

1 **16.1 General Provisions**

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15 **16.1.1 Title; Applicability**

- 16 A. This title is known, and may be cited as, the "Land Use and Development Code of the
17 Town of Kittery, Maine."
18 B. Application of title. The provisions of this title pertain to all the land and water areas as
19 herein defined within the boundaries of the Town.

20 **16.1.2 Purpose**

- 21 A. This title is designed for all the purposes of zoning embraced in the Maine Revised
22 Statutes and has been created as an integral part of a growth management program,
23 comprehensive planning, and implementation process for the Town to promote the health,
24 safety and general welfare of its residents.
25 B. Among other things, zoning is designed to:
26 (1). Encourage the most appropriate use of land and water throughout the Town;
27 (2). Promote traffic safety;
28 (3). Provide safety from fire and other elements;
29 (4). Provide adequate light and air;
30 (5). Prevent overcrowding of real property;
31 (6). Prevent development in unsuitable areas;
32 (7). Promote an adequate transportation and circulation system; [Amended 9-26-2011
33 by Ord. No. 11-15]
34 (8). Control and manage the coordinated development of unbuilt areas;
35 (9). Encourage the formation of community units;
36 (10). Provide an allotment of land area in new developments sufficient for all the
37 requirements of community life;
38 (11). Conserve energy and natural resources and protect the environment;
39 (12). Preserve land values; and
40 (13). Provide for adequate public services.

41 **16.1.3 Administration of Title 16 by Planning Board**

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

43 **16.1.4 Conflicting requirements**

- 44 A. Conflict within this title. Where the requirements of this title are in conflict with each
45 other, the most restrictive or that imposing the higher standards governs.
46 B. Conflict with other statutes. Wherever the requirements of this title are at variance with the
47 requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions
48 or covenants, the most restrictive or that imposing the higher standards governs.

49 **16.1.5 Severability**

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

54

55 **16.1.6 Rules of Construction**

- 56 A. For the purposes of this Ordinance:
- 57 B. The word “person” includes a firm, association, organization, partnership, trust, company
- 58 or corporation as well as an individual;
- 59 C. The present tense includes the future tense;
- 60 D. Words used in the singular include the plural and words used in the plural include the
- 61 singular;
- 62 E. The word “shall” is mandatory, the word “may” is permissive;
- 63 F. The words “used” or “occupied” included the words “intended,” “designed,” or “arranged
- 64 to be used or occupied”;
- 65 G. The word “dwelling” includes the word “residence”;
- 66 H. The word “lot” includes the words “plot” and parcel”
- 67 I. In case of any difference of meaning or implication between the text of this chapter and
- 68 any map or illustration, the text shall control;
- 69 J. Terms not defined shall have their customary dictionary meaning.

70 **16.1.7 Amendments**

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

75 **16.1.8 General Development Requirements**

- 76 A. This chapter outlines requirements for conformity; discusses nonconformance and waivers;
- 77 and defines various development review thresholds and requirements to further the safe
- 78 and orderly development of the Town.
- 79 B. Conformity
- 80 (1). Conformity required.
- 81 No building, structure or land may hereafter be used or occupied, and no building
- 82 or structure or part thereof may hereafter be erected, constructed, expanded, moved
- 83 or altered, and no new lot may be created except in conformity with all of the
- 84 regulations herein specified for the zone where it is located, unless such structure
- 85 or use exists as a legally nonconforming use or a variance is granted. See
- 86 §16.7.11.B and §16.8.10.D, for specific requirements related to septic waste
- 87 disposal systems.
- 88 (2). Minimums and uniformity.
- 89 The regulations specified by this title for each class of district are minimum
- 90 requirements and apply uniformly to each class or kind of structure or land.
- 91 (3). Land within street lines.
- 92 Land within the lines of a street on which a lot abuts is not considered as part of
- 93 such lot for the purposes of meeting the area/frontage requirements of §16.4,
- 94 notwithstanding the fact that the fee to such land may be in the owner of such lot.
- 95 (4). Yard, parking or loading space.
- 96 No part of a yard or other space or off-street parking or loading space about or in
- 97 connection with any building and required for the purpose of complying with this
- 98 title may be included as part of a yard, open space or off-street parking or loading
- 99 space similarly required for any other building, except as authorized in § 16.7.11.F.

- 100 (5). Zone boundary line extension.
101 Where a zoning district boundary line divides a lot, the regulations applicable to
102 either zone of such lot may extend not more than 50 feet into the portion in the
103 other zone(s), except when a less restrictive portion abuts the Resource Protection
104 Zone.
- 105 a. Before granting any such extension, the Planning Board must determine
106 that the proposed use of the extended portion will:
 - 107 i. Not prevent the orderly and reasonable use of properties in the
108 adjacent zone;
 - 109 ii. Be in harmony with the character of the adjacent zone;
 - 110 iii. Not adversely affect the property values of adjacent zone's
111 immediate neighborhoods;
 - 112 iv. Not create any traffic hazards or undue traffic congestion on streets
113 in the adjacent zone;
 - 114 v. Not give off obnoxious gases, odors, smoke or soot;
 - 115 vi. Not cause disturbing emission of electrical discharges, dust, light,
116 vibration or noise; and
 - 117 vii. Be adequately screened from the adjacent zone.
 - 118 b. The Planning Board may require a study to be performed or commissioned
119 by the applicant to ensure compliance with the above requirements.
- 120 (6). Averaging building setbacks.
121 Building setback from the street line need not be greater than the average of the
122 setback distances of the buildings on the lots next thereto on either side.

123 C. Nonconformance

124 [Amended 9-26-2011 by Ord. No. 11-13; 9-26-2011 by Ord. No. 11-14; 1-23-2012 by
125 Ord. No. 12-01; 1-28-2015 by Ord. No. 15-01; 9-28-2015 by Ord. No. 15-09; 5-22-2017
126 by Ord. No. 17-04]

- 127 (1). Purpose.
128 The purpose of this title is to promote land use conformities and to regulate
129 nonconforming structures, uses, and lots, and to promote the following objectives.
- 130 (2). Prohibitions and allowances.
- 131 a. Except as otherwise provided in this article, a nonconforming condition
132 must not be permitted to become more nonconforming.
 - 133 b. Nonconforming vacant lots of record may be developed, maintained or
134 repaired.
 - 135 c. Nonconforming uses may continue, may be changed to an equal or more
136 appropriate nonconforming use, or be changed to a conforming use.
- 137 (3). General.
- 138 a. Transfer of ownership. Legally nonconforming structures, lots, and uses
139 may be transferred, and the new owner may continue the nonconforming
140 use or continue to use the nonconforming structure and/or lot, subject to the
141 provisions of this title.
 - 142 b. Repair and maintenance. This title allows the normal upkeep and
143 maintenance of nonconforming uses and structures including repairs or
144 renovations that do not involve expansion of the nonconforming use or
145 structure that is not otherwise permitted by this title, and such other changes
146 in a nonconforming use or structure as federal, state, or local building and
147 safety codes may require.
 - 148 c. Nonconforming parking or loading space. A structure and/or use which is

149 nonconforming as to the requirements for off-street loading and/or parking
150 spaces may not be enlarged or added to unless off-street space is provided
151 sufficient to satisfy the requirements of this title for both the original and
152 addition or enlargement of the structure or use.

153 (4). Nonconforming structures.

154 a. Nonconforming structure relocation. Except where otherwise permitted in
155 this title, relocation of a nonconforming structure must be approved by the
156 Board of Appeals. In cases where the structure is located in the Shoreland
157 or Resource Protection Overlay Zone, the relocation must be approved by
158 the Planning Board.

159 i. A nonconforming structure may be relocated within the boundaries
160 of the parcel on which the structure is located provided the site of
161 relocation conforms to all dimensional requirements, to the greatest
162 practical extent, as determined by the Planning Board or Board of
163 Appeals, and provided the applicant demonstrates the present
164 subsurface sewage disposal system meets the requirements of state
165 law and the State of Maine Subsurface Wastewater Disposal Rules,
166 or a new system can be installed in compliance with the law and
167 said rules. In no case may the relocation of a structure be permitted
168 that causes the structure to be more nonconforming. See Chapter
169 §16.7.11.B and §16.8.10.D, for other specific requirements related
170 to septic waste disposal systems.

171 ii. In determining whether the structure relocation meets the setback to
172 the greatest practical extent, the Planning Board or Board of
173 Appeals must consider the following conditions:

- 174 a. The size of the lot;
- 175 b. The slope of the land;
- 176 c. The potential for soil erosion;
- 177 d. The location of other structures on the property and on
178 adjacent properties;
- 179 e. The location of the septic system and other on-site soils
180 suitable for septic systems;
- 181 f. The type and amount of vegetation to be removed to
182 accomplish the relocation.

183 iii. When it is necessary to remove vegetation within the water or
184 wetland setback area to relocate a structure, replanting of native
185 vegetation to compensate for the destroyed vegetation is required.
186 The Planning Board or Board of Appeals may restrict mowing
187 around and pruning of the replanted native vegetation to encourage
188 a more natural state of growth. Tree removal and vegetation
189 replanting is required as follows, effective 2-28-15:

- 190 a. Prior to the commencement of on-site construction, areas to
191 remain undisturbed must be clearly marked with stakes and
192 caution tape. All stakes, caution tape, silt fences, and other
193 materials used during construction must remain until all on-
194 site work is completed. Prior to removal, written permission
195 to remove such materials must be given by the Code
196 Enforcement Officer.
- 197 b. Trees removed to relocate a structure must be replanted with
198 at least one native tree, six feet in height, for every tree
199 removed. If more than five trees are planted, no one species

- 200 of tree can be used to make up more than 50% of the number
201 of trees planted. Replaced trees must be planted no farther
202 from the water or wetland than the trees removed.
- 203 c. Other woody and herbaceous vegetation and ground cover
204 that is removed, or destroyed, to relocate a structure must be
205 reestablished. An area at least the same size as the area
206 where vegetation and/or ground cover was disturbed,
207 damaged, or removed must be reestablished within the
208 setback area. The vegetation and/or ground cover must
209 consist of native vegetation and/or ground cover similar to
210 that disturbed, destroyed or removed.
- 211 d. Where feasible, when a structure is relocated on a parcel, the
212 original location of the structure must be replanted with
213 vegetation consisting of grasses, shrubs, trees or a
214 combination thereof.
- 215 iv. If the total footprint of the original structure can be relocated beyond
216 the required setback area, no portion of the relocated structure may
217 be constructed at less than the setback requirement for a new
218 structure.
- 219 b. Nonconforming structure repair and/or expansion.
- 220 i. The Code Enforcement Officer may approve the repair and/or
221 expansion of a nonconforming structure provided the proposed
222 expansion is not located in the base zone setback of the Shoreland
223 Overlay Zone or at any location and meets either of the following
224 criteria:
- 225 a. A vertical expansion that follows the existing building
226 footprint;
- 227 b. Will not result in setbacks less than those existing.
- 228 ii. Except where otherwise permitted in this title, repair and/or
229 expansion of a nonconforming structure must be approved by the
230 Board of Appeals. In cases where the structure is located in the base
231 zone setback of the Shoreland Overlay or Resource Protection
232 Overlay Zone, the repair and/or expansion must be approved by the
233 Planning Board.
- 234 iii. This subsection does not apply to any proposed vertical expansion
235 of a patio, deck or accessory structure permitted to be closer to a
236 water body or to a principal structure in accordance with Table
237 16.5.30s - Minimum Setbacks from Wetlands and Water Bodies.
- 238 a. A nonconforming structure may be repaired or maintained
239 and may be expanded in conformity with the dimensional
240 requirements, such as setback, height, etc., as contained in
241 this title. If the proposed expansion of a nonconforming
242 structure cannot meet the dimensional requirements of this
243 title, the Board of Appeals or the Planning Board will review
244 such expansion application and may approve proposed
245 changes provided the changes are no more nonconforming
246 than the existing condition and the Board of Appeals or the
247 Planning Board makes its decision per § 16.2.12.F.2.
- 248 b. Except in the Residential - Village (R-V) Zone, minimum
249 setbacks of residential storage sheds that are less than 121
250 square feet, one-story residential garages that are less than

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577 square feet, and decks less than 251 square feet may be one-half the minimum rear and side yard setbacks, providing the lots are legally nonconforming.

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

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

e. In addition to the standards in the above § 16.1.8.C(4)b.iii.a through (d), the expansion of nonconforming structures located in the Shoreland or Resource Protection Overlay Zone must meet the following:

1. Wherever a new, enlarged, or replacement foundation is constructed under a nonconforming structure the structure and new foundation must be placed such that setback requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in § 16.1.8.C(4)a. Nonconforming structure relocation.
2. If a legally nonconforming principal structure is located partially within 25 feet from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland, expansion of the footprint and/or height of any portion of the structure that is located within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland is prohibited.
3. Notwithstanding § 16.1.8.C.(4)b.iii.e[2] above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland, that structure may be expanded as follows:
 - [a] The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater. .

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4. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or coastal or freshwater wetland setback requirement. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or coastal or freshwater wetland setback requirements may be expanded or altered as follows:

[a] For structures located less than the base zone setback from the normal high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any portion of a structure that is located within the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater. .

[b] For structures that are located within the Resource Protection Overlay Zone, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet, or 30% larger than the footprint that existed at the time the Resource Protection Overlay Zone was established, whichever is greater. The maximum height of any structure may not be greater than 25 feet, or the height of the existing structure, whichever is greater, except that any portion of those structures located less than the base zone setback from the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or freshwater wetland must meet the footprint, roof pitch and height limits in § 16.1.8.C(4)b.iii.e.3.[a], above.

c. Nonconforming structure reconstruction.

i. In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming structure which is located less than the required setback from a water body, tributary stream, or coastal or freshwater wetland and which is removed, damaged or destroyed, by any cause, by more than 50% of the assessed value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within 18 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or coastal or freshwater wetland setback requirement to the greatest practical extent as determined by the Planning Board. In determining whether the structure reconstruction

355 meets the setback to the greatest practical extent the Planning Board
356 must consider, in addition to the criteria in § 16.1.8.C(4)a,
357 Nonconforming structure relocation, the physical condition and type
358 of foundation present, if any.

- 359 ii. In the Shoreland or Resource Protection Overlay Zone(s), any
360 nonconforming structure which is located less than the required
361 setback from a water body, tributary stream, or coastal or freshwater
362 wetland and removed, damaged or destroyed by any cause by 50%
363 or less of the assessed value of the structure before such damage,
364 destruction or removal, may be reconstructed in place if a permit is
365 obtained from the Code Enforcement Officer within 12 months of
366 the established date of damage or destruction.
- 367 iii. Outside of the Shoreland or Resource Protection Overlay Zone(s),
368 any nonconforming structure which is removed, damaged or
369 destroyed by any cause may be restored or reconstructed in place if
370 a permit is obtained from the Code Enforcement Officer within 18
371 months of the date of said removal, damage or destruction. Such
372 restoration or reconstruction must not make the structure more
373 nonconforming than the prior nonconforming structure.
- 374 iv. Nothing in this section prevents the demolition of the remains of
375 any structure damaged or destroyed. Application for a demolition
376 permit for any structure that has been partially damaged or
377 destroyed must be made to the Code Enforcement Officer.
- 378 v. In the Shoreland or Resource Protection Overlay Zone(s), if the total
379 footprint of the original structure can be reconstructed beyond the
380 required setback area, no portion of the reconstructed structure may
381 be reconstructed at less than the setback requirement for a new
382 structure. If the reconstructed or replacement structure is less than
383 the required setback, it may not be any larger than the original
384 structure, except as allowed in § 16.1.8.C(4)b, Nonconforming
385 structure repair and expansion.
- 386 vi. When it is necessary to remove vegetation to reconstruct a structure,
387 vegetation will be replanted in accordance with § 16.1.8.C(4)a.iii,
388 Nonconforming structure relocation.
- 389 vii. Except where expressly permitted in this title, in no case may a
390 structure be reconstructed or replaced so as to increase its
391 nonconformity.

392 (5). Nonconforming uses.

- 393 a. Nonconforming use continuance. The use of land, or structure, lawful at the
394 time such use began, may continue although such use may not meet the
395 provisions of this title.
- 396 b. Discontinued resumption prohibited. A nonconforming use discontinued for
397 a period exceeding one year, or which is superseded by a conforming use,
398 loses its status as a permitted nonconforming use. The uses of the land or
399 structure must thereafter meet the provisions of this title. This provision
400 does not apply to the resumption of a use of a residential structure where it
401 can be demonstrated that the structure has been used or maintained for
402 residential occupancy during the preceding five-year period.
- 403 c. Nonconforming use expansion. Expansion of nonconforming uses is
404 prohibited, except nonconforming residential uses may be expanded within
405 existing residential structures. Where the expansion of a nonconforming
406 residential use involves the expansion of a structure, the structure must be

407 expanded in conformity with all requirements as outlined in § 16.1.8.C(4),
408 Nonconforming structures.

- 409 d. Nonconforming use change: review authority and evaluations. The
410 reviewing authority may require evaluations be prepared by a person
411 certified and/or qualified to perform the required evaluation. It is the burden
412 and responsibility of the applicant to bear the costs for such evaluations. In
413 the event there are existing official maps, data and/or reports for general
414 use, the applicant is encouraged to submit copies of these documents to the
415 reviewing authority. In determining that no greater adverse impact will
416 occur, the applicant may be required to submit an evaluation in writing
417 regarding the probable effects on public health and safety, erosion and
418 sedimentation, water quality, fish and wildlife habitat, vegetative cover,
419 visual and actual points of public access to waters, natural beauty,
420 floodplain management, archaeological and historic resources, and
421 commercial fishing and maritime activities, and other functionally water-
422 dependent uses.
- 423 i. The Town Planner and the Code Enforcement Officer may approve
424 the change of use of a nonconforming structure where it can be
425 deemed the proposed use is a conforming use and the proposed use
426 does not impact a water body, tributary stream, or wetland.
 - 427 ii. Outside the areas regulated by Shoreland Overlay Zone or Resource
428 Protection Overlay Zone, an existing nonconforming use may be
429 changed to another nonconforming use with approval of the Board
430 of Appeals.
 - 431 iii. Within areas regulated by Shoreland Overlay Zone or Resource
432 Protection Overlay Zone, an existing nonconforming use may be
433 changed to another nonconforming use with the approval of the
434 Planning Board.

435 (6). Nonconforming lots.

- 436 a. Nonconforming lots of record.
 - 437 i. Nonconforming lots. In any district, notwithstanding limitations
438 imposed by other sections of this title, single noncontiguous lots
439 legally created when recorded may be built upon consistent with the
440 uses in the particular zone. These provisions apply even though such
441 lots fail to meet the minimum requirements for area or width, or
442 both, which are applicable in the zone, provided that yard
443 dimensions and other requirements, not involving area or width, or
444 both, of the lot conform to the regulation for the zone in which such
445 lot is located. Relaxation of yard and other requirements not
446 involving area or width may be obtained only through
447 miscellaneous variation request to the Board of Appeals.
- 448 b. Contiguous nonconforming lots.
 - 449 i. Contiguous nonconforming lots. If two or more contiguous
450 nonconforming lots or portions thereof are in single or joint
451 ownership of record, and if all or part of the lots do not meet the
452 dimensional requirements of this title, and if one or more of the lots
453 are vacant or contain no principal structure, the lots must be
454 combined to the extent necessary to meet the applicable dimensional
455 requirements of this title.

[\[Image\]](#)

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- ii. Contiguous-built upon nonconforming lots. If two or more contiguous lots or parcels are in a single or joint ownership of record prior to July 13, 1977, and prior to December 15, 1973, for properties within the Shoreland Overlay Zone, if all or part of the lots do not meet the dimensional requirements of this title, and if a principal use or structure exists on each lot, the nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S. § 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

[\[Image\]](#)

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- iii. Contiguous partially built-upon lot. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of or since adoption or amendment of this title, if any of these lots do not individually meet the dimensional requirements of this title or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the applicable dimensional requirements of this title.

[\[Image\]](#)

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- iv. This subsection does not apply:
 - a. To any Planning Board approved subdivision located entirely outside of the Shoreland Overlay Zone and Resource Protection Overlay Zone, and which was recorded with the York County Registry of Deeds on, or before, July 13, 1977;
 - b. If one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this title § 16.8.10.D, Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and
 - 1. If each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - 2. If any lot(s) that do not meet the frontage and lot size requirements of § 16.4.28.E(1) are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.
 - c. Single lot division of a nonconforming lot. If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title. If three or more principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title.
 - d. Adjustment of common boundary line of nonconforming lots.

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- i. The common property line of two nonconforming lots of record, each with legally created principal structures, can be adjusted if:
 - a. The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this title; or
 - b. Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this title; and
 1. Each resulting lot is not less than 20,000 square feet in lot size when not served by public sewer; or
 2. Each resulting lot is not less than the smallest residential lot permitted under the Town's land use base zones, Title 16.3, when served by public sewer; or
 - c. Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses¹; and
 1. Each resulting lot is not less than 20,000 square feet in lot size and not less than 100 feet in shore frontage^{2,3}; and
 2. A lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements¹; and
 3. Common boundary lines may not be adjusted when both subject lots are nonconforming per MDEP Mandatory Shoreland Zoning minimum lot standards.³
 - ii. It is not the intention of the above subsection (Adjustment of common boundary line of nonconforming lots) to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and Title 16.8 does not constitute the creation of a new lot and the adjusted lot remains a legally nonconforming lot of record, not applicable to the joining of lots.

NOTES:

- 1 Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 square feet lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 square feet lot size with 200 feet of shore frontage.
- 2 Title 16.1.8.C(6)d is allowed only when both subject lots are under the same single or joint ownership.
- 3 Adherence to State Minimum Lot Size Law (12 M.R.S. §§ 4807-A through 4807-D) and State of

Maine Subsurface Wastewater Disposal Rules or public sewer is required.

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1 **16.2 Administration and Enforcement**

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23 **16.2.1. Administration and Enforcement**

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

26 **16.2.2. Planning Board appointment and powers.**

27 A. Appointment and composition.

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

40 B. Powers and duties.

- 41 (1). The Board shall elect annually a chairperson and vice chairperson from its
42 membership and a secretary. It is the duty of the secretary to keep and maintain a
43 permanent record of all meetings of the Board and show the vote of each member
44 upon each question.
- 45 (2). A quorum consists of four or more members. All decisions must be made by a
46 minimum of four like votes, except on procedural matters.
- 47 (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and
48 hold meetings to perform duties.
- 49 (4). Any question of whether a particular issue involves a conflict of interest sufficient
50 to disqualify a member from voting thereon is decided by a majority vote of the
51 members present, except the member who is being challenged, who may not vote
52 on the issue.
- 53 (5). All records of the Board are public records, except as excluded under 1 M.R.S. §
54 402(3) and (3-A).
- 55 (6). The Board is to:
- 56 a. Perform duties as provided by law.
- 57 b. Hear and decide on required development plans, including special
58 exception use requests, that require Planning Board review, using the
59 development application and review procedures and criteria and other
60 provisions in this title.
- 61 c. Prepare and recommend for Council adoption a Comprehensive Plan and
62 initiate Plan implementation by zoning ordinance, other land use and
63 development regulations, and other means; and monitor and report on Plan
64 implementation progress.

65 **16.2.3. Board of Appeals**

66 A. Appointment and composition.

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

- 68 and 30-A M.R.S. § 2691.
- 69 (2). The Board consists of seven members, who are Kittery residents, serving staggered
70 terms of office of three years.
- 71 (3). Members of the Board are appointed by the Town Council.
- 72 (4). A municipal officer, or spouse thereof, may not serve as a member of the Board.
- 73 (5). Members serve until their successors are appointed and qualified.
- 74 (6). The number of consecutive terms by any Board member is limited by Sec. 8.01(3)
75 of the Town Charter.
- 76 (7). A member of the Board may be dismissed for cause by the Town Council before
77 the expiration of such member's term after notice and hearing.
- 78 (8). Vacancies are filled by Town Council appointment for the unexpired term.

79 B. Powers and duties.

- 80 (1). The Board shall elect annually a chairperson and vice chairperson from its
81 membership and a secretary. It is the duty of the secretary to keep and maintain a
82 permanent record of all meetings of the Board and show the vote of each member
83 upon each question.
- 84 (2). A quorum consists of four or more members. All decisions must be made by a
85 minimum of four like votes, except on procedural matters.
- 86 (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and
87 hold meetings to perform duties
- 88 (4). Any question of whether a particular issue involves a conflict of interest sufficient
89 to disqualify a member from voting thereon is decided by a majority vote of the
90 members present, except the member who is being challenged, who may not vote
91 on the issue.
- 92 (5). All records of the Board are public records, except as excluded under 1 M.R.S. §
93 402(3) and (3-A).
- 94 (6). The Board is to:
- 95 a. Perform duties as provided by law.
- 96 b. Administrative decision appeal. Hear and decide on an administrative
97 decision appeal where it is alleged by an aggrieved party that there is an
98 error in any order, requirement, decision or determination made by the
99 Code Enforcement Officer in review of an action on a permit application
100 under this title.
- 101 c. Variance request. Hear and decide on a variance request within the
102 limitations set forth in this title and 30-A M.R.S. § 4353(4).
- 103 d. Miscellaneous variation request. To hear and decide on a miscellaneous
104 variation request to permit variation in:
- 105 i. Nonconformance as prescribed in § 16.1.8;
- 106 ii. Standards contained in § 16.7.E, § 16.7.F, or § 16.5.23 Sign
107 violation and appeal; or
- 108 iii. Accessory dwelling unit standards per § 16.5.3.
- 109 e. Special exception use request. Hear and decide on a special exception use
110 request not requiring Planning Board review per development and site
111 review thresholds and using the development application and review
112 (§16.7) procedures and review criteria and other provisions in this title.

113 **16.2.4. Port Authority**

114 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

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

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

174 16.2.5. **Town Planner**

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

200 16.2.6. **Code Enforcement Officer (CEO)**

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

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

213 **16.2.7. Enforcement; general**

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

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

223 **16.2.8. Building/Regulated Activity Permits**

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

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

231 B. Conformity. No building/regulated activity permit may be issued except in conformity
232 with this title, except after written order of the Board of Appeals.

233 C. Permit records. The CEO must maintain a public record of all building/regulated activity
234 permits and applications thereof.

235 D. Permit period. [Amended 10-26-2015 by Ord. No. 15-11]

236 (1). A permit expires if the Code Enforcement Officer determines no substantial work
237 has been commenced within six months from date of issue. A permit expires if
238 work is not substantially complete within two years from date of issue. Expired
239 permits may be renewed upon written request and justifiable cause demonstrated to
240 the Code Enforcement Officer's satisfaction. Written request for renewal must be
241 made prior to the permit expiration.

242 (2). The permit may be renewed one time only for a single six-month period to
243 commence work, upon payment of the base application fee. If the Code
244 Enforcement Officer determines substantial work has not commenced upon
245 expiration of the six-month renewal period, a new permit application and payment
246 of all applicable new permit fees must be submitted.

247 (3). The permit may be renewed one time only for a single six-month period to
248 complete work, upon payment of the base application fee. If work is not
249 substantially complete as determined by the Code Enforcement Officer upon
250 expiration of the six-month renewal period, a new permit application and payment
251 of all applicable new permit fees must be submitted based on the value of the
252 remaining permitted work.

253 (4). Any work commenced or completed without the issue of a permit as required by
254 this title is subject to an after-the-fact permit with all applicable fees doubled.

255 E. Permit threshold. A permit is required if the activity involves any of the following
256 thresholds, as determined by the Code Enforcement Officer:

257 (1). Fair market value of the work is greater than \$2,000;

258 (2). Changes to electric, plumbing or septic systems;

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

269 F. Application.

- 270 (1). Plans.
- 271 a. All applications for building/regulated activity permits are to be
272 accompanied by plans showing the actual dimensions and shape of the lot
273 to be built upon, including but not limited to property and setback lines; the
274 exact sizes and locations and dimensions of the proposed building or
275 alteration of any existing structures and the proposed sewage disposal
276 systems as designed by a Maine-licensed site evaluator. The Code
277 Enforcement Officer may waive the requirement for plans in the case of
278 minor interior alterations which in the CEO's opinion do not result in a
279 change in use. The application is to include such other information as
280 lawfully may be required by the Code Enforcement Officer to determine
281 conformance with and provide for the enforcement of this title. All plans
282 and correspondence are to include the map and lot designation of the
283 property concerned in the upper right-hand corner.
- 284 b. At any time between the initial request for a building/regulated activity
285 permit and the granting of final occupancy certificate the CEO or
286 designated representative is to have access to the subject property and
287 structures without obtaining prior permission, written or oral, from the
288 property owner or applicant, except when a temporary occupancy permit
289 has been given to the dwelling owner or applicant.
- 290 (2). Drainage and sewage disposal. Wherever on-site subsurface disposal is
291 contemplated, the approval of building/regulated activity permit applications are
292 subject to evidence of satisfactory subsurface soil conditions for drainage and
293 sewage disposal and prior obtainment of a subsurface wastewater disposal permit.
294 Such evidence must be furnished in compliance with the Maine State Plumbing
295 Code and § 16.7 or § 16.8.
- 296 (3). Fee. Except for municipality permits, application for a building/regulated activity
297 permit must be accompanied by a fee which is established by the Town Council.
298 (See Appendix A, Fee Schedules.) [Amended 9-26-2011 by Ord. No. 11-15]
- 299 (4). Flood hazard ordinance. Any building or structure that might be erected in an area
300 subject to periodic flooding must meet all conditions of Chapter 15.3, relating to
301 flood hazard permit and review procedure, of this Code and the applicable Federal
302 Emergency Management Agency (FEMA) regulation(s). No alteration of the
303 natural contour of the land by grading or filling for any purpose is permitted in an
304 area subject to periodic flooding.
- 305 (5). Conformance to standards. [Amended 5-30-2012 by Ord. No. 12-04]
- 306 a. All developments must be in conformance with the procedures, standards
307 and requirements of this title.
- 308 b. All work that requires a building/regulated activity permit must conform to
16.2 Administration - Page 7 of 22

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

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

- 317 i. National Electrical Code® standards (NFPA 70), adopted pursuant
318 to 32 M.R.S. § 1153-A.
- 319 ii. Maine State Plumbing Codes standards, adopted pursuant to 32
320 M.R.S. § 3403-B.
- 321 iii. Standard for the Installation of Oil-Burning Equipment standards
322 (NFPA 31), adopted pursuant to 32 M.R.S. § 2353.
- 323 iv. Flammable and Combustible Liquids Code standards (NFPA 30),
324 adopted pursuant to 32 M.R.S. § 14804.
- 325 v. Boiler and pressure vessel standards, adopted pursuant to 32 M.R.S.
326 § 15104-A.
- 327 vi. Elevator standards, adopted pursuant to 32 M.R.S. § 15206.
- 328 vii. National Fire Protection Association (NFPA) firesafety codes and
329 standards, adopted pursuant to 25 M.R.S. § 2452 and § 2465, as
330 follows:

- 331 a. NFPA 1 - Fire Code.
- 332 b. NFPA 101 - Life Safety Code.
- 333 c. NFPA 54 - Fuel Gas Code.
- 334 d. NFPA 211 - Standard for Chimneys, Fireplaces, Vents, and
335 Solid-Fuel-Burning Appliances.

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

341 16.2.9. **Certificate of occupancy**

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

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

352 C. Temporary certificate.

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

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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]

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- 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]

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- 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.

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- b. Notwithstanding § 16.2.12.D(2)a, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board of Appeals must restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" includes railing, wall or roof systems necessary for the safety or effectiveness of the structure.
 - c. A copy of each variance request within the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, must be forwarded by the Code Enforcement Officer to the Commissioner of the Maine Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals will be made part of the record to be taken into consideration by the Board of Appeals.
 - d. The Board of Appeals must limit any variance granted as strictly as possible to ensure conformance with the purposes and provisions of this title to the greatest extent possible and, in doing so, may impose such conditions of approval to a variance as it deems necessary. The party receiving the variance must comply with any conditions imposed.
- (3). Miscellaneous variation request. The Board of Appeals may hear, decide and approve variations in:
- a. Nonconformance as prescribed in § 16.1.8;
 - b. Parking, loading and traffic standards contained in § 16.7.11.E and § 16.7.11.F;
 - c. Sign violation and appeal standards contained in § 16.5.23.M; or
 - d. Accessory dwelling unit standards contained in § 16.5.3.
- (4). Special exception use request.
- a. The Board of Appeals will hear, decide and may grant an applicant's special exception use request where authorized in § 16.4 for any application excluded from Planning Board review as stated in § 16.7.2.B, if the proposed use meets the criteria set forth in § 16.2.12.F, Basis for decision.
 - b. The Planning Board will review, decide and may approve an applicant's special exception use request where the proposed project requires Planning Board review as defined in § 16.7.2.B or is located in a Shoreland or Resource Protection Overlay Zone. The Planning Board must find the proposed project and use meets the criteria set forth in § 16.7.10.D and § 16.2.12.F.

543 E. BOA appeal/request filing procedures.

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

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

Officer prior to the date of said approval expiration.

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655 (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.
- 656 a. A request for the Board of Appeals to reconsider a decision must be filed
657 with the Code Enforcement Officer within 10 days of the decision that is to
658 be reconsidered. A vote to reconsider and the action taken on that
659 reconsideration must occur and be completed within 45 days of the date of
660 the vote on the original decision. Reconsideration of a decision requires a
661 positive vote of the entire Board and proper notification to the landowner,
662 petitioner, Planning Board, the Town Planner, including abutters and those
663 who testified at the original hearing(s). The Board may conduct additional
664 hearings and receive additional evidence and testimony.
- 665 b. Appeal of a reconsidered decision to the Superior Court must be made
666 within 15 days after the decision on reconsideration.
- 667 (12). Second appeals/requests. If the Board of Appeals denies an appeal/request, a
668 second appeal/request of a similar nature may not be brought before the BOA
669 within one year from the date of original denial, unless the appellant submits new
670 evidence and the BOA, by formal action, decides the evidence is significant and
671 warrants a new hearing, or unless the BOA finds in its sole and exclusive judgment
672 that an error or mistake of law or misunderstanding of facts has been made.
- 673 (13). Fees. The appellant must pay a fee for filing an appeal or special exception request
674 in an amount as set by the Town Council.

675 F. Basis for decision.

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

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

752 aggrieved party, hear and decide appeals from determinations of the Code
753 Enforcement Officer in the administration of the provisions of this chapter. The
754 Board of Appeals may grant a variance from the requirements of § 16.5.11,
755 Floodplain Management, § 16.5.11.A et seq., consistent with state law and the
756 following criteria: [Added 9-26-2011 by Ord. No. 11-15]

- 757 a. Variances may not be granted within any designated regulatory floodway if
758 any increase in flood levels during the base flood discharge would result.
- 759 b. Variances may be granted only upon:
- 760 i. A showing of good and sufficient cause; and
- 761 ii. A determination that, should a flood comparable to the base flood
762 occur, the granting of a variance will not result in increased flood
763 heights, additional threats to public safety, public expense, or create
764 nuisances, cause fraud or victimization of the public or conflict with
765 existing local laws or ordinances; and
- 766 iii. A showing that the existence of the variance will not cause a
767 conflict with other state, federal or local laws or ordinances; and
- 768 iv. A determination that failure to grant the variance would result in
769 "undue hardship," which in this subsection means:
- 770 a. That the land in question cannot yield a reasonable return
771 unless a variance is granted; and
- 772 b. That the need for a variance is due to the unique
773 circumstances of the property and not to the general
774 conditions in the neighborhood; and
- 775 c. That the granting of a variance will not alter the essential
776 character of the locality; and
- 777 d. That the hardship is not the result of action taken by the
778 applicant or a prior owner.
- 779 c. Variances may only be issued upon a determination that the variance is the
780 minimum necessary, considering the flood hazard, to afford relief.
- 781 d. Variances may be issued by a community for new construction, substantial
782 improvements, or other development for the conduct of a functionally
783 dependent use, provided that:
- 784 i. Other criteria of this section and § 16.5.11.H.(9) are met; and
- 785 ii. The structure or other development is protected by methods that
786 minimize flood damages during the base flood and create no
787 additional threats to public safety.
- 788 e. Variances may be issued by a community for the reconstruction,
789 rehabilitation or restoration of structures listed on the National Register of
790 Historic Places or a State Inventory of Historic Places, without regard to the
791 procedures set forth in Subsection 6(a) through (d) of this section.
- 792 f. Any applicant who meets the criteria of Subsection 6(a) through (e) of this
793 section is to be notified by the Board of Appeals, in writing, over the
794 signature of the Chairperson of the Board of Appeals, that:
- 795 i. The issuance of a variance to construct a structure below the base
796 flood level will result in greatly increased premium rates for flood
797 insurance, up to amounts as high as \$25 per \$100 of insurance
798 coverage;
- 799 ii. Such construction below the base flood level increases risks to life
800 and property; and
- 801 iii. The applicant agrees, in writing, that the applicant is fully aware of

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

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

814 16.2.13. **Violations and Enforcement**

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

- 821 A. Owner or persons liable. Any person(s), firm, corporation or legal entity, being the owner
822 of or having control or use of any buildings or premises, who participates in, assists,
823 directs, creates or maintains any situation that is contrary to the requirements of this title, is
824 responsible for the violation and is subject to the penalties and the remedies herein
825 provided.
- 826 B. Applications for permits or approvals involving sites with a violation. An application for a
827 building/regulated activity permit (see § 16.2.8), certificate of occupancy permit, sign
828 permit, subdivision approval or development review approval will be denied for any
829 property where a violation exists until such violation has been corrected or resolved.
- 830 C. Purpose of enforcement provisions. The purpose of these title enforcement provisions is to
831 provide an alternative method in addition to § 16.2.7 for enforcing and securing
832 compliance with the provisions of this title in a just, speedy and cost-effective manner, and
833 thereby to protect, preserve and enhance the public health, safety and general welfare.
- 834 D. Notice of violation and order (notice).

- 835 (1). It is the duty of the CEO to serve written notice on the landowner or the
836 landowner's agent and any other person or entity responsible (hereafter termed
837 "violation") for such violation. The notice must describe the nature of the violation,
838 include a specific reference to the provision(s) of this title and/or state statute
839 violated, and direct the discontinuance of the illegal action or condition. The notice
840 must also contain an order setting forth the action necessary to correct the violation
841 specifying a time period for correction as provided in § 16.2.13.H and must set
842 forth a fine to be imposed as authorized by § 16.2.13.I and/or 30-A M.R.S. § 4452
- 843 (2). Notwithstanding any other provision of this chapter, when the notice involves a
844 violation of this title pertaining to shoreland or resource protection zoning or 30-A
845 M.R.S. § 4452(3), the notice must also set forth, in addition to the fine to be
846 imposed, an order of remediation or other corrective action(s) consistent with and
847 in compliance with 30-A M.R.S. § 4452 deemed necessary by the CEO to correct
848 or mitigate the violation to the affected area(s), unless the correction or mitigation
849 would result in a threat or hazard to public health or safety, substantial
850 environmental damage or a substantial injustice.
- 851 (3). All proposed plans for corrective action submitted by the violator must comply

852 with the standards set forth in this chapter where applicable and 30-A M.R.S.
853 § 4452(3). The acceptance by the CEO of a violator's proposed plan(s) of
854 correction or mitigation will not relieve the violator of the requirement to pay the
855 fine set forth in the notice.

- 856 (4). The notice must also advise the violator of any right to appeal to the Board of
857 Appeals with respect to the CEO's determination that a violation of this title and/or
858 30-A M.R.S. § 4452 exists for which the violator is responsible.
- 859 (5). Additionally, if there is a violation of § 16.5.19, Nonstormwater Discharge, the
860 enforcement authority will order compliance by written notice of violation to that
861 person, indicating the nature of the violation and ordering the action necessary to
862 correct it, including, without limitation: [Amended 5-30-2018 by Ord. No. 04-18]
- 863 a. The elimination of nonstormwater discharges to the storm drainage system,
864 including, but not limited to, disconnection of the premises from the MS-4;
 - 865 b. The cessation of discharge practices or operations in violation of this
866 section;
 - 867 c. At the person's expense, the abatement or remediation (in accordance with
868 best management practices in DEP rules and regulations) of nonstormwater
869 discharges to the storm drainage system and the restoration of any affected
870 property; and/or
 - 871 d. The payment of fines, of the municipality's remediation costs, and of the
872 municipality's reasonable administrative costs and attorneys' fees and costs.
873 If abatement of a violation and/or restoration of affected property is
874 required, the notice will set forth a deadline within which such abatement or
875 restoration must be completed.

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

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

890 F. Appeal of notice of violation and order.

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

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

- (4). Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in § 16.2.13.J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.

- G. Civil proceedings. If the notice of violation and order has not been corrected, and no appeal is pending before the BOA or Superior Court, or the parties have not reached a consent agreement as provided in § 16.2.13.J, the Town Attorney or the CEO, as provided by MRCP Rule 80K, upon notice from the Town Manager, may initiate any and all appropriate legal proceedings authorized in this title or state statute to compel the violator to correct the violation, pay any fine imposed, and seek whatever other relief to which the Town may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to MRCP Rule 80K and 30-A M.R.S. § 4452 et seq., as amended.

H. Time limit for corrective action.

- (1). The time period within which a violation must be corrected as set forth in the notice of violation and order under § 16.2.13.D of this section is 30 days following receipt of the notice of the violation and order, unless:
- a. The CEO determines a longer reasonable time limit is necessary considering the nature and extent of the work required to correct the violation.
 - b. The CEO determines a shorter reasonable time limit is appropriate due to the threat posed by said violation to the health, safety and welfare of the public.
 - c. The CEO finds the violator has been previously served a notice of violation and order for a similar violation within the last 18 months; in which case the time limit for corrective action must be no more than five days.
- (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.

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

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

965 J. Consent agreements.

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

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

975 K. Payment of civil penalties. All civil penalties imposed pursuant to a notice of violation and
976 order as provided in § 16.2.13.D are payable to the Town and due within 30 days after the
977 notice of violation and order become final. All such civil penalties not paid when due
978 accrue interest on the unpaid penalties at the rate provided for judgments in 14 M.R.S.
979 § 1602-A. If the violator fails to pay this penalty, the penalty may be recovered by the
980 Town in a civil action in the nature of debt.

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

984 16.2.14. **Enforcement and Penalties**

985 A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter
986 16.5.11, Floodplain Management, pursuant to 30-A M.R.S. §4452.

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

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

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

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

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

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

1000
~~1001~~
1002

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

1003

1 **16.3 Definitions**

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13 **16.3.1. Purpose**

14 Except where specifically defined in this chapter, all words used in this title carry their
15 customary dictionary meanings. Words used in the present tense include the future, and the
16 plural includes the singular; the word "lot" includes the word "plot"; the word "building"
17 includes the word "structure"; the words "shall" or "must" are always mandatory; "occupied"
18 or "used" are considered as though followed by the words "or intended, arranged or designed
19 to be used or occupied"; and gender-specific words (e.g., she, he, his, hers) include the
20 opposite sex equivalent.

21 **16.3.2. Definitions**

22 As used in this title, the following terms shall have the meanings indicated:

23 **ABUTS**

24 That which is contiguous to, or shares, a common boundary line. The owner of a property that is
25 contiguous to or shares a common boundary line is an abutter. See § 16.5.2, § 16.7.10.C(2)c and §
26 16.8.9.C(3)c on abutter notification process when a new development or redevelopment is proposed.

27 **ACCESSORY BUILDING**

28 A subordinate building on the lot, the use of which is incidental to that of the main or principal
29 building.

30 **ACCESSORY DWELLING UNIT (ADU)**

31 A dwelling unit which is part of an existing structure on the property where the owner of the
32 property occupies one of the units. See § 16.5.3 for Accessory Dwelling Unit general performance
33 standards.

34 **ACCESSORY STRUCTURE**

35 A structure that is subordinate to and serves a principal building or use on the lot.

36 **ACCESSORY USE**

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

39 **ADJACENT GRADE**

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

42 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

43 **ADULT ENTERTAINMENT ESTABLISHMENT**

44 A. Any business in any use category, a substantial or significant portion of which consists of
45 selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials, actions,
46 and/or devices of any kind which appeal to prurient interest and which depict or describe
47 specified sexual activities, including but not limited to:

- 48 (1). Live entertainment, books, magazines, periodicals or other printed matter, or
49 photographs, films, motion pictures, video cassettes or video reproductions, slides
50 or other visual representations which are characterized by the depiction or
51 description of "specified sexual activities," or
52 (2). Instruments, devices or paraphernalia which are designed for use in connection
53 with "specified sexual activities."

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

- 55 (1). Human genitals in a state of sexual stimulation or arousal;
56 (2). Acts of human masturbation, sexual intercourse or sodomy, fondling or other erotic
57 touching of human genitals, pubic region, buttocks or female breasts.

58 **AFFORDABLE**

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

63 **AFFORDABLE HOUSING UNIT**

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

65 **AFFORDABLE HOUSING FOR RENT**

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

72 **AFFORDABLE HOUSING FOR SALE**

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

79 **AGE-RESTRICTED HOUSING**

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

87 **AGGRIEVED PARTY**

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

92 **AGRICULTURE**

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

- 102 **AGRICULTURE, PIGGERY**
103 A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the
104 keeping of pigs. See § 16.5.6 for Agriculture, Piggery general performance standards.
105
- 106 **AGRICULTURE, POULTRY FACILITY**
107 A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the
108 keeping of poultry or fowl. See § 16.5.7 for Agriculture, Poultry Facility general performance
109 standards.
110
- 111 **ALTERNATIVE TOWER STRUCTURE**
112 Includes but is not limited to clock towers, bell steeples, utility/light poles, water towers, and similar
113 alternative-design mounting structures that camouflage or conceal the presence of antennas or
114 towers, referred to by the industry as "stealth" technology.
- 115 **ANTENNA**
116 Any apparatus designed for telephonic, radio, television or similar communications through the
117 sending and/or receiving of electromagnetic waves.
- 118 **AQUACULTURE**
119 The growing or propagation of harvestable freshwater, estuarine or marine plant or animal species.
- 120 **ART STUDIO OR GALLERY**
121 Enclosed place for the exhibition, production and sales of art.
- 122 **ASSESSED VALUE**
123 A value of real property derived from a mass appraisal technique in accordance with market value
124 and is equitable to similarly situated properties within the Town.
- 125 **BANNER**
126 Any sign of lightweight fabric or similar material that is mounted for display at one or more edges.
- 127 **BASAL AREA**
128 The area of a tree stem derived by measuring the diameter of a standing tree measured 4.5 feet from
129 ground level and inclusive of bark.
- 130 **BASE FLOOD**
131 The flood having a one-percent chance of being equaled or exceeded in any given year, commonly
132 called the one-hundred-year flood.
- 133 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 134 **BASEMENT**
135 An area below the first floor having a floor-to-ceiling height of six feet or more and 50% of its
136 volume below the existing ground..
- 137 **BED-AND-BREAKFAST**
138 A home occupation in a single-family dwelling in which lodging or lodgings with meals served
139 before noon are offered to the general public for compensation, offering no more than six bedrooms
140 for lodging purposes.
- 141 **BEST MANAGEMENT PRACTICES ("BMP")**
142 Schedules of activities, prohibitions of practices, maintenance procedures, and other management
143 practices to prevent or reduce the pollution of water bodies. BMPs also include treatment

144 requirements, operating procedures, and practices to control plant site runoff, spillage or leaks,
145 sludge or waste disposal, or drainage from raw material storage.

146 **BILLBOARD**

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

150 **BOARD OF APPEALS**

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

152 **BOAT LAUNCHING FACILITY**

153 A facility designed primarily for the launching and landing of watercraft, and which may include an
154 access ramp, docking area, and parking spaces for vehicles and trailers.

155 **BOAT YARD**

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

157 **BOATHOUSE**

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

160 **BREAKAWAY WALL**

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

164 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

165 **BROOK**

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

170 **BUFFER**

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

174 **BUILDING**

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

178 **BUILDING COVERAGE**

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

184 **[ADDED 5-22-2017 BY ORD. NO. 17-05]**

- 185 **BUILDING FRONTAGE**
186 Linear footage along the face of the building containing the main public entry, commonly labeled
187 "front elevation" on building plans.
- 188 **BUSINESS**
189 For the purposes of the sign regulations, any corporation, trust, partnership or other verifiable legal
190 entity with the object of gain, benefit or advantage.
- 191 **BUSINESS AND PROFESSIONAL OFFICES**
192 A building, or portion thereof, in which there are located the offices of a profession or business,
193 including, but not limited to, banks, insurance, realtors, attorneys, appraisers, engineers, architects,
194 landscape architects, accountants, dentists, optometrists and physicians.
- 195 **BUSINESS FACILITY**
196 For the purposes of the sign regulations, a workplace of a business other than an employee's or
197 employer's personal residence.
- 198 **BUSINESS SERVICES**
199 Establishments primarily engaged in providing services to business enterprises on a fee or contract
200 basis, including, but not limited to, advertising, credit agencies, photocopying, commercial graphics,
201 computer programming, cleaning and maintenance services, employment agencies, data processing,
202 consulting and public relations, security and business equipment rental.
- 203 **CAMPGROUND**
204 Any area or tract of land use to accommodate two or more people, including tents, trailers or other
205 camping outfits, not to be used as permanent residence.
- 206 **CANNABIS**
207 All parts of the plant of the genus Cannabis whether growing or not, the seeds thereof, the resin
208 extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or
209 preparation of the plant, its seeds or its resin including cannabis concentrate. This term does not
210 include industrial hemp, fiber produced from the stalks, oil, cake made from the seeds of the plant,
211 sterilized seed of the plant that is incapable of germination or any ingredient combined with cannabis
212 to prepare topical or oral administrations, food, drink or any other product. Cannabis also means
213 marijuana.
- 214 **[ADDED 5-22-2017 BY ORD. NO. 17-08]**
- 215 **CANOPY, TREE (TREE CANOPY)**
216 The more or less continuous cover formed by tree crowns in a wooded area.
- 217 **CEMETERY**
218 A private or public place set apart for the interment of the dead. In the absence of an apparent
219 boundary, i.e., fence, stone wall, survey markers, survey plan, or information from the Kittery
220 Historical and Naval Society or other reliable historic sources, the perimeter of the interment area is
221 determined by starting with a ten-foot distance from existing tombstones and expanded, where
222 necessary, to form a final rectilinear area.
- 223 **[ADDED 9-28-2015 BY ORD. NO. 15-05]**
- 224 **CERTIFICATE OF COMPLIANCE**
225 A document signed by the Code Enforcement Officer stating that a structure is in compliance with
226 all of the provisions of § 16.5.11.I

227 [ADDED 9-26-2011 BY ORD. NO. 11-15]

228 **CERTIFICATE OF OCCUPANCY**

229 A permit issued by the Code Enforcement Officer that authorizes the recipient to make use of
230 property in accordance with the requirements of this title and applicable state and federal
231 requirements.

232 **CHARACTER**

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

234 **CLEAN WATER ACT**

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

237 [ADDED 5-22-2017 BY ORD. NO. 17-06]

238 **CLEAR-CUT**

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

- 242 A. If after harvesting the average residual basal area of trees over one inch in diameter
243 measured at 4.5 feet above the ground is 30 square feet per acre or more, a clear cut does
244 not occur until the average residual basal area of trees six inches or larger measured at 4.5
245 feet above the ground is less than 10 square feet per acre; or
- 246 B. After harvesting, the site has a well-distributed stand of trees at least five feet in height that
247 meets the regeneration standards applicable under 12 M.R.S. Chapter 805, § 8869(1).

248 **CLUSTER RESIDENTIAL DEVELOPMENT**

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

254 **CODE ENFORCEMENT OFFICER (CEO)**

255 The person duly authorized by the Town to carry out the duties as prescribed herein and in the Town
256 Administrative Code.

257 **CO-LOCATION**

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

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

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

264 **COMMERCIAL GREENHOUSE**

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

267 **COMMERCIAL KENNEL**

268 A commercial operation that: 1) provides food and shelter and care of eight or more domestic

269 animals for purposes not primarily related to medical care; or 2) has at any one time eight or more
270 animals for the purpose of commercial breeding.

271 **COMMERCIAL MARINA USE STRUCTURE**

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

274 **COMMERCIAL OR HOME OCCUPATION VESSEL**

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

278 **COMMERCIAL SCHOOL**

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

283 **COMMERCIAL USE**

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

287 .

288 **COMMUNITY**

289 The Town of Kittery and its people.

290 **COMPACT OR BUILT-UP SECTION**

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

293 **COMPREHENSIVE PLAN**

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

297 **CONFERENCE CENTER**

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

300 **CONSTRUCTION DRAWINGS**

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

303 **CONSTRUCTION SERVICES**

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

308 **CONTIGUOUS LOTS**

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

311 **CONTRACTOR, EXCAVATION**

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

315 **[ADDED 10-26-2015 BY ORD. NO. 15-12]**

316 **CONVALESCENT CARE FACILITY**

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

321 **CORNER LOT**

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

324 In zones where yards are required:

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

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

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

334 **COTTAGE CLUSTER**

335 A group of size-restricted single-family detached dwelling units that share a common lot as well as
336 common open space and may share a parking area and/or accessory structures.

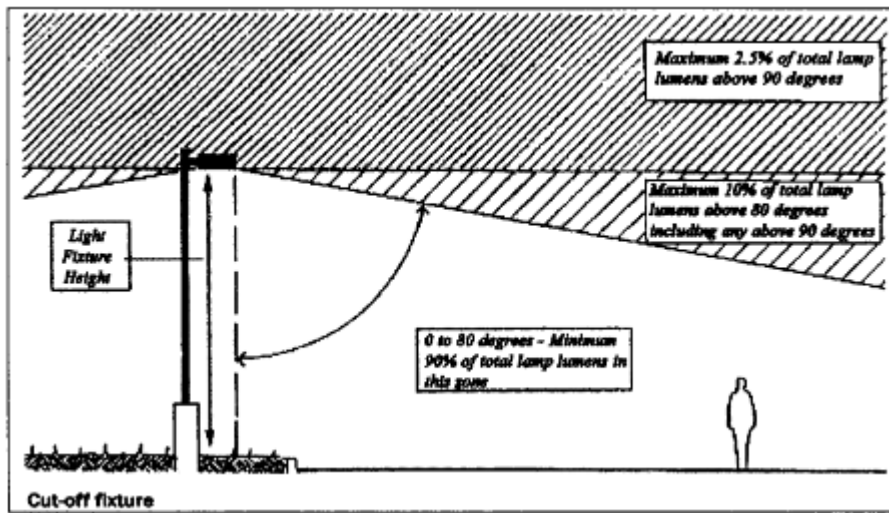
337 **COVERAGE (LOT, BUILDING)**

338 See definition for "building coverage."

339 **[AMENDED 5-22-2017 BY ORD. NO. 17-05]**

340 **CUTOFF FIXTURE**

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



345 **DAY**

346 A calendar day unless otherwise indicated.

347 **DAY CARE FACILITY**

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

352 **DECK**

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

356 **DESIGNATED HISTORIC BUILDING**

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

360 **DESIGN HANDBOOK**

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

363 **[ADDED 5-30-2018 BY ORD. NO. 04-18]**

364 **DEVEGETATED AREA**

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

367 **[ADDED 7-25-2016 BY ORD. NO. 16-03]**

368 **DEVELOPER**

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

371 **DEVELOPMENT**

372 **[AMENDED 7-25-2016 BY ORD. NO. 16-02]**

- 373 A. A change in land use involving alteration of the land, water or vegetation; or
374 B. The addition or alteration of structures or other construction not naturally occurring.

375 **DIMENSIONAL REQUIREMENTS**

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

378 **DISABILITY**

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

385 **DISCHARGE**

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

392 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

393 **DISTRIBUTION CENTER**

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

396 **DISTURBED AREA**

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

402 **DOCK**

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

405 **DRAINAGE DITCH**

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

413 **DREDGE**

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

416 **DRIVEWAY**

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

418 **DRIVE-THROUGH FACILITY**

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

421 **DWELLING**

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

425 **DWELLING, ATTACHED SINGLE-FAMILY**

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

429 **DWELLING, MANUFACTURED HOUSING**

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

432 **[AMENDED 9-26-2011 BY ORD. NO. 11-15]**

433 **DWELLING, MULTI-FAMILY**

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

437 **DWELLING, SINGLE-FAMILY**

438 A detached dwelling unit located on its own lot.

439 **DWELLING, TWO-FAMILY**

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

442 **DWELLING UNIT**

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

447 **DWELLING UNIT (IN THE SHORELAND AND RESOURCE PROTECTION OVERLAY
448 ZONES)**

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

453 **[ADDED 1-28-2015 BY ORD. NO. 15-01]**

454 **EASEMENT**

455 The authorization of a property owner for the use by another, and for a specified purpose, of any
456 designated part of the owner's property.

457 **EAVE**

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

461 **ELDERLY DAY CARE FACILITY**

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

464 **ELEVATED BUILDING**

465 [ADDED 9-26-2011 BY ORD. NO. 11-15]

466 A. A nonbasement building:

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

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

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

475 **ELEVATION CERTIFICATE**

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

477 [ADDED 9-26-2011 BY ORD. NO. 11-15]

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

480 B. Is required for purchasing flood insurance.

481 **EMERGENCY OPERATIONS**

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

485 **ESSENTIAL SERVICES**

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

493 **EXEMPT PERSON OR DISCHARGE**

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

503 [ADDED 5-22-2017 BY ORD. NO. 17-06]

504 **EXPANSION OF STRUCTURE**

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

507 **EXPANSION OF USE**

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

510 **FAA**

511 The Federal Aviation Administration.

512 **FAMILY**

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

514 **FARMERS MARKET**

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

521 **FCC**

522 The Federal Communications Commission.

523 **FILL**

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

525 **FILLING**

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

527 **FINGER FLOAT**

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

530 **FLAG**

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

533 **FLOAT**

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

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

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

541 [ADDED 9-26-2011 BY ORD. NO. 11-15]

542 **FLOOD, AREA OF SPECIAL FLOOD HAZARD**

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

545 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

546 **FLOOD ELEVATION STUDY**

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

549 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

550 **FLOOD HAZARD ZONE**

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

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

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

558 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

559 **FLOOD INSURANCE STUDY**

560 See "flood elevation study."

561 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

562 **FLOOD OR FLOODING**

563 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

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

- 566 (1). The overflow of inland or tidal waters; or
567 (2). The unusual and rapid accumulation or runoff of surface waters from any source.

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

574 **FLOOD, ONE-HUNDRED-YEAR**

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

577 **FLOODPLAIN MANAGEMENT**

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

581 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

582 **FLOODPLAIN MANAGEMENT REGULATIONS**

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

588 [ADDED 9-26-2011 BY ORD. NO. 11-15]

589 **FLOODPLAIN OR FLOOD-PRONE AREA**

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

591 [ADDED 9-26-2011 BY ORD. NO. 11-15]

592 **FLOODPROOFING**

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

596 [ADDED 9-26-2011 BY ORD. NO. 11-15]

597 **FLOODWAY**

598 See "regulatory floodway."

599 [ADDED 9-26-2011 BY ORD. NO. 11-15]

600 **FLOODWAY ENCROACHMENT LINES**

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

602 [ADDED 9-26-2011 BY ORD. NO. 11-15]

603 **FLOOR AREA**

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

606 **FOREST MANAGEMENT ACTIVITIES**

607 Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application,
608 management planning activities, timber stand improvement, pruning, regeneration of forest stands,
609 and other similar or associated activities, exclusive of timber harvesting and the construction,
610 creation or maintenance of roads.

611 **FOUNDATION**

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

614 **FREEBOARD**

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

619 [ADDED 9-26-2011 BY ORD. NO. 11-15]

620 **FULFILLMENT CENTER**

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

623 **FUNCTIONALLY WATER-DEPENDENT USES**

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

633 **GAMBLING OR GAMING**

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

637 **GAMBLING CASINO**

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

639 **GASOLINE SALES**

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

644 **GASOLINE SERVICE STATION**

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

648 **GLARE**

649 Excessive brightness that makes it difficult to see or that causes discomfort. Glare includes direct glare,
650 disability glare, and discomfort glare.**GLARE, DIRECT**

651 Glare resulting from insufficiently shielded light sources or areas of excessive luminance within the field
652 of view.**GLARE, DISABILITY**

653 The effect of stray light in the eye whereby visibility and visual performance are reduced. **GLARE,**
654 **DISCOMFORT L**

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

656 **GRADE PLANE**

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

662 **GROSS FLOOR AREA**

663 The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls or a roof,

664 plus the horizontal area of portions of the site used for customer seating, display of merchandise, or
665 outdoor sales.

666 **GROUND COVER**

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

669 **HAZARDOUS WASTE**

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

672 **HEIGHT OF BUILDING**

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

683 **HEIGHT OF STRUCTURE**

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

687 **HEIGHT OF WIRELESS COMMUNICATION SERVICES FACILITIES**

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

690 **HIGH INTENSITY SOIL SURVEY**

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

698 **HISTORIC STRUCTURE**

699 Any structure that is:

700 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

- 701 A. Listed individually on the National Register of Historic Places (a listing maintained by the
702 Department of the Interior) or preliminarily determined by the Secretary of the Interior as
703 meeting the requirements for individual listing on the National Register;
- 704 B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the
705 historical significance of a registered historic district or a district preliminarily determined
706 by the Secretary of the Interior to qualify as a registered historic district;
- 707 C. Individually listed on a state inventory of historic places in states with historic preservation

- 708 programs which have been approved by the Secretary of the Interior; or
709 D. Individually listed on a local inventory of historic places in communities with historic
710 preservation programs that have been certified either:
711 (1). By an approved state program as determined by the Secretary of the Interior; or
712 (2). Directly by the Secretary of the Interior in states without approved programs.

713 **HOME OCCUPATION**

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

716 **HOME OCCUPATION, MAJOR**

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

721 **HOME OCCUPATION, MINOR**

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

724 **HOSPITAL**

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

729 **HOTEL**

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

735 **HYDRIC SOIL**

736 A soil that in its undrained condition is saturated, flooded or ponded long enough during the growing
737 season to develop anaerobic conditions that favor the growth and regeneration of wetland
738 (hydrophytic) vegetation. Soils found in Kittery which may be considered hydric soils include but
739 are not limited to: Biddeford, Brayton, Chocorua, Rumney, Scantic, Sebago, Vassalboro, Naumberg,
740 Raynham and Waskish. All hydric soils listed in the Natural Resources Conservation Service list
741 entitled "National Hydric Soils List by State" are included for consideration in this title.
742 (<http://soils.usda.gov/use/hydric/lists/state.html>)

743 **HYDROPHYTIC VEGETATION**

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

749 **ILLICIT DISCHARGE**

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

753 [ADDED 5-22-2017 BY ORD. NO. 17-06]

754 **IMPERVIOUS SURFACE**

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

759 **IMPROVEMENT PLANS**

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

762 **INDIVIDUAL PRIVATE CAMPSITE**

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

767 **INDUSTRIAL ACTIVITY**

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

770 **INDUSTRIAL ACTIVITY, STORMWATER REGULATION**

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

773 [Added 5-22-2017 by Ord. No. 17-06]

774 **INDUSTRY, HEAVY**

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

779 **INDUSTRY, LIGHT**

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

785 **INN**

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

789

790 **INTERMITTENT STREAM**

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

793 **INVASIVE NONNATIVE PLANT**

794 Grasses, forbs, shrubs or trees not native to the State of Maine and which proliferate in and dominate

795 vegetation to the exclusion or elimination of native plants.

796 **JULY 13, 1977**

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

800 **JUNKYARD**

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

805 **LANDING**

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

807 **LANDSCAPE PLANTER STRIP**

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

811 **LARGE, HEALTHY TREE**

812 A tree with a diameter at breast height (dbh) of at least 12 inches and which does not exhibit any
813 indicators of stress, damage, disease or decay that will limit its expected additional life to less than
814 20 years.

815 **LEGISLATIVE BODY**

816 Town Council.

817 **LIGHT FIXTURE HEIGHT**

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

820 **LINER BUILDING**

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

826 **[Added 11-26-2018 by Ord. No 10-18]**

827 **LOCALLY ESTABLISHED DATUM**

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

832 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

833 **LOT**

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

836 **LOT AREA**

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

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

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

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

842 **LOT WIDTH**

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

844 **LOWEST FLOOR**

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

850 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

851 **LUMEN**

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

854 **MANUFACTURED HOUSING**

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

857

858 **MARIJUANA**

859 Cannabis. See Cannabis definition.

860 **MARIJUANA, ADULT USE STORE**

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

864 **MARIJUANA BUSINESS**

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

868 **MARIJUANA CULTIVATION FACILITY**

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

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

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

875 Tier 3: Up to 7,000 square feet of plant canopy
876 Tier 4: Up to 20,000 square feet of plant canopy

877 **MEDICAL MARIJUANA CAREGIVER RETAIL STORE**

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

882 **MARIJUANA MANUFACTURING FACILITY**

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

888 **MARIJUANA TESTING FACILITY**

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

892 **MEDICAL MARIJUANA REGISTERED CAREGIVER**

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

895 **MEDICAL MARIJUANA REGISTERED CAREGIVER HOME ESTABLISHMENT**

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

898 **MEDICAL MARIJUANA REGISTERED DISPENSARY**

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

902 **MARINA**

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

905 **MARKET VALUE**

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

909 **MASS TRANSIT STATION**

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

913 **MASTER SITE DEVELOPMENT PLAN**

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

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

920 **MEAN SEA LEVEL**

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

924 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

925 **MECHANICAL SERVICE**

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

929 **MEDICAL MARIJUANA CULTIVATION FACILITY**

930 A facility registered in accordance with 22 M.R.S. § 2428 that cultivates and manufactures
931 marijuana or related supplies for a registered medical marijuana dispensary under common
932 management and operating under the same state and local license(s).

933 **[ADDED 5-22-2017 BY ORD. NO. 17-08]**

934 **MEDICAL MARIJUANA DISPENSARY**

935 A not-for-profit entity registered under 22 M.R.S. § 2428 that acquires, possesses, cultivates,
936 manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies
937 and educational materials to qualifying patients who have designated the dispensary to cultivate
938 marijuana for their medical use, and the primary caregivers of those patients.

939 **[ADDED 5-22-2017 BY ORD. NO. 17-08]**

940 **MEDICAL MARIJUANA QUALIFYING PATIENT OR PATIENT**

941 A person who has been diagnosed by a medical provider as having a debilitating medical condition
942 and who possesses a valid written certification regarding medical use of marijuana, as defined under
943 22 M.R.S. § 2422.

944 **[ADDED 5-22-2017 BY ORD. NO. 17-08]**

945 **MEDICAL MARIJUANA TESTING FACILITY**

946 A public or private laboratory that:

947 **[ADDED 5-22-2017 BY ORD. NO. 17-08]**

- 948 A. Is licensed, certified or otherwise approved under 22 M.R.S. § 2423-A to analyze
949 contaminants in, and the potency and cannabinoid profile of, samples; and
950 B. Is accredited pursuant to standard International Standards Organization/International
951 Electrotechnical Commission 17025 of the International Organization for Standardization
952 by a third-party accrediting body or is certified, registered, or accredited by an
953 organization approved by the state.

954 **MINERAL EXTRACTION**

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

958 **MINERAL/EARTH MATERIAL EXPLORATION**

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

962 **MINI STORAGE**

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

966 **MINIMUM LAND AREA PER DWELLING UNIT**

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

970 **[ADDED 9-28-2015 BY ORD. NO. 15-05]**

- 971 A. All land located below the highest annual tide elevation as published in the Maine DEP
972 Highest Annual Tide (HAT) levels for the most-current year.
- 973 B. All wetlands as defined in the definition of "wetland," as well as vernal pools, ponds,
974 streams and other water bodies.
- 975 C. All land located on filled tidal lands, per the definition of "tidal land, filled."
- 976 D. All land located within existing rights-of-way and other existing easements wherein
977 dwelling units cannot be built.

978 **MIXED-USE BUILDING**

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

982 **MOBILE HOME PARK**

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

985 **MOTEL**

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

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

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

998 MS4."

999 [AMENDED 5-22-2017 BY ORD. NO. 17-06]

1000 **MUNICIPALITY**

1001 Town of Kittery, Maine.

1002 **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**
1003 **STORMWATER DISCHARGE PERMIT**

1004 A permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the
1005 United States, whether the permit is applicable on an individual, group, or general area-wide basis.

1006 [ADDED 5-22-2017 BY ORD. NO. 17-06]

1007 **NAVIGABLE WATERS**

1008 The "waters of the United States including territorial seas" as defined in the Federal Clean Water Act
1009 and 33 CFR Part 328, as amended.

1010 **NET RESIDENTIAL ACREAGE**

1011 The land area subject to subdivision that is identified for regulatory purposes as developable and is
1012 the gross available acreage minus land area identified in § 16.5.18, Net Residential Acreage, unless
1013 otherwise exempt in § 16.5.18.D, Exemptions to net residential acreage calculations.

1014 [AMENDED 9-28-2015 BY ORD. NO. 15-05]

1015 **NET RESIDENTIAL DENSITY**

1016 The number of dwelling units in a subdivision per net residential acre. This is calculated by dividing
1017 the net residential acreage by the square feet specified as minimum land area per dwelling unit in the
1018 dimensional standards in § 16.4, for the relevant base zone or overlay zone(s) where applicable.

1019 [AMENDED 9-28-2015 BY ORD. NO. 15-05]

1020 **NEW CONSTRUCTION**

1021 Structures for which the "start of construction" commenced on or after the effective date of
1022 floodplain management regulations adopted by a community, and includes any subsequent
1023 improvements to such structures.

1024 [ADDED 9-26-2011 BY ORD. NO. 11-15]

1025 **NEW MOTOR VEHICLE SALES**

1026 A commercial establishment whose primary business is the buying and selling or offering to
1027 negotiate a sale of new motor vehicles, including related service activities, and has a franchise from
1028 a distributor or manufacturer. An establishment is "engaged in the business of buying, selling or
1029 offering to negotiate the sale of a vehicle" if that business buys motor vehicles for the purpose of
1030 resale, sells or offers to negotiate the sale of more than five motor vehicles in any twelve-month
1031 period, or displays or permits the display of three or more motor vehicles for sale at any one time or
1032 within any thirty-day period upon the premises, unless that person has owned and registered each
1033 vehicle for at least six months.

1034 **NONCONFORMING LOT OF RECORD**

1035 A single lot of record which was created prior to July 13, 1977, or subsequently created by
1036 legislative or judicial decision, which does not meet the area and/or frontage requirements of the
1037 district in which it is located; or is the result of legally authorized development created between July
1038 13, 1977 and April 26, 1990, and became nonconforming as a direct result of the implementation of

1039 this title.

1040 **NONCONFORMING STRUCTURE**

1041 A structure that does not meet one or more of the following dimensional requirements: setbacks,
1042 yard, height or lot coverage. It is allowed solely because it was lawful when created and became
1043 legally nonconforming as a direct result of a change in the provisions of this title.

1044 **NONCONFORMING USE**

1045 Use of buildings, structures, premises, land or parts thereof which is not allowed in the district and/or
1046 zone in which it is situated, but which is allowed to remain solely because it was in lawful existence
1047 when created or became legally nonconforming as a direct result of a change in the provisions of this
1048 title.

1049 **NONCONFORMING, LEGALLY**

1050 It was lawfully created but became nonconforming due to a change in the Town Code.

1051 **NONSTORMWATER DISCHARGE**

1052 Any discharge to an MS4 that is not composed entirely of stormwater.

1053 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1054 **NORMAL HIGH-WATER LINE**

1055 The line which is apparent from visible markings, changes in the character of soils due to prolonged
1056 action of the water or changes in vegetation, and which distinguishes between predominantly aquatic
1057 and predominantly terrestrial land.

1058 **NURSERY SCHOOL**

1059 A house or other place in which a person or combination of persons maintains or otherwise carries
1060 out for consideration during the day a regular program which provides care for three or more
1061 children in accordance with 22 M.R.S. § 8401, provided that:

1062 **[AMENDED 5-30-2018 BY ORD. NO. 04-18]**

- 1063 A. No session conducted for the children is longer than 3 1/2 hours in length;
1064 B. No more than two sessions are conducted per day;
1065 C. Each child in attendance at the nursery school attends only one session per day; and
1066 D. No hot meal is served to the children.

1067 **NURSING CARE FACILITY, LONG-TERM**

1068 A facility that is licensed by the State of Maine to provide nursing care to persons who are unable to
1069 care for themselves. The facility provides long-term residential and nursing care to its residents. The
1070 facility does not provide hospital services except as incidental to the delivery of nursing care. A
1071 long-term nursing care facility does not include any facility that is defined as a Residential Care
1072 Facility.

1073 **OFFICIAL BUSINESS DIRECTIONAL SIGN (OBDS)**

1074 Any sign erected and maintained in accordance with the Maine Traveler Information Services Act,
1075 23 M.R.S. § 1901 et seq., and regulations adopted pursuant to it, and which complies with the
1076 requirements of this title.

1077 **[AMENDED 5-30-2018 BY ORD. NO. 04-18]**

1078 **OFFICIAL MAP**

1079 The map adopted by the municipality showing the location of public property, ways used in common
1080 by more than two owners of abutting property, and approved subdivision or site plan, and any
1081 amendments thereto adopted by the municipality or additions thereto resulting from the approval of a
1082 subdivision or site plan by the Planning Board and the subsequent filing for record of such plan.

1083 **[AMENDED 9-26-2011 BY ORD. NO. 11-15]**

1084 **OFFICIAL SUBMITTAL DATE**

1085 The date upon which the Town Planner receives a complete application and issues a receipt so
1086 indicating.

1087 **ONE-HUNDRED-YEAR FLOOD**

1088 See "base flood."

1089 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1090 **OPEN SPACE**

1091 Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural
1092 state. "Open space" does not include areas occupied by a building or a parking area, except where
1093 required by the management plan in place to govern the open space and as approved by the Planning
1094 Board.

1095 **[ADDED 9-24-2012 BY ORD. NO. 12-10]**

1096 **OPEN SPACE, COMMON**

1097 Usable land within or related to a development, not individually owned, which is designed and
1098 intended for the common use or enjoyment of the residents of the development and may include such
1099 complementary structures, improvements and uses approved by the Planning Board. Such uses may
1100 include active or passive recreation or agriculture, where permitted.

1101 **[ADDED 9-24-2012 BY ORD. NO. 12-10]**

1102 **OPEN SPACE, PUBLIC**

1103 Land accessible or dedicated for public use.

1104 **[ADDED 9-24-2012 BY ORD. NO. 12-10]**

1105 **OPEN SPACE, RESERVED**

1106 Dedicated land that is permanently protected from further development and remains in a natural
1107 condition or is managed according to an approved management plan for natural resource functions,
1108 e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the
1109 Planning Board as part of cluster residential developments.

1110 **[ADDED 9-24-2012 BY ORD. NO. 12-10]**

1111 **OUTDOOR DINING**

1112 A dining area with seats and/or table(s) located outside of a restaurant, which is either: a) located
1113 entirely outside of the walls of the building of the subject business, or b) enclosed on two (2) sides or
1114 fewer by the walls of the building with or without a solid roof cover, or c) enclosed on three (3) sides
1115 by the walls of the building without a solid roof cover.

1116 **OUTDOOR SERVICE AREAS**

1117 Areas located outside of a building or structure that are used for the delivery, handling, storage or

1118 processing of materials, goods or wastes, including areas used for the servicing, repairing, washing
1119 or fueling of motor vehicles and equipment.

1120 **OWNER**

1121 Any person, corporation or other legal entity having record title ownership to the property or the
1122 expressly authorized agent or designee thereof.

1123 **PARAPET**

1124 The extension of the wall(s) of a building above the roof eave and/or roofline.

1125 **PARCEL**

1126 See "tract or parcel of land."

1127 **PARKING AREA**

1128 Any public or private area, under, within or outside of a building or structure, designed and used for
1129 parking motor vehicles, including parking lots, garages, private driveways, and legally designated
1130 areas of public streets. .

1131 **PATIO**

1132 An unenclosed, unroofed, exterior floor-like surface, usually composed of brick, stone or concrete,
1133 situated no higher than 18 inches above ground level, accessory to a dwelling and serving as an area
1134 for outdoor living.

1135 **PERSON**

1136 Any individual, firm, corporation, municipality, quasi-municipal corporation, two or more
1137 individuals having a joint or common interest, state agency or federal agency or other legal entity.

1138 **PERSONAL SERVICES**

1139 Establishments primarily engaged in providing services generally involving the care of one's
1140 personal appearance or apparel, including, but not limited to, barbers and beauty shops, laundries,
1141 photographic studios, shoe repair, garment altering, and diaper services.

1142 **PIER**

1143 A structure built out into the water generally with piles for use as a landing place.

1144 **POLLUTANT**

1145 Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage
1146 sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or
1147 byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal,
1148 domestic, commercial or agricultural wastes of any kind.

1149 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1150 **POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN**

1151 An inspection and maintenance plan as required by rule for projects that require approval by the
1152 Maine Department of Environmental Protection (MDEP) under Chapter 500, Stormwater
1153 Management; or a plan to inspect and maintain best management practices (BMPs) and stormwater
1154 management facilities employed by a new development or redevelopment, not subject to MDEP
1155 Chapter 500 rules, to meet the stormwater standards of this Code.

1156 **[AMENDED 7-25-2016 BY ORD. NO. 16-06]**

1157 **PRACTICABLE**

1158 Available and feasible, considering cost, existing technology, and logistics, based on overall project

1159 purposes.

1160 **PREEXISTING ACCESSORY-USE TOWERS/ANTENNAS**

1161 Legally existing prior to December 21, 1997, wireless communication system facility (WCSF),
1162 towers/antennas and alternative tower structures. Enlargements of WCSF, accessory use
1163 towers/antennas legally existing prior to December 21, 1997 must conform to the requirements of
1164 this title.

1165 **PREMISES**

1166 For the purposes of stormwater regulation, means any building, lot, parcel of land, or portion of land,
1167 whether improved or unimproved, including adjacent sidewalks and parking strips, located within
1168 the municipality from which discharges into the storm drainage system are or may be created,
1169 initiated, originated or maintained.

1170 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1171 **PRIMARY CAREGIVER**

1172 A person or an employee of that person, a licensed hospice provider or licensed nursing facility that
1173 provides care for a qualifying patient and is registered under 22 M.R.S. § 2425 and receives Board of
1174 Appeals approval for a major home occupation.

1175 **[ADDED 5-22-2017 BY ORD. NO. 17-08]**

1176 **PRINCIPAL BUILDING**

1177 The primary building on a lot or a building that shelters or encloses the principal use on a lot.

1178 **PRINCIPAL STRUCTURE**

1179 The primary structure on a lot or a structure that supports, shelters or encloses the principal use on
1180 the lot.

1181 **PRINCIPAL USE**

1182 The primary or predominant use. An activity that is conducted in conjunction with the principal use
1183 and such activity that either constitutes only an incidental or insubstantial part of the total activity
1184 that takes place on a lot; or is commonly associated with the principal use and integrally related to it,
1185 is regarded as "accessory to the principal use." An accessory to the principal use is regarded as
1186 "incidental or insubstantial" if it is both incidental and insubstantial in and of itself, and in relation to
1187 the principal use. Quantitative measures for consideration in this determination include the
1188 percentage and total amount of square footage attributed to the accessory to the principal use and
1189 sales or income derived from the accessory to the principal use.

1190 **PRIVATE ASSEMBLY**

1191 A building which is owned and used as a meeting place for private or semi-private social
1192 organization and clubs such as grange halls, fraternal organizations, religious institutions, etc. in
1193 which the principle use is exclusively for members. Rental of the facilities to outside groups is
1194 clearly incidental to the principle use and shall not significantly increase the intensity of the use of
1195 the site, especially regarding parking.

1196 **PRIVATE MARINA USE STRUCTURE**

1197 A structure which is owned and/or used by a private group, club, association or other legal entity's
1198 organization, and is used by its members only, and has frontage on navigable water, and as its
1199 principal use provides offshore moorings and/or docking facilities for vessels for use by its members
1200 and/or guests. The private marina may also provide accessory boating services. These accessory
1201 boating services may be provided to the boating public, members or guests.

- 1202 **PRUDENT AVOIDANCE**
1203 In any case where aboveground electrical utilities are approved, the plan is to be designed to avoid
1204 human residences as distant as possible without prohibitive cost.
- 1205 **PUBLIC ASSEMBLY AREA**
1206 Any area where large numbers of individuals collect to participate or to observe programs of
1207 participation.
- 1208 **PUBLIC FACILITY**
1209 Any facility, including, but not limited to, buildings, property, recreation areas and roads which are
1210 owned, leased or otherwise operated, or funded by a governmental body or public entity **PUBLIC OR**
1211 **PRIVATE SCHOOL**
1212 A building or buildings and its associated grounds which is principally used to conduct educational
1213 classes including public and private elementary schools and nursery schools, including post-
1214 secondary schools, but not including commercial schools.
- 1215 **PUBLIC UTILITY**
1216 As defined in Title 35-A M.R.S. § 102, as amended.
- 1217 **PUBLIC UTILITY FACILITY**
1218 Buildings, structures, and facilities, including generating and switching stations, poles, lines, pipes,
1219 pumping stations, repeaters, antennas, transmitters and receivers, valves, and all buildings and
1220 structures relating to the furnishing of utility services, such as electric, gas, telephone, water and
1221 sewer, to the public, excluding solar energy systems .
- 1222 **QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR**
1223 A person who conducts post-construction stormwater management facilities inspections for
1224 compensation and who has received the appropriate training for the same from the Maine
1225 Department of Environmental Protection.
- 1226 **RECENT FLOODPLAIN SOILS**
1227 The following soil series as described and identified by the National Cooperative Soil Survey:
1228 Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk,
1229 Rumney, Saco, Suncook, Sunday and Winooski.
- 1230 **RECREATION, COMMERCIAL INDOOR**
1231 The use of a building for play, sports, games, fitness, and other similar diversions operated as a
1232 business and open to the public for a fee.
- 1233 **RECREATION, COMMERCIAL OUTDOOR**
1234 The use of a land outside of a fully enclosed building, as defined, for play, sports, games, and other
1235 similar diversions operated as a business and open to the public for a fee.
- 1236 **RECREATION, PASSIVE**
1237 Outdoor recreational activities which have a low impact on the environment and neighborhood and
1238 require no motorized vehicles, significant earthmoving or substantial structures, such as hiking,
1239 fishing, canoeing, hunting, cross-country skiing, and wildlife observation and study. Benches and
1240 boardwalks, steps, railings and other structures necessary to provide safe accessibility for physically
1241 handicapped persons are allowed.
- 1242 **RECREATION, PUBLIC FACILITY**
1243 Means a facility open to the general public, for no charge or a subsidized charge, where organized
1244 recreational or athletic activities and events are held.

1245

1246 **RECREATION, PUBLIC OPEN SPACE**

1247 Open Space owned by a public agency and maintained by it for the use and enjoyment of the general
1248 public.

1249 **RECREATIONAL VEHICLE**

1250 A vehicle or an attachment to a vehicle designed to be towed, hauled, or driven and is primarily
1251 designed as temporary living accommodations for one or more persons. The vehicle must be
1252 registered with the State Division of Motor Vehicles.

1253 **RECREATIONAL VEHICLE PARK**

1254 Any lot or parcel of land upon which two or more sites are located, established, or maintained for
1255 occupancy by recreational vehicle for a fee as temporary living quarters for recreation or vacation
1256 purposes.

1257 **REGULATED SMALL MS4**

1258 Any small municipal separate storm sewer system (MS4) regulated by the State of Maine "General
1259 Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems"
1260 dated July 2013 ("general permit"), including all those located partially or entirely within an
1261 urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance
1262 of the general permit have been designated by the DEP as regulated small MS4s. The Town of
1263 Kittery is a regulated small MS4.

1264 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1265 **REGULATORY FLOODWAY**

1266 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

- 1267 A. The channel of a river or other watercourse and the adjacent land areas that must be
1268 reserved in order to discharge the base flood without cumulatively increasing the water
1269 surface elevation more than one foot; and
- 1270 B. In riverine areas, is considered to be the channel of a river or other watercourse and the
1271 adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the
1272 normal high-water mark to the upland limit of the floodplain.

1273 **RELIGIOUS USE**

1274 A structure of place in which worship, ceremonies, rituals, and education pertaining to a particular
1275 system of beliefs are held.

1276 **REPAIR GARAGE**

1277 An establishment providing for the repair or servicing of motor vehicles. A repair garage does not
1278 include activities that are defined as mechanical service or a junkyard.

1279 **REPAIR SERVICE**

1280 A business providing for the repair of personal or small business property, such as radios and
1281 televisions, household or office electrical or electronic equipment, watches, clocks and jewelry,
1282 furniture and upholstery, sporting equipment, and similar items, but not including items included
1283 under mechanical services or automotive services and repair.

1284 **REPLACEMENT SYSTEM**

1285 A system intended to replace:

- 1286 A. An existing system which is either malfunctioning or being upgraded with no significant

1287 change of design flow or use of the structure; or

1288 B. Any existing overboard wastewater discharge.

1289 **RESEARCH AND DEVELOPMENT**

1290 A building or group of buildings in which are located facilities for technical or scientific research,
1291 investigation, testing or experimentation, but not facilities for the manufacture or sale of products,
1292 except as incidental to the main purpose of the facility.

1293 **RESIDENTIAL CARE FACILITY**

1294 A house or other place that, for consideration, is maintained wholly or partly for the purpose of
1295 providing residents with assisted living services. Residential Care Facilities provide housing and
1296 services to residents in private or semi-private bedrooms in buildings with common living areas and
1297 dining areas. “Residential Care Facility” does not include a licensed nursing home or supportive
1298 living arrangement certified by the state.

1299 **RESIDENTIAL CARE UNIT**

1300 A type of residential accommodation in a Residential Care Facility that has private sleeping and
1301 bathroom facilities but does not have permanent complete cooking facilities within the unit. The
1302 occupant of a residential care unit typically eats all or most of meals in a shared dining room.
1303 Residential care units may have a portable or removable kitchen or partial kitchen facilities such as a
1304 refrigerator and microwave oven. A residential care unit may be a unit with a separate bedroom, a
1305 suite or a room. A residential care unit is distinct from a dwelling unit that is defined separately.

1306 **RESIDENTIAL DEVELOPMENT USE PIER, RAMP AND FLOAT SYSTEM**

1307 A pier and/or ramp and float system which is used in common by lot owners or residents of a
1308 subdivision or residential planned development. The purpose is to provide waterfront access to the
1309 owners of lots in a residential development that has the potential for more than one waterfront lot.
1310 The object is to minimize the number of piers, ramps and floats resulting from new development.

1311 **RESIDENTIAL HOME OCCUPATION USE PIER, RAMP AND FLOAT SYSTEM**

1312 A pier and/or ramp and float system which is used for the residential home occupation workers in an
1313 approved functionally water-dependent home occupation (minor or major) in addition to its
1314 customary residential accessory use.

1315 **RESIDENTIAL JOINT/SHARED-USE PIER, RAMP AND FLOAT SYSTEM**

1316 A pier and/or ramp and float system which is used by the owners of not more than four residential
1317 shorefront lots, at least one boundary of whose building lot lies within 1,000 feet of the lot on which
1318 the joint/shared-use pier is constructed.

1319 **RESIDENTIAL SINGLE-USE PIER, RAMP AND FLOAT SYSTEM**

1320 A pier and/or ramp and float system which is used by the owner(s) of a single residential shorefront
1321 lot.

1322 **RESIDUAL BASAL AREA**

1323 The sum of the basal area of trees remaining on a harvested site.

1324 **RESIDUAL STAND**

1325 A stand of trees remaining in the forest following timber harvesting.

1326 **RESTAURANT**

1327 An establishment where food or food and drink are prepared and sold for consumption on the
1328 premises by the public and includes cafes, coffee shops and similar establishments that serve food.

1329 **RESUBDIVISION**

1330 The division of an existing subdivision or any change of lot size therein or the relocation of any
1331 street or lot in a subdivision, or any changes thereto.

1332 **RETAIL SALES**

1333 Any business engaged primarily in the sale of goods for personal or household consumption and/or
1334 use, and not for resale. The term "retail sale" does not include specific types of retail uses that are
1335 individually listed in § 16.4.

1336 **RETAIL SALES, BUILDING MATERIALS AND GARDEN SUPPLY**

1337 A retail establishment primarily engaged in selling lumber and other building materials; paint, glass,
1338 floor covering and wallpaper; hardware, drapery and upholstery; flowers and/or nursery stock, lawn
1339 and garden supplies; modular homes and mobile homes.

1340 **RETAIL SALES, CONVENIENCE STORE**

1341 A retail store containing less than 2,000 square feet of gross floor area that is designed and stocked
1342 to sell primarily food, beverages and other household supplies to customers who purchase only a
1343 relatively few items (in contrast to a grocery store). It is designed to attract and depends upon a large
1344 volume of stop-and-go traffic. Supplementing these uses with accessory gasoline sales requires
1345 additional parking and traffic considerations.

1346 **RIGHT-OF-WAY, PRIVATE**

1347 A platted and dedicated access route normally to back lot(s); and as approved by the Planning Board
1348 and recorded in the York County Registry of Deeds.

1349 **RIPRAP**

1350 Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil
1351 stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

1352 **RIVER**

1353 A free-flowing body of water, including its associated floodplain wetlands, from that point at which
1354 it provides drainage for a watershed of 25 square miles to its mouth.

1355 **RIVERINE**

1356 Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

1357 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1358 **ROAD**

1359 A route or track consisting of a bed of exposed mineral soil, gravel, asphalt or other surfacing
1360 material constructed for or created by the repeated passage of motorized vehicles, excluding
1361 driveways

1362 **ROOMING HOUSE**

1363 A residential use in which the owner or manager of the facility resides on the premises and in which
1364 more than three persons who are not part of the owner's/manager's family are housed in rooms for
1365 compensation with or without meals. This includes fraternities and sororities.

1366 **SALT MARSH**

1367 Areas along coastal waters (most often along coastal bays) which support salt-tolerant species, and
1368 where, at average high tide during the growing season, the soil is regularly inundated by tidal waters.
1369 The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often
1370 support widgeon grass, eelgrass and Sago pondweed.

1371 **SALT MEADOW**

1372 Areas which support salt-tolerant plant species bordering the landward side of salt marshes or open
1373 coastal water, where the soil is saturated during the growing season, but which is rarely inundated by
1374 tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black
1375 rush; common three-square occurs in fresher areas.

1376 **SAWMILL, PERMANENT**

1377 A facility where logs are cut into boards or timbers; a mill or machine for sawing logs or producing
1378 firewood that is in operation on a permanent basis. Sawmill operations may be subject to State
1379 regulations.

1380 **SAWMILL, TEMPORARY**

1381 A facility where logs are cut into boards or timbers, a mill or machine for sawing logs or producing
1382 firewood that is in operation for a cumulative duration of two (2) months or fewer in any twelve (12)
1383 month period. Sawmill operations may be subject to State regulations. This definition does not
1384 include the use of handheld chainsaws.

1385 **SCREEN**

1386 A method of significantly reducing the impact of noise and unsightly visual intrusions with less
1387 offensive or more harmonious elements, such as plants, berms, fences, walls, or any appropriate
1388 combination thereof.

1389 **SCREENING**

1390 Either: 1) a strip of at least 10 feet wide, densely planted (or having equivalent natural growth)
1391 shrubs or trees at least four feet high at the time of planting, of an evergreen type that will grow to a
1392 year-round dense screen at least six feet high in three years; or 2) an opaque wall or barrier of
1393 uniformly colored fence at least six feet in height. Screening of either type must be maintained in
1394 good condition at all times.

1395 **SEPTIC SYSTEM**

1396 See "subsurface wastewater disposal system."

1397 **[ADDED 10-14-2015 BY ORD. NO. 15-10]**

1398 **SERVICE DROP**

1399 Any utility line extension which does not cross or run beneath any portion of a water body, provided
1400 that:

1401 A. In the case of electric service:

1402 (1). The placement of wires and/or the installation of utility poles is located entirely
1403 upon the premises of the customer requesting service or upon a roadway at the
1404 right-of-way; and

1405 (2). The total length of the extension is less than 1,000 feet.

1406 B. In the case of telecommunications service:

1407 (1). The extension, regardless of length, will be made by the installation of telephone
1408 wires to existing utility poles; or

1409 (2). The extension requiring the installation of new utility poles or placement
1410 underground is less than 1,000 feet in length.

1411 **SETBACK**

1412 The minimum horizontal distance from an identified object, line, boundary or feature to the nearest
1413 part of a regulated object, use or feature. (Note: See § 16.1, for setbacks from water bodies and
1414 wetlands. See § 16.7.8 for applying setbacks in special situations.)

1415 **SETBACK FROM STREAMS, WATER BODIES AND WETLANDS**

1416 The minimum horizontal distance allowed from the upland edge of a wetland and/or from the normal
1417 high-water line to the nearest part of a structure (excluding cornices, eaves or gutters projecting not
1418 more than 24 inches), roads, parking areas, or other regulated activities. See Table 16.5.30.
1419 Minimum Setbacks from Wetlands and Water Bodies, for required horizontal distances, and § 16.7.8
1420 and § 16.8.7 for applying setbacks in special situations. Adjacent to tidal waters, setbacks are
1421 measured from the upland edge of the coastal wetland.

1422 **SHOP IN PURSUIT OF TRADES**

1423 An establishment occupied by a business or craftsman in a skilled trade, including, by way of
1424 example only, plumbing, carpentry or electrical work. Not more than 10 people may be employed at
1425 and/or work from the shop. The shop may include work space, storage space and/or office space. A
1426 shop in pursuit of trades does not include "construction services," which is separately defined.

1427 **SHOPPING FULFILLMENT CENTERS**

1428 A physical location that combines a business's retail functions and its warehouse or distribution
1429 activities into one Building. These facilities provide customers options for viewing goods and placing
1430 orders online or onsite. Products are stored and orders are processed onsite.

1431 **SHORE FRONTAGE**

1432 The width of a lot as it fronts the shore as measured in a straight line between the point of
1433 intersection of the side lot lines with the shoreline at normal high-water elevation.

1434 **SHOREFRONT DEVELOPMENT PLAN**

1435 A plan for any development extending into or within 100 feet of the upland edge of a coastal
1436 wetland, or into or within 100 feet of the upland edge of a fresh water wetland shown on the Zoning
1437 Map, including but not limited to public and private access paths; piers, ramps and floats; storage of
1438 boats and/or floats; clearing of vegetation, visual impact and controls to assure continuing
1439 conformance to the plan.

1440 **SHORELINE**

1441 The normal high-water line or upland edge of a wetland.

1442 **SIGN**

1443 Any structure or part of the structure attached thereto or painted or represented thereon, which
1444 displays or includes any letter, word, model, banner, flag, pennant, insignia, trade name, trademark,
1445 logo, device or representation used as, or which is in the nature of, any announcement of the purpose
1446 of a business, entity or person, direction or advertisement. The term "sign" does not include a flag.

1447 **SIGN AREA**

1448 The enclosed space within a geometric figure which contains the advertising message, illustration,
1449 insignia or display, together with any frame, color or other material which comprises the display and
1450 is used to differentiate or draw attention to the sign and away from the background. Each face of a
1451 sign is considered a separate sign for area computations, but supporting brackets and posts are not
1452 included.

1453 **SIGN, CHANGEABLE MESSAGE**

1454 Any sign or portion thereof designed to allow characters, letters and numbers on the face of the sign
1455 to be changed or rearranged.

1456 **SIGN, FREESTANDING**

1457 Any sign supported by a structure or supports that are permanently anchored in the ground and that
1458 is independent from any building.

1459 **SIGN, REAL ESTATE**

1460 Any sign advertising real estate for sale, lease or rent.

1461 **SIGN, TEMPORARY**

1462 A sign that is intended to remain where it is erected or placed for a period of time not to exceed 21
1463 days in any calendar quarter.

1464 **SIGN, TRAILER**

1465 A portable sign mounted on a chassis and wheels or supported by legs.

1466 **SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM, OR SMALL MS4**

1467 Any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally
1468 owned or operated storm sewer systems, state or federally owned systems, such as colleges,
1469 universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road
1470 systems and facilities, and military bases and facilities. The Town of Kittery is a small MS4.

1471 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1472 **SOILS**

1473 A soil's drainage class must be determined by a Maine certified soil scientist and based on the most-
1474 recent Natural Resources Conservation Service Supplemental Key for the Identification of Soil
1475 Drainage Class that reflects the Maine Association of Professional Soil Scientists, Key to Drainage
1476 Classes. The Key includes, among other terms, the following:

1477 **[AMENDED 9-28-2015 BY ORD. NO. 15-05]**

- 1478 A. **VERY POORLY DRAINED** Water is removed from the soil so slowly that the water table
1479 remains at or above the surface most of the year. A seasonal high water table is at or above
1480 the surface from at least October through July and sometimes throughout the year. In
1481 August and September, the water table may recede below 12 inches. The high water table
1482 severely limits the use of these soils for most agricultural, forestry, and urban activities.
1483 These soils are hydric and typically support a wetland plant community.
- 1484 B. **POORLY DRAINED** Water is removed from the soil so slowly that the soil remains wet
1485 most of the year. A seasonal high water table is at or near the surface from October
1486 through June. In July, August and September, it may recede below 16 inches. The seasonal
1487 high water table limits the use of these soils for most agricultural, forestry, and urban
1488 activities. These soils are hydric and typically support a wetland plant community.
- 1489 C. **SOMEWHAT POORLY DRAINED** Water is removed from the soil slowly enough to
1490 keep it wet for significant periods of time but not the entire year. A seasonal high water
1491 table is at seven inches to 16 inches in depth from October through May and sometimes
1492 June. From July to October, it may recede below 30 inches in depth. A seasonal water
1493 table limits the use of these soils for some agricultural, forestry and urban activities. These
1494 soils are not hydric in Maine and are commonly found in the transitional landscape
1495 positions between wetland and upland soils.

1496 **SPECIAL EXCEPTION**

1497 A use that would not be appropriate generally or without restriction throughout the zoning district,
1498 but which, if controlled as to number, area, location or relation to the neighborhood, would promote
1499 the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or
1500 general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific
1501 provision for such special exceptions is made in § 16.4.

1502 **SPECIAL FLOOD HAZARD AREA**

1503 See "Flood, area of special flood hazard."

1504 [ADDED 9-26-2011 BY ORD. NO. 11-15]

1505 **SPECIALTY FOOD AND/OR BEVERAGE FACILITY**

1506 A facility wherein food and/or beverage is produced, sold on a wholesale and/or retail basis,
1507 distributed, and/or consumed on the premises. This may include, but not be limited to, a brew pub,
1508 microbrewery, coffee roaster and/or other facilities producing crafted alcoholic or nonalcoholic
1509 beverages and/or artisan food.

1510 [ADDED 6-10-2013 BY ORD. NO. 13-02]

1511 **START OF CONSTRUCTION**

1512 The date the building/regulated activity permit was issued, provided the actual start of construction,
1513 repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other
1514 improvement was within 180 days of the permit date. The "actual start" means either the first
1515 placement of permanent construction of a structure on a site, such as the pouring of slab or footings,
1516 the installation of piles, the construction of columns, or any work beyond the stage of excavation; or
1517 the placement of a manufactured home on a foundation. Permanent construction does not include
1518 land preparation, such as clearing, grading and filling; nor does it include the installation of streets
1519 and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the
1520 erection of temporary forms; nor does it include the installation on the property of accessory
1521 buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
1522 For a substantial improvement, the "actual start of construction" means the first alteration of any
1523 wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the
1524 external dimensions of the building.

1525 [ADDED 9-26-2011 BY ORD. NO. 11-15]

1526 **STORM DRAINAGE SYSTEM**

1527 The entire Town's storm drainage system.

1528 [ADDED 5-22-2017 BY ORD. NO. 17-06]

1529 **STORMWATER**

1530 Any stormwater runoff, snowmelt runoff, and surface runoff and drainage.

1531 [ADDED 5-22-2017 BY ORD. NO. 17-06]

1532 **STORY**

1533 That portion of a building included between the upper surface of a floor and the upper surface of the
1534 floor or roof next above. For any building that contains no floors in the vertical plane, every 10 feet
1535 or portion thereof counts as a floor.

1536 [AMENDED 9-24-2012 BY ORD. NO. 12-11]

1537 **STORY ABOVE GRADE**

1538 Any story having its finished floor surface entirely above grade, except that a basement is considered
1539 as a story above grade where the finished surface of the floor above the basement is:

1540 A. More than six feet (1,829 mm) above the grade plane;

1541 B. More than six feet (1,829 mm) above the finished ground level for more than 50% of the
1542 total building perimeter; or

1543 C. More than 12 feet (3,658 mm) above the finished ground level at any point.

1544 **STREAM OR BROOK**

1545 A channel between defined banks, including the floodway and associated floodplain wetlands, where
1546 the channel is created by the action of surface water and characterized by the lack of upland
1547 vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil
1548 containing waterborne deposits on exposed soil, parent material or bedrock.

1549 **STREET**

1550 A way established or maintained under public authority, or a minimum forty-foot-wide private way
1551 constructed to Town standards as contained in § 16.5 and § 16.8, approved by the Planning Board
1552 and plotted, dedicated and recorded, or a way shown on a plan of a subdivision duly approved by the
1553 Planning Board. Also included are such ways as alleys, avenues, boulevards, highways, roads, streets
1554 and other rights-of-way.

1555 **STREET FRONTAGE**

1556 A continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the front of
1557 the lot. When a lot is bounded by more than one street, any one of them, but only one, may be
1558 designated as the frontage street by the owner, provided that the lot meets the frontage requirement
1559 on that street, front, side and rear yard setbacks, and that the principal building is numbered on that
1560 street.

1561 **STREET LINE**

1562 The exterior line of a street right-of-way which separates it from abutting lots.

1563 **STRUCTURALLY ALTERED**

1564 Any work which requires or contemplates any changes to the structural capabilities of a building.

1565 **STRUCTURE**

1566 Anything built for the support, shelter or enclosure of persons, animals, goods or property of any
1567 kind, or anything constructed or erected with a fixed location on or in the ground, or attached to
1568 something having a fixed location on or in the ground. The term includes decks. The term does not
1569 include fences less than eight feet in height, nor any required by the Planning Board or Town
1570 Planner to be taller; flagpoles no higher than 50 feet in height; signs located in conformance with §
1571 16.5.23; and electricity generators and propane and oil tanks for residential use only and the pads on
1572 which they are located, provided the pad is less than 20 square feet in size.

1573 **SUBDIVIDER**

1574 Any person, firm, corporation or other legal entity making application for the subdivision of land or
1575 buildings within the Town.

1576 **SUBDIVISION**

1577 The division of a tract or parcel of land into three or more lots within any five-year period that
1578 begins on or after September 23, 1971. This definition applies whether the division is accomplished
1579 by sale, lease, development, building or otherwise. The term "subdivision" also includes the division
1580 of a new structure of structures on a tract or parcel of land into three or more dwelling units within a
1581 five-year period, the construction or placement of three or more dwelling units on a single tract or
1582 parcel of land and the division of an existing structure or structures previously used for commercial
1583 or industrial use into three or more dwelling units within a five-year period, as set forth in 30-A
1584 M.R.S. § 4401, as amended.

1585 **SUBDIVISION, MAJOR**

1586 Any subdivision containing more than four lots or any subdivision requiring any new public street
1587 extension or the extension of public or municipal facilities.

1588 **SUBDIVISION, MINOR**

1589 A subdivision containing not more than four lots.

1590 **SUBDIVISION PLAN, FINAL**

1591 The final drawings on which an applicant's plan of a subdivision is presented to the Planning Board
1592 for approval and which, if approved, must be filed for the record with the Municipal Clerk and York
1593 County Registry of Deeds.

1594 **PRELIMINARY SUBDIVISION PLAN**

1595 The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the
1596 Planning Board for its consideration.

1597 **SUBSTANTIAL DAMAGE**

1598 Damage of any origin sustained by a structure whereby the cost of restoring the structure to its
1599 before-damage condition would equal or exceed 50% of the assessed value of the structure before
1600 the damage occurred.

1601 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1602 **SUBSTANTIAL IMPROVEMENT**

1603 Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which
1604 equals or exceeds 50% of the market value of the structure before the start of construction of the
1605 improvement. This term includes structures which have incurred substantial damage, regardless of
1606 the actual repair work performed. The term does not, however, include either:

1607 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1608 A. Any project for improvement of a structure to correct existing violations of state or local
1609 health, sanitary or safety code specifications which have been identified by the local code
1610 enforcement official and which are the minimum necessary to assure safe living
1611 conditions; or

1612 B. Any alteration of an historic structure, provided that the alteration will not preclude the
1613 structure's continued designation as an historic structure.

1614 **SUBSURFACE WASTEWATER DISPOSAL SYSTEM (SWDS)**

1615 Any system designed to dispose of waste or wastewater on or beneath the surface of the earth. These
1616 include, but are not limited to, septic tanks, disposal fields, holding tanks, pretreatment filters,
1617 piping, or any other fixture, mechanism or apparatus used for such purposes. This definition does not
1618 include any discharge system licensed under 38 M.R.S. § 414, any surface wastewater disposal
1619 system or any municipal or quasi-municipal sewer or wastewater treatment system. (See also
1620 "wastewater" and "domestic wastewater.")

1621 **[ADDED 10-14-2015 BY ORD. NO. 15-10]**

1622 **SUSTAINED SLOPE**

1623 A change in elevation where the referenced percent grade is substantially maintained or exceeded
1624 throughout the measured area.

1625 **TEMPORARY STRUCTURE**

1626 A structure which by type and materials of its construction is erected for not more than 30 days with
1627 a permit from the CEO. Such structures include tents, portable bandstands, bleachers, reviewing
1628 stands, a mobile home, tractor trailers or structures of a similar character. Temporary structures
1629 erected in conjunction with licensed circuses are not construed to be temporary structures under this
1630 title.

- 1631 **THEATER**
 1632 A building or portion of a building for the showing of motion pictures or the presentation of
 1633 dramatic, musical or other live performances.
- 1634 **THEATER, DRIVE-IN**
 1635 An open lot devoted primarily to the showing of motion pictures and theatrical productions on a paid
 1636 admission basis to patrons seated in automobiles.
- 1637 **TIDAL LAND, FILLED**
 1638 Portions of the submerged and intertidal lands that have been rendered by human activity to be no
 1639 longer subject to tidal action or below the natural low-water mark after October 1, 1975.
- 1640 **[ADDED 9-28-2015 BY ORD. NO. 15-05]**
- 1641 **TIDAL WATERS**
 1642 All waters where the high-water line is affected by the ebb and flow of tidal action.
- 1643 **TIMBER HARVESTING**
- 1644 A. **TIMBER HARVESTING** Selective cutting or removal of 10 or more cords, or the
 1645 equivalent thereof, but no more than 40% of the total volume of trees four inches or more
 1646 in diameter measured at 4 1/2 feet above ground level on any lot in any ten-year period for
 1647 the purpose of selling or processing forest products. Clearing of land necessary for
 1648 approved construction is not considered as timber harvesting.
- 1649 B. For the purposes of this title, timber harvesting activities taking place outside the shoreland
 1650 overlay zone on land classified by the Town Assessor as enrolled in the state tree growth
 1651 program (36 M.R.S. §§ 571 to 584-A), which is conducted in compliance with a forest
 1652 management and harvest plan prepared by a licensed professional forester, is not
 1653 considered timber harvesting.
- 1654 **TOWER**
 1655 Any structure, whether freestanding or in association with a building or other permanent structure,
 1656 that is designed and constructed primarily for the purposes of supporting one or more antennas,
 1657 including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio
 1658 and television transmission towers, microwave towers, common-carrier towers, cellular telephone
 1659 towers, alternative tower structures, and similar structures.
- 1660 **TRACT OR PARCEL OF LAND**
 1661 All contiguous land in the same ownership, except that lands located on opposite sides of a public or
 1662 private street are considered separate tracts or parcels of land unless the street was established by the
 1663 owner of land on both sides of the street after September 22, 1971.
- 1664 **TRANSPORTATION TERMINAL**
 1665 Land and buildings used as a relay station for the transfer of a load from one vehicle to another. The
 1666 terminal facility may include storage areas for trucks and buildings or areas for the repair of trucks
 1667 associated with the terminal.
- 1668 **TRAVELED WAY**
 1669 That portion of a road or driveway designed for vehicle travel. Where a road or driveway surface is
 1670 paved, the traveled way is that portion of the road surface between the edges of the paved width.
- 1671 **TRIBUTARY STREAM**
 1672 A channel between defined banks created by the action of surface water, whether intermittent or
 1673 perennial, and which is characterized by the lack of upland vegetation or presence of aquatic

1674 vegetation and by the presence of a bed devoid of topsoil, containing waterborne deposits on
1675 exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined.
1676 This definition does not include the term "stream" as defined elsewhere in this title and only applies
1677 to that portion of the tributary stream located within the shoreland or resource protection overlay
1678 zones of the receiving water body or wetland.

1679 **UPLAND EDGE**

1680 The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the
1681 line formed by the landward limits of the salt-tolerant vegetation and/or the elevation being six feet
1682 above mean sea level based on the North American Vertical Datum of 1988 (NAVD 88), including
1683 all area affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed
1684 where the soils are not saturated for a time period sufficient to support wetland vegetation or where
1685 the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems
1686 that are 20 feet tall or taller; whichever is more restrictive.

1687 **URBANIZED AREA (UA)**

1688 The areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the
1689 Census.

1690 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1691 **USED CAR LOT**

1692 A lot exposed to the elements which is used for the sale of secondhand automobiles or trucks which
1693 can pass the state inspection tests in their existing conditions.

1694 **VARIANCE**

- 1695 A. A relaxation of the terms of this title where such relaxation will not be contrary to the
1696 public interest and where, owing to conditions peculiar to the property and not the result of
1697 the actions of the applicant or prior owner, a literal enforcement of the title will result in
1698 unnecessary or undue hardship.
- 1699 B. As used in this title, a variance is authorized only for dimensional requirements related to
1700 height, area and size of structure, or size of yards and open spaces. Establishment or
1701 expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be
1702 granted because of the presence of nonconforming uses in the particular zone or adjoining
1703 zone.

1704 **VEGETATION**

1705 All live trees, shrubs, ground cover and other plants.

1706 **VETERINARY HOSPITAL**

1707 A commercial establishment, operated by a licensed veterinarian, for the medical and surgical care
1708 of sick or injured animals.

1709 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1710 **VOLUME OF A STRUCTURE**

1711 The volume of all portions of a structure enclosed by roof and fixed exterior walls, as measured from
1712 the exterior faces of these walls and roof.

1713 **WAREHOUSING AND STORAGE**

1714 Premises where goods or materials are stored in an enclosed structure or in specific outdoor areas.

1715 **WASTE**

1716 Any unwanted or discarded substance or material, whether or not such substance or material has any
1717 future use, and includes any substance or material that is spilled, leaked, pumped, poured, emitted,
1718 disposed of, emptied, or dumped onto the land or into the water.

1719 **WASTEWATER**

1720 Any domestic wastewater, or other wastewater from commercial, industrial or residential sources
1721 that has attributes similar to those of domestic wastewater. This term specifically excludes hazardous
1722 or toxic wastes and materials. (Applicable only to Title 16. If there is a conflict with the definition of
1723 "wastewater" in Title 13, the Title 13 definition takes precedence.)

1724 **[ADDED 10-14-2015 BY ORD. NO. 15-10]**

1725 **WASTEWATER, DOMESTIC**

1726 Any wastewater produced by ordinary living uses, including liquid waste containing animal or
1727 vegetable matter in suspension or solution, or the water-carried waste from the discharge of water
1728 closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes
1729 of human origin.

1730 **[ADDED 10-14-2015 BY ORD. NO. 15-10]**

1731 **WATER BODY**

1732 Any pond, river, brook, stream, intermittent stream or coastal wetland.

1733 **WATER CROSSING**

1734 Any project extending from one bank to the opposite bank of a water body, whether under, through
1735 or over the watercourse. Such projects include but may not be limited to roads, fords, bridges,
1736 culverts, waterlines, sewer lines and cables, as well as maintenance work on these crossings.

1737 **WATER-DEPENDENT USE**

1738 See "functionally water-dependent use."

1739 **WATER FRONT COMMERCIAL/INDUSTRIAL AND/OR FISHERIES USE STRUCTURE**

1740 A structure which is used by a business entity, Port Authority or municipality having frontage on
1741 navigable water and, as its principal use, provides for hire to the general public offshore mooring and/or
1742 docking facilities for vessels used for any marine-related commercial, industrial or fisheries use

1743 **WETLAND**

1744 Areas that under normal circumstances have hydrophytic vegetation, hydric soils and wetland
1745 hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual — Waterways
1746 Experiment Station Technical Report Y-87-1, January 1987" (1987 manual). This definition of
1747 wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.

1748 **WETLAND ALTERATION**

1749 Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the
1750 hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the
1751 Planning Board, the term "alteration" may exclude:

1752 A. An activity of installing a fence post or planting shrubs by hand;

1753 B. Alteration of an existing structure such as a bench or handrail; and

1754 The construction, repair or alteration of a structure with minimal impact such as a nesting box,
1755 pasture fence or staff gauge.

1756 **WETLAND, COASTAL**

1757 All tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands
1758 with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine
1759 habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal
1760 action during the maximum spring tide level as identified in tide tables published by the National
1761 Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

1762 **WETLAND CREATION**

1763 Conversion of a nonwetland area into a wetland, where a wetland never existed.

1764 **WETLAND ENHANCEMENT**

1765 An activity increasing the value of one or more functions in an existing wetland. Activities may also
1766 include improvements to upland buffers where timber harvesting or other activities have degraded
1767 the value for wildlife.

1768 **WETLAND, FORESTED**

1769 A fresh water wetland dominated by woody vegetation that is 20 feet tall or taller.

1770 **WETLAND, FRESHWATER**

1771 Noncoastal types of wetlands, including, but not limited to, freshwater swamps, marshes, bogs and
1772 similar areas.

1773 **WETLAND, FRESHWATER (IN THE SHORELAND AND RESOURCE PROTECTION**
1774 **OVERLAY ZONES)**

1775 A. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which
1776 are: **[Added 5-22-2017 by Ord. No. 17-04]**

- 1777 (1). Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to
1778 a surface water body, excluding any river, stream or brook, such that in a natural
1779 state, the combined surface area is in excess of 10 acres; and
1780 (2). Inundated or saturated by surface- or groundwater at a frequency and for a duration
1781 sufficient to support, and which under normal circumstances do support, a
1782 prevalence of wetland vegetation typically adapted for life in saturated soils.

1783 B. Freshwater wetlands may contain small stream channels or inclusions of land that do not
1784 conform to the criteria in this definition.

1785 **WETLAND FUNCTIONS**

1786 The roles wetlands serve which are of value to society or the environment, including, but not limited
1787 to, floodwater storage, floodwater conveyance, groundwater recharge and discharge, erosion control,
1788 wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries,
1789 wetland plant habitat, aquatic habitat and wildlife habitat.
1790

1791 **WETLAND HYDROLOGY**

1792 In general terms, a condition where permanent or periodic inundation or prolonged soil saturation is
1793 sufficient to create anaerobic conditions in the soil. According to the 1989 Manual, inundation or
1794 saturation for one week or more during the growing season and a water table within at least 18
1795 inches of soil surface is required to meet the wetland hydrology criterion.

1796 **WETLAND PRESERVATION**

1797 The maintenance of an area of wetlands or adjacent upland so that it remains in a natural or
1798 undeveloped condition. Preservation measures include, but are not limited to, conservation
1799 easements and land trusts.

1800 **WETLAND RESTORATION**

1801 An activity returning a wetland from a disturbed or altered condition with lesser acreage or fewer
1802 functions to a previous condition with greater wetland acreage or function.

1803 **WETLAND VALUE**

1804 The importance of a wetland with respect to the individual or collective functions it provides.

1805 **WETLAND VEGETATION**

1806 Those plants classified as Obligate, Facultative Wetland or Facultative in the U.S. Fish and Wildlife
1807 Service publication, Wetland Plants of the State of Maine, 1986, as amended or superseded.

1808 **WETLANDS ASSOCIATED WITH RIVERS**

1809 Wetlands contiguous with or adjacent to a river, and which during normal high water are connected
1810 by surface water to the river. Also included are wetlands which are separated from the river by a
1811 berm, causeway or similar feature less than 100 feet in width, and which have a surface elevation at
1812 or below the normal high-water line of the river. Wetlands associated with rivers are considered to
1813 be part of that great pond or river.

1814 **WETLANDS IMPACT**

1815 Any disturbance, including but not limited to filling, dredging, draining, bridging and cutting or
1816 clearing of vegetation in the wetland and buffer areas.

1817 **WHARF**

1818 A structure on the shore, parallel to the shoreline of navigable waters, alongside of which vessels can
1819 be brought for loading or unloading.

1820 **WHOLESALE BUSINESS**

1821 The sale of goods not produced on the premises primarily to customers engaged in the business of
1822 reselling the goods.

1823 **WIRELESS COMMUNICATION SERVICES FACILITIES (WCSF)**

1824 Any structure, antenna, tower or other device which provides radio/television transmission,
1825 commercial mobile wireless services, unlicensed wireless services, cellular phone services,
1826 specialized mobile radio communications (SMR), common carrier wireless exchange access
1827 services, and personal communications service (PCS) or pager services, and associated development.
1828 Telecommunications facilities are considered a principal use.

1829 **WORK**

1830 Activity related to physical change for improvements and not the engineering, production or
1831 correction of construction drawings, or real estate marketing.

1832 **YARD, ACCESSORY BUILDING SIDE AND REAR**

1833 In the R-RL, R-U, R-S and B-L Zones, accessory building side and rear yard setbacks that are at
1834 least 10 feet, except no building may be closer than 30 feet to a principal building on an adjoining
1835 lot.

1836 **YARD, FRONT**

1837 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more
1838 than 24 inches, on the same lot with the building between the front line of the building and the front
1839 line of the lot and extending the full width of the lot as it abuts along a public or private street.

1840 **YARD, REAR**

1841 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more
1842 than 24 inches, on the same lot with the building between the rear line of the building and the rear
1843 line of the lot and extending the full width of the lot.

1844 **YARD, SIDE**

1845 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more
1846 than 24 inches, on the same lot with the building situated between the building and the side line of
1847 the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line
1848 will be deemed a side line.

1849

1 **16.4 Land Use Zone Regulations**

2 **Contents**

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35
36

37 **16.4.1 Purpose**

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

40 **16.4.2 Establishment of Zones**

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

43 **16.4.3 Base zones**

44	A. Residential – Rural	R-RL
45	B. Residential – Suburban	R-S
46	C. Residential – Kittery Point Village	R-KPV
47	D. Residential – Urban	R-U
48	E. Residential – Village	R-V
49	F. Residential – Rural Conservation	R-RC
50	G. Conservation	CON
51	H. Business – Local	B-L
52	I. Business – Local 1	B-L1
53	J. Commercial 1	C-1
54	K. Commercial 2	C-2
55	L. Commercial 3	C-3
56	M. Industrial	IND
57	N. Mixed-Use	MU
58	O. Mixed-Use – Badgers Island	MU-BI
59	P. Mixed-Use – Kittery Foreside	MU-KF
60	Q. Mixed Use – Neighborhood	MU-N
61	R. Transportation – Maine Turnpike	T-MT

62 **16.4.4 Overlay zones**

63	A. Shoreland Overlay Zones	
64	(1). Water Body/Wetland Protection Area – 250 feet	OZ-SL-250
65	(2). Stream Protection Area – 75 feet	OZ-SL-75
66	B. Commercial Fisheries/Maritime Uses Overlay Zone	OZ-CFMU
67	C. Resource Protection Overlay Zone	OZ-RP

68 **16.4.5 Zoning Map**

69 A. Zone boundaries

70 The location and boundaries of the zones are established as shown on the current Official
71 Zoning Map titled "Town of Kittery Maine Land Use Zoning Map," as may be amended
72 by law. The Zoning Map with all explanatory matter thereon is hereby made part of this

73 title and must be kept on file at the Town office. Said Zoning Map must be drawn at a
74 scale of not less than one-inch equals 1,000 feet. Zone boundaries must be clearly
75 delineated, and the Map must have a legend indicating the name and symbol for each zone.

76 **16.4.6 Boundary line interpretation**

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

- 79 (1). Unless otherwise shown, zone boundary lines are coincidental with street center
80 lines and lot lines. Where zone boundary lines are designated on the Zoning Map,
81 those lines are construed to be the boundary of the zone.
- 82 (2). Where the zone boundary lines are not otherwise indicated and where the property
83 has been or may hereafter be divided into blocks and lots, the zone boundaries are
84 construed to be the lot lines, and where the zones designated on the Map
85 accompanying and made a part of this title are bounded approximately by lot lines,
86 the lot lines are construed to be the boundary of the zones unless the boundary lines
87 are otherwise indicated on the Zoning Map.
- 88 (3). Where unsubdivided property lies within two or more zones, the zone boundary
89 lines on the Zoning Map are determined by use of the scale appearing on the
90 Zoning Map.
- 91 (4). Where there is uncertainty regarding a zone boundary, the Planning Board is the
92 local decision authority as to the exact location of said boundary. In the Shoreland
93 and Resource Protection Overlay Zones, boundary redefinition must be supported
94 by documentation from an appropriate certified Maine state professional.

95 **16.4.7 Overlay zone**

96 An overlay zone is a special purpose zone where additional regulations, beyond those set
97 forth in the base zone, apply. The regulations of the underlying zone must apply unless
98 specified otherwise in the overlay zone.

99 **16.4.8 Zoning Map amendments to Resource Protection and Shoreland Overlay** 100 **Zones**

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

105 **16.4.9 Prohibited uses**

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

109

110 **16.4.10 Residential – Rural (R-RL)**

111 A. Purpose

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

115 B. Permitted uses

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

- 117 (1). Accessory Dwelling Unit
- 118 (2). Cluster Residential Development [Added 9-24-2012 by Ord. No. 12-10]
- 119 (3). Dwelling, Manufactured Housing
- 120 (4). Dwelling, Single-Family
- 121 (5). Dwelling, Two-Family
- 122 (6). Convalescent Care Facility
- 123 (7). Nursing Care Facility, Long-Term
- 124 (8). Accessory Use & Building
- 125 (9). Home Occupation, Minor
- 126 (10). Individual Private Campsite
- 127 (11). Day Care Facility
- 128 (12). Hospital
- 129 (13). Private Assembly
- 130 (14). Public Facility
- 131 (15). Public or Private School
- 132 (16). Religious Use
- 133 (17). Recreation, Public Open Space
- 134 (18). Agriculture
- 135 (19). Commercial School

136 C. Special exception uses

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

- 138 (1). Mobile Home Park, subject to § 16.5.17.D
- 139 (2). Home Occupation, Major
- 140 (3). Campgrounds
- 141 (4). Rooming House
- 142 (5). Public Utility Facility
- 143 (6). Recreation, Commercial Indoor
- 144 (7). Recreation, Commercial Outdoor
- 145 (8). Agriculture, Piggery
- 146 (9). Commercial Kennel
- 147 (10). Sawmill, Permanent
- 148 (11). Sawmill, Temporary
- 149 (12). Veterinary Hospital
- 150 (13). Cemetery
- 151 (14). Shops in Pursuit of Trade
- 152 (15). Junkyard

- 153 (16). Mineral extraction, subject to § 16.5.16
154 (17). Major or Minor Subdivision [Added 9-24-2012 by Ord. No. 12-10]

155 D. Standards

156 The following standards must be met unless modified per § 16.8.10.H, Cluster
157 Residential Development: [Amended 9-24-2012 by Ord. No. 12-10]

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

159 (2). Dimensional standards:

160 a. Minimum land area per dwelling unit: 40,000 square feet.*

161 *As per §16.3 definition of "minimum land area per dwelling unit,"
162 except to exempt properties which are unable to meet the square feet
163 required for a single-family dwelling unit, provided the lot was
164 conforming prior to October 25, 2012. [Amended 9-28-2015 by
165 Ord. No. 15-05]

166 b. Minimum lot size: 40,000 square feet.

167 c. Minimum street frontage: 150 feet.

168 d. Minimum front yard: 40 feet.

169 e. Maximum building coverage: 15%.

170 f. Minimum rear and side yards: 20 feet

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

173 g. Maximum building height: 35 feet

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

176 h. Minimum water body setback for functionally and wetland water-dependent
177 uses: zero feet

178 i. Minimum setback from streams, water bodies and wetlands: in accordance
179 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

180 (3). Subdivision types and standards

181 Subject to net residential acreage and net residential density per § 16.3.
182 [Amended 9-28-2015 by Ord. No. 15-05]

183 a. Cluster residential development

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

187 i. Minimum principal building separation as required by the Fire
188 Chief, but not less than 20 feet.

189 b. Subdivision development [per special exception uses, § 16.4.10.C].

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

192 i. Minimum percentage of common open space: 15%

193 (4). Junkyards

194 In the case of junkyards, the following special standards apply, which are in
195 addition to the standards and provisions prescribed in Maine State Statutes,
196 30-A M.R.S. §§ 3751 to 3760, and any changes thereto:

197 a. Minimum land area: 400,000 square feet.

198 b. Minimum street frontage: 600 feet.

199 c. Minimum distance from street or highway to junk concentration area: 200

200 feet.
201 d. Other standards as prescribed in § 16.5.13.

202 (5). Mobile Home Parks

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

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

206 (1). Permitted uses

207 a. Accessory Use & Building

208 b. Agriculture

209 c. Dwellings, if located farther than 100 feet from the normal high-water line
210 of any water bodies, or the upland edge of a wetland
211 Individual Private
Campsite

212 d. Recreation, Public Open Space

213 (2). Special exception uses

214 e. Day Care Facility

215 f. Home occupation, Major

216 g. Home Occupation, Minor

217 h. Mineral extraction subject to § 16.5.16;

218 i. Public Utility Facility

219 j. Recreation, Commercial Indoor

220 k. Recreation, Commercial Outdoor

221 l. Commercial School

222 m. Public or Private School

223 n. Hospital

224 o. Nursing Care Facility, Long-Term

225 p. Convalescent Care Facility

226 q. Public Facility

227 r. Religious Use

228 s. Private Assembly

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

230 F. Resource Protection Overlay Zone OZ-RP – Residential – Rural Zone (R-RL)

231 (1). Permitted uses

232 a. Individual Private Campsite

233 b. Recreation, Public Open Space

234 (2). Special exception uses

235 a. Accessory Use & Building

236 b. Agriculture

237 c. Home Occupation, Major

238 d. Home Occupation, Minor

239 e. Dwelling, Single-Family

240 f. Commercial School,

241 g. Public or Private School,

242 h. Religious Use,

243 i. Private Assembly,

244
245
246
247

- j. Public Utility Facility
- (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-RP

248 **16.4.11 Residential – Suburban (R-S)**

249 A. Purpose

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

253 B. Permitted uses

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

- 255 (1). Accessory Dwelling Unit
- 256 (2). Cluster Residential Development [Added 9-24-2012 by Ord. No. 12-10]
- 257 (3). Dwelling, Attached Single-Family
- 258 (4). Dwelling, Multi-Family (not more than four (4) units per building)
- 259 (5). Dwelling, Single-Family
- 260 (6). Dwelling, Two-Family
- 261 (7). Convalescent Care Facility (may not occupy more than 5,000 square feet of floor
262 area)
- 263 (8). Nursing Care Facility, Long-term (may not occupy more than 5,000 square feet of
264 floor area)
- 265 (9). Residential Care Facility (may not occupy more than 5,000 square feet of floor
266 area)
- 267 (10). Accessory Use & Building
- 268 (11). Home Occupation, Minor
- 269 (12). Day Care Facility
- 270 (13). Elderly Day Care Facility
- 271 (14). Hospital (may not occupy more than 5,000 square feet of floor area)
- 272 (15). Nursery School (may not occupy more than 5,000 square feet of floor area)
- 273 (16). Private Assembly (may not occupy more than 5,000 square feet of floor area)
- 274 (17). Public Facility (may not occupy more than 5,000 square feet of floor area)
- 275 (18). Public or Private School (may not occupy more than 5,000 square feet of floor
276 area)
- 277 (19). Religious Use (may not occupy more than 5,000 square feet of floor area)
- 278 (20). Recreation, Public Open Space
- 279 (21). Agriculture
- 280 (22). Commercial School (may not occupy more than 5,000 square feet of floor area)

281 C. Special exception uses

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

- 283 (1). Dwelling, Multi-Family (five to twelve (5-12) units per building)
- 284 (2). Home Occupations, Major
- 285 (3). Rooming House
- 286 (4). Public Utility Facility
- 287 (5). Cemetery
- 288 (6). Retail Sales, Convenience (excluding the sale of gasoline)
- 289 (7). Any use listed in Subsection B(12-20) (permitted uses) of this section that occupies
290 more than 5,000 square feet of floor area
- 291 (8). Mineral Extraction, subject to § 16.5.16

292 (9). Major or Minor Subdivision [Added 9-24-2012 by Ord. No. 12-10]

293 D. Standards

294 The following standards must be met unless modified per § 16.8.10.H, Cluster
295 Residential Development: [Amended 9-24-2012 by Ord. No. 12-10]

296 (1). Design and performance standards.

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

300 (2). Dimensional standards.

301 a. Minimum land area per dwelling unit:*

- 302 i. Without public sewage disposal: 40,000 square feet.
- 303 ii. With public sewage disposal: 30,000 square feet unless reduced in
304 accordance with Note A.

305 *As per § 16.3 definition of "minimum land area per dwelling unit,"
306 except to exempt properties which are unable to meet the square feet
307 required for a single-family dwelling unit, provided the lot was
308 conforming prior to October 25, 2012. [Amended 9-28-2015 by
309 Ord. No. 15-05]

310 b. Minimum lot size:

- 311 i. Without public sewage disposal: 40,000 square feet.
- 312 ii. With public sewage disposal: 30,000 square feet unless reduced in
313 accordance with Note A.

314 c. Minimum street frontage: 150 feet unless reduced in accordance with Note
315 A.

316 d. Minimum front yard: 40 feet.

317 e. Maximum building coverage: 20%.

318 f. Minimum rear and side yards: 15 feet

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

321 g. Maximum building height: 35 feet

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

324 h. Minimum water body setback for functionally and wetland water-dependent
325 uses: zero feet.

326 i. Minimum setback from streams, water bodies and wetlands: in accordance
327 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

328 **Note A:**

- 329 • The required minimum land area per dwelling unit and/or
330 minimum lot size for residential uses that are served by
331 public sewage disposal and that are located outside of areas
332 subject to shoreland zoning may be less than 30,000 square
333 feet per lot/unit if the established average density of
334 development in the immediate area of the use as determined
335 below is less than 30,000 square feet.
- 336 • If the average of the lot sizes and/or land area per dwelling
337 unit of the developed residential lots that are located on the
338 same street and within 500 feet of the parcel is less than
339 30,000 square feet, the required minimum lot size or required
340 minimum land area per dwelling unit is the calculated

341 average lot size or average land area per dwelling unit but not
342 less than 20,000 square feet.
343 • If the required minimum lot size is reduced, the required
344 minimum street frontage for new residential uses served by
345 public sewerage may also be reduced to the average of the lot
346 frontage of existing developed residential lots that are located
347 on the same street and within 500 feet of the parcel but in no
348 case to less than 100 feet.

349 (3). Subdivision types and standards

350 Subject to net residential acreage and net residential density per § 16.3
351 [Amended 9-28-2015 by Ord. No. 15-05]

352 a. Cluster residential development

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

357 i. Minimum principal building separation as required by the Fire
358 Chief, but not less than 15 feet.

359 b. Subdivision development [per special exception uses, § 16.4.11.C].

360 In a subdivision development, standards in § 16.4.11.D(1) and (2) apply
361 and include:

362 i. Minimum percentage of common open space: 15%.

363 (4). Mobile Homes

364 Mobile Homes must meet the standards of § 16.5.17.

365 E. Shoreland Overlay Zone OZ-SL – Residential – Suburban Zone (R-S)

366 (1). Permitted uses

367 a. Day Care Facility

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

370 c. Elderly Day Care Facility

371 d. Recreation, Public Open Space

372 (2). Special exception uses

373 a. Home Occupation, Major

374 b. Home Occupation, Minor

375 c. Mineral Extraction subject to § 16.5.16

376 d. Public Utility Facility

377 e. Commercial School (must not occupy more than 5,000 square feet of floor
378 area)

379 f. Public or Private School (must not occupy more than 5,000 square feet of
380 floor area)

381 g. Residential Care Facility (must not occupy more than 5,000 square feet of
382 floor area)

383 h. Hospital (must not occupy more than 5,000 square feet of floor area)

384 i. Nursing Care Facility, Long-term (must not occupy more than 5,000 square
385 feet of floor area)

386 j. Public Facility (must not occupy more than 5,000 square feet of floor area)

387 k. Religious Use (must not occupy more than 5,000 square feet of floor area)

- 388 1. Private Assembly (must not occupy more than 5,000 square feet of floor
389 area)
- 390 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 391 F. Resource Protection Overlay Zone OZ-RP – Residential Suburban Zone (R-S)
- 392 (1). Permitted Uses
- 393 a. Recreation, Public Open Space
- 394 (2). Special Exception Uses
- 395 a. Accessory Use & Building
- 396 b. Agriculture
- 397 c. Home Occupation, Major
- 398 d. Home Occupation, Minor
- 399 e. Public Utility Facility
- 400 f. Dwelling, Single-Family
- 401 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 402 OZ-RP
- 403

404 **16.4.12 Residential – Kittery Point Village (R-KPV)**

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

406 A. Purpose

407 The purpose of the Residential – Kittery Point Village R-KPV Zone is to preserve
408 the established character and development pattern of the Kittery Point
409 neighborhood while assuring that any new development is consistent with this
410 historical development pattern and is environmentally suitable. To this end, the
411 following apply:

412 B. Permitted uses

413 The following uses are permitted in the R-KPV Zone:

- 414 (1). Accessory Dwelling Units
- 415 (2). Cluster Residential Development [Added 9-24-2012 by Ord. No. 12-10]
- 416 (3). Dwelling, Attached Single-Family
- 417 (4). Dwelling, Multi-Family (not more than four (4) units per building)
- 418 (5). Dwelling, Single-Family
- 419 (6). Dwelling, Two-Family
- 420 (7). Accessory Use & Building
- 421 (8). Home Occupations, Minor
- 422 (9). Day Care Facility
- 423 (10). Nursery School (must not occupy more than 5,000 square feet of floor area)
- 424 (11). Private Assembly (must not occupy more than 5,000 square feet of floor area)
- 425 (12). Public Facility (must not occupy more than 5,000 square feet of floor area)
- 426 (13). Public or Private School (must not occupy more than 5,000 square feet of floor
427 area)
- 428 (14). Religious Use (must not occupy more than 5,000 square feet of floor area)
- 429 (15). Recreation, Public Open Space
- 430 (16). Agriculture
- 431 (17). Commercial School (must not occupy more than 5,000 square feet of floor area)

432 C. Special exception uses

433 The following uses are permitted as special exception uses in the R-KPV Zone:

- 434 (1). Rooming House
- 435 (2). Any use listed in Subsection B(11-15) of this section (permitted uses) that occupies
436 more than 5,000 square feet of floor area
- 437 (3). Public Utility Facility
- 438 (4). Cemetery
- 439 (5). Retail Sales, Convenience (excluding sale of gasoline)
- 440 (6). Home Occupation, Major
- 441 (7). The reuse of a designated historic building, in nonresidential use as of the effective
442 date of this provision, as an art studio/gallery, museum, or business and
443 professional office subject to standards for a minor home occupation as set forth in
444 § 16.5.12.
- 445 (8). Major or Minor Subdivision [Added 9-24-2012 by Ord. No. 12-10]

446 D. Standards

447 The following standards must be met unless modified per § 16.8.10.H , Cluster
448 Residential Development: [Amended 9-24-2012 by Ord. No. 12-10]

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

450 The Design Handbook provides examples of appropriate design for
451 nonresidential and multiunit residential projects.

452 (2). Dimensional standards.

453 a. Minimum land area per dwelling unit: 40,000 square feet.*

454 *As per Chapter 16.3 definition of "minimum land area per dwelling
455 unit," except to exempt properties which are unable to meet the
456 square feet required for a single-family dwelling unit, provided the
457 lot was conforming prior to October 25, 2012. [Amended 9-28-2015
458 by Ord. No. 15-05]

459 b. Minimum lot size: 40,000 square feet.

460 c. Minimum street frontage: 150 feet unless reduced in accordance with Note
461 A.

462 **Note A:**

- 463 • The required minimum street frontage for a new lot may be
464 less than 150 feet if the established pattern of street frontage
465 in the immediate area of the lot as determined below is less
466 than 150 feet per lot.
- 467 • The required minimum street frontage in this case is the
468 average of the street frontage of existing developed
469 residential lots that are located on the same street and within
470 500 feet of the parcel, but in no case less than 100 feet.

471 d. Minimum front yard: 40 feet

472 e. Maximum building coverage: 20%.

473 f. Minimum rear and side yards: 15 feet. (NOTE: Buildings higher than 40
474 actual feet must have side and rear yards not less than 50% of the building
475 height.)

476 g. Maximum building height: 35 feet. (NOTE: Minimum distance between
477 principal buildings on the same lot is the height equivalent to the taller
478 building.)

479 h. Minimum water body setback for functionally and wetland water-dependent
480 uses: zero feet.

481 i. Minimum setback from streams, water bodies and wetlands: in accordance
482 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

483 (3). Subdivision types and standards

484 Subject to net residential acreage and net residential density per § 16.3.
485 [Amended 9-28-2015 by Ord. No. 15-05]

486 a. Cluster residential development

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

491 i. Minimum principal building separation as required by the Fire
492 Chief, but not less than 15 feet.

493 b. Subdivision development [per special exception uses, § 16.4.12.C].

494 In a subdivision development, standards in § 16.4.12.D(1) and (2) apply
495 and include:

- i. Minimum percentage of common open space: 15%.

E. Shoreland Overlay Zone OZ-SL – Residential – Kittery Point Village (R-KPV)

(1). Permitted uses.

- a. Agriculture
- b. Accessory Use & Building
- c. Day Care Facility
- d. Dwellings if located farther than 100 feet from the normal high-water line of any water bodies, or the upland edge of a wetland

(2). Special exception uses.

- e. Home Occupation, Major
- f. Home Occupation, Minor
- g. Public Utility Facility
- h. Commercial School (must not occupy more than 5,000 square feet of floor area)
- i. Public or Private School (must not occupy more than 5,000 square feet of floor area)
- j. Nursery School (must not occupy more than 5,000 square feet of floor area)
- k. Public Facility (must not occupy more than 5,000 square feet of floor area)
- l. Religious Use (must not occupy more than 5,000 square feet of floor area)
- m. Private Assembly (must not occupy more than 5,000 square feet of floor area)

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

F. Resource Protection Overlay Zone OZ-RP – Residential – Kittery Point Village Zone (R-KPV)

(1). Permitted Uses

- a. Recreation, Public Open Space

(2). Special Exception Uses

- a. Accessory Use & Building
- b. Agriculture
- c. Home Occupations, Major
- d. Home Occupations, Minor
- e. Public Utility Facility
- f. Dwelling, Single-Family

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

534 **16.4.13 Residential – Urban (R-U)**

535 A. Purpose

536 The purpose of the Residential – Urban R-U Zone is to preserve the physical,
537 aesthetic and social quality of Kittery's urban area and, consistent with this goal, to
538 provide therein for the location of a variety of residential uses in accordance with
539 the standards of this title. To this end, the following apply:

540 B. Permitted uses

541 The following uses are permitted in the R-U Zone:

- 542 (1). Accessory Dwelling Units
- 543 (2). Cluster Residential Development [Added 9-24-2012 by Ord. No. 12-10]
- 544 (3). Dwelling, Attached Single-Family
- 545 (4). Dwelling, Manufactured Housing
- 546 (5). Dwelling, Multi-Family
- 547 (6). Dwelling, Single-family
- 548 (7). Dwelling, Two-Family
- 549 (8). Convalescent Care Facility
- 550 (9). Nursing Care Facility, Long-term
- 551 (10). Accessory Use & Building
- 552 (11). Home Occupations, Minor
- 553 (12). Day Care Facility
- 554 (13). Hospital
- 555 (14). Nursery School
- 556 (15). Private Assembly
- 557 (16). Public Facility
- 558 (17). Public or Private School
- 559 (18). Religious Use
- 560 (19). Recreation, Public Open Space
- 561 (20). Commercial School
- 562 (21). Conference Center

563 C. Special exception uses

564 The following uses are permitted as special exception uses in the R-U Zone:

- 565 (1). Rooming House
- 566 (2). Business & Professional Offices
- 567 (3). Funeral Home
- 568 (4). Art Studio or Gallery
- 569 (5). Recreation, Public Facility
- 570 (6). Recreation, Commercial Indoor
- 571 (7). Recreation, Commercial Outdoor
- 572 (8). Public Utility Facility
- 573 (9). Inn
- 574 (10). Home Occupations, Major
- 575 (11). Age-Restricted Housing
- 576 (12). Major or Minor Subdivision [Added 9-24-2012 by Ord. No. 12-10]

D. Standards

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The following standards must be met unless modified per § 16.8.10.H, Cluster Residential Development: [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-10]

- (1). The design and performance standards in § 16.5, 16.7 and 16.8.
- (2). Dimensional standards:
 - a. Minimum land area per dwelling unit: 20,000 square feet.*
 *As per Chapter 16.3 definition of "minimum land area per dwelling unit," except to exempt properties which are unable to meet the square feet required for a single-family dwelling unit, provided the lot was conforming prior to October 25, 2012. [Amended 9-28-2015 by Ord. No. 15-05]
 - b. Minimum lot size: 20,000 square feet.
 - c. Minimum street frontage: 100 feet.
 - d. Minimum front yard, all buildings: 30 feet.
 - e. Minimum rear and side yards, all buildings: 15 feet.
 (NOTE: Buildings higher than 40 actual feet must have side and rear yards not less than 50% of building height.)
 - f. Maximum building height: 35 feet.
 (NOTE: Minimum distance between principal buildings on the same lot is the height equivalent to the taller building.)
 - g. Maximum building coverage: 20%.
 - h. Minimum water body setback for functionally and wetland water-dependent uses: zero feet.
 - i. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30 § 16.4.28 and Appendix A, Fee Schedules.
- (3). Subdivision types and standards
 Subject to net residential acreage and net residential density per § 16.3. [Amended 9-28-2015 by Ord. No. 15-05]
 - a. Cluster residential development
 In a cluster residential development, the above standards may be modified in accordance with special provisions of § 16.8.10.H, including that there is no minimum lot size, and with the conditions that:
 - i. Minimum principal building separation as required by the Fire Chief, but not less than 15 feet.
 - b. Subdivision development [special exception uses, § 16.4.13.C].
 In a subdivision development, standards in § 16.4.13.D(1) and (2) apply and include:
 - i. Minimum percentage of common open space: 15%.
- (4). Age-Restricted Housing
 In the case of Age-Restricted Housing, the above standards may be modified in accordance with the special provisions of § 16.5.15 and with the condition that:
 - a. Municipal sewerage and water must be provided.
 - b. A minimum land area of three acres must be provided.
 - c. The maximum net density may not exceed four dwelling units per net residential acre. In no event may the Planning Board authorize a departure

625 which increases the total number of dwelling units greater than that
626 specified under the applicable zoning ordinance.
627 d. A single bedroom unit may not be less than 550 square feet and a two-
628 bedroom unit not less than 650 square feet.

629 (5). Manufactured Housing

630 Manufactured Housing must meet standards of § 16.5.15

631 E. Shoreland Overlay Zone OZ-SL – Residential – Urban Zone (R-U)

632 (1). Permitted uses.

- 633 a. Accessory Use & Building
- 634 b. Day Care Facility
- 635 c. Dwellings if located farther than 100 feet from the normal high-water line
636 of any water bodies, or the upland edge of a wetland
- 637 d. Recreation, Public Open Space

638 (2). Special exception uses.

- 639 a. Home Occupation, Major
- 640 b. Home Occupation, Minor
- 641 c. Inn
- 642 d. Public Utility Facility
- 643 e. Recreation, Commercial Indoor
- 644 f. Recreation, Commercial Outdoor
- 645 g. Commercial School
- 646 h. Public or Private School
- 647 i. Nursery School
- 648 j. Hospital
- 649 k. Nursing Care Facility, Long-term
- 650 l. Convalescent Care Facility
- 651 m. Public Facility
- 652 n. Religious Use
- 653 e. Private Assembly

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

655 F. Resource Protection Overlay Zone OZ-RP – Residential – Urban Zone (R-U)

656 (1). Permitted Uses

- 657 a. Recreation, Public Open Space

658 (2). Special Exception Uses

- 659 a. Accessory Use & Building
- 660 b. Home Occupation, Major
- 661 c. Home Occupation, Minor
- 662 d. Public Utility Facility
- 663 e. Dwelling, Single-Family

664 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
665 OZ-RP

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667 **16.4.14 Residential – Village (R-V)**

668 A. Purpose

669 The purpose of the Residential – Village R-V Zone is to recognize the special
670 nature of the Admiralty Village neighborhood as a densely developed residential
671 zone composed primarily of affordable housing on small lots serviced by sewer and
672 water and to encourage reinvestment in maintaining and upgrading the
673 neighborhood. Consistent with this goal, the zone provides for uses that reinforce
674 the residential character and establish building standards that allow improvements
675 on typical lots to enhance the residential quality of life in the neighborhood. To this
676 end, the following will apply:

677 B. Permitted uses

678 The following uses are permitted in the R-V Zone:

- 679 (1). Accessory Dwelling Unit
- 680 (2). Dwelling, Attached Single-Family
- 681 (3). Dwelling, Manufactured Housing
- 682 (4). Dwelling, Single-Family
- 683 (5). Dwelling, Two-Family
- 684 (6). Accessory Use & Building
- 685 (7). Home Occupation, Minor
- 686 (8). Day Care Facility (limited to twelve (12) or fewer persons in care, in conformance
687 with the standards for a Home Occupation, Minor. See § 16.5.12)
- 688 (9). Nursery School (limited to twelve (12) or fewer persons in care, in conformance
689 with the standards for a Home Occupation, Minor See § 16.5.12)
- 690 (10). Public Facility
- 691 (11). Recreation, Public Facility
- 692 (12). Recreation, Public Open Space

693 C. Special exception uses

694 The following uses are permitted as special exception uses in the R-V Zone:

- 695 (1). Public Utility Facility
- 696 (2). Home Occupations, Major
- 697 (3). Day Care Facility (for thirteen (13) or more persons in care, in conformance with
698 the standards for a Home Occupation, Major. See § 16.5.12)
- 699 (4). Nursery School (for thirteen (13) or more persons in care, in conformance with the
700 standards for a Home Occupation, Major. See § 16.5.12)

701 D. Standards.

702 All development and the use of land in the R-V Zone must meet the following
703 standards. In addition, the design and performance standards of Chapters 16.5, 16.7
704 and 16.8 must be met. The Design Handbook provides examples of appropriate
705 design for nonresidential and multiunit residential projects.

- 706 (1). The following space standards apply:

- 707 a. Minimum land area per dwelling unit: 4,000 square feet.*

708 *As per Chapter 16.3 definition of "minimum land area per dwelling
709 unit," except to exempt properties which are unable to meet the
710 square feet required for a single-family dwelling unit, provided the
711 lot was conforming prior to October 25, 2012. [Amended 9-24-2012
712 by Ord. No. 12-10; 9-28-2015 by Ord. No. 15-05]

- 713 b. Minimum lot size: 6,000 square feet.
- 714 c. Minimum street frontage: 50 feet.
- 715 d. Minimum front yard: 15 feet.
- 716 e. Minimum rear yard, dwellings/structures: 15 feet.
- 717 f. Minimum side yard, dwellings/structures: 10 feet.
- 718 g. Minimum rear and side yards for accessory buildings/structures that are
- 719 accessory to a residential use and located at least four feet behind the
- 720 predominant rear line of the principal building: three feet.
- 721 h. Maximum structure coverage: 40%.
- 722 i. Maximum height of principal dwellings/structures: 35 feet.
- 723 j. Maximum height of accessory buildings/structures located closer than 10
- 724 feet to a lot line: 15 feet.
- 725 k. Maximum building coverage: 20%.
- 726 l. Minimum water body setback for functionally and wetland water-dependent
- 727 uses: zero feet.
- 728 m. Minimum setback from streams, water bodies and wetlands: in accordance
- 729 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

730 E. Shoreland Overlay Zone OZ-SL – Residential – Village Zone (R-V)

731 (1). Permitted uses

- 732 a. Accessory Use & Building
- 733 b. Dwellings if located farther than 100 feet from the normal high-water line
- 734 of any water bodies, or the upland edge of a wetland Public Facility
- 735 c. Recreation, Public Facility
- 736 d. Recreation, Public Open Space

737 (2). Special exception uses

- 738 a. Day Care Facility (for thirteen (13) or more persons in care, in conformance
- 739 with the standards for a major home occupation see § 16.5.12);
- 740 b. Nursery School (for thirteen (13) or more persons in care, in conformance
- 741 with the standards for a major home occupation (see § 16.5.12);
- 742 c. Home occupation, Major
- 743 d. Home Occupation, Minor
- 744 e. Public Utility Facility

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

746 F. Resource Protection Overlay Zone OZ-RP – Residential – Village Zone (R-V)

747 (1). Permitted Uses: none

748 (2). Special Exception Uses

- 749 a. Accessory Use & Buildings
- 750 b. Home Occupations, Major
- 751 c. Home Occupations, Minor
- 752 d. Public Utility Facility
- 753 e. Dwelling, Single-Family

754 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone

755 OZ-RP

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757 **16.4.15 Residential – Rural Conservation (R-RC)**

758 A. Purpose

759 The purpose of the Residential – Rural Conservation R-RC Zone is to conserve and
760 protect land areas of the Town which by their location and character require special
761 measures to ensure low-density development. To this end, the following apply:

762 B. Permitted use.

763 The following uses are permitted in the R-RC Zone:

- 764 (1). Accessory Dwelling Units
- 765 (2). Cluster Residential Development [Added 9-24-2012 by Ord. No. 12-10]
- 766 (3). Dwelling, Manufactured Housing
- 767 (4). Dwelling, Single-Family
- 768 (5). Dwelling, Two-Family
- 769 (6). Accessory Use & Building
- 770 (7). Home Occupations, Minor
- 771 (8). Recreation, Public Facility
- 772 (9). Recreation, Public Open Space
- 773 (10). Agriculture
- 774 (11). Timber Harvesting

775 C. Special exception uses

776 The following uses are permitted as special exception uses in the R-RC Zone:

- 777 (1). Home Occupations, Major
- 778 (2). Day Care Facility
- 779 (3). Private Assembly
- 780 (4). Public Facility
- 781 (5). Public or Private School
- 782 (6). Public Utility Facility
- 783 (7). Religious Use
- 784 (8). Recreation, Commercial Indoor
- 785 (9). Recreation, Commercial Outdoor
- 786 (10). Commercial School
- 787 (11). Cemetery
- 788 (12). Major or Minor Subdivision [Added 9-24-2012 by Ord. No. 12-10]

789 D. Standards

790 The following standards must be met unless modified per § 16.8.10H, Cluster
791 Residential Development: [Amended 9-24-2012 by Ord. No. 12-10]

- 792 (1). The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be
793 met.
- 794 (2). The following dimensional standards apply:
 - 795 a. Minimum land area per dwelling unit: 80,000 square feet.*

796 *As per Chapter 16.3 definition of "minimum land area per dwelling
797 unit," except to exempt properties which are unable to meet the
798 square feet required for a single-family dwelling unit, provided the
799 lot was conforming prior to October 25, 2012. [Amended 9-28-2015
800 by Ord. No. 15-05]

- 801 b. Minimum lot size: 80,000 square feet.
- 802 c. Minimum street frontage: 200 feet.
- 803 d. Minimum front yard: 40 feet.
- 804 e. Maximum building coverage: 6%.
- 805 f. Minimum rear and side yards: 20 feet.
- 806 (NOTE: Buildings higher than 40 actual feet must have side and rear yards
- 807 not less than 50% of building height.)
- 808 g. Maximum building height: 35 feet.
- 809 (NOTE: Minimum distance between principal buildings on the same lot is
- 810 the height equivalent to the taller building.)
- 811 h. Minimum water body setback for functionally and wetland water-dependent
- 812 uses: zero feet.
- 813 i. Minimum setback from streams, water bodies and wetlands: in accordance
- 814 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 815 (3). Subdivision types and standards.
- 816 Subject to net residential acreage and net residential density per § 16.2.2.
- 817 [Amended 9-28-2015 by Ord. No. 15-05]
- 818 a. Cluster residential development.
- 819 In a cluster residential development, the above standards may be
- 820 modified in accordance with special provisions of § 16.8.10.H,
- 821 including that there is no minimum lot size, and with the conditions
- 822 that:
- 823 i. Minimum principal building separation as required by the Fire
- 824 Chief, but not less than 20 feet.
- 825 b. Subdivision development [special exception uses, § 16.4.15.C].
- 826 In a subdivision development, standards in § 16.4.15D(1) and (2) apply
- 827 and include:
- 828 i. Minimum percentage of common open space: 15%.

829 E. Shoreland Overlay Zone – Residential Conservation Zone (R-RC)

- 830 (1). Permitted uses
- 831 a. Accessory Use & Building
- 832 b. Agriculture
- 833 c. Dwellings if located farther than 100 feet from the normal high-water line
- 834 of any water bodies, or the upland edge of a wetland
- 835 d. Recreation, Public Facility
- 836 e. Recreation, Public Open Space
- 837 f. Timber Harvesting
- 838 (2). Special exception uses
- 839 a. Day Care Facility
- 840 b. Home occupation, Major
- 841 c. Home Occupation, Minor
- 842 d. Recreation, Selected Commercial
- 843 e. Public Utility Facility
- 844 f. Commercial School
- 845 g. Public or Private School
- 846 h. Public Facility

- 847 i. Religious Use
- 848 j. Private Assembly
- 849 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 850 F. Resource Protection Overlay Zone OZ-RP – Residential – Rural Conservation Zone (R-
- 851 RC)
- 852 (1). Permitted Uses
- 853 a. Recreation, Public Facility
- 854 b. Recreation, Public Open Space
- 855 c. Timber Harvesting
- 856 (2). Special Exception Uses
- 857 a. Accessory Use & Buildings
- 858 b. Agriculture
- 859 c. Home Occupations, Major
- 860 d. Home Occupations, Minor
- 861 e. Recreation, Commercial Indoor
- 862 f. Recreation, Commercial Outdoor (exclusive of golf courses)
- 863 g. Public Utility Facility
- 864 h. Dwelling, Single-Family
- 865 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 866 OZ-RP
- 867

868 **16.4.16 Conservation (CON)**

869 A. Purpose

870 The purposes of the Conservation Zone are to preserve and protect natural
871 environmental areas, conservation lands, park and other areas, including but not
872 limited to the Rachel Carson Wildlife Preserve, Town Farm Forest, state and local
873 parklands, and land with conservation easements that prohibit development in
874 perpetuity; further the maintenance of safe and healthful conditions; prevent and
875 control potential water pollution sources; protect spawning grounds, fish, aquatic
876 life, bird and other wildlife habitat; and conserve shore cover, visual as well as
877 actual point of access to inland and coastal waters and natural beauty.

878 B. Permitted uses

879 The following uses are permitted in the CON Zone:

- 880 (1). Accessory Use & Building
- 881 (2). Open Space, Reserved
- 882 (3). Recreation, Public Facility
- 883 (4). Recreation, Public Open Space
- 884 (5). Existing Land Conservation Uses

885 C. Special exception uses

886 The following uses are permitted as special exception uses in the CON Zone:

- 887 (1). Public Facility

888 D. Standards.

- 889 (1). The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be
890 met.
- 891 (2). Dimensional standards:
 - 892 a. Minimum land area per dwelling unit: not applicable.
 - 893 b. Minimum lot size: none.
 - 894 c. Minimum street frontage: none.
 - 895 d. Minimum front yard: 40 feet.
 - 896 e. Maximum building coverage: 6%.
 - 897 f. Minimum rear and side yards: 20 feet. (NOTE: If by variance or existing
898 conditions a building is higher than 40 actual feet, it must have side and rear
899 yards not less than 50% of building height.)
 - 900 g. Maximum building height: 35 feet. (NOTE: Minimum distance between
901 principal buildings on the same lot is the height equivalent to the taller
902 building.)
 - 903 h. Minimum water body setback for functionally and wetlandwater-dependent
904 uses: zero feet.
 - 905 i. Minimum setback from streams, water bodies and wetlands: in accordance
906 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

907 E. Shoreland Overlay Zone OZ-SL – Conservation (CON)

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

- 909 (1). Permitted uses.
 - 910 a. Open Space, Reserved
 - 911 b. Recreation, Public Facility
 - 912 c. Recreation, Public Open Space

- 913 d. Accessory Use & Building
- 914 e. Existing Land Conservation Uses
- 915 (2). Special exception uses.
- 916 Public facility
- 917 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 918 F. Resource Protection Overlay Zone OZ-RP – Conservation (CON)
- 919 (1). Permitted Uses.
- 920 a. Accessory Use & Building
- 921 b. Existing Land Conservation Uses
- 922 c. Recreation, Public Facility
- 923 d. Recreation, Public Open Space
- 924 (2). Special Exception Uses
- 925 a. Public Facility
- 926 (3). See 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 927 OZ-RP
- 928

929 **16.4.17 Business – Local Zone (B-L)**

930 A. Purpose

931 The purpose of the Business – Local B-L Zone is to provide local sales, services
932 and business space within the Town.

933 B. Permitted uses

934 The following uses are permitted in the B-L Zone:

- 935 (1). Accessory Dwelling Unit
- 936 (2). Dwelling, Attached Single-Family
- 937 (3). Dwelling, Manufactured Housing
- 938 (4). Dwelling, Multi-Family
- 939 (5). Dwelling, Single-Family
- 940 (6). Dwellings Two-Family
- 941 (7). Convalescent Care Facility
- 942 (8). Nursing Care Facility, Long-term
- 943 (9). Residential Care Facility
- 944 (10). Accessory Use & Building
- 945 (11). Home Occupation, Major
- 946 (12). Home Occupation, Minor
- 947 (13). Day Care Facility
- 948 (14). Hospital
- 949 (15). Nursery School
- 950 (16). Private Assembly
- 951 (17). Public Facility
- 952 (18). Public or Private School
- 953 (19). Religious Use
- 954 (20). Recreation, Public Open Space
- 955 (21). Aquaculture
- 956 (22). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
957 cooking of seafood occur at the site)
- 958 (23). Commercial School
- 959 (24). Art Studio or Gallery
- 960 (25). Business & Professional Offices
- 961 (26). Business Service
- 962 (27). Conference Center
- 963 (28). Personal Service
- 964 (29). Restaurant
- 965 (30). Retail Sales (excluding those of which the principal activity entails outdoor sales
966 and/or storage and excluding those specifically mentioned under Subsection C of
967 this section)
- 968 (31). Retail Sales, Building Materials & Garden Supply (excluding those of which the
969 principal activity entails outdoor sales and/or storage)
- 970 (32). Retail Sales, Convenience
- 971 (33). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 972 (34). Mass Transit Station

973 (35). Parking Area

974 C. Special exception uses

975 The following uses are permitted as special exception uses in the B-L Zone:

- 976 (1). Motel
- 977 (2). Hotel
- 978 (3). Inn
- 979 (4). Rooming House
- 980 (5). Funeral Home
- 981 (6). Gasoline Service Station
- 982 (7). Public Assembly Area
- 983 (8). Theater
- 984 (9). Public Utility Facility
- 985 (10). Mechanical Service
- 986 (11). Residential Dwelling Units, as part of a mixed-use building

987 D. Standards.

988 All development and the use of land in the B-L Zone must meet the following
989 standards. Kittery's Design Handbook illustrates how these standards can be met.
990 In addition, the design and performance standards of Chapters 16.5, 16.7 and 16.8
991 must be met.

- 992 (1). Parking. One row of parking spaces and a related access drive may be located
993 between the front property line and the front wall of the building extending the full
994 width of the lot. All other parking must be located to the side and/or rear of the
995 building. All new or revised parking must be visually screened through the use of
996 landscaping, earthen berms and/or fencing from adjacent public streets or
997 residential properties. (See the Design Handbook for appropriate examples.)
- 998 (2). Building design standards. Kittery's characteristic buildings reflect its historic
999 seacoast past. The primary architectural styles are New England Colonial (such as
1000 Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings
1001 must be compatible with Kittery's characteristic styles in form, scale, material and
1002 color. In general, buildings should be oriented with the front of the building facing
1003 the street on which the building is located. The front or street facade must be
1004 designed as the front of the building. The front elevation must contain one or more
1005 of the following elements: 1) a "front door," although other provisions for access to
1006 the building may be provided; 2) windows; or 3) display cases. (See Design
1007 Handbook for examples of acceptable materials and designs.) Strict imitation is not
1008 required. Design techniques can be used to maintain compatibility with
1009 characteristic styles and still leave enough flexibility for architectural variety. To
1010 achieve this purpose, the following design standards apply to new and modified
1011 existing building projects:
 - 1012 a. Exterior building materials and details. Building materials and details
1013 strongly define a project's architectural style and overall character. (See
1014 Design Handbook for examples of acceptable materials, building scale and
1015 designs.) "One-sided" schemes are prohibited; similar materials and details
1016 must be used on all sides of a building to achieve continuity and
1017 completeness of design. Predominant exterior building materials must be of
1018 good quality and characteristic of Kittery, such as horizontal wood board
1019 siding, vertical wood boards, wood shakes, brick, stone or simulated stone,
1020 glass and vinyl, or metal clapboard.
 - 1021 b. Roofs. A building's prominent roofs must be pitched a minimum of 4:12

1022 unless demonstrated to the Planning Board's satisfaction that this is not
1023 practicable. Acceptable roof styles are gabled, gambrel, and hipped roofs.
1024 Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are
1025 not acceptable as prominent roof forms except as provided above. Roof
1026 colors must be muted. (See Design Handbook for examples.) The roof
1027 design must screen or camouflage rooftop protrusions to minimize the
1028 visual impact of air-conditioning units, air-handler units, exhaust vents,
1029 transformer boxes, and the like. (See Design Handbook for examples of
1030 appropriate treatments.)

1031 c. Loading docks and overhead doors. Loading docks and overhead doors
1032 must be located on the side or rear of the building and screened from view
1033 from adjacent properties in residential use.

1034 (3). Landscaping standards. To achieve attractive and environmentally sound site
1035 design and appropriate screening of parking areas, in addition to the landscaping
1036 standards contained in Chapters 16.7 and 16.8 the following landscaping
1037 requirements apply to new and modified existing developments:

1038 a. Landscape planter strip. A vegetated landscape planter strip must be
1039 provided a minimum of 15 feet in depth adjacent to the right-of-way of all
1040 public roads. The Planning Board may reduce the required depth of the
1041 landscape planter strip if a sidewalk is provided in front of the parcel and
1042 the area between the front property line and the front wall of the building
1043 will be designed and used as a pedestrian space. The landscape planter strip
1044 must include the following landscape elements:

1045 b. Ground cover. The entire landscape planter must be vegetated except for
1046 approved driveways, walkways, bikeways and screened utility equipment.

1047 c. Street-side trees. A minimum of one tree must be planted for each 25 feet of
1048 street frontage. The trees may be spaced along the frontage or grouped or
1049 clustered to enhance the visual quality of the site. (See Design Handbook
1050 for examples.) The trees must be a minimum two-and-one-half-inch caliper
1051 and be at least 12 feet high at the time of planting. The species must be
1052 selected from the list of approved street trees in the Design Handbook.
1053 Existing large healthy trees must be preserved if practical and will count
1054 toward this requirement. [Amended 9-26-2011 by Ord. No. 11-15]

1055 d. Special situations.

1056 i. Expansions of less than 1,000 square feet to existing uses are
1057 exempt from the landscaping standard of this subsection.

1058 ii. Depth of landscape planter strip. In instances where the required
1059 minimum depth of the landscape planter strip is legally utilized in
1060 accordance with previous permits or approvals, for parking, display,
1061 storage, building or necessary vehicle circulation, the depth may be
1062 narrowed by the Planning Board to the minimum extent necessary to
1063 achieve the objective of the proposed project, provided that shrubs
1064 and perennials are planted along the street frontage to soften the
1065 appearance of the development from the public street.

1066 iii. Additions and changes in use. For additions to existing buildings
1067 and changes of residential structures to a nonresidential use, one
1068 street-side tree (see list of street trees in Design Handbook) is
1069 required to be planted for every 1,000 square feet of additional gross
1070 floor area added or converted to nonresidential use. In instances
1071 where parking, display area, storage, building or necessary vehicle
1072 circulation exists at the time of enactment of this section, the
1073 required trees may be clustered and/or relocated away from the road

- 1074 as is necessary to be practicable. The preservation of existing large
1075 trees is encouraged; therefore, the Planning Board may permit the
1076 preservation of existing healthy, large, mature trees within the
1077 landscape planter strip or other developed areas of the site to be
1078 substituted for the planting of new trees.
- 1079 e. Outdoor service and storage areas. Service and storage areas must be
1080 located to the side or rear of the building. Facilities for waste storage such
1081 as dumpsters must be located within an enclosure and be visually buffered
1082 by fencing, landscaping and/or other treatments. (See Design Handbook for
1083 examples of appropriate buffering.)
- 1084 (4). Traffic and circulation standards. Sidewalks and roadways must be provided within
1085 the site to internally join abutting properties that are determined by the Planning
1086 Board to be compatible. In addition, safe pedestrian route(s) must be provided to
1087 allow pedestrians to move within the site and between the principal customer
1088 entrance and the front lot line where a sidewalk exists or will be provided or where
1089 the Planning Board determines that such a route is needed for adequate pedestrian
1090 safety and movement. (See Design Handbook for appropriate examples.)
- 1091 (5). Open space standards. Open space must be provided as a percentage of the total
1092 area of the lot, including freshwater wetlands, water bodies, streams and setbacks.
1093 Fifteen percent of each lot must be designated as open space. Required open space
1094 must be shown on the plan with a note dedicating it as "open space." The open
1095 space must be located to create an attractive environment on the site, minimize
1096 environmental impacts, protect significant natural features or resources on the site
1097 and maintain wildlife habitat. Individual large, healthy trees and areas with mature
1098 tree cover should be included in the open space. Where possible, the open space
1099 must be located to allow the creation of continuous open space networks in
1100 conjunction with existing or potential open space on adjacent properties. The
1101 required amount of designated open space is reduced to 10% of each lot that is less
1102 than 40,000 square feet in size.
- 1103 (6). The following space standards apply:
- 1104 a. Minimum land area per dwelling unit when all floors are residential: 20,000
1105 square feet if served by on-site sewage disposal; 8,000 square feet if served
1106 by the public sewerage system.
1107 (NOTE: Except as otherwise required by the buffer provisions of this title,
1108 and except where the side and/or rear yards abut a residential district or use;
1109 in which case a minimum of 15 feet or 50% of the building height is
1110 required.)
- 1111 b. Minimum land area per dwelling unit when the entire first floor is used for
1112 nonresidential uses: 20,000 square feet if served by on-site sewage disposal;
1113 4,000 square feet if served by the public sewerage system.
- 1114 c. Minimum lot size: none.
1115 (NOTE: Except as otherwise required by the buffer provisions of this title,
1116 and except where the side and/or rear yards abut a residential district or use;
1117 in which case a minimum of 15 feet or 50% of the building height is
1118 required.)
- 1119 d. Minimum street frontage: none.
1120 (NOTE: Except as otherwise required by the buffer provisions of this title,
1121 and except where the side and/or rear yards abut a residential district or use;
1122 in which case a minimum of 15 feet or 50% of the building height is
1123 required.)
- 1124 e. Minimum front yard: 15 feet.

- 1125 (NOTE: Except as otherwise required by the buffer provisions of this title,
 1126 and except where the side and/or rear yards abut a residential district or use;
 1127 in which case a minimum of 15 feet or 50% of the building height is
 1128 required.)
- 1129 f. Maximum front setback of the principal building: 60 feet.
- 1130 g. Minimum rear and side yards: 10 feet.
- 1131 (NOTE: Except as otherwise required by the buffer provisions of this title,
 1132 and except where the side and/or rear yards abut a residential district or use;
 1133 in which case a minimum of 15 feet or 50% of the building height is
 1134 required.)
- 1135 h. Maximum building height: 40 feet.
- 1136 (NOTE: Except that space standards for single- and two-family residential
 1137 uses are the same as for those of the Urban Residential District.)
- 1138 i. Maximum building and outdoor stored material coverage: none, except that
 1139 side, rear and front yards must be maintained
- 1140 j. Minimum water body setback for functionally and wetlandwater-dependent
 1141 uses: zero feet.
- 1142 k. Minimum setback from streams, water bodies and wetlands: in accordance
 1143 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

1144 (7). Gasoline Sales

- 1145 a. Gasoline Sales must a) not be located within 1,000 feet of an existing
 1146 station; (b) not be located within 1,000 feet of any private residence; and (c)
 1147 not be located within 150 feet of any existing structure.

1148 E. Shoreland Overlay Zone OZ-SL – Business – Local Zone (B-L)

1149 (1). Permitted uses.

- 1150 a. Accessory Use & Building
- 1151 b. Dwellings if located farther than 100 feet from the normal high-water line
 1152 of any water bodies, or the upland edge of a wetland
- 1153 c. Recreation, Public Open Space

1154 (2). Special exception uses.

- 1155 d. Art Studio or Gallery
- 1156 e. Retail Sales, Building Materials & Garden Supply (excluding those of
 1157 which the principal activity entails outdoor sales and/or storage)
- 1158 f. Business Services
- 1159 g. Business & Professional Offices
- 1160 h. Commercial Fisheries/Maritime Activities (provided only incidental
 1161 cleaning and cooking of seafood occur at the site)
- 1162 i. Parking Area
- 1163 j. Conference Center
- 1164 k. Retail Sales, Convenience
- 1165 l. Home Occupation, Major
- 1166 m. Home Occupation, Minor
- 1167 n. Mass Transit Station
- 1168 o. Motel
- 1169 p. Hotel
- 1170 q. Inn
- 1171 r. Rooming House

- 1172 s. Personal Services
- 1173 t. Public Assembly Area
- 1174 u. Theater
- 1175 v. Public Utility Facility
- 1176 w. Restaurant
- 1177 x. Retail Sales, but (excluding those of which the principal activity entails
- 1178 outdoor sales and/or storage)
- 1179 y. Commercial School
- 1180 z. Public or Private School
- 1181 aa. Nursery School
- 1182 bb. Day Care Facility
- 1183 cc. Elder Care Facility
- 1184 dd. Hospital
- 1185 ee. Nursing Care Facility, Long-term
- 1186 ff. Convalescent Care Facility
- 1187 gg. Public Facility
- 1188 hh. Religious Use
- 1189 ii. Private Assembly
- 1190 jj. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 1191 02]
- 1192 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 1193 F. Resource Protection Overlay Zone OZ-RP – Business – Local (B-L). [Amended 9-26-2011
- 1194 by Ord. No. 11-15]
- 1195 (1). Permitted Uses.
- 1196 a. Recreation, Public Open Space
- 1197 (2). Special Exception Uses.
- 1198 a. Accessory Uses & Buildings
- 1199 b. Aquaculture
- 1200 c. Home Occupations, Major
- 1201 d. Home Occupations, Minor
- 1202 e. Public Utility Facilities,
- 1203 f. Dwelling, Single-Family
- 1204 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 1205 RP-SL
- 1206

1207 **16.4.18 Business – Local 1 (B-L1)**

1208 A. Purpose

1209 The purpose of the Business – Local 1 B-L1 Zone is to encourage a smart
1210 growth/urban design pattern that will serve as a focal point for the provision of
1211 local sales, urban residences, services and business space. The goal of this section
1212 is to create an attractive, functional and vibrant pedestrian-scaled neighborhood
1213 supporting a mix of commercial and residential uses. This type of development
1214 reflects a traditional New England pattern of building, where commercial uses are
1215 located on the first floor and housing on the upper floors.

1216 B. Permitted uses

1217 The following uses are permitted in the B-L1 Zone:

- 1218 (1). Accessory Dwelling Unit
- 1219 (2). Dwelling, Attached Single-Family
- 1220 (3). Dwelling, Manufactured Housing
- 1221 (4). Dwelling, Multi-Family
- 1222 (5). Dwelling, Single-Family
- 1223 (6). Dwelling, Two-Family
- 1224 (7). Convalescent Care Facility
- 1225 (8). Nursing Care Facility, Long-term
- 1226 (9). Residential Care Facility
- 1227 (10). Accessory Use & Building
- 1228 (11). Home Occupation, Major
- 1229 (12). Home Occupation, Minor
- 1230 (13). Inn
- 1231 (14). Day Care Facility
- 1232 (15). Hospital
- 1233 (16). Nursery School
- 1234 (17). Private Assembly
- 1235 (18). Public Facility
- 1236 (19). Public or Private School
- 1237 (20). Religious Use
- 1238 (21). Recreation, Public Open Space
- 1239 (22). Commercial School
- 1240 (23). Art Studio or Gallery
- 1241 (24). Business & Professional Offices
- 1242 (25). Business Services
- 1243 (26). Conference Center
- 1244 (27). Personal Services
- 1245 (28). Restaurant
- 1246 (29). Retail Sales (excluding those of which the principal activity entails outdoor sales
1247 and/or storage and excluding those specifically mentioned under Subsection C of
1248 this section)
- 1249 (30). Retail Sales, Building Materials & Garden Supply (excluding those of which the
1250 principal activity entails outdoor sales and/or storage)
- 1251 (31). Retail Sales, Convenience

- 1252 (32). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
1253 (33). Mass Transit Station
1254 (34). Parking Area

1255 C. Special exception uses

1256 The following uses are permitted as special exception uses in the B-L1 Zone:

- 1257 (1). Motel
1258 (2). Hotel
1259 (3). Rooming House
1260 (4). Funeral Home
1261 (5). Gasoline Service Station
1262 (6). Public Assembly Area
1263 (7). Theater
1264 (8). Public Utility Facility
1265 (9). Farmers Market
1266 (10). Mechanical service

1267 D. Standards

1268 All development and the use of land in the B-L1 Zone must meet the following
1269 standards. Kittery's Design Handbook illustrates how these standards can be met.
1270 In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must be
1271 met.

- 1272 (1). The following space standards apply
- 1273 a. Minimum land area per dwelling unit:
 - 1274 i. When all floors are residential: 8,000 square feet
 - 1275 ii. When the entire first floor is in nonresidential use: 3,500 square feet.
 - 1276 b. Minimum parking spaces per dwelling unit: 1.5.
 - 1277 c. Minimum lot size: 20,000 square feet.
 - 1278 d. Minimum street frontage per building: 50 feet.
 - 1279 e. Maximum front yard: 30 feet.
1280 (NOTE: This area must be designed to promote a pedestrian public space,
1281 which includes, but is not limited to, landscaping, sidewalks and sitting
1282 areas. Parking and outdoor storage are prohibited anywhere in the front
1283 yard of the structure, except for seasonal sales items.)
 - 1284 f. Minimum rear and side yards: 10 feet.
1285 (NOTE: Except as otherwise required by the buffer provisions of this title,
1286 and except where the side and/or rear yards abut a residential zone or use;
1287 in which case a minimum of 15 feet or 50% of the building height,
1288 whichever is greater, is required.) [Amended 9-26-2011 by Ord. No. 11-15]
 - 1289 g. Maximum building height: 40 feet.
 - 1290 h. Maximum building and outdoor stored material coverage: 50%.
 - 1291 i. Minimum area dedicated to landscaped area: 15%.
 - 1292 j. Hours of operation must be noted on the final site plan and are determined
1293 by the Planning Board on a case-by-case basis. All lighting other than
1294 designated security lighting must be extinguished outside of noted hours of
1295 operation.
 - 1296 k. Minimum water body setback for functionally and wetland water-dependent
1297 uses: zero feet.

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- l. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
 - m. Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b) not be located within 1,000 feet of any private residence; and (c) not be located within 150 feet of any existing structure.
- (2). Parking.
- a. Parking must be on the side or back yard;
 - b. Shared access must be provided where feasible; and
 - c. New or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)
 - d. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.
- (3). Building design standards
- Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale, material and color. In general, buildings should be oriented to the street with the front of the building facing the street. Architectural design and structure location must reinforce the human scale and pedestrian nature of the neighborhood by using orientation and building massing, exterior building materials, and roofing as set forth below. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements: 1) a "front door," although other provisions for access to the building may be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable materials and designs.) Main entries should be clearly visible from the street and provide adequate cover from the weather. Strict imitation is not required. Design techniques can be used to maintain compatibility with characteristic styles and still leave enough flexibility for architectural variety. To achieve this purpose, the following design standards apply to new and modified existing building projects:
- a. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale, and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.
 - b. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. Roof

- 1350 colors must be muted. (See Design Handbook for examples.) The roof
1351 design must screen or camouflage rooftop protrusions to minimize the
1352 visual impact of air-conditioning units, air handler units, exhaust vents,
1353 transformer boxes and the like. (See Design Handbook for examples of
1354 appropriate treatments.)
- 1355 c. Loading docks and overhead doors. Loading docks and overhead doors
1356 must be located on the side or rear of the building and must be screened
1357 from view from adjacent properties in residential use.
- 1358 (4). Landscaping/site improvements.
- 1359 To achieve attractive and environmentally sound site design and appropriate
1360 screening of parking areas, in addition to the landscaping standards contained
1361 in § 16.7 and § 16.8, the following landscaping requirements apply to new and
1362 modified existing developments:
- 1363 a. Fifteen percent of site area must be landscaped;
- 1364 b. Outdoor spaces must be created to reinforce commercial activities and
1365 pedestrian-friendly access. Outdoor spaces are encouraged throughout the
1366 site with special attention along the sidewalk and street. Architectural
1367 features such as decorative pavers, planters and benches are encouraged in
1368 the creation of these spaces;
- 1369 c. The space between the roadway and any buildings must be attractively
1370 landscaped using trees, flowers, shrubs, fencing or stone walls to reinforce
1371 the site's unique character and building design;
- 1372 d. A buffer between commercial and residential zones must be established and
1373 be landscaped with a visually pleasing mixed planting type;
- 1374 e. Solid fencing, berms and/or stone walls must be used to prevent headlights
1375 from shining on abutting residential property. Incorporating flowering vines
1376 and other plantings on fences and blank exterior walls is encouraged;
- 1377 f. Provide street trees in a pattern reflecting the existing streetscape. For new
1378 buildings, a minimum of one street tree must be planted for each 25 feet of
1379 street frontage. The trees may be spaced along the frontage or grouped or
1380 clustered to enhance the visual quality of the site. (See Design Handbook
1381 for examples.) The trees must be a minimum two-and-one-half-inch caliper
1382 and be at least 12 feet high at the time of planting. The species must be
1383 selected from the list of approved street trees in the Design Handbook.
1384 Existing large healthy trees must be preserved if practical and will count
1385 toward this requirement.
- 1386 g. For additions to existing buildings and changes of residential structures to a
1387 nonresidential use, one street-side tree (see list of street trees in Design
1388 Handbook) is required to be planted for every 1,000 square feet of
1389 additional gross floor area added or converted to nonresidential use. In
1390 instances where parking, display area, storage, building or necessary
1391 vehicle circulation exists at the time of enactment of this section, the
1392 required trees may be clustered and/or relocated away from the road as is
1393 necessary to be practicable. The preservation of existing large trees is
1394 encouraged; therefore, the Planning Board may permit the preservation of
1395 existing healthy, large, mature trees within developed areas of the site to be
1396 substituted for the planting of new trees; [Amended 9-26-2011 by Ord. No.
1397 11-15]
- 1398 h. Service and storage areas must be located to the rear of the building and be
1399 shielded using plantings and/or fencing. Facilities for waste storage such as
1400 dumpsters must be located within an enclosure and be visually buffered by

- 1401 fencing, landscaping and/or other treatments (see Design Handbook for
1402 examples of appropriate buffering);
- 1403 i. No storage may be in front of buildings except seasonal sales items;
 - 1404 j. Lighting and landscape plans must be provided and approved as a part of
1405 final plan; and
 - 1406 k. Lighting along the street must be of a pedestrian scale using an architectural
1407 fixture appropriate to the neighborhood.

1408 (5). Traffic and circulation standards.

1409 Sidewalks and roadways must be provided within the site to internally join
1410 abutting properties that are determined by the Planning Board to be compatible.
1411 In addition, safe pedestrian route(s) must be provided to allow pedestrians to
1412 move within the site and between the principal customer entrance and the front
1413 lot line where a sidewalk exists or will be provided or where the Planning
1414 Board determines that such a route is needed for adequate pedestrian safety and
1415 movement. (See Design Handbook for appropriate examples.)

1416 E. Shoreland Overlay Zone OZ-SL – Business Local Zone (B-L1)

1417 (1). Permitted uses

- 1418 a. Accessory Uses & Building
- 1419 b. Aquaculture
- 1420 c. Recreation, Public Open Space

1421 (2). Special exception uses

- 1422 a. Art Studio or Gallery
- 1423 b. Business & Professional Offices
- 1424 c. Business Services
- 1425 d. Retail Sales, Building Materials & Garden Supply (excluding those of
1426 which the principal activity entails outdoor sales and/or storage)
- 1427 e. Conference Center
- 1428 f. Retail Sales, Convenience
- 1429 g. Commercial Fisheries/Maritime Activities (provided only incidental
1430 cleaning and cooking of seafood occur at the site)
- 1431 h. Parking Area
- 1432 i. Dwelling, Manufactured Housing
- 1433 j. Dwelling, Single-Family
- 1434 k. Dwelling, Two-Family
- 1435 l. Farmers market
- 1436 m. Funeral Home
- 1437 n. Home Occupation, Major
- 1438 o. Home Occupation, Minor
- 1439 p. Inn
- 1440 q. Mass Transit Station
- 1441 r. Motel
- 1442 s. Hotel
- 1443 t. Inn
- 1444 u. Rooming House
- 1445 v. Personal Service
- 1446 w. Public Assembly Area

- 1447 x. Theater
- 1448 y. Public Utility Facility
- 1449 z. Restaurant
- 1450 aa. Retail Sales (excluding those of which the principal activity entails outdoor
- 1451 sales and/or storage)
- 1452 bb. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 1453 02]
- 1454 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 1455 F. Resource Protection Overlay Zone OZ-RP – Business – Local Zone (B-L1)
- 1456 (1). Permitted Uses
- 1457 a. Recreation, Public Open Space
- 1458 (2). Special Exception Uses
- 1459 a. Accessory Uses & Buildings
- 1460 b. Home Occupations, Major
- 1461 c. Home Occupations, Minor
- 1462 d. Public Utility Facility
- 1463 e. Dwelling, Single-Family, including modular homes
- 1464 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 1465 OZ-RP
- 1466

1467 **16.4.19 Commercial 1, Route 1 Commercial Zone (C-1)**

1468 A. Purpose.

1469 (1). The C-1 (Route 1 Commercial) Zone proposes to add a range of uses and building
1470 types, including residential, to a vehicle-dependent predominately retail-oriented
1471 shopping area with proximity to several small neighborhoods. The presence of
1472 significant existing infrastructure and the opportunity to redevelop under-utilized
1473 properties for a diversity of housing types, restaurants, services and shops with
1474 increased pedestrian access will allow the Town to advance Comprehensive Plan
1475 housing and economic development goals and meet the needs of residents into the
1476 future.

1477
1478 To reflect the differing character of various parts of the commercial areas, it is
1479 divided into three zones that are shown on the Zoning Map:

- 1480 C-1 Route 1 Commercial Zone
- 1481 C-2 Route 236 Commercial Zone
- 1482 C-3 Bypass/Old Post Road Commercial Zone

1483
1484 Where the standards or requirements for the zones vary, the provisions for the zone
1485 in which the parcel is located apply.

1486 B. Permitted uses

1487 The following uses are permitted in the C-1 Zone:

- 1488 (1). Accessory Dwelling Unit
- 1489 (2). Convalescent Care Facility
- 1490 (3). Dwelling, two-family
- 1491 (4). Nursing Care Facility, Long-term
- 1492 (5). Accessory Use & Building
- 1493 (6). Home Occupation, Major
- 1494 (7). Home Occupation, Minor
- 1495 (8). Hotel
- 1496 (9). Inn
- 1497 (10). Motel
- 1498 (11). Rooming House
- 1499 (12). Day Care Facility
- 1500 (13). Hospital
- 1501 (14). Nursery School
- 1502 (15). Private Assembly
- 1503 (16). Public Facility
- 1504 (17). Public or Private School
- 1505 (18). Public Utility Facility
- 1506 (19). Religious Use
- 1507 (20). Recreation, Commercial Indoor
- 1508 (21). Recreation, Commercial Outdoor
- 1509 (22). Recreation, Public Open Space
- 1510 (23). Recreation, Public Facility
- 1511 (24). Commercial School

- 1512 (25). Veterinary Hospital
- 1513 (26). Art Studio or Gallery
- 1514 (27). Business & Professional Offices
- 1515 (28). Business Services
- 1516 (29). Conference Center
- 1517 (30). Personal Services
- 1518 (31). Repair Services
- 1519 (32). Restaurant
- 1520 (33). Retail Sales
- 1521 (34). Retail Sales, Building Materials & Garden Supply
- 1522 (35). Retail Sales, Convenience
- 1523 (36). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 1524 (37). Mass Transit Station
- 1525 (38). Parking Area
- 1526 (39). Wholesale Businesses

C. Special exception uses

The following uses are permitted as special exception uses in the C-1 Zone:

- 1528
- 1529 (1). Aquaculture
- 1530 (2). Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 1531 16.8. Buildings and structures, other than multi-family dwelling units as part of a
- 1532 mixed-use building in the C-1 Zone, west of Route 1, which are taller as allowed in
- 1533 § 16.4.19.E(2)e higher than 40 actual feet from the lowest point of grade to the
- 1534 highest point of the building or structure must have side, rear and front yards of
- 1535 sufficient depth to adequately protect the health, safety and welfare of abutting
- 1536 properties and which may not be less than current standards or 50% of actual
- 1537 height, whichever is greater;
- 1538 (3). Cottage Cluster
- 1539 (4). Dwelling, attached single-family
- 1540 (5). Dwelling, multi-family
- 1541 (6). Dwelling units as part of a mixed-use building
- 1542 (7). Funeral Home
- 1543 (8). Gasoline Service Station
- 1544 (9). Industry, Light
- 1545 (10). Mechanical Services
- 1546 (11). Mini Storage not located within 2,000 feet from an existing mini storage facility
- 1547 located in the same zoning district
- 1548 (12). Public Assembly Area
- 1549 (13). Theater
- 1550 (14). Repair Garage
- 1551 (15). Research & Development
- 1552 (16). Transportation Terminal
- 1553 (17). Warehousing & Storage
- 1554 (18). Marijuana Business, except a Marijuana Cultivation Facility

D. Undefined Uses in C-1 and C-3 Zones

- 1555
- 1556 (1). Undefined uses will be considered by the Planning Board based on the following

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criteria:

- a. If the use is consistent with the Comprehensive Plan and zoning district purposed; and
 - b. If the use meets special exception criteria found in § 16.4.19.E.
- (2). In addition, the undefined use must meet one or both of the following criteria:
- a. If the proposed use has substantially similar impacts as a listed use.
 - b. If the proposed use is compatible with existing uses within the zoning district for which it is proposed.

E. Standards.

- (1). C Zone standards. All development and the use of land in the C Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must be met unless noted otherwise below.
- (2). The following space standards apply in the C-1 Zones:

a. Minimum lot size or density:

C-1 Zones	
Cottage Cluster; Dwelling, attached single-family; Dwelling, multi-family; Dwelling, two-family; Dwelling units as part of a mixed-use building	16 units per acre unless 25% of units are affordable housing units as defined by this code, in which case 20 units per acres allowed*
All other uses	40,000 Sq Ft

*NOTE: These uses are exempt from net residential acreage calculations but are subject to minimum land area per dwelling unit requirement as described in § 16.5.18.D Exemptions to net residential acreage calculations.

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b. Minimum street frontage:

C-1 Zone	
All uses	No minimum*

*NOTE: All lots must meet the requirements of § 16.5.14 Lots unless specifically modified by this section (16.4.19). Street frontage must provide sufficient vehicular and pedestrian access for the uses proposed while meeting public health and safety requirements (e.g. Fire Department, Department of Public Works). The applicant must demonstrate to the municipal permitting authority, that the street frontage and lot design meet these requirements to the extent practicable.

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c. Maximum front setback:

C-1 Zone	
All uses	15 Ft*

* NOTE: The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks, outdoor dining or seating areas are proposed. Properties in the C-3 Zone with frontage on Old

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Post Road, including those lots which also have frontage on Route 1 Bypass, are required to have at least a 15-foot setback on Old Post Road.

d. Minimum rear and side setbacks:

C-1 Zone	
All Uses	10 Ft*

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*NOTE: Except where side and/or rear setback of proposed new uses about a single-family use and/or any properties located on the east side of Route 1 from the southern most extent of the C-1 zone north to properties abutting Ox Point Drive in which case a minimum of 40 feet is required. See 16.4.19.E(4)e for buffer requirements.

e. Maximum building height:

C-1 Zone	
Dwelling, multi-family; Dwelling units as part of a mixed-use building	50 feet on the west side of Route 1, not including solar apparatus* and 40 feet on the east side of Route 1, not including solar apparatus*.
All other uses	40 Ft

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*NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus is screened from view and the screening is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable.

f. Impervious Surface:

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- i. For lots in the C-1 and C-3 zones which are currently developed and for which new multi-family, attached single-family or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, either with or without existing or new commercial uses on the same lot, the maximum impervious surface, including but not limited to driveways, buildings, sidewalks and parking areas:
 - 1. Is 70%; or
 - 2. The Planning Board may at its discretion, allow greater than 70% if proof that all stormwater will be managed on-site, utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems based on MaineDEP's Maine Stormwater Best Management Practices Manual, Volumes I-III as amended from time to time. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.
- ii. For lots in the C-3 zone which are currently vacant (no existing structure) and for which new multi-family, attached single-family, or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, the maximum impervious surface, including driveways, buildings, sidewalks and parking

- 1630 areas:
- 1631 1. Is 60%; or
- 1632 2. The Planning Board may, at its discretion, allow greater than
- 1633 60% if proof that all stormwater will be managed on-site
- 1634 utilizing LID (Low Impact Development) and BMP (Best
- 1635 Management Practice) systems based on Maine DEP's
- 1636 Maine Stormwater Best Management Practices Manual,
- 1637 Volumes 1-III as amended from time to time. The
- 1638 stormwater report and plan demonstrating that this
- 1639 requirement is met must be included with the application at
- 1640 the time of submission.
- 1641 iii. For lots in the C-1 or C-3 zones which are currently developed and
- 1642 for which redevelopment is proposed with new non-residential
- 1643 structures, the maximum impervious surface, including but not
- 1644 limited to driveways, buildings, sidewalks and parking areas:
- 1645 1. Is 70%; and all stormwater must be managed on-site,
- 1646 utilizing LID (Low Impact Development) and BMP (Best
- 1647 Management Practice) systems based on Maine DEP's
- 1648 Maine Stormwater Best Management Practices Manual,
- 1649 Volumes 1-III as amended from time to time. The
- 1650 stormwater report and plan demonstrating that this
- 1651 requirement is met must be included with the application at
- 1652 the time of submission.
- 1653 iv. For all uses in the C-2 Zone, building and outdoor material
- 1654 coverage must not exceed 40%.
- 1655 g. Minimum water body setback for functionally and wetland water-dependent
- 1656 uses: zero feet.
- 1657 h. Minimum setback from streams, water bodies and wetlands: in accordance
- 1658 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 1659 i. Gasoline Sales i) not located within 1,000 feet of an existing station or
- 1660 private residence; and ii) not located within 150 feet of an existing
- 1661 structure.
- 1662 j. Repair Garages must not be located within 150 feet of a private dwelling or
- 1663 existing structure.
- 1664 k. Affordable housing requirements:
- 1665 i. All requirements in 16.5.4 Affordable Housing must be met.
- 1666 ii. Density incentives outlined above in (2).(a) may be applied to
- 1667 projects that create affordable housing units, as defined by this code.
- 1668 No proportional payment-in-lieu is required if the affordable
- 1669 dwelling unit requirements for the density incentives are met.
- 1670 l. Mixed-use buildings must have non-residential uses comprising at least
- 1671 50% of the street-facing first floor.
- 1672 m. Underground utilities are required. The Planning Board may allow an
- 1673 alternative but it is incumbent upon the applicant to demonstrate why such a
- 1674 modification request should be granted.
- 1675 n. Cottage cluster requirements:
- 1676 i. Cottage cluster dwelling units must either face the required common
- 1677 open space or the street. The required open space must be held in
- 1678 common for use by all the cottage cluster residents and must be
- 1679 immediately accessible to each dwelling unit, via either the front or

- 1680 the back of each unit.
- 1681 ii. Each cottage cluster dwelling unit must be no greater than 1,200
- 1682 square feet. Spacing between units must comply with the
- 1683 requirements of the Fire Department and/or the State Fire Marshal's
- 1684 office.
- 1685 iii. Shared parking areas must be connected to each dwelling unit via a
- 1686 sidewalk
- 1687 (3). C-1 Zone standards. All development and the use of land except for new
- 1688 multifamily, attached single-family or two-family dwellings, cottage clusters, or
- 1689 dwelling units as part of a mixed-use building within the C-1 Zone must meet the
- 1690 following standards:
- 1691 a. Parking.
- 1692 i. All new or revised parking must be visually screened by
- 1693 landscaping, earthen berms and/or fencing from adjacent public
- 1694 streets or residential properties. (See the Design Handbook for
- 1695 appropriate examples.) [Amended 9-26-2011 by Ord. No. 11-15]
- 1696 ii. Each parking space is to contain a rectangular area at least 19 feet
- 1697 long and nine feet wide. Lines demarcating parking spaces may be
- 1698 drawn at various angles in relation to curbs or aisles, so long as the
- 1699 parking spaces so created contain within them the rectangular area
- 1700 required by this section. This is exclusive of drives or aisles giving
- 1701 access thereto, accessible from streets or aisles leading to streets,
- 1702 and usable for the storage or parking of passenger vehicles. Parking
- 1703 spaces or access thereto must be constructed as to be usable year
- 1704 round.
- 1705 b. Building design standards.
- 1706 Kittery's characteristic buildings reflect its historic seacoast past. The
- 1707 primary architectural styles are New England Colonial (such as Cape
- 1708 Cod and saltbox), Georgian, Federal and Classical Revival. New
- 1709 buildings must be compatible with Kittery's characteristic styles in
- 1710 form, scale, material and color. In general, buildings should be
- 1711 oriented to the street with the front of the building facing the street.
- 1712 The front or street facade must be designed as the front of the
- 1713 building. The front elevation must contain one or more of the
- 1714 following elements: 1) a "front door," although other provisions for
- 1715 access to the building may be provided; 2) windows; or 3) display
- 1716 cases. (See Design Handbook for examples of acceptable materials
- 1717 and designs.) Strict imitation is not required. Design techniques can
- 1718 be used to maintain compatibility with characteristic styles and still
- 1719 leave enough flexibility for architectural variety. To achieve this
- 1720 purpose, the following design standards apply to new and modified
- 1721 existing building projects:
- 1722 i. Exterior building materials and details. Building materials and
- 1723 details strongly define a project's architectural style and overall
- 1724 character. (See Design Handbook for examples of acceptable
- 1725 materials, building scale, and designs.) "One-sided" schemes are
- 1726 prohibited; similar materials and details must be used on all sides of
- 1727 a building to achieve continuity and completeness of design.
- 1728 Predominant exterior building materials must be of good quality and
- 1729 characteristic of Kittery, such as horizontal wood board siding,
- 1730 vertical wood boards, wood shakes, brick, stone or simulated stone,
- 1731 glass and vinyl, or metal clapboard. [Amended 9-26-2011 by Ord.

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- ii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes, and the like. (See Design Handbook for examples of appropriate treatments.)
 - iii. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.
- c. Landscaping site improvements
- To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8 the following landscaping requirements apply to new and modified existing developments: [Amended 9-26-2011 by Ord. No. 11-15]
- i. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 30 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:
 - ii. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.
 - iii. Street-side trees. A minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.
 - iv. Planter strip. Shrubs and flowering perennials must be planted at a minimum of 10 plants per 40 linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of recommended materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation. (See Design Handbook for examples of appropriate treatments.)
 - v. Special situations.
 - i. Expansions of less than 2,000 square feet to existing uses are exempt from the landscaping standard of this subsection.
 - ii. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building or

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necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street. If providing the required landscape planter strip together with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the Planning Board so the open space standards are not exceeded, but in no case to less than 20 feet for this reason.

- iii. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.
 - iv. Residences. Residential additions to existing single- and two-family dwellings and proposed single- and duplex-family dwellings are exempt from the landscaping standards of this subsection.
 - vi. Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)
- d. Traffic and circulation standards
- i. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)
- e. Open space standards
- i. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. Twenty-five percent of each lot must be designated as

- 1835 open space. Required open space must be shown on the plan with a
1836 note dedicating it as "open space." The open space must be located
1837 to create an attractive environment on the site, minimize
1838 environmental impacts, protect significant natural features or
1839 resources on the site, and maintain wildlife habitat. Individual large,
1840 healthy trees and areas with mature tree cover should be included in
1841 the open space. Where possible, the open space must be located to
1842 allow the creation of continuous open space networks in conjunction
1843 with existing or potential open space on adjacent properties. The
1844 required amount of designated open space is reduced to 15% of each
1845 lot that is less than 100,000 square feet in size.
- 1846 ii. Minimum land area per unit for elder-care facilities that are
1847 connected to the public sewerage system:
- 1848 i. Dwelling unit with two or more bedrooms: 3,000 square
1849 feet.
- 1850 ii. Dwelling unit with less than two bedrooms: 2,000 square
1851 feet.
- 1852 iii. Residential care unit: 1,500 square feet.
- 1853 iv. Minimum land area per bed for nursing care and
1854 convalescent care facilities that are connected to the public
1855 sewerage system: 1,200 square feet.
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- 1857 (4). C-1 and C-3 Zone standards for attached single-family dwellings, multi-family
1858 dwellings, two-family dwellings where more than one two-family dwelling is
1859 proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use
1860 building:
- 1861 a. Design Standards.
- 1862 See Kittery's Design Handbook for further information on how these standards
1863 can be met.
- 1864 i. Sidewalks must be installed within the right-of-way to meet
1865 minimum requirements as specified in 16.5.27, subject to review
1866 and approval by the Department of Public Works and MaineDOT if
1867 required.
- 1868 ii. Connectivity between new housing development and adjacent
1869 existing or new commercial areas is required. This connectivity
1870 must, at minimum, include sidewalks or walkways. In the C-1 zone,
1871 connectivity may also include vehicular access coupled with
1872 sidewalks or walkways between residential and commercial areas.
1873 Connectivity must be pedestrian-friendly with appropriately scaled
1874 improvements such as eight-foot wide sidewalks and human-scaled
1875 lighting.
- 1876 iii. On-street parking is encouraged on new or existing private roads off
1877 Route 1, and may be considered as a part of a joint use parking plan
1878 when such on-street parking is proposed as part of a development or
1879 redevelopment plan.
- 1880 iv. All service areas for dumpsters, compressors, generators and similar
1881 items must be screened by a fence at least six feet tall, constructed
1882 of a material similar to surrounding buildings, and must surround
1883 the service area except for the necessary ingress/egress.
- 1884 v. Parking must be located behind multifamily dwellings and mixed-
1885 use buildings with residential dwelling units when viewed from the

- 1886 street. The Planning Board may allow parking to the side or front of
1887 such residential or mixed-use buildings at its discretion, but it is
1888 incumbent upon the applicant to demonstrate why rear parking is
1889 not feasible.
- 1890 vi. Lighting plans, including lighting fixture designs and photometric
1891 plans must be included at the time of application submission. All
1892 fixtures must be cut-off to prevent light trespass and meet all
1893 requirements of § 16.7.11.H.
- 1894 vii. A single new two-family dwelling proposed for a lot, the addition of
1895 another dwelling unit to an existing single-family residence to create
1896 a two-family dwelling and the addition of an ADU (Accessory
1897 Dwelling Unit) to a single-family residence is exempt from these
1898 design standards.
- 1899 b. Open Space Standards.
- 1900 i. Open space must be provided as a percentage of the total area of the
1901 lot, and may include wetlands, waterbodies, streams, and setbacks.
1902 Fifteen percent (15%) of each lot must be designated as open space.
- 1903 ii. For multifamily dwellings, mixed-use buildings with residential
1904 dwelling units and attached single-family dwellings, in cases where
1905 the property does not meet the 15% requirement due to existing
1906 development, and where redevelopment will remain at the same or
1907 comprise a lower percentage of the lot, the Planning Board may, at
1908 its discretion, allow a smaller percentage of open space. In granting
1909 this concession, the Board may require more intensive landscape
1910 plantings.
- 1911 c. Parking Standards.
- 1912 The following minimum off-street parking requirements must be provided
1913 and maintained in case of new construction, alterations, and changes of use:
- 1914 i. Parking requirements must be met on site unless an existing
1915 building covers so much of the lot as to make the provision of
1916 parking impractical in whole or in part. If meeting the parking
1917 requirements is not practical, then the parking demand may be
1918 satisfied off site or through joint-use agreements as specified herein.
1919 Notwithstanding the off-street parking requirements in 16.7.11.F,
1920 minimum parking requirements for the uses below are modified as
1921 specified:
- 1922 i. Dwelling units: 1 parking space per dwelling unit.
- 1923 ii. For multifamily dwellings, if more than ten parking spaces
1924 are required, up to 20% of the parking may be designated for
1925 compact cars. See 16.7.11.F Off-Street Parking Standards.
- 1926 ii. Off-site parking. Required off-street parking may be satisfied at off-
1927 site locations, provided such parking is on other property owned by
1928 the applicant or is under the terms of a contractual agreement that
1929 will ensure such parking remains available for the uses served.
1930 Applicant must present evidence of a parking location and a
1931 contractual agreement;
- 1932 iii. Joint-use parking. Required off-street parking may also be satisfied
1933 by the joint use of parking space by two or more uses if the
1934 applicant can show that parking demand is nonconflicting and will
1935 reasonably provide adequate parking for the multiple uses without
1936 parking overflowing into undesignated areas. Nonconflicting

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periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand.

- i. Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;
 - ii. Determination of parking adequacy will be based on a most frequent basis, not a "worst case" scenario;
 - iii. Joint use parking areas must be located within 1,500 feet of the uses served, but do not need to be located on the same lot as the uses served;
 - iv. Ease and safety of pedestrian access to shared parking by the users served must be demonstrated to the municipal permitting authority's satisfaction, including any proposed improvements, such as crosswalks or shuttle service that may be offered and its requisite loading/unloading areas;
 - v. Such joint parking areas must not be located in residential zones of the Town.
- iv. In making determinations on off-site or joint-use parking under a development plan review, the municipal permitting authority with jurisdiction to review and approve will make a final determination of the joint-use and/or off-site spaces that constitute an acceptable combination of spaces to meet the required parking demand.
- v. Electric car charging stations are allowed in parking lots but must not interfere with pedestrian movement on sidewalks.
- d. Landscaping and Screening.
- i. For new multi-family, attached single-family, or dwelling units as part of a mixed-use building or any new residential use that will create more than three dwelling units on a site, the following standards apply:
 - i. A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion.
 - ii. A minimum of one street tree must be planted for each 25 feet of street frontage. Trees may be planted in groups or spaced along the frontage. However, trees must be planted to ensure survival, using silva cells, bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity.
 - iii. Surface parking lots designed for five or more cars that will service multifamily or mixed-use buildings with dwelling units and which abut a street, an existing single-family use, or a residential zone, must provide screening in one of the following ways:
 - 1. One tree per 25 feet of street frontage backed by a fence constructed of a material similar to surrounding

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buildings which must screen the parking area from the street except for necessary vehicular and pedestrian access. To ensure survival, trees must be planted using silva cells, bioretention cells or tree wells. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity.

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

- iv. A minimum of 10% of any surface parking area consisting of 10 or more spaces must be landscaped with trees and vegetated islands. This requirement is in addition to the aforementioned screening and street tree requirements.
- v. Native trees are preferred and must be drought and salt tolerant when used along streets. A diversity of tree species (three to five species per every 12 trees) is required to provide greater resiliency to threats from introduced insect pests and diseases.
- vi. Any required plantings that do not survive must be replaced within one year. This requirement does not expire and runs with the land.
- vii. If 25% of the proposed development will be affordable dwelling units, the Planning Board may, at its discretion, modify surface parking lot landscaping and screening requirements under [iii] and [iv] above.

e. Buffers.

- i. Buffers are required between new residential uses and existing nonresidential uses and must be at least 10 feet wide. A buffer plan must be prepared in conjunction with the landscape plan as described in [d].[i] above and consist of:
 - i. A fence at least six feet high, constructed of material similar to surrounding buildings, with plantings of trees at least six feet tall at time of planting and shrubs on the new residential side of the fence.
 - ii. Ground cover plantings such as perennials or ornamental grasses must be used where appropriate.
 - iii. Plantings must be provided with irrigation to enhance survival unless they are part of a bioretention cell, rain garden or tree well.
 - iv. Any required plantings that do not survive must be replaced within one year. This requirement does not expire and runs with the land.

- 2039 v. If 25% of the proposed development will be affordable
2040 housing dwelling units, the Planning Board may, at its
2041 discretion, modify buffer requirements under [i] and [iii].
- 2042 ii. Buffers are required between new residential uses and existing
2043 single-family uses and must be at least 10 feet wide. A buffer plan
2044 must be prepared in conjunction with the landscape plan as
2045 described in [d].[i] above and consist of:
- 2046 i. A fence at least six feet high, constructed of material similar
2047 to surrounding buildings, with plantings of trees and shrubs
2048 at least six feet tall on the new residential side of the fence;
2049 or
- 2050 ii. Plantings of trees at least six feet tall and shrubs, including at
2051 least 50% evergreen species. Such plantings must ensure
2052 adequate buffering and screening is achieved as determined
2053 by the Planning Board.
- 2054 iii. Ground cover plantings, such as perennials or ornamental
2055 grasses must be used where appropriate.
- 2056 iv. Plantings must be provided with irrigation to enhance
2057 survival unless they are part of a bioretention cell, rain
2058 garden or tree well.
- 2059 v. Any required plantings that do not survive must be replaced
2060 within one year. This requirement does not expire and runs
2061 with the land.
- 2062 vi. If 25% of the proposed development will be affordable
2063 housing dwelling units, the Planning Board may, at its
2064 discretion, modify buffer requirements under [i], [ii] and
2065 [iii].
2066

2067 F. Shoreland Overlay Zone OZ-SL – Commercial – 1 Zone (C-1)

2068 (1). Permitted uses

- 2069 a. Accessory Use & Building
2070 b. Home Occupation, Major
2071 c. Home Occupation, Minor
2072 d. Recreation, Public Facility
2073 e. Recreation, Public Open Space
2074 f. Recreation, Selected Commercial
2075 g. Public Utility Facility
2076 h. Commercial School
2077 i. Public or Private School
2078 j. Nursery School
2079 k. Hospital
2080 l. Nursing Care Facility, Long-term
2081 m. Convalescent Care Facility
2082 n. Public Facility
2083 o. Religious Use
2084 p. Private Assembly

2085 (2). Special exception uses

- 2086 a. Aquaculture
- 2087 b. Art Studio or Gallery
- 2088 c. Retail Sales, Building Materials& Garden Supply;
- 2089 d. Business & Professional Offices
- 2090 e. Business Services
- 2091 f. Parking Area
- 2092 g. Conference Center
- 2093 h. Day Care Facility
- 2094 i. Retail Sales
- 2095 j. Retail Sales, Convenience
- 2096 k. Mass Transit Station
- 2097 l. Mini Storage
- 2098 m. Motel
- 2099 n. Hotel
- 2100 o. Rooming House
- 2101 p. Inn
- 2102 q. Personal Services
- 2103 r. Repair Services
- 2104 s. Public Assembly Area
- 2105 t. Theater
- 2106 u. Research & Development
- 2107 v. Restaurant
- 2108 w. Retail Sales
- 2109 x. Wholesale Businesses
- 2110 y. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 2111 02]
- 2112 z. Transportation Terminal
- 2113 aa. Veterinary Hospital
- 2114 bb. Warehousing & Storage

2115 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

2116 G. Resource Protection Overlay Zone OZ-RP – Commercial – 1 Zone (C-1).

- 2117 (1). Permitted uses.
- 2118 a. Recreation, Public Open Space
- 2119 (2). Special exception uses.
- 2120 a. Accessory Uses & Buildings
- 2121 b. Aquaculture
- 2122 c. Home Occupations, Major
- 2123 d. Home Occupations, Minor
- 2124 e. Public Utility Facilities
- 2125 f. Research & Development

2126 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
2127 OZ-RP

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2129 **16.4.20 Commercial 2, Route 236 Commercial Zone (C-2)**

2130 A. Purpose

2131 (1). The purpose of the C-2 (Route 236 Commercial) Zone is to provide services, industry
2132 and business space within the Town in a location capable of conveniently serving
2133 community-wide and/or regional trade areas and oriented primarily to vehicular access.

2134 To reflect the differing character of various parts of the commercial areas, it is
2135 divided into three zones that are shown on the Zoning Map:

2136 C-1 Route 1 Commercial Zone

2137 C-2 Route 236 Commercial Zone

2138 C-3 Bypass/Old Post Road Commercial Zone

2139 Where the standards or requirements for the zones vary, the provisions for the zone
2140 in which the parcel is located apply.

2141 B. Permitted uses

2142 The following uses are permitted in the C-2 Zone:

2143 (1). Accessory Dwelling Unit

2144 (2). Convalescent Care Facility

2145 (3). Nursing Care Facility, Long-term

2146 (4). Accessory Use & Building

2147 (5). Home Occupation, Major

2148 (6). Home Occupation, Minor

2149 (7). Hotel

2150 (8). Inn

2151 (9). Motel

2152 (10). Rooming House

2153 (11). Day Care Facility

2154 (12). Hospital

2155 (13). Nursery School

2156 (14). Private Assembly

2157 (15). Public Facility

2158 (16). Public or Private School

2159 (17). Public Utility Facility

2160 (18). Religious Use

2161 (19). Recreation, Commercial Indoor

2162 (20). Recreation, Commercial Outdoor

2163 (21). Recreation, Public Open Space

2164 (22). Recreation, Public Facility

2165 (23). Aquaculture

2166 (24). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
2167 cooking of seafood occur at the site)

2168 (25). Commercial School

2169 (26). Veterinary Hospital

2170 (27). Art Studio or Gallery

2171 (28). Business & Professional Offices

- 2172 (29). Business Service
- 2173 (30). Conference Center
- 2174 (31). Personal Service
- 2175 (32). Repair Service
- 2176 (33). Restaurant
- 2177 (34). Retail Sales
- 2178 (35). Retail Sales, Building Materials & Garden Supply
- 2179 (36). Retail Sales, Convenience
- 2180 (37). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 2181 (38). Boatyard
- 2182 (39). Mass Transit Station
- 2183 (40). Mechanical Services
- 2184 (41). New Motor Vehicle Sales
- 2185 (42). Parking Area
- 2186 (43). Wholesale Business
- 2187 C. Special Exceptions
- 2188 The following land uses are permitted as special exception uses in the C-2 Zone:
- 2189 (1). Adult Entertainment Establishment
- 2190 (2). Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 2191 16.8. Buildings and structures higher than 40 actual feet from the lowest point of
- 2192 grade to the highest point of the building or structure must have side, rear and front
- 2193 yards of sufficient depth to adequately protect the health, safety and welfare of
- 2194 abutting properties, and which may not be less than current standards or 50% of
- 2195 actual height, whichever is greater;
- 2196 (3). Commercial Greenhouse
- 2197 (4). Construction Services
- 2198 (5). Funeral Home
- 2199 (6). Gasoline Service Station
- 2200 (7). Industry, Light
- 2201 (8). Mini Storage
- 2202 (9). Repair Garage
- 2203 (10). Public Assembly Area
- 2204 (11). Theater
- 2205 (12). Research & Development
- 2206 (13). Shops in Pursuit of Trade
- 2207 (14). Transportation Terminal
- 2208 (15). Used Car Lot
- 2209 (16). Warehousing & Storage
- 2210 (17). Marijuana Business
- 2211 D. Standards
- 2212 (1). C Zone standards. All development and the use of land in the C Zone must meet
- 2213 the following standards. Kittery's Design Handbook illustrates how these standards
- 2214 can be met. In addition, the design and performance standards of § 16.5, 16.7 and
- 2215 16.8 must be met unless noted otherwise below.
- 2216 (2). The following space standards apply in the C-2 Zones:

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a. Minimum lot size or density:

C-2 Zone	
All uses:	40,000 Sq Ft

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b. Minimum street frontage:

C-2 Zone	
All uses:	150 Ft

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c. Maximum front setback:

C-2 Zone	
All uses:	50 Ft

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d. Minimum rear and side setbacks:

C-2 Zone	
All Uses	30 Ft**

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**NOTE: Except as may be required by the buffer provisions of this title, and where the side and/or rear yards of the proposed nonresidential use abut a residential zone or use; in which case a minimum of 40 feet is required.

e. Maximum building height:

C-2 Zone	
All uses:	40 Ft

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2230

f. Impervious Surface:

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i. For all uses in the C-2 Zone, building and outdoor material coverage must not exceed 40%.

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g. Minimum water body setback for functionally and wetland water-dependent uses: zero feet.

2235

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h. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

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i. Gasoline Sales i) not located within 1,000 feet of an existing station or private residence; and ii) not located within 150 feet of an existing structure.

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j. Repair Garages must not be located within 150 feet of a private dwelling or existing structure.

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k. Affordable housing requirements:

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i. All requirements in 16.5.4 Affordable Housing must be met.
ii. Density incentives outlined above in (2).(a) may be applied to projects that create affordable housing units, as defined by this code. No proportional payment-in-lieu is required if the affordable dwelling unit requirements for the density incentives are met.

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- l. Mixed-use buildings must have non-residential uses comprising at least 50% of the street-facing first floor.
 - m. Underground utilities are required. The Planning Board may allow an alternative but it is incumbent upon the applicant to demonstrate why such a modification request should be granted.
 - n. Cottage cluster requirements:
 - i. Cottage cluster dwelling units must either face the required common open space or the street. The required open space must be held in common for use by all the cottage cluster residents and must be immediately accessible to each dwelling unit, via either the front or the back of each unit.
 - ii. Each cottage cluster dwelling unit must be no greater than 1,200 square feet. Spacing between units must comply with the requirements of the Fire Department and/or the State Fire Marshal's office.
 - iii. Shared parking areas must be connected to each dwelling unit via a sidewalk
- (3). C-2 Zone standards.
- a. Parking
 - i. All new or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)
 - ii. Each parking space is to contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section. This is exclusive of drives or aisles giving access thereto, accessible from streets or aisles leading to streets, and usable for the storage or parking of passenger vehicles. Parking spaces or access thereto must be constructed as to be usable year round.
 - b. Building design standards
 - i. New buildings should meet the general design principles set forth in the Design Handbook. In general, buildings should be oriented to the street with the front of the building facing the street. The front or street facade must be designed as the front of the building. The front elevation must contain one or more of the following elements:
 - i. A "front door," although other provisions for access to the building may be provided;
 - ii. Windows; or
 - iii. Display cases.
 - ii. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. (See Design Handbook for examples of acceptable designs.)
 - c. Landscaping site improvements. To achieve attractive and environmentally

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sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapter 16.8 the following landscaping requirements apply to new and modified existing developments: [Amended 9-26-2011 by Ord. No. 11-15]

- i. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 20 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:
 - i. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.
 - ii. Street-side trees. A minimum of one street tree must be planted for each 50 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.
- d. Special situations
 - i. Expansions of less than 2,000 square feet to existing uses are exempt from the landscaping standard of this subsection.
 - ii. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals for parking, display, storage, building or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.
 - iii. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one street-side tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.
 - iv. Residences. Residential additions to existing single- and two-family dwellings and proposed single and duplex family dwellings are exempt from the landscaping standards of this subsection.
- e. Outdoor service and storage areas. No areas for the storage of raw materials, equipment or finished products other than small areas for the display of samples of products available for sale or rent may be located between the front property line and the front facade of the building. Display areas may not be located within the required landscape planter strip.

2350 Facilities for waste storage such as dumpsters must be located within an
2351 enclosure and be visually buffered by fencing, landscaping and/or other
2352 treatments. (See Design Handbook for examples of appropriate buffering.)
2353 f. Traffic and circulation standards
2354 i. Vehicular and pedestrian circulation must meet the general
2355 provisions of the Design Handbook.
2356

2357 E. Shoreland Overlay Zone OZ-SL – Commercial – 2 Zone (C-2)

2358 (1). Permitted uses

- 2359 a. Accessory Use & Building
- 2360 b. Home Occupation, Major
- 2361 c. Home Occupation, Minor
- 2362 d. Aquaculture
- 2363 e. Recreation, Public Facility
- 2364 f. Recreation, Public Open Space
- 2365 g. Recreation, Selected Commercial
- 2366 h. Public Utility Facility
- 2367 i. Commercial School
- 2368 j. Public or Private School
- 2369 k. Nursery School
- 2370 l. Hospital
- 2371 m. Nursing Care Facility, Long-term
- 2372 n. Convalescent Care Facility
- 2373 o. Public Facility
- 2374 p. Religious Institution
- 2375 q. Private Assembly

2376 (2). Special exception uses

- 2377 a. Adult Entertainment Establishment, not located within 1,000 feet of an
2378 existing private residence, school or place of worship
- 2379 b. Art Studio or Gallery
- 2380 c. Boatyard
- 2381 d. Business & Professional Offices
- 2382 e. Business Services
- 2383 f. Commercial Fisheries/Maritime Activities (provided only incidental
2384 cleaning and cooking of seafood occur at the site)
- 2385 g. Parking Area
- 2386 h. Conference Center
- 2387 i. Construction Services
- 2388 j. Day Care Facility
- 2389 k. Retail Sales, Convenience
- 2390 l. Retail Sales
- 2391 m. Mass Transit Station
- 2392 n. Mini Storage
- 2393 o. Motel
- 2394 p. Hotel

- 2395 q. Rooming House
- 2396 r. Inn
- 2397 s. Personal Service
- 2398 t. Public Assembly Area
- 2399 u. Theater
- 2400 v. Research & Development
- 2401 w. Restaurant
- 2402 x. Wholesale Business
- 2403 y. Repair Services
- 2404 z. Shops in Pursuit of Trade
- 2405 aa. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 2406 02]
- 2407 bb. Transportation Terminal
- 2408 cc. Veterinary Hospital
- 2409 dd. Warehousing & Storage
- 2410 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 2411 F. Resource Protection Overlay Zone OZ-RP – Commercial – 2 Zone (C-2).
- 2412 (1). Permitted Uses.
- 2413 a. Recreation, Public Open Space
- 2414 (2). Special Exception Uses.
- 2415 a. Accessory Uses & Buildings
- 2416 b. Aquaculture
- 2417 c. Public Utility Facility
- 2418 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 2419 OZ-RP
- 2420

2421 **16.4.21 Commercial 3, Bypass/Old Post Road Commercial Zone (C-3)**

2422 A. Purpose.

- 2423 (1). The C-3 (Bypass/Old Post Road Commercial) Zone proposed to introduce a mix of
2424 housing, businesses and services to an area that serves as one of the gateways to and
2425 through Kittery. Existing infrastructure, proximity to residential neighborhoods, and
2426 direct access to I-95 give this zone opportunities for housing and commercial uses, as
2427 well as advancing pedestrian access, serving residents and the region.

2428

2429 To reflect the differing character of various parts of the commercial areas, it is
2430 divided into three zones that are shown on the Zoning Map:

- 2431 C-1 Route 1 Commercial Zone
2432 C-2 Route 236 Commercial Zone
2433 C-3 Bypass/Old Post Road Commercial Zone

2434

2435 Where the standards or requirements for the zones vary, the provisions for the zone
2436 in which the parcel is located apply.

2437 B. Permitted uses

2438 The following uses are permitted in the C-3 Zone:

- 2439 (1). Accessory Dwelling Unit
2440 (2). Convalescent Care Facility
2441 (3). Dwelling, two-family
2442 (4). Nursing Care Facility, Long-term
2443 (5). Residential Care Facility
2444 (6). Accessory Use & Building
2445 (7). Home Occupation, Major
2446 (8). Home Occupation, Minor
2447 (9). Hotel
2448 (10). Inn
2449 (11). Motel
2450 (12). Rooming House
2451 (13). Day Care Facility
2452 (14). Hospital
2453 (15). Nursery School
2454 (16). Private Assembly
2455 (17). Public Facility
2456 (18). Public or Private School
2457 (19). Public Utility Facility
2458 (20). Religious Use
2459 (21). Recreation, Commercial Indoor
2460 (22). Recreation, Commercial Outdoor
2461 (23). Recreation, Public Open Space
2462 (24). Recreation, Public Facility
2463 (25). Aquaculture
2464 (26). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and

- 2465 cooking of seafood occur at the site)
- 2466 (27). Commercial School
- 2467 (28). Veterinary Hospital
- 2468 (29). Art Studio or Gallery
- 2469 (30). Business & Professional Offices
- 2470 (31). Business Services
- 2471 (32). Conference Center
- 2472 (33). Personal Services
- 2473 (34). Repair Service
- 2474 (35). Restaurant
- 2475 (36). Retail Sales
- 2476 (37). Retail Sales, Building Materials & Garden Supply
- 2477 (38). Retail Sales, Convenience
- 2478 (39). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 2479 (40). Boatyard
- 2480 (41). Mass Transit Station
- 2481 (42). Mechanical Services
- 2482 (43). Parking Area
- 2483 (44). Wholesale Business
- 2484 C. Special exception uses
- 2485 The following uses are permitted by special exception uses in the C-3 Zone:
- 2486 (1). Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 2487 16.8. Buildings and structures, other than multi-family dwellings and dwelling
- 2488 units as part of a mixed-use building in the C-3 Zone, west of Route 1, which are
- 2489 taller as allowed in § 16.4.21.B(41) higher than 40 actual feet from the lowest
- 2490 point of grade to the highest point of the building or structure must have side, rear
- 2491 and front yards of sufficient depth to adequately protect the health, safety and
- 2492 welfare of abutting properties, and which may not be less than current standards or
- 2493 50% of actual height, whichever is greater;
- 2494 (2). Commercial Greenhouses
- 2495 (3). Construction Services
- 2496 (4). Cottage Cluster
- 2497 (5). Dwelling, attached single-family
- 2498 (6). Dwelling, multi-family
- 2499 (7). Dwellings as part of a mixed-use building
- 2500 (8). Funeral Home
- 2501 (9). Gasoline Service Station
- 2502 (10). Industry, Light
- 2503 (11). Mini Storage not located within 2,000 feet from an existing mini storage facility
- 2504 located in the same zoning district
- 2505 (12). Public Assembly Area
- 2506 (13). Theater
- 2507 (14). Repair Garage
- 2508 (15). Research & Development
- 2509 (16). Shops in Pursuit of Trade

- 2510 (17). Transportation Terminal (excluding truck stops)
- 2511 (18). Warehousing & Storage
- 2512 (19). Marijuana Business

D. Undefined Uses in C-1 and C-3 Zones

- 2514 (1). Undefined uses will be considered by the Planning Board based on the following
- 2515 criteria:
- 2516 a. If the use is consistent with the Comprehensive Plan and zoning district
- 2517 purposed; and
- 2518 b. If the use meets special exception criteria found in § 16.4.21.C.
- 2519 (2). In addition, the undefined use must meet one or both of the following criteria:
- 2520 a. If the proposed use has substantially similar impacts as a listed use.
- 2521 b. If the proposed use is compatible with existing uses within the zoning
- 2522 district for which it is proposed.

E. Standards.

- 2524 (1). C Zone standards. All development and the use of land in the C Zone must meet
- 2525 the following standards. Kittery's Design Handbook illustrates how these standards
- 2526 can be met. In addition, the design and performance standards of § 16.5, 16.7 and
- 2527 16.8 must be met unless noted otherwise below.
- 2528 (2). The following space standards apply in the C-3 Zone:
- 2529 a. Minimum lot size or density:

C-1 and C-3 Zones	
Cottage Cluster; Dwelling, attached single-family; Dwelling, multi-family; Dwelling, two-family; Dwelling units as part of a mixed-use building	16 units per acre unless 25% of units are affordable housing units as defined by this code, in which case 20 units per acres allowed*
All other uses	40,000 Sq Ft

2530 *NOTE: These uses are exempt from net residential acreage calculations but
 2531 are subject to minimum land area per dwelling unit requirement as described
 2532 in § 16.5.18.D Exemptions to net residential acreage calculations.

- 2533
- 2534 b. Minimum street frontage:

C-1 and C-3 Zones	
All uses	No minimum*

2535 *NOTE: All lots must meet the requirements of § 16.5.14 Lots unless
 2536 specifically modified by this section (16.4.21). Street frontage must provide
 2537 sufficient vehicular and pedestrian access for the uses proposed while
 2538 meeting public health and safety requirements (e.g. Fire Department,
 2539 Department of Public Works). The applicant must demonstrate to the
 2540 municipal permitting authority, that the street frontage and lot design meet
 2541 these requirements to the extent practicable.

- 2542
- 2543 c. Maximum front setback:

C-1 and C-3 Zones	
All uses	15 Ft*

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* NOTE: The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks, outdoor dining or seating areas are proposed. Properties in the C-3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, are required to have at least a 15-foot setback on Old Post Road.

d. Minimum rear and side setbacks:

C-3 Zone	
All Uses	10 Ft***

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***NOTE: Except where side and/or rear setbacks of proposed new uses about a single-family use in which case a minimum of 15 feet is required.

e. Maximum building height:

C-3 Zone	
Dwelling, multi-family; Dwelling units as part of a mixed-use building	40 Ft*
All other uses	40 Ft

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*NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus is screened from view and the screening is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable.

**NOTE: For properties in the C- 3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, the setback on Old Post Road must be 15 feet or greater as provided by section(c)above and building heights must not exceed 25 feet for the first 15 feet beyond the minimum 15-foot setback.

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f. Impervious Surface:

- i. For lots in the C-1 and C-3 zones which are currently developed and for which new multi-family, attached single-family or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, either with or without existing or new commercial uses on the same lot, the maximum impervious surface, including but not limited to driveways, buildings, sidewalks and parking areas:

1. Is 70%; or

2. The Planning Board may at its discretion, allow greater than 70% if proof that all stormwater will be managed on-site, utilizing LID (Low Impact Development) and BMP (Best

- 2579 Management Practice) systems based on MaineDEP's Maine
 2580 Stormwater Best Management Practices Manual, Volumes I-
 2581 III as amended from time to time. The stormwater report and
 2582 plan demonstrating that this requirement is met must be
 2583 included with the application at the time of submission.
- 2584 ii. For lots in the C-3 zone which are currently vacant (no existing
 2585 structure) and for which new multi-family, attached single-family,
 2586 or two-family dwellings, cottage clusters, or dwelling units as part
 2587 of mixed-use building are proposed, the maximum impervious
 2588 surface, including driveways, buildings, sidewalks and parking
 2589 areas:
- 2590 1. Is 60%; or
 2591 2. The Planning Board may, at its discretion, allow greater than
 2592 60% if proof that all stormwater will be managed on-site
 2593 utilizing LID (Low Impact Development) and BMP (Best
 2594 Management Practice) systems based on Maine DEP's
 2595 Maine Stormwater Best Management Practices Manual,
 2596 Volumes 1-III as amended from time to time. The
 2597 stormwater report and plan demonstrating that this
 2598 requirement is met must be included with the application at
 2599 the time of submission.
- 2600 iii. For lots in the C-1 or C-3 zones which are currently developed and
 2601 for which redevelopment is proposed with new non-residential
 2602 structures, the maximum impervious surface, including but not
 2603 limited to driveways, buildings, sidewalks and parking areas:
- 2604 1. Is 70%; and all stormwater must be managed on-site,
 2605 utilizing LID (Low Impact Development) and BMP (Best
 2606 Management Practice) systems based on Maine DEP's
 2607 Maine Stormwater Best Management Practices Manual,
 2608 Volumes 1-III as amended from time to time. The
 2609 stormwater report and plan demonstrating that this
 2610 requirement is met must be included with the application at
 2611 the time of submission.
- 2612 iv. For all uses in the C-2 Zone, building and outdoor material
 2613 coverage must not exceed 40%.
- 2614 g. Minimum water body setback for functionally and wetland water-dependent
 2615 uses: zero feet.
- 2616 h. Minimum setback from streams, water bodies and wetlands: in accordance
 2617 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 2618 i. Gasoline Sales i) not located within 1,000 feet of an existing station or
 2619 private residence; and ii) not located within 150 feet of an existing
 2620 structure.
- 2621 j. Repair Garages must not be located within 150 feet of a private dwelling or
 2622 existing structure.
- 2623 k. Affordable housing requirements:
- 2624 i. All requirements in 16.5.4 Affordable Housing must be met.
 2625 ii. Density incentives outlined above in (2).(a) may be applied to
 2626 projects that create affordable housing units, as defined by this code.
 2627 No proportional payment-in-lieu is required if the affordable
 2628 dwelling unit requirements for the density incentives are met.
- 2629 l. Mixed-use buildings must have non-residential uses comprising at least

- 2630 50% of the street-facing first floor.
- 2631 m. Underground utilities are required. The Planning Board may allow an
2632 alternative but it is incumbent upon the applicant to demonstrate why such a
2633 modification request should be granted.
- 2634 n. Cottage cluster requirements:
- 2635 i. Cottage cluster dwelling units must either face the required common
2636 open space or the street. The required open space must be held in
2637 common for use by all the cottage cluster residents and must be
2638 immediately accessible to each dwelling unit, via either the front or
2639 the back of each unit.
- 2640 ii. Each cottage cluster dwelling unit must be no greater than 1,200
2641 square feet. Spacing between units must comply with the
2642 requirements of the Fire Department and/or the State Fire Marshal's
2643 office.
- 2644 iii. Shared parking areas must be connected to each dwelling unit via a
2645 sidewalk
- 2646 (3). C-3 Zone standards. All development and the use of land except for new
2647 multifamily, attached single-family or two-family dwellings, cottage clusters, or
2648 dwelling units as part of a mixed-use building within the C-3 Zone must meet the
2649 following standards:
- 2650 a. Parking.
- 2651 i. All new or revised parking must be visually screened through the
2652 use of landscaping, earthen berms and/or fencing from adjacent
2653 public streets or residential properties. (See the Design Handbook
2654 for appropriate examples.)
- 2655 ii. Each parking space is to contain a rectangular area at least 19 feet
2656 long and nine feet wide. Lines demarcating parking spaces may be
2657 drawn at various angles in relation to curbs or aisles, so long as the
2658 parking spaces so created contain within them the rectangular area
2659 required by this section. This is exclusive of drives or aisles giving
2660 access thereto, accessible from streets or aisles leading to streets,
2661 and usable for the storage or parking of passenger vehicles. Parking
2662 spaces or access thereto must be constructed as to be usable year
2663 round.
- 2664 b. Building design
- 2665 i. Kittery's characteristic buildings reflect its historical seacoast past.
2666 The primary architectural styles are New England Colonial (such as
2667 Cape Cod and saltbox), Georgian, Federal and Classical Revival.
2668 New buildings must be compatible with Kittery's characteristic
2669 styles in form, scale, material and color. In general, buildings should
2670 be oriented to the street with the front of the building facing the
2671 street. The front or street facade must be designed as the front of the
2672 building. The front elevation must contain one or more of the
2673 following elements: 1) a "front door," although other provisions for
2674 access to the building may be provided; 2) windows; or 3) display
2675 cases. (See Design Handbook for examples of acceptable materials
2676 and designs.) Strict imitation is not required. Design techniques can
2677 be used to maintain compatibility with characteristic styles and still
2678 leave enough flexibility for architectural variety. To achieve this
2679 purpose, the following design standards apply to new and remodeled
2680 building projects: [Amended 9-26-2011 by Ord. No. 11-15]

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- ii. Exterior building materials and details. Building materials and details strongly define a project's architectural style and overall character. (See Design Handbook for examples of acceptable materials, building scale and designs.) "One-sided" schemes are prohibited; similar materials and details must be used on all sides of a building to achieve continuity and completeness of design. Predominant exterior building materials must be of good quality and characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.
 - iii. Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are gabled, gambrel and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms except as provided above. The roof design must screen or camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air handler units, exhaust vents, transformer boxes and the like. (See Design Handbook for examples of appropriate treatments.)
 - iv. Loading docks and overhead doors. Loading docks and overhead doors must be located on the side or rear of the building and screened from view from adjacent properties in residential use.
- c. Landscaping site improvements
- i. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in § 16.7 the following landscaping requirements apply to new and modified existing developments: [Amended 9-26-2011 by Ord. No. 11-15]
 - ii. Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of 15 feet in depth adjacent to the right-of-way of all public roads and include the following landscape elements:
 - i. Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.
 - ii. Street-side trees. A minimum of one tree must be planted for each 50 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch caliper and be at least 12 feet high at the time of planting. The species should be selected from the list of recommended street trees in the Town Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.
 - iii. Special situations.
 - i. Expansions of less than 1,000 square feet to existing uses are exempt from the landscaping standard of this subsection.
 - ii. Depth of landscape planter strip. In instances where the required minimum depth of the landscape planter strip is legally utilized, in accordance with previous permits or approvals, for parking, display, storage, building or

necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street.

iii. Additions and changes in use. For additions to existing buildings and changes of residential structures to a nonresidential use, one tree (see list of recommended street trees in Design Handbook) is required to be planted for every 1,000 square feet of additional gross floor area added or converted to nonresidential use. In instances where parking, display area, storage, building or necessary vehicle circulation exists at the time of enactment of this section, the required trees may be clustered and/or relocated away from the road as is necessary to be practicable. The preservation of existing large trees is encouraged; therefore, the Planning Board may permit the preservation of existing healthy, large, mature trees within the landscape planter strip or other developed areas of the site to be substituted for the planting of new trees.

iv. Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)

d. Traffic and circulation standards

i. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)

e. Open space standards

i. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. Twenty percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to 10% of each lot that is less than 40,000 square feet in size.

2785 (4). C-1 and C-3 Zone standards for attached single-family dwellings, multi-family
2786 dwellings, two-family dwellings where more than one two-family dwelling is
2787 proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use
2788 building:

2789 a. Design Standards.

2790 See Kittery's Design Handbook for further information on how these standards
2791 can be met.

- 2792 i. Sidewalks must be installed within the right-of-way to meet
2793 minimum requirements as specified in 16.5.27, subject to review
2794 and approval by the Department of Public Works and MaineDOT if
2795 required.
- 2796 ii. Connectivity between new housing development and adjacent
2797 existing or new commercial areas is required. This connectivity
2798 must, at minimum, include sidewalks or walkways. In the C-1 zone,
2799 connectivity may also include vehicular access coupled with
2800 sidewalks or walkways between residential and commercial areas.
2801 Connectivity must be pedestrian-friendly with appropriately scaled
2802 improvements such as eight-foot wide sidewalks and human-scaled
2803 lighting.
- 2804 iii. On-street parking is encouraged on new or existing private roads off
2805 Route 1, and may be considered as a part of a joint use parking plan
2806 when such on-street parking is proposed as part of a development or
2807 redevelopment plan.
- 2808 iv. All service areas for dumpsters, compressors, generators and similar
2809 items must be screened by a fence at least six feet tall, constructed
2810 of a material similar to surrounding buildings, and must surround
2811 the service area except for the necessary ingress/egress.
- 2812 v. Parking must be located behind multifamily dwellings and mixed-
2813 use buildings with residential dwelling units when viewed from the
2814 street. The Planning Board may allow parking to the side or front of
2815 such residential or mixed-use buildings at its discretion, but it is
2816 incumbent upon the applicant to demonstrate why rear parking is
2817 not feasible.
- 2818 vi. Lighting plans, including lighting fixture designs and photometric
2819 plans must be included at the time of application submission. All
2820 fixtures must be cut-off to prevent light trespass and meet all
2821 requirements of 16.7.11.H.
- 2822 vii. A single new two-family dwelling proposed for a lot, the addition of
2823 another dwelling unit to an existing single-family residence to create
2824 a two-family dwelling and the addition of an ADU (Accessory
2825 Dwelling Unit) to a single-family residence is exempt from these
2826 design standards.

2827 b. Open Space Standards.

- 2828 i. Open space must be provided as a percentage of the total area of the
2829 lot, and may include wetlands, waterbodies, streams, and setbacks.
2830 Fifteen percent (15%) of each lot must be designated as open space.
- 2831 ii. For multifamily dwellings, mixed-use buildings with residential
2832 dwelling units and attached single-family dwellings, in cases where
2833 the property does not meet the 15% requirement due to existing
2834 development, and where redevelopment will remain at the same or
2835 comprise a lower percentage of the lot, the Planning Board may, at

2836 its discretion, allow a smaller percentage of open space. In granting
2837 this concession, the Board may require more intensive landscape
2838 plantings.

2839 c. Parking Standards.

2840 The following minimum off-street parking requirements must be provided
2841 and maintained in case of new construction, alterations, and changes of use:

2842 i. Parking requirements must be met on site unless an existing
2843 building covers so much of the lot as to make the provision of
2844 parking impractical in whole or in part. If meeting the parking
2845 requirements is not practical, then the parking demand may be
2846 satisfied off site or through joint-use agreements as specified herein.
2847 Notwithstanding the off-street parking requirements in Article IX of
2848 Chapter 16.8, minimum parking requirements for the uses below are
2849 modified as specified:

2850 i. Dwelling units: 1 parking space per dwelling unit.

2851 ii. For multifamily dwellings, if more than ten parking spaces
2852 are required, up to 20% of the parking may be designated for
2853 compact cars. See 16.7.11.F Off-Street Parking Standards.

2854 ii. Off-site parking. Required off-street parking may be satisfied at off-
2855 site locations, provided such parking is on other property owned by
2856 the applicant or is under the terms of a contractual agreement that
2857 will ensure such parking remains available for the uses served.
2858 Applicant must present evidence of a parking location and a
2859 contractual agreement;

2860 iii. Joint-use parking. Required off-street parking may also be satisfied
2861 by the joint use of parking space by two or more uses if the
2862 applicant can show that parking demand is nonconflicting and will
2863 reasonably provide adequate parking for the multiple uses without
2864 parking overflowing into undesignated areas. Nonconflicting
2865 periods may consist of daytime as opposed to evening hours of
2866 operation or weekday as opposed to weekends or seasonal variation
2867 in parking demand.

2868 i. Such joint parking areas must be held under ownership of
2869 the applicant or under terms of a contractual agreement that
2870 ensures such parking remains available to all users of the
2871 shared parking spaces;

2872 ii. Determination of parking adequacy will be based on a most
2873 frequent basis, not a "worst case" scenario;

2874 iii. Joint use parking areas must be located within 1,500 feet of
2875 the uses served, but do not need to be located on the same lot
2876 as the uses served;

2877 iv. Ease and safety of pedestrian access to shared parking by the
2878 users served must be demonstrated to the municipal
2879 permitting authority's satisfaction, including any proposed
2880 improvements, such as crosswalks or shuttle service that
2881 may be offered and its requisite loading/unloading areas;

2882 v. Such joint parking areas must not be located in residential
2883 zones of the Town.

2884 iv. In making determinations on off-site or joint-use parking under a
2885 development plan review, the municipal permitting authority with
2886 jurisdiction to review and approve will make a final determination

2887 of the joint-use and/or off-site spaces that constitute an acceptable
2888 combination of spaces to meet the required parking demand.

- 2889 v. Electric car charging stations are allowed in parking lots but must
2890 not interfere with pedestrian movement on sidewalks.

2891 d. Landscaping and Screening.

- 2892 i. For new multi-family, attached single-family, or dwelling units as
2893 part of a mixed-use building or any new residential use that will
2894 create more than three dwelling units on a site, the following
2895 standards apply:

- 2896 i. A landscape plan prepared by a registered landscape
2897 architect is a submission requirement. However, a landscape
2898 plan done by other design professionals may be allowed at
2899 the Planning Board's discretion.

- 2900 ii. A minimum of one street tree must be planted for each 25
2901 feet of street frontage. Trees may be planted in groups or
2902 spaced along the frontage. However, trees must be planted to
2903 ensure survival, using silva cells, bioretention cells or tree
2904 wells. Trees are to be a minimum of 2.5-inch caliper and 12
2905 feet high at the time of planting. Existing large healthy trees
2906 must be preserved if practical and will count towards this
2907 requirement. Trees proposed within the right-of-way must
2908 remain under 20 feet tall at maturity.

- 2909 iii. Surface parking lots designed for five or more cars that will
2910 service multifamily or mixed-use buildings with dwelling
2911 units and which abut a street, an existing single-family use,
2912 or a residential zone, must provide screening in one of the
2913 following ways:

- 2914 1. One tree per 25 feet of street frontage backed by a
2915 fence constructed of a material similar to surrounding
2916 buildings which must screen the parking area from
2917 the street except for necessary vehicular and
2918 pedestrian access. To ensure survival, trees must be
2919 planted using silva cells, bioretention cells or tree
2920 wells. Trees must be at least 2.5-inch caliper and 12
2921 feet high at the time of planting. Existing large
2922 healthy trees must be preserved if practical and will
2923 count towards this requirement. Trees proposed
2924 within the right-of-way must remain under 20 feet
2925 tall at maturity.

- 2926 2. A combination of trees and shrubs including at least
2927 50% evergreen species, all at least six feet high at
2928 time of planting, in a planting bed at least eight feet
2929 wide. Plantings must be sufficient, as determined by
2930 the Planning Board, to screen the parking area from
2931 the street except for necessary vehicular and
2932 pedestrian access. Planting beds may be mulched but
2933 no dyed-mulching material may be used.

- 2934 iv. A minimum of 10% of any surface parking area consisting
2935 of 10 or more spaces must be landscaped with trees and
2936 vegetated islands. This requirement is in addition to the
2937 aforementioned screening and street tree requirements.

- 2938 v. Native trees are preferred and must be drought and salt

2939 tolerant when used along streets. A diversity of tree species
2940 (three to five species per every 12 trees) is required to
2941 provide greater resiliency to threats from introduced insect
2942 pests and diseases.

- 2943 vi. Any required plantings that do not survive must be replaced
2944 within one year. This requirement does not expire and runs
2945 with the land.
- 2946 vii. If 25% of the proposed development will be affordable
2947 dwelling units, the Planning Board may, at its discretion,
2948 modify surface parking lot landscaping and screening
2949 requirements under [iii] and [iv].

2950 e. Buffers.

- 2951 i. Buffers are required between new residential uses and existing
2952 nonresidential uses and must be at least 10 feet wide. A buffer plan
2953 must be prepared in conjunction with the landscape plan as
2954 described in [d].[i].(i) above and consist of:
 - 2955 i. A fence at least six feet high, constructed of material similar
2956 to surrounding buildings, with plantings of trees at least six
2957 feet tall at time of planting and shrubs on the new residential
2958 side of the fence.
 - 2959 ii. Ground cover plantings such as perennials or ornamental
2960 grasses must be used where appropriate.
 - 2961 iii. Plantings must be provided with irrigation to enhance
2962 survival unless they are part of a bioretention cell, rain
2963 garden or tree well.
 - 2964 iv. Any required plantings that do not survive must be replaced
2965 within one year. This requirement does not expire and runs
2966 with the land.
 - 2967 v. If 25% of the proposed development will be affordable
2968 housing dwelling units, the Planning Board may, at its
2969 discretion, modify buffer requirements under [i] and [ii].
- 2970 ii. Buffers are required between new residential uses and existing
2971 single-family uses and must be at least 10 feet wide. A buffer plan
2972 must be prepared in conjunction with the landscape plan as
2973 described in [d].[i].(i) above and consist of:
 - 2974 i. A fence at least six feet high, constructed of material similar
2975 to surrounding buildings, with plantings of trees and shrubs
2976 at least six feet tall on the new residential side of the fence;
2977 or
 - 2978 ii. Plantings of trees at least six feet tall and shrubs, including at
2979 least 50% evergreen species. Such plantings must ensure
2980 adequate buffering and screening is achieved as determined
2981 by the Planning Board.
 - 2982 iii. Ground cover plantings, such as perennials or ornamental
2983 grasses must be used where appropriate.
 - 2984 iv. Plantings must be provided with irrigation to enhance
2985 survival unless they are part of a bioretention cell, rain
2986 garden or tree well.
 - 2987 v. Any required plantings that do not survive must be replaced
2988 within one year. This requirement does not expire and runs
2989 with the land.

2990 vi. If 25% of the proposed development will be affordable
2991 housing dwelling units, the Planning Board may, at its
2992 discretion, modify buffer requirements under [i], [ii] and
2993 [iii].

2994 F. Shoreland Overlay Zone OZ-SL – Commercial – 3 Zone (C-3)

2995 (1). Permitted uses

- 2996 a. Accessory Use & Building
- 2997 b. Home Occupation, Major
- 2998 c. Home Occupation, Minor
- 2999 d. Aquaculture
- 3000 e. Recreation, Public Facility
- 3001 f. Recreation, Public Open Space
- 3002 g. Recreation, Selected Commercial
- 3003 h. Public Utility Facility
- 3004 i. Commercial School
- 3005 j. Public or Private School
- 3006 k. Nursery School
- 3007 l. Hospital
- 3008 m. Elder Care Facility
- 3009 n. Nursing Care Facility, Long-term
- 3010 o. Convalescent Care Facility
- 3011 p. Public Facility
- 3012 q. Religious Use
- 3013 r. Private Assembly

3014 (2). Special exception uses

- 3015 a. Adult Entertainment Establishment, not located within 1,000 feet of an
3016 existing private residence, school or place of worship
- 3017 b. Art Studio or Gallery
- 3018 c. Boatyard
- 3019 d. Business & Professional Offices
- 3020 e. Business Services
- 3021 f. Commercial Fisheries/Maritime Activities, provided only incidental
3022 cleaning and cooking of seafood occur at the site
- 3023 g. Parking Area
- 3024 h. Conference Center
- 3025 i. Construction Services
- 3026 j. Day Care Facility
- 3027 k. Funeral Home
- 3028 l. Retail Sales, Convenience
- 3029 m. Mass Transit Station
- 3030 n. Motel
- 3031 o. Hotel
- 3032 p. Rooming House
- 3033 q. Inn
- 3034 r. Mini Storage

- 3035 s. Personal Service
- 3036 t. Public Assembly Area
- 3037 u. Theater
- 3038 v. Research & Development
- 3039 w. Restaurant
- 3040 x. Retail Sales
- 3041 y. Wholesale Business
- 3042 z. Shops in Pursuit of Trade
- 3043 aa. Transportation Terminal (excluding truck stops)
- 3044 bb. Veterinary Hospital
- 3045 cc. Warehousing & Storage
- 3046 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 3047 G. Resource Protection Overlay Zone OZ-RP – Commercial – 3 Zone (C-3)
- 3048 (1). Permitted Uses
- 3049 a. Recreation, Public Open Space
- 3050 (2). Special Exception Uses
- 3051 a. Accessory Uses & Buildings
- 3052 b. Aquaculture
- 3053 c. Home Occupations, Major
- 3054 d. Home Occupations, Minor
- 3055 e. Public Utility Facility
- 3056 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 3057 OZ-RP
- 3058

3059 **16.4.22 Industrial (IND)**

3060 A. Purpose

3061 The purpose of the Industrial IND Zone is to provide areas within the Town for
3062 manufacturing, processing, treatment and research, to which end all the
3063 performance standards set forth in this title apply.

3064 B. Permitted uses

3065 The following uses are permitted in the IND Zone:

- 3066 (1). Accessory Use & Building
- 3067 (2). Home Occupation, Major
- 3068 (3). Home Occupation, Minor
- 3069 (4). Research & Development
- 3070 (5). Industry, Heavy

3071 C. Special exception uses

3072 The following uses are permitted as special exception uses in the IND Zone:

- 3073 (1). Public Facility
- 3074 (2). Public Utility Facility

3075 D. Standards

3076 (1). The design and performance standards of § 16.5, 16.7 and 16.8 must be met.

3077 (2). The following space standards apply:

- 3078 a. Minimum area of lot: none.
- 3079 b. Minimum street frontage: none.
- 3080 c. Minimum front yard: none.
- 3081 d. Minimum rear and side yards: 30 feet.

3082 (NOTE: Except as may be required by the buffer provisions of this title, and
3083 except where the side and/or rear yards abut a residential zone or use; in
3084 which case a minimum of 50 feet or 50% of the building or outdoor stored
3085 material height, whichever is greater, is required.)

- 3086 e. Maximum building height: none.
- 3087 f. Maximum building coverage: none.
- 3088 g. Minimum setback from water body and wetland water-dependent uses: zero
3089 feet.
- 3090 h. Minimum setback from streams, water bodies and wetlands: in accordance
3091 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

3092 E. Shoreland Overlay Zone OZ-SL – Industrial Zone (IND)

3093 (1). Permitted uses

- 3094 a. Accessory Use & Building
- 3095 b. Home Occupation, Major
- 3096 c. Home Occupation, Minor
- 3097 d. Research & Development

3098 (2). Special exception uses

- 3099 a. Industry, Heavy
- 3100 b. Public Facility
- 3101 c. Public Utility Facility

3102 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

3103 F. Resource Protection Overlay Zone OZ-RP – Industrial Zone (IND)

3104 (1). Permitted Uses

3105 a. Research & Development

3106 (2). Special Exception Uses

3107 a. Accessory Uses & Buildings

3108 b. Home Occupations, Major

3109 c. Home Occupations, Minor

3110 d. Public Facility

3111 e. Public Utility Facility

3112 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
3113 OZ-RP

3114 NOTE: It is recognized that federal ownership of this zone at the time of
3115 enactment of the ordinance codified in this title precludes enforcement of any
3116 local regulations.

3117

3118 **16.4.23 Mixed-Use (MU)**

3119 A. Purpose

3120 To provide opportunities for a mix of office, service, and limited residential and
3121 retail uses, to alter the pattern of commercial activity on Route 1, to serve Kittery's
3122 needs, and to minimize traffic congestion. A mix of uses on a site is desired and, in
3123 some cases, required; a continuation of strip development is not encouraged in this
3124 zone. The Mixed-Use Zone is intended to accommodate growth.

3125 The purpose of large lot sizes, open space standards, and frontage requirements is
3126 to limit the number of access points along U.S. Route 1, to encourage the
3127 development of service roads which may serve several developments, and to create
3128 development that will retain the predominant rural character of the zone. Other
3129 objectives are to encourage an orderly and safe traffic flow along U.S. Route 1,
3130 pedestrian safety, and an attractive site design enhanced by landscaping, open
3131 space, and restrictions on the locations of parking. These development goals are
3132 supported by the principles and objectives identified in the Town's Design
3133 Handbook, Kittery Maine.

3134 B. Permitted uses

- 3135 (1). Accessory Dwelling Units
3136 (2). Dwelling, Single-Family (limited to lots of record as of April 1, 2004)
3137 (3). Dwelling, Multi-Family (limited to the upper floors of mixed-use building that is
3138 served by public sewerage)
3139 (4). Convalescent Care Facility
3140 (5). Nursing Care Facility, Long-term
3141 (6). Residential Care Facility
3142 (7). Accessory Use & Building
3143 (8). Home Occupations, Major
3144 (9). Home Occupations, Minor
3145 (10). Inn
3146 (11). Day Care Facility
3147 (12). Hospital
3148 (13). Private Assembly (which is not used for residential or overnight occupancy)
3149 (14). Public Facility
3150 (15). Public or Private School (which is not used for residential or overnight occupancy)
3151 (16). Recreation, Commercial Indoor
3152 (17). Recreation, Commercial Outdoor
3153 (18). Recreation, Public Open Space
3154 (19). Agriculture
3155 (20). Commercial School (which is not used for residential or overnight occupancy)
3156 (21). Timber Harvesting
3157 (22). Veterinary Hospital
3158 (23). Art Studio or Gallery
3159 (24). Business & Professional Offices
3160 (25). Funeral Home
3161 (26). Personal Services
3162 (27). Repair Service

- 3163 (28). Research & Development
- 3164 (29). Restaurant
- 3165 (30). Retail Sales (a single use not to exceed 50,000 square feet in gross floor area)
- 3166 (31). Retail Sales, Building Materials & Garden Supply
- 3167 (32). Retail Sales, Convenience
- 3168 (33). Specialty Food and/or Beverage Facility
- 3169 (34). Theater
- 3170 (35). Boat Yard
- 3171 (36). Mass Transit Station
- 3172 (37). Industry, light (less than or equal to 20,000 square feet in gross floor area).
- 3173 (38). Parking Area

C. Special exception uses

- 3175 (1). Aged-Restricted Housing
- 3176 (2). Campground
- 3177 (3). Recreational Vehicle Park
- 3178 (4). Construction Services
- 3179 (5). Commercial Kennel
- 3180 (6). Commercial Greenhouses
- 3181 (7). Theater, Drive-in
- 3182 (8). Gas Service Station
- 3183 (9).
- 3184 (10). Industry, Light (greater than 20,000 square feet in gross floor area)
- 3185 (11). Mechanical Services
- 3186 (12). Motel
- 3187 (13). Hotel
- 3188 (14). New Motor Vehicle Sales
- 3189 (15). Public Utility Facilities
- 3190 (16). Repair Garage
- 3191 (17). Retail Sales (a single use greater than 50,000 square feet in gross floor area and
- 3192 less than 150,000 square feet in gross floor area)
- 3193 (18). Shop in Pursuit of Trade
- 3194 (19). Transportation Terminal
- 3195 (20). Warehousing & Storage
- 3196 (21). Wholesale Business

D. Standards

- 3198 (1). All development and the use of land in the MU Zone must meet the following
- 3199 standards. Kittery's Design Handbook illustrates how these standards can be met.
- 3200 In addition, the design and performance standards of § 16.5, 16.7 and § 16.8 must
- 3201 be met.
- 3202 (2). Minimum dimensional standards. The following apply:
- 3203 a. Minimum lot size:
- 3204 i. Lots with frontage on Route 1: 200,000 square feet.
- 3205 ii. Lots without frontage on Route 1: 80,000 square feet.
- 3206 b. Minimum street frontage on road with access along U.S. Route 1, Haley
- 3207 Road, Lewis Road, or Cutts Road: 250 feet.

- 3208 i. Other streets or approved ways: 150 feet.
- 3209 c. Minimum front yard: 30 feet.
- 3210 d. Minimum rear and side yards: 30 feet.
- 3211 e. Maximum building height: 40 feet.
- 3212 f. Maximum height above grade of building-mounted signs: 40 feet.
- 3213 g. Minimum setback from water body and wetland water dependent uses: zero
- 3214 feet.
- 3215 h. Minimum setback from streams, water bodies and wetlands: in accordance
- 3216 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.
- 3217 i. Minimum land area per unit for eldercare facilities that are connected to the
- 3218 public sewerage system:
- 3219 i. Dwelling unit with two or more bedrooms: 5,000 square feet.
- 3220 ii. Dwelling unit with less than two bedrooms: 4,000 square feet.
- 3221 iii. Residential care unit: 2,500 square feet.
- 3222 j. Minimum land area per bed for nursing care and convalescent care facilities
- 3223 that are connected to the public sewerage system: 2,000 square feet.
- 3224 k. Buffer to I-95 right-of-way: 40 feet.
- 3225 l. Buffer to neighboring lot with an existing residence within 100 feet of the
- 3226 lot line: 40 feet.
- 3227 m. Vegetated buffer to be maintained between the MU and R-RL Zones: 40
- 3228 feet.
- 3229 NOTE 1: For single-family dwellings, one dwelling unit is allowed for each
- 3230 200,000 square feet of land area. A lot of record having a land area of more
- 3231 than 200,000 square feet that was improved with a single-family dwelling
- 3232 as of April 1, 2004, may be divided into two lots with a single-family
- 3233 dwelling on each lot provided that each of the lots contains at least 40,000
- 3234 square feet of land area and meets the other dimensional standards of the
- 3235 zone. § 16.4.10.D(1) and (2) as set forth in the Residential - Rural Zone
- 3236 apply and no further subdivision is allowed.
- 3237 NOTE 2: For dwelling units that are part of a mixed-use building and are
- 3238 connected to the public sewerage system, one dwelling unit is allowed for
- 3239 each 10,000 square feet of buildable land area. Within the Resource
- 3240 Protection and Shoreland Overlay Zones, one dwelling unit is allowed for
- 3241 each 40,000 square feet of land area within these zones. If the parking for
- 3242 the residential units is encompassed within the building, the minimum
- 3243 required buildable land area per dwelling unit is reduced to 7,500 square
- 3244 feet, except in the Resource Protection and Shoreland Overlay Zones where
- 3245 the area per dwelling unit remains 40,000 square feet.
- 3246 NOTE 3: For aged-restricted dwelling units that are connected to the public
- 3247 sewerage system, one dwelling unit is allowed for each 15,000 square feet
- 3248 of buildable land area. Within the Resource Protection and Shoreland
- 3249 Overlay Zones, one dwelling unit is allowed for each 40,000 square feet of
- 3250 land within these zones. If the parking for the aged-restricted units is
- 3251 encompassed within the building, the minimum required buildable land area
- 3252 per dwelling unit is reduced to 10,000 square feet, except in the Resource
- 3253 Protection and Shoreland Overlay Zones where the area per dwelling unit
- 3254 remains 40,000 square feet.

3255 (3). Retail use limitation

3256 Retail use, including parking areas and other supporting unvegetated areas for

3257 retail use, is limited to not more than 30% of the developable area of any lot or

3258 portion of a lot within the Mixed-Use Zone.

3259 (4). Mixed-use requirement

3260 The Mixed-Use Zone is intended for the creation of an area in the Town that
3261 has a mix of uses and in which no single type of use predominates. To this end,
3262 larger scale projects must incorporate a mix of principal uses into the
3263 development. Any new development that creates more than 20,000 square feet
3264 of gross floor area must include at least two principal uses as set forth in the list
3265 of permitted uses and special exceptions. To fulfill this requirement, the smaller
3266 use or combination of smaller uses must contain at least 10% of the gross floor
3267 area. The combination of retail uses that are permitted uses and one larger retail
3268 use allowed as a special exception does not fulfill this requirement. This
3269 provision does not apply to the development of a single lot of record as of April
3270 1, 2004, that has a lot area of less than 200,000 square feet.

3271 (5). Location and screening of parking areas

3272 All new parking areas must be located at the side of, and/or to the rear of,
3273 principal buildings. Where unique circumstances exist and it is demonstrated to
3274 the Planning Board that prohibition of parking in front of the principal building
3275 is not practicable, with the Board's approval, 10 or fewer parking spaces may
3276 be located closer to the front lot line than a principal building. All new or
3277 altered parking must be visually screened from U.S. Route 1, Lewis Road,
3278 Cutts Road, and Haley Road by extensive landscaping, earthen berms, and/or
3279 fencing (see Design Handbook for examples of acceptable screening).

3280 (6). Building design standards

3281 Kittery's characteristic buildings reflect its historic seacoast past. The primary
3282 architectural styles are New England Colonial (such as Cape Cod and saltbox),
3283 Georgian, Federal, and Classical Revival. New buildings should be compatible
3284 with Kittery's characteristic styles in form, scale, material, and color. In
3285 general, buildings should be oriented to the street with the front of the building
3286 facing the street. The front or street facade must be designed as the front of the
3287 building. The front elevation must contain one or more of the following
3288 elements: (1) a front door although other provisions for access to the building
3289 may be provided, (2) windows, or (3) display cases (see Design Handbook for
3290 examples of acceptable materials and designs). Though strict imitation is not
3291 required, design techniques can be used to maintain compatibility with
3292 characteristic styles and still leave enough flexibility for architectural variety.
3293 To achieve this purpose, the following design standards apply to new and
3294 remodeled building projects:

- 3295 a. Exterior building materials and details. Building materials and details
3296 strongly define a project's architectural style and overall character (see
3297 Design Handbook for examples of acceptable materials, building scale, and
3298 designs). "One-sided" schemes are prohibited; similar materials and details
3299 must be used on all sides of a building to achieve continuity and
3300 completeness of design.
- 3301 i. Predominant exterior building materials. Predominant exterior
3302 building materials must be of good quality and characteristic of
3303 Kittery, such as horizontal wood board siding, vertical wood boards,
3304 wood shakes, brick, stone or simulated stone, glass and vinyl, or
3305 metal clapboard. Stucco, adobe, sheet metal, standard concrete
3306 block, tilt-up concrete panels, plywood or particle board are
3307 prohibited as the primary materials.
- 3308 ii. Blank walls. A wall may not extend for a length of more than 50
3309 linear feet without an architectural feature such as a dormer, pilaster,

- 3310 cornice, corner, window, porch, or visually compatible door to break
3311 up the large mass of a featureless wall (see Design Handbook for
3312 examples of the appropriate treatment of walls). As an exception,
3313 walls with a clapboard facade may extend for a length of up to 100
3314 feet without such an architectural feature.
- 3315 iii. Light industrial and boatyard uses. Such uses must comply with the
3316 above standards only along the front face and extending back 100
3317 feet along the side walls.
- 3318 b. Roofs. Roofs must meet the following standards:
- 3319 i. Form. A building's prominent roofs must be pitched a minimum of
3320 4:12 unless demonstrated to the Planning Board's satisfaction that
3321 this is not practicable. Acceptable roof styles are gabled, gambrel,
3322 and hipped roofs. Flat roofs, shed roofs, and roof facades (such as
3323 "stuck on" mansards) are not acceptable as primary roof forms.
- 3324 ii. Color. Roof colors must be muted (see Design Handbook for
3325 examples).
- 3326 iii. Rooftop mechanical and electrical equipment. Rooftops must be free
3327 of clutter. The roof design must screen or camouflage rooftop
3328 protrusions to minimize the visual impact of air conditioning units,
3329 air handler units, exhaust vents, transformer boxes, and the like (see
3330 Design Handbook for examples of appropriate treatments). Interior-
3331 mounted equipment is encouraged. Whenever possible, utility
3332 equipment areas must be placed in an obscure location and screened
3333 from view.
- 3334 iv. Loading docks and overhead doors. Loading docks and overhead
3335 doors must be located on the side or rear of the building and be
3336 screened from view from public streets.
- 3337 (7). Landscaping standards
- 3338 To achieve attractive and environmentally sound site design, and appropriate
3339 screening of parking areas, in addition to the landscaping standards contained
3340 in § 16.7 and 16.8, the following landscaping requirements apply to new and
3341 modified existing developments:
- 3342 a. Landscape planter strip. A vegetated landscape planter strip 30 feet in depth
3343 (as measured from the edge of the property line) must be provided along the
3344 length of all developed portions of a parcel that are adjacent to a street
3345 right-of-way. The planter strip must include the following landscape
3346 elements:
- 3347 i. Ground cover. The entire landscape planter strip must be vegetated
3348 except for approved driveways, walkways, bikeways, and screened
3349 utility equipment.
- 3350 ii. Streetside trees. A minimum of one street tree must be planted for
3351 each 25 feet of street frontage. The trees may be spaced along the
3352 frontage or grouped or clustered to enhance the visual quality of the
3353 site (see Design Handbook for examples). The trees must be a
3354 minimum 2.5 inch caliper, and be at least 12 feet high at the time of
3355 planting. The species should be selected from the list of approved
3356 street trees in the Design Handbook. Existing large healthy trees
3357 must be preserved if practical and will count toward this
3358 requirement.
- 3359 iii. Planter strip. Shrubs and flowering perennials must be planted at a
3360 minimum of 10 plants per 40 linear feet of street frontage unless

3361 existing woodlands are being retained or such planting is
3362 inconsistent with the retention of rural landscape features. The plant
3363 material should be selected from the list of approved materials in the
3364 Design Handbook. The plants must be placed within the planter
3365 strip to enhance the visual character of the site and augment natural
3366 features and vegetation (see Design Handbook for examples of
3367 appropriate treatments).

3368 iv. Special situations.

- 3369 1. Expansions of less than 500 square feet to existing uses are
3370 exempt from the landscaping standard of this subsection.
- 3371 2. Depth of landscape planter strip. In instances where the
3372 required average depth of the landscape planter strip is
3373 legally utilized, in accordance with previous permits or
3374 approval, for parking, display, storage, building, or
3375 necessary vehicle circulation, the depth may be narrowed by
3376 the Planning Board to the minimum extent necessary to
3377 achieve the objective of the proposed project, provided that
3378 the required shrubs and perennials are planted along the
3379 street frontage to soften the appearance of the development
3380 from the public street. If providing the required landscape
3381 planter strip along with other required landscaping and
3382 required vegetated areas in and around wetlands would cause
3383 the project to exceed the required open space standards, the
3384 depth of the landscape planter strip and the front yard may
3385 be reduced by the Planning Board so that the open space
3386 standards are not exceeded, but in no case to less than 20 feet
3387 for this reason.
- 3388 3. Additions and changes in use. For additions to existing
3389 buildings and changes of residential structures to a
3390 nonresidential use, one streetside tree (see list of
3391 recommended street trees in Design Handbook) is required
3392 for every 500 square feet of additional gross floor area added
3393 or converted to nonresidential use. In instances where
3394 parking, display area, storage, building or necessary vehicle
3395 circulation exists at the time of enactment of this section, the
3396 required trees may be clustered and/or relocated away from
3397 the road as is necessary to be practicable. The preservation
3398 of existing large trees is encouraged; therefore, the Planning
3399 Board may permit the preservation of existing healthy, large,
3400 mature trees within the landscape planter strip or other
3401 developed areas of the site to be substituted for the planting
3402 of new trees.
- 3403 4. Residences. Residential additions to existing single- and
3404 two-family dwellings and proposed single- and duplex-
3405 family dwellings are exempt from the landscaping standards
3406 of this subsection.

- 3407 b. Buffer area. Where buffering is required, it must provide a year-round
3408 visual screen to minimize adverse impacts and screen new development
3409 (see Design Guidelines for examples of appropriate buffers for various
3410 situations), and may consist of fencing, evergreens, retention of existing
3411 vegetation, berms, rocks, boulders, mounds or combinations thereof. Within
3412 three growing seasons, the buffer must provide a year-round screen at least
3413 eight feet in height or such lower height as determined by the Planning

- 3414 Board to be appropriate for the situation. Buffer areas must be maintained
3415 and kept free of all outdoor storage, debris, and rubbish. The width of the
3416 buffer area may be reduced by the Planning Board if the function of the
3417 buffer is still fulfilled.
- 3418 c. Rural landscape features. Rural landscape features such as stonewalls,
3419 berms, and other agricultural structures, and tree lines or fields must be
3420 retained to the maximum extent practicable.
- 3421 d. Lighting. Outdoor lighting must provide the minimum illumination needed
3422 for the safe use of the site while enhancing the nighttime visual character of
3423 the site. Lighting must conform to the standards for outdoor lighting in §
3424 16.7.11.H.
- 3425 e. Outdoor service and storage areas. Service and storage areas must be
3426 located to the side or rear of the building. Facilities for waste storage such
3427 as dumpsters must be located within an enclosure and be visually buffered
3428 by fencing, landscaping, and/or other treatments (see Design Handbook for
3429 examples of appropriate buffering).
- 3430 (8). Traffic and circulation standards
- 3431 Sidewalks and roadways must be provided within the site to internally join
3432 abutting properties that are determined by the Planning Board to be compatible.
3433 In addition, safe pedestrian route(s) must be provided to allow pedestrians to
3434 move within the site and between the principal customer entrance and the front
3435 lot line where a sidewalk exists or will be provided or where the Planning
3436 Board determines that such a route is needed for adequate pedestrian safety and
3437 movement.
- 3438 (9). Open space standards
- 3439 Open space must be provided as a percentage of the total area of the lot,
3440 including freshwater wetlands, water bodies, streams, and setbacks. Thirty-five
3441 percent of each lot must be designated as open space. Required open space
3442 must be shown on the plan with a note dedicating it as "open space."
- 3443 a. An objective of the open space standard is to encourage the integration of
3444 open space throughout the entire development and with the open space on
3445 adjoining properties in order to alter the pattern of commercial activity
3446 along Route 1. To this end, a minimum of 25% of the required open space
3447 must be located in the front 50% of the lot area closest to U.S. Route 1, or if
3448 not fronting Route 1, closest to the public street used to enter the lot. The
3449 Planning Board may modify this requirement when it is demonstrated to the
3450 Board's satisfaction that the objective is met to the greatest practicable
3451 extent.
- 3452 b. The open space must be located to create an attractive environment on the
3453 site, minimize environmental impacts, protect significant natural features or
3454 resources on the site, and maintain wildlife habitat. Where possible, the
3455 open space must be located to allow the creation of continuous open space
3456 networks in conjunction with existing or potential open space on adjacent
3457 properties.
- 3458 c. Special situations.
- 3459 i. Cases where integrating open space would require exceeding the
3460 open space standards. In cases where the topography, wetlands, and
3461 existing development on the lot dictates that more than 75% of the
3462 required open space be located outside the front portion of the lot, a
3463 percentage of the open space normally required in the front portion
3464 of the lot may be shifted to the rear portion of the lot in order to

- 3465 achieve the required amount of vegetated open space and not reduce
 3466 the allowable developable area on the lot, provided minimum
 3467 landscaping standards are satisfied.
- 3468 ii. Small lots. The required amount of designated open space is reduced
 3469 to 20% of each lot that is less than 100,000 square feet in size.
- 3470 (10). Conditions for approving special exception uses in the Mixed-Use Zone.
- 3471 a. All special exception uses in the Mixed-Use Zone must be visually
 3472 harmonious with the neighborhood and natural landscape by the use of
 3473 adequate screening and/or architectural design as follows:
- 3474 i. Screening. Must be screened and buffered through landscaping,
 3475 fencing, planted berms, existing vegetation, and separations of
 3476 spaces to shield neighbors from any adverse external effects of the
 3477 facility and to integrate the facility into the landscape. Plantings
 3478 must be of sufficient maturity to achieve the desired screening effect
 3479 within three years.
- 3480 ii. Architectural compatibility. Must be in architectural harmony with
 3481 the area in which it is located to the maximum extent practicable
 3482 through the appropriate use of facade materials, roof style, scale,
 3483 bulk, and architectural style and details.
- 3484 iii. Location. Facilities located above ground must be sited so as to
 3485 eliminate adverse impacts associated with the facility to the
 3486 maximum extent practicable while still fulfilling the basic purpose
 3487 of the facility.
- 3488 b. Retail Sales, a single retail use greater than 50,000 square feet in gross floor
 3489 area and less than 150,000 square feet in gross floor area:
- 3490 i. Timing. No more than one retail use with a gross floor area greater
 3491 than 50,000 square feet and less than 150,000 square feet may be
 3492 approved in any three-year period.
- 3493 ii. Size. A single retail use with a gross floor area greater than 150,000
 3494 square feet is not permitted.
- 3495 c. Gasoline Service Stations.
- 3496 i. Visual screening. A year-round buffer area must be provided
 3497 between the gasoline service station and neighboring uses in
 3498 accordance with the landscaping standards of the mixed-use zone
 3499 regulations.
- 3500 ii. Separation distance. A gasoline service station may not be located
 3501 within 2,000 feet of another service station.
- 3502 iii. Minimum distance, pump to existing structures. A fuel pump may
 3503 not be located closer than 150 feet to an existing occupied structure
 3504 located off the site of the gasoline service station.
- 3505 d. Theater, Drive-in.
- 3506 i. To protect the tranquility and quality of life of existing residential
 3507 uses in the vicinity of the proposed drive-in theater, the hours of
 3508 operation must be limited to the degree necessary and/or adequate
 3509 visual and sound buffers must be established.
- 3510 e. Campground/Recreational Vehicle Park.
- 3511 i. The standards in § 16.5.17 must be satisfied.
- 3512 ii. Occupation of any site by single user for a period exceeding 96
 3513 hours is prohibited.
- 3514 iii. Quiet hours must be enforced between 10:00 p.m. and 7:00 a.m.

- 3515 f. Motel or Hotel.
- 3516 i. Multiple-story structures are encouraged.
- 3517 ii. Wherever practicable, building orientation should not be parallel to
- 3518 U.S. Route 1, but must take maximum advantage of the depth of the
- 3519 mixed-use zone.
- 3520 iii. More than three separate motels and/or hotels may not be permitted
- 3521 in the mixed-use zone.
- 3522 g. Public Utility Facility.
- 3523 i. Public health and safety. Must not endanger the public health or
- 3524 safety.
- 3525 ii. Protect property values. Must not unreasonably reduce the value of
- 3526 abutting property without just compensation.
- 3527 iii. Prevent nuisances. Must prevent the emission of nuisances, such as
- 3528 but not limited to noise, odors, dust, gas, fumes, smoke, light,
- 3529 vibrations, and electrical interference, beyond the boundaries of the
- 3530 site to the maximum extent practicable.
- 3531 h. Age-Restricted Housing.
- 3532 i. Location suitability. The location of the site must allow it to be
- 3533 developed so that the residents of the project will be able to function
- 3534 as part of the community and have pedestrian access to services and
- 3535 facilities within the area.
- 3536 ii. Mixed use. If an aged-restricted housing component is proposed as
- 3537 part of the project, it must be an essential element of the mixed-use
- 3538 project and be designed to be an integrated part of the overall
- 3539 development.
- 3540 i. Commercial Greenhouses
- 3541 i. The greenhouses and any related outdoor storage or service areas or
- 3542 structures must be visually buffered from Route 1 and adjacent
- 3543 properties.
- 3544 ii. If the greenhouses will be internally lit between 9:00 p.m. and 6:00
- 3545 a.m., the internal lighting may not be visible from adjacent
- 3546 properties including public streets.
- 3547 iii. The noise resulting from the operation of the facility as measured at
- 3548 the property line must be comparable with other uses in the MU
- 3549 Zone during the period between 9:00 p.m. and 6:00 a.m.
- 3550 iv. The greenhouses and related storage and service areas may not be
- 3551 located within 200 feet of any legally existing residential use, inn,
- 3552 motel or hotel, hospital, or nursing home/convalescent center on
- 3553 another lot.
- 3554 j. Industry, light (greater than 20,000 square feet in gross floor area),
- 3555 Transportation Terminal, Warehousing & Storage, or Wholesale Business.
- 3556 i. The building and any related outdoor storage or service areas or
- 3557 structures must be visually buffered from Route 1 and adjacent
- 3558 properties by other uses allowed in the zone and/or by a landscaped
- 3559 buffer strip.
- 3560 ii. If the area between this use and Route 1 is not developed for another
- 3561 permitted use or special exception, it must be maintained as a
- 3562 naturally vegetated buffer in addition to the provision of a landscape
- 3563 planter strip.
- 3564 iii. The noise resulting from the operation of the facility as measured at

3565 the property line must be comparable with other uses in the MU
3566 Zone during the period between 9:00 p.m. and 6:00 a.m.
3567 iv. The use and related storage and service areas may not be located
3568 within 200 feet for any legally existing residential use, inn, motel or
3569 hotel, hospital, or nursing home/convalescent center on another lot.

3570 E. Shoreland Overlay Zone OZ-SL – Mixed-Use Zone (MU)

3571 [Amended 9-26-2011 by Ord. No. 11-15]

3572 (1). Permitted uses

- 3573 a. Agriculture
- 3574 b. Art Studio or Gallery
- 3575 c. Dwellings, limited to the following:
 - 3576 i. Dwellings on lots of record as of April 1, 2004 if located farther
3577 than 100 feet from the normal high-water line of any water bodies,
3578 or the upland edge of a wetland.
 - 3579 ii. Dwelling units on the upper floors of a mixed-use building is served
3580 by public sewerage if located farther than 100 feet from the normal
3581 high-water line of any water bodies, or the upland edge of a
3582 wetland.
- 3583 d. Religious Use
- 3584 e. Home Occupation, Major
- 3585 f. Home Occupation, Minor
- 3586 g. Private Assembly (which is not used for residential or overnight occupancy)
- 3587 h. Public Facility
- 3588 i. Recreation, Public Open Space
- 3589 j. Research & Development
- 3590 k. Timber Harvesting

3591 (2). Special exception uses

- 3592 l. Accessory Use & Building
- 3593 m. Boatyard
- 3594 n. Business & Professional Offices
- 3595 o. Commercial Kennel
- 3596 p. Parking Area
- 3597 q. Construction Services
- 3598 r. Convalescent Care Facility
- 3599 s. Nursing Care Facility, long-term
- 3600 t. Day Care Facility
- 3601 u. Residential Care Facility
- 3602 v. Funeral Home
- 3603 w. Retail Sales, Convenience
- 3604 x. Retail Sales (a single use not to exceed 50,000 square feet in gross floor
3605 area)
- 3606 y. Hospital
- 3607 z. Inn
- 3608 aa. Commercial School (which is not used for residential or overnight
3609 occupancy)
- 3610 bb. Public or Private School (which is not used for residential or overnight

- 3611 occupancy)
- 3612 cc. Mass Transit Station
- 3613 dd. Motel
- 3614 ee. Hotel
- 3615 ff. Personal Services
- 3616 gg. Public Utility Facility
- 3617 hh. Repair Services
- 3618 ii. Research & Development
- 3619 jj. Restaurant
- 3620 kk. Recreation, Selected Commercial
- 3621 ll. Shop in Pursuit of Trade
- 3622 mm. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord.
- 3623 No. 13-02]
- 3624 nn. Theater
- 3625 oo. Transportation Terminal
- 3626 pp. Veterinary Hospital
- 3627 qq. Warehousing & Storage
- 3628 rr. Wholesale Business
- 3629 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 3630 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use Zone (MU).
- 3631 (1). Permitted Uses
- 3632 a. Recreation, Public Open Space
- 3633 b. Timber Harvesting
- 3634 (2). Special Exception Uses
- 3635 a. Accessory Uses & Buildings
- 3636 b. Agriculture
- 3637 c. Home Occupations, Major
- 3638 d. Home Occupations, Minor
- 3639 e. Public Utility Facility
- 3640 f. Dwelling, Single-Family (on lots of record as of April 1, 2004)
- 3641 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 3642 OZ-RP
- 3643

3644 **16.4.24 Mixed-Use – Badger Island (MU-BI)**

3645 A. Purpose

3646 The purpose of the Mixed-Use – Badgers Island MU-BI Zone is to provide
3647 opportunities for a wide variety of uses, including marine-related activities, offices,
3648 restaurants, shops, residences and services, to take advantage of a unique island
3649 setting located within walking distance to both downtown Portsmouth and
3650 downtown Kittery, in which water and sewer services are available to support
3651 development.

3652 This zone is further intended to develop standards appropriate for existing small lot
3653 sizes and street frontages to encourage investment in buildings that will contribute
3654 to the revitalization of the greater Kittery Foreside area while balancing business
3655 and residential interests to keep property values up and maintain an urban
3656 residential quality of life in the zone.

3657 B. Permitted uses.

3658 The following uses are permitted in the MU-BI Zone:

- 3659 (1). Accessory Dwelling Units
3660 (2). Dwellings, Attached Single-Family
3661 (3). Dwellings, Manufactured Housing
3662 (4). Dwelling, Multi-Family
3663 (5). Dwellings, Single-Family
3664 (6). Accessory Use & Building
3665 (7). Home Occupations, Major
3666 (8). Home Occupations, Minor
3667 (9). Inn
3668 (10). Day Care Facility
3669 (11). Private Assembly
3670 (12). Public Facility
3671 (13). Public or Private School
3672 (14). Religious Use
3673 (15). Recreation, Public Open Space
3674 (16). Aquaculture
3675 (17). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
3676 cooking of seafood occur at the site)
3677 (18). Commercial School
3678 (19). Art Studio or Gallery
3679 (20). Business & Professional Offices
3680 (21). Conference Center
3681 (22). Personal Service
3682 (23). Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but
3683 excluding restaurants where ordering and/or pickup of food may take place from a
3684 motorized vehicle)
3685 (24). Retail Sales (excluding those with any outdoor sales and/or storage)
3686 (25). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
3687 (26). Boat Yard
3688 (27). Marina

3689 (28). Mass Transit Station

3690 (29). Mechanical Services

3691 C. Special exception uses.

3692 The following uses are permitted as special exception uses in the MU-BI Zone:

3693 (1). Recreation, Commercial Indoor

3694 (2). Recreation, Commercial Outdoor

3695 (3). Public Assembly Area

3696 (4). Theater

3697 (5). Public Utility Facility

3698 D. Standards

3699 (1). The following space standards apply

3700 a. Minimum land area per dwelling unit: 3,000 square feet.

3701 i. For each of the first two dwelling units and thereafter: 6,000 square
3702 feet.

3703 b. Minimum lot size: 6,000 square feet.

3704 c. Minimum street frontage: 50 feet.

3705 d. Minimum front yard: five feet.

3706 e. Minimum rear and side yards: 10 feet.

3707 f. Maximum building height: 40 feet.

3708 g. Minimum setback from:

3709 i. Water body and wetland water-dependent uses: zero feet.

3710 ii. All other uses (including buildings and parking): 75 feet unless
3711 modified, according to the terms of Subsection E of this section.

3712 h. Minimum open space on the site: 40%. (NOTE: The Planning Board may
3713 reduce the required open space to 30% where it is clearly demonstrated that
3714 no practicable alternative exists to accommodate a water-dependent use.)

3715 (2). The design and performance standards of § 16.5, 16.7 and 16.8 must be met, except
3716 where specifically altered in this subsection.

3717 (3). Appropriate waterfront activity incentives

3718 To encourage objectives of the Comprehensive Plan to: 1) provide public
3719 access to the waterfront; 2) retain and expand commercial water-dependent
3720 uses; and 3) take extraordinary steps to preserve the environmental quality of
3721 the shoreline and tidal waters, the required setback from water bodies and
3722 wetlands may be reduced to 25 feet where the Planning Board finds a
3723 development plan significantly contributes to accomplishment of the above
3724 objectives by satisfactorily achieving one or more of the following:

3725 (4). Public access

3726 Grants an easement to the Town, or other acceptable party, providing public
3727 access to the waterfront at no charge to the general public via a developed
3728 accessible pedestrian route with appropriate signage or includes an outdoor
3729 deck or patio for customer seating at a restaurant open to the general public; or

3730 (5). Retain/expand commercial water-dependent uses

3731 Provides for inclusion of commercial water-dependent use(s) on the property
3732 for the duration of the portion of the project that encroaches closer than the
3733 normal minimum setback from water bodies and wetlands. Provision of fewer
3734 than six boat slips for leisure/recreational boating do not constitute a
3735 commercial water-dependent use for the purposes of this section; or

- 3736 (6). Preserve the environmental quality of coastal resources. Protect existing wildlife
3737 habitat, conserve shore cover and ensure the quality of stormwater runoff by
3738 satisfying all of the following standards:
- 3739 a. Retain and protect existing significant wildlife habitat that provides food,
3740 cover and/or nesting for migratory song birds and wading birds;
 - 3741 b. In order to conserve shore cover, contiguous areas of shrubberies of varying
3742 height, such as dwarf species of barberry, serviceberry, holly, crabapple,
3743 dogwood, cotoneaster, euonymus, firethorn and/or rosa rugosa, as well as
3744 erosion-resistant ground cover plantings must be retained and planted, and
3745 existing trees retained, wherever practicable in the setback;
 - 3746 c. Implementation of a stormwater management plan endorsed by the York
3747 County Soil and Water Conservation District (SCS), or the Town's
3748 engineering peer review consultant, that treats stormwater with appropriate
3749 BMPs and removes pollutants in accordance with the most-current edition
3750 of the Maine Department of Environmental Protection BMP Manual,
3751 Stormwater Management for Maine. Pollutants sought to be removed
3752 include suspended solids, nitrates, hydrocarbons and heavy metals. Such
3753 special treatment of the first flush of runoff may include detention,
3754 infiltration, filtering and trapping of pollutants. [Amended 9-26-2011 by
3755 Ord. No. 11-15]
- 3756 (7). Special parking standards
- 3757 a. Revised off-street parking standards
3758 Off-street parking must be provided in accordance with § 16.7.11.F unless
3759 modified below for the following uses:
 - 3760 i. Dwellings: 1 1/2 parking space for each dwelling unit;
 - 3761 ii. Retail stores: one parking space for each 400 square feet of gross
3762 floor area;
 - 3763 iii. Drive-in restaurants, snack bars and fast-food outlets, but excluding
3764 restaurants where ordering and/or pickup of food may take place
3765 from a motorized vehicle: one parking space for every three seats,
3766 but in no case less than four spaces;
 - 3767 iv. Conference centers: one parking space for every 60 square feet in
3768 the largest assembly or meeting room.
 - 3769 b. Joint-use parking
3770 Required off-street parking may be satisfied by the joint use of parking
3771 spaces by two or more uses if the applicant can show that parking demand
3772 is nonconflicting and will reasonably provide adequate parking for multiple
3773 uses without parking overflowing into undesignated areas. Nonconflicting
3774 periods may consist of daytime as opposed to evening hours of operation or
3775 weekday as opposed to weekend hours of operation or seasonal variation in
3776 parking demand. In making this determination under development plan
3777 review, the Planning Board must consider the following factors:
 - 3778 i. Such joint parking areas must be held under ownership or under
3779 terms of a contractual agreement that ensures such parking remains
3780 available to all users of the shared parking spaces;
 - 3781 ii. Analysis is based on a most frequent basis not a "worst case"
3782 scenario;
 - 3783 iii. Joint-use parking areas must be located within reasonable distance
3784 to the uses served, but do not need to be located on the same parcel
3785 as the uses served;

- 3786 iv. Ease and safety of pedestrian access to shared parking by the users
 3787 served, including any improvements or shuttle service necessary;
 3788 and
 3789 v. Such joint parking areas may not be located in residential zoning
 3790 districts.
- 3791 c. Off-site parking
 3792 Required off-street parking for employee use may be satisfied at off-site
 3793 locations located within 1,000 feet measured along lines of public access
 3794 from the lot to be served, provided such parking area is on other property
 3795 owned by the applicant or under terms of a contractual agreement that will
 3796 ensure such parking remains available to the use served.
- 3797 d. Employee parking
 3798 Required off-street parking for employee use may be satisfied at off-site
 3799 locations greater than 1,000 feet from the lot served upon a finding by the
 3800 Planning Board that such parking is practicable and will reasonably prevent
 3801 overflow parking from occurring on Badgers Island in undesignated
 3802 locations. In making this determination under development review, the
 3803 Planning Board must consider the following factors:
- 3804 i. Such parking must be located within a reasonable distance to the
 3805 users.
 - 3806 ii. Such parking area must be on other property of the applicant or
 3807 under terms of a contractual agreement that will ensure such parking
 3808 remains available to the use served.
 - 3809 iii. Safe and convenient means of transporting users to and from the off-
 3810 site parking must be demonstrated by the applicant.
 - 3811 iv. Such off-site parking area must not be located in residential zones of
 3812 the Town. Off-site parking for use by employees may deviate from
 3813 the dimensional standards contained in § 16.7.11.F, Table 2, Parking
 3814 Space Design, if the applicant can demonstrate that the proposal
 3815 practicably accommodates the number of parking spaces proposed.
- 3816 e. Parking demand management (PDM) strategies
- 3817 i. Parking demand strategies are measures geared toward affecting the
 3818 demand side of the parking equation rather than the supply side.
 3819 They attempt to change people's behavior away from traveling to
 3820 work as a single occupant in an automobile to be parked near the
 3821 work site. To be successful, they must rely on incentives or
 3822 disincentives to make these shifts in behavior attractive to the
 3823 traveler.
 - 3824 ii. A portion of required off-street parking may be satisfied by an
 3825 owner incorporating PDM strategies to effectively reduce demand
 3826 for parking stalls as determined by the Planning Board. In making
 3827 this determination the Planning Board, under development plan
 3828 review, must consider the following factors:
 - 3829 1. The written commitment of the employer to maintain and
 3830 enforce parking policies to reduce demand for parking stalls;
 - 3831 2. The likelihood that specific incentives and policies adopted
 3832 by the applicant will reduce parking demand on a regular
 3833 basis throughout the year;
 - 3834 3. Written commitments by employees to participate in PDM
 3835 strategies; and

- 3836 4.The results of any studies demonstrating the effectiveness of
3837 strategies adopted by the applicant to reduce parking
3838 demand.
- 3839 f. PDM strategies include, but are not limited to, the following:
- 3840 i. Increase the number of persons per parked vehicle. Potential
3841 incentives:
- 3842 1.Preferential parking locations for car pools and van pools;
3843 2.Guaranteed ride home programs/taxi subsidies;
3844 3.Employer provision of vans for van pools; and
3845 4.Financial incentives to participants in car pools and van
3846 pools.
- 3847 ii. Increase the number of persons using an alternative mode of travel
3848 to the automobile, such as walking, bicycling, motorcycle, moped,
3849 bus and shuttle service. Potential incentives:
- 3850 1.Preferential parking locations for alternative modes of travel;
3851 2.Provision of changing rooms, lockers and showers;
3852 3.Early work release for employees using alternative modes of
3853 travel;
3854 4.Financial subsidies toward the purchase of alternative modes
3855 of travel to be used for commuting;
3856 5.Guaranteed ride home programs in inclement weather;
3857 6.Preferential work station locations; and
3858 7.Free use of a business vehicle for errands, lunch and off-site
3859 appointments.
- 3860 iii. Influencing the time of, or need to, travel to work. Potential
3861 incentives:
- 3862 1.Reward employees who telecommute from their home or
3863 other remote location;
3864 2.Offer an optional four-day, forty-hour workweek as an
3865 alternative to a five-day workweek;
3866 3.Allow nonoverlapping early and late work shifts; and
3867 4.Flextime.

3868 E. Shoreland Overlay Zone OZ-SL Mixed-Use – Badger’s Island Zone (MU-BI)

- 3869 (1). Permitted uses
- 3870 a. Aquaculture
3871 b. Dwellings if located 75 feet or farther from the normal high-water line of
3872 any water bodies, or the upland edge of a wetland.
3873 c. Recreation, Public Open Space
3874 d. Research & Development
3875 e. Mass Transit Station
- 3876 (2). Special exception uses
- 3877 a. Accessory Use & Building
3878 b. Art Studio or Gallery
3879 c. Boatyard
3880 d. Business & Professional Offices
3881 e. Commercial Fisheries/Maritime Activities (provided only incidental

- 3882 cleaning and cooking of seafood occur at the site)
- 3883 f. Recreation, Commercial Indoor
- 3884 g. Recreation, Commercial Outdoor
- 3885 h. Day Care Facility
- 3886 i. Retail Sales (excluding those with any outdoor sales and/or storage)
- 3887 j. Home occupation, Major
- 3888 k. Home Occupation, Minor
- 3889 l. Inn
- 3890 m. Marina
- 3891 n. Personal Services
- 3892 o. Business Services
- 3893 p. Public Assembly Area
- 3894 q. Public Utility Facility
- 3895 r. Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m.,
- 3896 but excluding restaurants where ordering and/or pickup of food may take
- 3897 place from a motorized vehicle)
- 3898 s. Commercial School
- 3899 t. Public or Private School
- 3900 u. Public Facility
- 3901 v. Religious Use
- 3902 w. Private Assembly
- 3903 x. Specialty Food and/or Beverage Facility; [Added 6-10-2013 by Ord. No.
- 3904 13-02]
- 3905 y. Theater
- 3906 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 3907 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use – Badger’s Island Zone (MU-BI)
- 3908 (1). Permitted Uses
- 3909 a. Aquaculture
- 3910 b. Recreation, Public Open Space
- 3911 (2). Special Exception Uses
- 3912 a. Accessory Uses & Buildings
- 3913 b. Home Occupations, Major
- 3914 c. Home Occupations, Minor
- 3915 d. Public Utility Facility
- 3916 e. Dwelling, Single-Family
- 3917 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 3918 OZ-RP
- 3919

3920 **16.4.25 Mixed-Use – Kittery Foreside (MU-KF)**

3921 A. Purpose

3922 The purpose of the Mixed-Use – Kittery Foreside MU-KF Zone is to provide
3923 business, service and community functions within the Mixed-Use – Kittery
3924 Foreside Zone and to provide a mix of housing opportunities in the historic
3925 urbanized center of the community and to allow for use patterns which recognize
3926 the densely built-up character of the zone and the limitations for providing off-
3927 street parking. Design standards are used to facilitate the revitalization of
3928 downtown Kittery Foreside as a neighborhood center, while promoting economic
3929 development of service businesses and walk-in shopping as well as respecting the
3930 zone's historic and residential character. [Amended 7-25-2016 by Ord. No. 16-04]

3931 B. Permitted uses

3932 The following uses are permitted in the MU-KF Zone:

- 3933 (1). Accessory Dwelling Units
- 3934 (2). Dwelling, Attached Single-Family
- 3935 (3). Dwellings, Single-family
- 3936 (4). Dwellings, Two-Family
- 3937 (5). Dwellings, Multi-Family (up to 12 units per lot)
- 3938 (6). Convalescent Care Facility
- 3939 (7). Nursing Care Facility, Long-term
- 3940 (8). Residential Care Facility
- 3941 (9). Accessory Use & Building
- 3942 (10). Home Occupation, Major
- 3943 (11). Home Occupation, Minor
- 3944 (12). Inn
- 3945 (13). Hospital
- 3946 (14). Nursery School
- 3947 (15). Private Assembly
- 3948 (16). Public Facility
- 3949 (17). Public or Private School
- 3950 (18). Religious Use
- 3951 (19). Recreation, Public Open Space
- 3952 (20). Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
3953 cooking of seafood occur at the site
- 3954 (21). Commercial School
- 3955 (22). Art Studio or Gallery
- 3956 (23). Business & Professional Offices
- 3957 (24). Business Service
- 3958 (25). Personal Service
- 3959 (26). Public Assembly Area
- 3960 (27). Restaurant
- 3961 (28). Retail Sales (excluding those where the principle activity entails outdoor sales
3962 and/or storage)
- 3963 (29). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 3964 (30). Theater

- 3965 (31). Marinas
3966 (32). Mass Transit Station
3967 (33). Parking Area

3968 C. Special exception uses

3969 The following uses are permitted as special exception uses in the MU-KF Zone:

- 3970 (1). Public Utility Facility
3971 (2). Research & Development

3972 D. Standards.

3973 [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-11; 7-25-
3974 2016 by Ord. No. 16-04]

- 3975 (1). The design and performance standards of § 16.7 and 16.8 must be met, except
3976 where specifically altered in this subsection.
- 3977 (2). Dimensional standards. The following space standards apply:
- 3978 a. Minimum land area per dwelling unit: 5,000 square feet.
- 3979 b. Minimum lot size: 5,000 square feet.
- 3980 c. Minimum street frontage: zero feet.
- 3981 d. Minimum front yard along:
- 3982 i. Government Street east of Jones Avenue including Lot 107 at the
3983 corner of Government and Walker Streets: zero feet.
- 3984 ii. Wallingford Square: zero feet.
- 3985 iii. Other streets: 10 feet.
- 3986 e. Minimum rear and side yards: 10 feet.
- 3987 f. Minimum separation distance between principal buildings on the same lot:
3988 10 feet.
- 3989 g. Maximum building height: 40 feet. (NOTE: Except that for buildings
3990 located on lots that abut tidal waters, the highest point on the primary
3991 structure of the building including the roof, but excluding chimneys,
3992 towers, cupolas and similar appurtenances that have no floor area, may be
3993 not more than 35 feet above the average grade between the highest and
3994 lowest elevations of the original ground level adjacent to the building.)
- 3995 h. Minimum setback from:
- 3996 i. Water body and wetland water-dependent uses: zero feet.
- 3997 ii. All other uses (including buildings and parking): 75 feet unless
3998 modified, according to the terms of §16.4.25.D(7) through
3999 §16.4.25.D(10).
- 4000 i. Maximum building coverage: 60%.
- 4001 j. Minimum open space on the site: 40%.
- 4002 k. Minimum land area per unit for elder-care facilities that are connected to
4003 the public sewerage system:
- 4004 i. Dwelling unit with two or more bedrooms: 3,000 square feet.
- 4005 ii. Dwelling unit with less than two bedrooms: 2,500 square feet.
- 4006 iii. Residential care unit: 2,000 square feet.
- 4007 1. Minimum land area per bed for nursing care and
4008 convalescent care facilities that are connected to the public
4009 sewerage system: 1,500 square feet.
- 4010 (3). Maximum building footprint. The maximum area of the building footprint of any

4011 new building is 1,500 square feet unless the building is replacing a larger building
4012 that existed on the lot as of April 1, 2005.

- 4013 a. If the footprint of the preexisting building was larger than 1,500 square feet,
4014 the maximum size of the footprint of the new building may be no larger
4015 than the footprint of the preexisting building.
4016 b. If the footprint of the new building is larger than 1,500 square feet, the
4017 width of the new building as measured parallel to the front lot line may not
4018 be greater than the width of the preexisting building.

4019 (4). Design standards.

4020 Any new building or additions or modifications to an existing building that
4021 cumulatively increases the building footprint or building volume by more than
4022 30% after April 1, 2005, or is subject to shoreland overlay zoning as set forth in
4023 § 16.4.28 must conform to the following standards:

4024 NOTE: This requirement does not apply to the replacement of a building
4025 destroyed by accidental or natural causes after April 1, 2005 that is rebuilt
4026 within the preexisting building footprint and that does not increase the
4027 preexisting building volume by more than 30%.

- 4028 a. Placement and orientation of buildings within a lot.
- 4029 i. The placement of buildings on the lot must acknowledge the
4030 uniqueness of the site, the neighboring buildings, and the natural
4031 setting. Existing views and vistas must be preserved in the design of
4032 the site and buildings, and buildings must be placed to frame, rather
4033 than block, vistas.
- 4034 ii. Buildings and the front elevation must be oriented facing the street
4035 on which the building is located. The siting of buildings on corner
4036 lots must consider the placement of buildings on both streets.
- 4037 b. Overall massing of buildings. The overall massing objective is to simulate a
4038 concentrated use of space in the Foreside Zone while avoiding the use of
4039 large, multiunit buildings. In the interest of this objective, building
4040 footprints must not exceed the maximums set forth within this subsection.
4041 Larger parcels may be developed but will require the use of multiple
4042 buildings with smaller footprints. The smaller scale of the buildings will
4043 allow new projects to fit in with the existing architectural styles of the
4044 Foreside Zone.
- 4045 c. Grouping of smaller buildings. When smaller buildings that are part of one
4046 project are placed adjacent to one another on the same lot or adjacent lots,
4047 each building must have its own structure and elevation treatment that is
4048 different from its neighbor. Small decorative wings may be attached to
4049 larger structures if well integrated into the overall arrangement of shapes.
- 4050 d. Building details. Buildings must include architectural details that reflect the
4051 historic style of the Foreside Zone. Molding and trim must be used to
4052 decorate or finish the surface of buildings and doors. Eaves and overhangs
4053 should be incorporated into the design.
- 4054 e. Roof slopes and shapes.
- 4055 i. Allowable roof shapes include a simple gable, gambrel, saltbox and
4056 hip. The minimum roof pitch must be 8:12 (rise over run), except in
4057 the case of a hip roof, where a lesser pitch is acceptable.
- 4058 ii. The roof pitch of elements that link buildings or portions of
4059 buildings must be the same or greater than the pitch of the roofs on
4060 the buildings that are being linked.
- 4061 iii. Flat or nearly flat shed roofs are not allowed except for porches,

- 4062 dormers or attachments distinct from the primary structure or where
4063 systems are concealed by standard roof forms.
- 4064 iv. The roof pitch of additions or wings must be similar to the pitch of
4065 the primary roof. Clusters of buildings must apply the same roof
4066 plan principles to pitch and link roofs.
- 4067 f. Fencing and walls.
- 4068 i. Fencing may be used to separate public and private spaces, mark
4069 property lines, and protect plantings.
- 4070 ii. Fences must harmonize with nearby structures and not unduly
4071 interfere with existing scenic views or vistas.
- 4072 iii. Picket and other medium height fences and low stone walls are
4073 permitted.
- 4074 iv. Modern concrete walls and similar structures are prohibited.
- 4075 v. Chain-link and stockade fences are not appropriate in front yards
4076 and may be used in side and rear yards only if compatible with the
4077 overall design of the site.
- 4078 vi. Waste receptacles, dumpsters, exterior systems, service entrances
4079 and similar areas must be screened with board fences, board and
4080 lattice fences, and/or landscaping.
- 4081 g. Utilities. All utilities serving a new building, including electricity,
4082 telephone, cable, Internet and alarm systems must be placed underground
4083 from the access pole.
- 4084 h. Preservation of trees. Existing large, healthy trees must be preserved if
4085 practical.
- 4086 (5). Signage. Display of signboard and/or products for sale may be placed on a Town
4087 sidewalk only if:
- 4088 a. Products for sale displayed outside the building are limited to an area
4089 extending no greater than two feet from the front facade of the building;
- 4090 b. Signboards and/or products for sale must be removed from the sidewalk at
4091 the close of each business day;
- 4092 c. An annual permit must be obtained from the Code Enforcement Officer.
4093 Permits are issued for a calendar year or portion thereof, to expire
4094 December 31 of each year. Sign permit application fee, reference Appendix
4095 A.
- 4096 (6). Special parking standards.
- 4097 The Kittery Foreside Zone is already largely built up and many buildings either
4098 completely or almost completely cover the lot on which they are located.
4099 Therefore, it is not possible to comply with parking standards which would
4100 otherwise be required for open land. To encourage the reuse of existing
4101 structures as far as practical, the Town establishes special parking standards
4102 and conditions within the zone.
- 4103 (7). Revised off-street parking standards.
- 4104 Insofar as practical, parking requirements are to be met on site unless an
4105 existing building covers so much of the lot as to make the provision of parking
4106 impractical in whole or in part. If meeting the parking requirements is not
4107 practical, then the parking demand may be satisfied off site or through joint-use
4108 agreements as specified herein. Notwithstanding the off-street parking
4109 requirements in § 16.7.11.F(3), minimum parking requirements for the uses
4110 below are modified as specified herein:
- 4111 a. Dwelling units in buildings that existed as of April 1, 2005, including the

- 4112 replacement of units destroyed by accidental or natural causes regardless of
4113 how configured: one parking space per dwelling unit;
- 4114 b. Dwelling units in new buildings, including the replacement of existing
4115 buildings other than the replacement of units destroyed by accidental or
4116 natural causes: 1 1/2 parking spaces per dwelling unit;
 - 4117 c. Retail, business office or bank facilities: one parking space for each 400
4118 square feet of gross floor area;
 - 4119 d. Professional office: one parking space for each 300 square feet of gross
4120 floor area;
 - 4121 e. Inn: one parking space for each guest room;
 - 4122 f. Church: none required, if primary use occurs on weekends;
 - 4123 g. Restaurants: one parking space for each 100 square feet of gross floor area
4124 used by the public.

4125 NOTE: For each use in the zone, the total parking demand is calculated
4126 using the standards above or in § 16.7.11.F(3), if not modified above. Then
4127 each nonresidential use is exempt from providing off-street parking for the
4128 first three required spaces. For uses requiring a demand of greater than
4129 three, then the off-street parking is to be provided on site and/or in
4130 accordance with Subsection (9) and (10) of this section.

4131 (8). Maximum parking on new impervious surface

4132 Not more than 1 1/2 parking spaces per dwelling unit may be created on new
4133 impervious surface in conjunction with the construction of a new or
4134 replacement building. This restriction does not apply to parking spaces located
4135 within the same building with the dwelling units, to spaces located on
4136 preexisting impervious surface, or to spaces located on a pervious surface such
4137 as parking pavers designed to allow infiltration of precipitation.

4138 (9). Off-site parking

4139 Required off-street parking may be satisfied at off-site locations, provided such
4140 parking is on other property owned by the applicant or is under the terms of a
4141 contractual agreement that will ensure such parking remains available for the
4142 uses served. Applicant must present evidence of a parking location and a
4143 contractual agreement to the Town Board or officer with jurisdiction to review
4144 and approve.

4145 (10). Joint-use parking

4146 Required off-street parking may also be satisfied by the joint use of parking
4147 space by two or more uses if the applicant can show that parking demand is
4148 nonconflicting and will reasonably provide adequate parking for the multiple
4149 uses without parking overflowing into undesignated areas. Nonconflicting
4150 periods may consist of daytime as opposed to evening hours of operation or
4151 weekday as opposed to weekends or seasonal variation in parking demand. In
4152 making this determination under development plan review, the Planning Board
4153 is to consider the following factors:

- 4154 a. Such joint parking areas must be held under ownership of the applicant or
4155 under terms of a contractual agreement that ensures such parking remains
4156 available to all users of the shared parking spaces;
- 4157 b. Analysis is to be based on a most frequent basis not a "worst case" scenario;
- 4158 c. Joint use parking areas must be located within reasonable distance to the
4159 use served, but do not need to be located on the same lot as the uses served;
- 4160 d. Ease and safety of pedestrian access to shared parking by the users served,
4161 including any improvements or shuttle service necessary;

- 4162 e. Such joint parking areas must not be located in residential zones of the
4163 Town. The Planning Board must make a final determination of the joint-use
4164 and/or off-site parking spaces that constitute an acceptable combination of
4165 spaces to meet the required parking demand

4166 E. Shoreland Overlay Zone OZ-SL – Mixed-Use – Kittery Foreside Zone (MU-KF)

- 4167 (1). Permitted uses
- 4168 a. Dwellings if located farther than 75 feet or farther from the normal high-
4169 water line of any water bodies, or the upland edge of a wetland
 - 4170 a. Recreation, Public Open Space
- 4171 (2). Special exception uses
- 4172 a. Art Studio or Gallery
 - 4173 b. Business & Professional Offices
 - 4174 c. Commercial Fisheries/Maritime Activities, provided only incidental
4175 cleaning and cooking of seafood occur at the site
 - 4176 d. Parking Area
 - 4177 e. Home Occupation, Major
 - 4178 f. Home Occupation, Minor
 - 4179 g. Inn
 - 4180 h. Marinas
 - 4181 i. Personal Services
 - 4182 j. Business Services
 - 4183 k. Public Assembly Area
 - 4184 l. Public Utility Facility
 - 4185 m. Research & Development;
 - 4186 n. Restaurant, coffee shop, bakery, cafes and similar food service operations,
4187 but excluding drive-in facilities;
 - 4188 o. Retail Sales, excluding those where the principal activity entails outdoor
4189 sales and/or storage
 - 4190 p. Mass Transit Station
 - 4191 q. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
4192 02]
 - 4193 r. Theater
- 4194 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

4195 F. Resource Protection Overlay Zone OZ-RP – Mized Use – Kittery Foreside Zone (MU-KF)
4196 [Amended 9-26-2011 by Ord. No. 11-15]

- 4197 (1). Permitted Uses
- 4198 a. Recreation, Public Open Space
- 4199 (2). Special Exception Uses
- 4200 a. Accessory Use & Buildings
 - 4201 b. Home Occupation, Major
 - 4202 c. Home Occupation, Minor
 - 4203 d. Public Utility Facility
 - 4204 e. Dwelling, Single-Family
- 4205 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
4206 OZ-RP

4207 **16.4.26 Mixed-Use-Neighborhood MU-N**

4208 [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-10; 6-10-
4209 2013 by Ord. No. 13-02; 9-28-2015 by Ord. No. 15-05; 11-26-2018 by Ord.
4210 No. 10-18]

4211 A. Purpose

4212 To encourage higher density, mixed-use development that provides increased
4213 housing opportunities and a desirable setting for business while balancing such
4214 increased development with environmentally conscious and ecologically sensitive
4215 use of land.

4216 B. Permitted Uses

- 4217 (1). Dwelling, Attached Single-Family
4218 (2). Dwelling, Multi-Family
4219 (3). Dwelling, Multi-Family (units on the upper floors of a mixed-use building that is
4220 served by public sewer)
4221 (4). Convalescent Care Facility
4222 (5). Nursing Care Facility, Long-term
4223 (6). Residential Care Facility (attached dwelling units only)
4224 (7). Accessory Use & Building
4225 (8). Home Occupation, Major
4226 (9). Home Occupation, Minor
4227 (10). Hotel
4228 (11). Inn
4229 (12). Day Care Facility
4230 (13). Elderly Day Care Facility
4231 (14). Hospital
4232 (15). Public Utility Facility
4233 (16). Recreation, Passive
4234 (17). Recreation, Public Open Space
4235 (18). Recreation, Commercial Indoor (except shooting and archery ranges)
4236 (19). Recreation, Commercial Outdoor (except shooting and archery ranges)
4237 (20). Veterinary Hospital
4238 (21). Art Studio or Gallery
4239 (22). Business & Professional Offices
4240 (23). Business Services
4241 (24). Conference Center
4242 (25). Personal Services
4243 (26). Repair Service
4244 (27). Research & Development
4245 (28). Restaurant
4246 (29). Retail Sales (not to exceed 30,000 square feet in gross floor area unless part of a
4247 mixed-use building)
4248 (30). Retail Sales, Convenience (excluding the sale of gasoline)
4249 (31). Shops in Pursuit of Trade
4250 (32). Specialty Food and/or Beverage Facility

- 4251 (33). Theater
- 4252 (34).
- 4253 (35). Industry, light (less than or equal to 20,000 square feet in gross floor area)
- 4254 (36). Liner Buildings (as part of a mixed-use building)

4255 C. Special exception uses

- 4256 (1). Commercial Kennel
- 4257 (2). Parking Area
- 4258 (3). Construction Services
- 4259 (4). Equipment sales and rentals (only on lots with frontage on Route 236)
- 4260 (5). Gas service station (only on lots with frontage on Route 236)
- 4261 (6). Industry, light (greater than 20,000 square feet in gross floor area)
- 4262 (7). Mass Transit Station
- 4263 (8). Mechanical Services
- 4264 (9). New Motor Vehicle Sales (only on lots with frontage on Route 236)
- 4265 (10). Used Car Lot (only on lots with frontage on Route 236)
- 4266 (11). Repair Garage (only on lots with frontage on Route 236)
- 4267 (12). Retail Sales (greater than 30,000 square feet in gross floor area and less than
- 4268 50,000 square feet in gross floor area)
- 4269 (13). Undefined use; additional commercial/business uses not defined by § 16.3.
 - 4270 a. Undefined uses: will be considered by the Planning Board based on the
 - 4271 following criteria:
 - 4272 i. If the use is consistent with the Comprehensive Plan and zoning
 - 4273 district purposes; and
 - 4274 ii. If the use meets special exception criteria found in § 16.3.2.1.C(14)
 - 4275 b. In addition, the undefined use must meet one or both of the following
 - 4276 criteria:
 - 4277 i. If the proposed use has substantially similar impacts as a listed use.
 - 4278 ii. If the proposed use is compatible with existing uses within the
 - 4279 zoning district for which it is proposed.

4280 D. Standards.

4281 All development and the use of land in the MU-N Zone must meet the following
 4282 standards. Kittery's Design Handbook illustrates how these standards can be met.
 4283 In addition, the design and performance standards of § 16.5, 16.7 and 16.8 must be
 4284 met unless noted otherwise below.

- 4285 (1). All submissions must include a lighting plan. Hours of operation and number of
- 4286 employees for businesses must also be provided.
- 4287 (2). The following space standards apply:
 - 4288 a. Minimum land area per dwelling unit - mixed-use building: 4,000 square
 - 4289 feet for first residential unit plus 3,000 square feet for each additional unit,
 - 4290 no minimum land area for business or commercial uses when combined in a
 - 4291 building with residential uses except that the total lot size must be at least
 - 4292 20,000 square feet.
 - 4293 [1] NOTE: ADA-compliant units may be located on the first floor through a
 - 4294 special exception permit by the Planning Board but only 50% of the first
 - 4295 floor may be such ADA-compliant residential units.
 - 4296 b. Minimum land area per dwelling unit - multiunit residential: 4,000 square

- 4297 feet for first unit, plus 2,500 square feet for each additional unit up to 16
 4298 units per acre of lot size. Total lot size must be a minimum of 20,000 square
 4299 feet.
- 4300 c. Mixed-use or multiunit residential buildings which encompass at least 50%
 4301 of required parking within the building: Two additional residential units
 4302 may be added to each story above the parking with no additional land area
 4303 required.
 - 4304 d. Mixed-use buildings which encompass at least 50% of required parking
 4305 within the building and include a liner building for nonresidential uses
 4306 buffering parking from the street: One additional residential unit may be
 4307 added to each story with no additional land area required.
 - 4308 e. Minimum land area per bed for long-term nursing care and convalescent
 4309 care facilities that are connected to public sewer: 2,000 square feet.
 - 4310 f. Minimum land area per residential unit for eldercare facilities that are
 4311 connected to public sewer: 3,000 square feet.
 - 4312 g. Minimum lot size: 20,000 square feet.
 - 4313 h. Minimum street frontage: 75 feet.
 - 4314 i. Minimum front setback on Route 236: 30 feet.
 - 4315 j. Minimum front setback on Dennett Road: 50 feet.
 - 4316 k. Minimum front setback on Martin Road: 100 feet.
 - 4317 l. Maximum front setback all other roads: 20 feet.
 - 4318 m. Spacing between buildings: 15 feet.*
 - 4319 n. Maximum rear and side setbacks: 20 feet.**

4320 [1] NOTES:

* Or as required by the Fire Department or State Fire Marshal's office.

** Except as may be required by the buffer provisions of Code. See
 Landscaping, Screening and Buffers § 16.4.26.(8)

- 4321 o. Maximum building height: 50 feet (exclusive of solar apparatus).
 - 4322 p. Maximum impervious and outdoor stored material coverage: 70%.
- 4323 [1] NOTE: With Best Management Practices (BMPs) and Low Impact
 4324 Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's
 4325 Maine Stormwater Best Management Practices Manual, Volumes I - III, as
 4326 amended from time to time, incorporated in site design, otherwise 60%.
 4327 Maximum on-site stormwater infiltration is the desired and measurable
 4328 outcome.
- 4329 q. Minimum setback from streams, water bodies and wetlands in accordance
 4330 with Table 16.5.30.

4331 [1] NOTES:

- 4332 i. With Best Management Practices (BMPs) and Low Impact
 4333 Development Practices (LIDs) as defined in § 16.3 and based on
 4334 Maine DEP's Maine Stormwater Best Management Practices
 4335 Manual, Volumes I - III, as amended from time to time,
 4336 incorporated in site design, then wetland setbacks pursuant only to
 4337 Maine Department of Environmental Protection (MDEP) Rules
 4338 Chapters 305 and 310.
- 4339 ii. Without Best Management Practices (BMPs) and Low Impact
 4340 Development Practices (LIDs) as defined in § 16.3 and based on

Maine DEP's Maine Stormwater Best Management Practices Manual, Volumes I - III, as amended from time to time, incorporated in site design, wetland setbacks pursuant to Kittery Town Code Title 16, Table 16.5.30.

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

r. Minimum open space:

i. Lot size less than 100,000 square feet: 15%.

ii. Lot size greater than 100,000 square feet: 25%.

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

(3). Parking:

a. Parking is encouraged within buildings. New or revised surface parking areas, garages, and entrances to parking within buildings must be located to the rear of buildings. If a rear location is not achievable, as determined by the Planning Board, parking, garages and entrances to parking must be located to the side of the building. Screening and/or fencing is required for surface parking areas along a street. See Subsection WW(12), Landscaping, Screening and Buffers. Parking requirements are based on the Institute of Transportation Engineers (ITE) parking generation rates.

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

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

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

i. Parking for development that includes trails and low intensity recreation: Development that includes the creation of public trails and low intensity recreational opportunities such as wildlife observation stations or boardwalks may apply the pertinent off-street parking standards below. All other off-street parking standards as found in § 16.7.11F(3) shall apply.

e. Multiunit residential buildings and mixed-use buildings that include residential.

i. One parking space for studio and one-bedroom dwelling units.

- 4392 ii. One and one-half parking spaces for two-bedroom dwelling units
4393 plus one guest parking space per every four dwelling units.
4394 iii. Parking spaces for more-than-two-bedroom dwelling units.
4395 (4). Loading docks, overhead doors, service areas and outdoor storage areas.
4396 a. Loading docks and overhead doors must be located on the rear or side of
4397 the building. Loading docks must be screened from view by adjacent
4398 residential uses. This screening must consist of the following:
4399 i. A fence, constructed of a material similar to surrounding buildings,
4400 of sufficient height as determined by the Planning Board to
4401 accomplish the screening. No fence may be less than six feet tall.
4402 b. All service areas for dumpsters, compressors, generators and similar items
4403 as well as any outdoor storage areas must be screened by a fence at least six
4404 feet tall, constructed of a material similar to surrounding buildings, and
4405 must surround the service or storage area except for the necessary
4406 ingress/egress.
4407 (5). Site design
4408 Site design and building placement must be attentive to the surrounding
4409 environment including sun, wind and shade patterns related to proposed and
4410 existing buildings. A sun/shade analysis may be required by the Planning
4411 Board.
4412 (6). Energy and sustainability
4413 Energy efficiency is allowed and encouraged through the use of solar power,
4414 geothermal, and other alternative and sustainable power sources.
4415 (7). Building design standards.
4416 a. New buildings must meet the general design principles set forth in the
4417 Design Handbook except as noted below. In general, buildings should be
4418 oriented to the street from which they derive frontage, with the front of the
4419 building facing the street. The front facade must contain the following:
4420 i. A front door for pedestrian access.
4421 ii. Windows.
4422 b. Flat roofs, proposed to locate heating, cooling, or other such mechanical or
4423 electrical apparatus off the ground, are acceptable provided that such
4424 apparatus are screened from view and the screening is designed as an
4425 integral part of the building to aid both aesthetics and noise attenuation. Flat
4426 roofs proposed for the purpose of solar array installations are also
4427 acceptable.
4428 (8). Landscaping, screening and buffers.
4429 a. A landscape plan prepared by a registered landscape architect is a
4430 submission requirement. However, a landscape plan done by other design
4431 professionals may be allowed at the Planning Board's discretion.
4432 b. Native trees, shrubs and herbaceous plantings are preferred and must be
4433 drought and salt tolerant when used along streets. A diversity of tree species
4434 (three to five species per every 12 trees) is required to provide greater
4435 resiliency to threats from introduced insect pests and diseases.
4436 c. Any required plantings approved by the Planning Board that do not survive
4437 must be replaced within one year.
4438 d. Landscaping along the street frontage of each building must consist of one
4439 of the following:
4440 i. Street trees. A minimum of one street tree must be planted for each
4441 20 feet of street frontage. Trees may be planted in groups or spaced

- 4442 along the frontage. However, trees must be planted to ensure
 4443 survival, using silva cells, bioretention cells or tree wells. Trees are
 4444 to be a minimum of 2.5-inch caliper and 12 feet high at the time of
 4445 planting. Existing large healthy trees must be preserved if practical
 4446 and will count towards this requirement.
- 4447 ii. Pocket park. The park must be at least 200 square feet. A minimum
 4448 of three trees and a bench for sitting are required. Park must be
 4449 vegetated with ground cover except for walkways.
- 4450 e. Surface parking areas that abut a street must provide screening in one of the
 4451 following ways:
- 4452 i. One tree per 25 feet of street frontage backed by a fence constructed
 4453 of a material similar to surrounding buildings which must screen the
 4454 parking area from the street except for necessary vehicular and
 4455 pedestrian access. Trees must be at least 2.5-inch caliper and 12 feet
 4456 high at the time of planting.
- 4457 ii. A combination of trees and shrubs including at least 50% evergreen
 4458 species, all at least six feet high at time of planting, in a planting bed
 4459 at least eight feet wide. Plantings must be sufficient, as determined
 4460 by the Planning Board, to screen the parking area from the street
 4461 except for necessary vehicular and pedestrian access. Planting beds
 4462 may be mulched but no orange- or red-dyed mulching material may
 4463 be used.
- 4464 iii. A minimum of 10% of any surface parking area consisting of 10 or
 4465 more parking spaces must be landscaped with trees and vegetated
 4466 islands. This requirement is in addition to the screening
 4467 requirements in Subsection §16.4.26.D(8)(e)(i) and
 4468 §16.4.26.D(8)(e)(ii) if the parking area abuts a street. Bioretention
 4469 cells and rain gardens may be utilized to meet the landscaping
 4470 requirements and perform stormwater management.
- 4471 iv. Buffers required between residential uses and mixed use or
 4472 nonresidential uses, and between adjacent residential zones and this
 4473 zone must be 50 feet wide and consist of one of the following as
 4474 determined by the Planning Board:
- 4475 1. Existing natural woodland and vegetation.
- 4476 2. Existing natural woodland augmented by the planting of
 4477 additional trees consisting of a variety of species at least 2.5-
 4478 inch caliper and 12 feet high.
- 4479 3. A fence at least six feet high, constructed of material similar
 4480 to surrounding buildings, with plantings of trees and shrubs
 4481 at least six feet tall on either side of the fence.

4482 (9). Open space

- 4483 Open space must be provided as a percentage of the total parcel area including
 4484 freshwater wetlands, water bodies, streams and setbacks. Required open space
 4485 must be shown on the site plan with a note dedicating it as open space. The
 4486 open space must be situated to protect significant natural features and
 4487 resources, minimize environmental impacts and promote an aesthetically
 4488 pleasing site.
- 4489 a. Wherever possible, large healthy trees and areas with mature tree cover
 4490 must be included in the open space.
- 4491 b. Location of open space must promote the continuity of open-space
 4492 networks across adjacent parcels.

- 4493 c. Where possible, open space and open-space networks must include public
4494 trails and low-intensity recreational opportunities.
- 4495 (10). Special situations
- 4496 Expansions or modifications of 1,000 square feet or less to existing uses are
4497 exempt from landscaping, screening and buffer requirements.
- 4498 (11). Conditions for approving special exception uses in the Neighborhood Mixed-Use
4499 Zone.
- 4500 All applications must include a narrative describing why the use proposed will
4501 promote the general welfare (specifics may be found in § 16.3 Definitions for
4502 special exception) of the Town of Kittery, how the use proposed will meet the
4503 special exception criteria found in § 16.2.12.F.(3) and how the proposed
4504 development will adapt and relate to the natural environmental conditions
4505 found on the site.
- 4506

4507 **16.4.27 Transportation – Maine Turnpike T-MT**

4508 A. Purpose

4509 The purpose of the Transportation – Maine Turnpike Zone (T-MT) is to provide for
4510 the safe, effective, efficient and environmentally compatible use of the right-of-
4511 way owned and operated by the Maine Department of Transportation and the
4512 Maine Turnpike Authority as authorized by the state, as well as for safe and
4513 environmentally compatible buffering for the adjacent land uses along the right-of-
4514 way.

4515 B. Permitted uses: Permitted and special exception land uses include the highway,
4516 information center and other uses as authorized by the state.

4517 C. Special exception uses: none.

4518 D. Standards.

4519 (1). The design and performance standards of § 16.5, 16.7 and 16.8 and the Shoreland
4520 and Resource Protection Overlay Zones, where applicable.

4521 (2). Dimensional standards.

4522 a. Minimum land area per dwelling unit: not applicable.

4523 b. Minimum lot size: not applicable.

4524 c. Minimum street frontage: not applicable.

4525 d. Minimum front yard: not applicable.

4526 e. Maximum building coverage: not applicable.

4527 f. Minimum rear and side yards: not applicable.

4528 g. Maximum building height: 35 feet.

4529 h. Minimum distance between principal buildings on the same lot: not
4530 applicable.

4531 i. Minimum setback from water bodies and wetlands: not applicable.

4532 E. Shoreland Overlay Zone OZ-SL – Transportation – Maine Turnpike (T-MT)

4533 [Amended 9-26-2011 by Ord. No. 11-15]

4534 (1). Permitted uses: Permitted and special exception land uses include the highway,
4535 information center and other uses as authorized by the state.

4536 (2). Special Exceptions: None.

4537 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

4538 F. Resource Protection Overlay Zone OZ-RP – Transportation – Maine Turnpike (T-MT)

4539 (1). Permitted Uses.

4540 a. Permitted and special exception land uses include the highway, information
4541 center and other uses as authorized by the state.

4542 b. Special Exception uses: none.

4543

4544 **16.4.28 Shoreland Overlay Zone OZ-SL**

4545 A. Purposes

4546 The purpose of the Shoreland Overlay Zone OZ-SL is to further the maintenance of
4547 safe and healthful conditions; to prevent and control water pollution; to protect fish
4548 spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings
4549 and lands from flooding and accelerated erosion; to protect archaeological and
4550 historic resources, to protect commercial fishing and maritime industries; to protect
4551 freshwater and coastal wetlands; to control building sites, placement of structures
4552 and land uses; to conserve shore cover and visual as well as actual points of access
4553 to inland and coastal waters; to conserve natural beauty and open space; and to
4554 anticipate and respond to the impacts of development in shoreland areas.

4555 B. Authority

4556 These provisions have been prepared in accordance with the provisions of 38
4557 M.R.S. §§ 435 to 449.

4558 C. Applicability and boundaries

4559 The provisions of this section apply to all uses, lots and structures within the
4560 following:

- 4561 (1). Shoreland Overlay Zone – Water Body/Wetland Protection Area 250 feet (OZ-SL-
4562 250 feet): Land areas within 250 feet, horizontal distance, of the:
- 4563 a. Normal high-water line of any river or saltwater body.
 - 4564 b. Upland edge of a coastal wetland, including all areas affected by tidal
4565 action.
 - 4566 c. Land edge of a fresh water wetland connecting to a protected stream as
4567 identified on the Zoning Map.
- 4568 (2). Shoreland Overlay Zone – Stream Protection Area 75 feet (OZ-SL-75 feet): Land
4569 areas within 75 feet, horizontal distance, of the normal high-water line of a stream,
4570 exclusive of those areas within 250 feet horizontal distance of the normal high-
4571 water line of a river or within 250 feet horizontal distance of the upland edge of a
4572 freshwater or coastal wetland. [Amended 9-26-2011 by Ord. No. 11-15]
- 4573 a. However, where a stream and its associated Shoreland Overlay Zone area
4574 are located within 250 feet, horizontal distance, of the above water bodies
4575 or wetlands, that land area will be regulated under the provisions of the
4576 Shoreland Overlay Zone associated with that water body or wetland.
 - 4577 b. Where uncertainty exists as to the exact location of the Shoreland Overlay
4578 Zone boundary, the Planning Board, with expert consultation as may be
4579 required, is the final authority as to location.

4580 D. Permitted and special exception land use

4581 The permitted and special exception uses in the Shoreland Overlay Zone section
4582 are allowed in accordance with the land use standards established in the underlying
4583 base zone in this chapter and land uses identified by the Mandatory Shoreland
4584 Zoning Act, 38 M.R.S. §§ 435 to 449.

4585 E. Standards

4586 [Amended 1-28-2015 by Ord. No. 15-01; 7-25-2016 by Ord. No. 16-03]

- 4587 (1). Minimum lot standards
- 4588 a. Minimum lot size by base zone, within the:
 - 4589 i. Residential-Village (R-V) Zone: 8,000 square feet.
 - 4590 ii. Residential-Urban (R-U) Zone: 20,000 square feet.

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- iii. Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery Point Village (R-KPV) Zones: 40,000 square feet.
 - iv. Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and Business-Local 1 (B-L1) Zones: 60,000 square feet.
 - v. Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.
 - vi. Business-Park (B-PK) Zone: 120,000 square feet.
 - vii. Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.
 - viii. Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.
- b. Minimum land area per dwelling unit by base zone, within the:
- i. Residential-Village (R-V) Zone: 8,000 square feet.
 - ii. Business-Park (B-PK) Zone: 10,000 square feet.
 - iii. Residential-Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1) Zones: 20,000 square feet.
 - iv. Mixed-Use (M-U), Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery Point Village (R-KPV) Zones: 40,000 square feet.
 - v. Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.
 - vi. Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.
[NOTE: 3,000 square feet for the first two dwelling units.]
 - vii. Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.
- c. Minimum shore frontage by base zone per lot and dwelling unit.
- i. Mixed Use-Badgers Island (MU-BI): 25 feet.
 - ii. Residential-Village (R-V), Residential Urban (R-U), and Mixed-Use Kittery Foreside (MU-KF) Zones: 50 feet.
 - iii. Mixed-Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Business-Park (B-PK), Business-Local (B-L) and Business-Local 1 (B-L1) Zones:
 - 1. Shore frontage per lot: 150 feet.
 - 2. Shore frontage per dwelling unit: 50 feet.
 - iv. Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-Kittery Point Village (R-KPV) Zones:
 - 1. Shore frontage per lot: 150 feet.
 - 2. Shore frontage per dwelling unit: 100 feet.
 - v. Residential-Rural Conservation (R-RLC) Zone (per lot and dwelling unit): 250 feet.
 - vi. The minimum shore frontage requirement for public and private recreational facilities is the same as that for residential development in the respective zone.
- (2). The total footprint of devegetated area must not exceed 20% of the lot area located within the Shoreland Overlay Zone, except in the following zones:
- a. Mixed-Use – Badgers Island (MU-BI) and Mixed-Use – Kittery Foreside (MU-KF) Zones, where the maximum devegetated area is 60%. The Board of Appeals may approve a miscellaneous appeal application to increase allowable devegetated area in the Mixed-Use – Badgers Island (MU-BI) Zone to 70% where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.

- 4639 b. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and
4640 Industrial (IND) Zones where the maximum devegetated area is 70%.
- 4641 c. Residential – Urban (R-U) Zone where the lot is equal to or less than
4642 10,000 square feet, the maximum devegetated area is 50%.
- 4643 (3). Principal and accessory structures — setbacks and development
- 4644 a. All new principal and accessory structures [except certain patios and decks
4645 per § 16.4.28.E(3)b] must be set back at least 100 feet, horizontal distance,
4646 from the normal high-water line of any water bodies, tributary streams, the
4647 upland edge of a coastal wetland, or the upland edge of a freshwater
4648 wetland, with the following exceptions:
- 4649 i. In the Mixed Use – Badgers Island and Kittery Foreside Zones, the
4650 setback requirement is 75 feet, horizontal distance, from the normal
4651 high-water line of any water bodies, or the upland edge of a
4652 wetland, unless modified according to the terms of §§ 16.4.24.D(1)
4653 through (6) and 16.4.25.D
- 4654 ii. In the Resource Protection Overlay Zone, the setback requirement is
4655 250 feet, horizontal distance, except for structures, roads, parking
4656 spaces or other regulated objects specifically allowed in the zone, in
4657 which case the setback requirements specified above apply.
- 4658 iii. The water body, tributary stream, or wetland setbacks do not apply
4659 to structures that require direct access to the water body or wetland
4660 as an operational necessity, such as piers and retaining walls, nor do
4661 they apply to other functionally water-dependent uses, as defined in
4662 § 16.3.
- 4663 b. Accessory patios or decks no larger than 500 square feet in area must be set
4664 back at least 75 feet from the normal high-water line of any water bodies,
4665 tributary streams, the upland edge of a coastal wetland, or the upland edge
4666 of a freshwater wetland. Other patios and decks must satisfy the normal
4667 setback required for principal structures in the Shoreland Overlay Zone.
- 4668 c. If there is a bluff, setback measurements for principal structures, water and
4669 wetland must be taken from the top of a coastal bluff that has been
4670 identified on coastal bluff maps as being "highly unstable" or "unstable" by
4671 the Maine Geological Survey pursuant to its "Classification of Coastal
4672 Bluffs" and published on the most recent Coastal Bluff Map. If the
4673 applicant and Code Enforcement Officer are in disagreement as to the
4674 specific location of a "highly unstable" or "unstable" bluff, or where the top
4675 of the bluff is located, the applicant is responsible for the employment of a
4676 Maine-registered professional engineer, a Maine-certified soil scientist, or a
4677 Maine state geologist qualified to make a determination. If agreement is
4678 still not reached, the applicant may appeal the matter to the Board of
4679 Appeals.
- 4680 d. Public access to the waterfront must be discouraged through the use of
4681 visually compatible fencing and/or landscape barriers where parking lots,
4682 driveways or pedestrian routes abut the protective buffer. The planting or
4683 retention of thorny shrubs, such as wild rose or raspberry plants, or dense
4684 shrubbery along the perimeter of the protective buffer is encouraged as a
4685 landscape barrier. If hedges are used as an element of a landscape barrier,
4686 they must form a solid continuous visual screen of at least three feet in
4687 height immediately upon planting.
- 4688 e. On a nonconforming lot of record on which only a residential structure
4689 exists, and it is not possible to place an accessory structure meeting the
4690 required water body, tributary stream or wetland setbacks, the Code

4691 Enforcement Officer may issue a permit to place a single accessory
4692 structure, with no utilities, for the storage of yard tools and similar
4693 equipment. Such accessory structure must not exceed 80 square feet in area
4694 nor eight feet in height and must be located as far from the shoreline or
4695 tributary stream as practical and meet all other applicable standards,
4696 including lot coverage and vegetation clearing limitations. In no case will
4697 the structure be allowed to be situated closer to the shoreline or tributary
4698 stream than the existing principal structure.

4699 f. The lowest floor elevation or openings of all buildings and structures,
4700 including basements, must be elevated at least one foot above the elevation
4701 of the one-hundred-year flood, the flood of record or, in the absence of
4702 these, the flood as defined by soil types identified as recent floodplain soils.

4703 g. Stairways or similar structures may be allowed with a permit from the Code
4704 Enforcement Officer to provide shoreline access in areas of steep slopes or
4705 unstable soils, provided the:

4706 i. Structure is limited to a maximum of four feet in width;

4707 1. Structure does not extend below or over the normal high-
4708 water line of a water body or upland edge of a wetland
4709 (unless permitted by the Department of Environmental
4710 Protection pursuant to the Natural Resources Protection Act,
4711 38 M.R.S. § 480-C); and

4712 ii. Applicant demonstrates that no reasonable access alternative exists
4713 on the property.

4714 h. If more than one dwelling unit, principal governmental, institutional,
4715 commercial or industrial structure or use, or combination thereof, is
4716 constructed or established on a single parcel in the Shoreland Overlay Zone,
4717 all dimensional requirements shall be met for each additional dwelling unit,
4718 principal structure, or use.

4719

4720 **16.4.29 Resource Protection Overlay Zone OZ-RP**

4721 A. Purpose

4722 The purposes of this zone are to further the maintenance of safe and healthful
4723 conditions; prevent and control potential water pollution sources; protect spawning
4724 grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore
4725 cover, visual as well as actual point of access to inland and coastal waters, and
4726 natural beauty.

4727 B. Authority

4728 These provisions have been prepared in accordance with the provisions of 38
4729 M.R.S. §§ 435 to 449.

4730 C. Applicability and boundaries

4731 The provisions of this section apply to all uses, lots and structures within areas
4732 where the existing conservation and accessory development is consistent with the
4733 allowed uses for this zone. The Resource Protection Overlay Zone includes areas
4734 where development would adversely affect water quality, productive habitat,
4735 biological ecosystems, or scenic and natural values. This includes the following
4736 areas when they also occur within the limits of the Shoreland Overlay Zone,
4737 exclusive of a stream protection area, except currently developed areas and areas
4738 that meet the criteria for commercial fisheries/maritime uses:

- 4739 (1). Waterfowl and wading bird habitat/water body related wetland areas. Land areas
4740 within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt
4741 marshes and salt meadows, and wetlands associated with rivers which are rated
4742 "moderate" or "high" value waterfowl and wading bird habitat, including nesting
4743 and feeding areas as identified as of December 31, 2008, and salt marshes and salt
4744 meadows as identified as of January 1, 1973, by the Maine Department of Inland
4745 Fisheries and Wildlife (MDIF&W). For the purposes of this section "wetlands
4746 associated with rivers" means: areas characterized by nonforested wetland
4747 vegetation and hydric soils that are contiguous with a river and have a surface
4748 elevation at or below the water level of the river during the period of normal high
4749 water. "Wetlands associated with rivers" are considered to be part of that river.
- 4750 (2). Steep slope areas.
- 4751 a. Land areas that have two or more contiguous acres of land where the slopes
4752 are 20% or greater; and
 - 4753 b. Land areas along rivers subject to severe bank erosion, undercutting or
4754 riverbed movement; and
 - 4755 c. Land adjacent to tidal waters which are subject to severe erosion or mass
4756 movement, such as steep coastal bluffs.
- 4757 (3). Independent wetland areas. Land areas of two or more contiguous acres supporting
4758 wetland vegetation and hydric soils which are not part of a freshwater or coastal
4759 wetland as defined and which are not surficially connected to a water body during
4760 the period of normal high water.
- 4761 (4). Floodplain areas. This includes areas along rivers, areas adjacent to tidal waters,
4762 and other areas susceptible to flooding as defined as being located within the one-
4763 hundred-year floodplain as designated on the FEMA Flood Insurance Rate Maps or
4764 Flood Hazard Boundary Maps, or the flood of record or, in the absence of these, by
4765 soil types identified as recent floodplain soils.

4766 D. Standards

- 4767 (1). The design and performance standards of § 16.5, 16.7 and 16.8 and Shoreland

- 4768 Overlay Zone provisions of § 16.4.28 apply, where applicable, in addition to the
4769 following standards, whichever is the most restrictive.
- 4770 (2). Dimensional standards such as front, side and rear yards, building coverage, height
4771 and the like are the same as those in the underlying zone.
- 4772 (3). Road construction and parking facilities are allowed in the Resource Protection
4773 Overlay Zone only where no reasonable alternative route or location is available
4774 outside the Resource Protection Overlay Zone, in which case a permit or site plan
4775 or subdivision plan approval is required by the Planning Board.
- 4776 (4). Clearing or removal of vegetation for uses, other than timber harvesting as limited
4777 per § 16.5.29, in a Resource Protection Overlay Zone, is prohibited within the strip
4778 of land extending 100 feet, horizontal distance, inland from the normal high-water
4779 line, except to remove safety hazards. Elsewhere in a Resource Protection Overlay
4780 Zone, the cutting or removal of vegetation is limited to that which is necessary for
4781 uses expressly authorized in the Resource Protection Overlay Zone.
- 4782

4783 **16.4.30 Commercial Fisheries/Maritime Activities Overlay Zone OZ-CFMU**

4784 A. Purpose

4785 The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is to
4786 provide for the development and expansion of water-dependent commercial
4787 fisheries/maritime activities. Commercial fisheries/maritime activities and other
4788 areas suitable for functionally water-dependent uses, considers:

- 4789 (1). Shelter from prevailing winds and waves;
4790 (2). Slope of the land within 250 feet, horizontal distance, of the normal high-water
4791 line;
4792 (3). Depth of the water within 150 feet, horizontal distance, of the shoreline;
4793 (4). Available support facilities, including utilities and transportation facilities; and
4794 (5). Compatibility with adjacent upland uses.

4795 B. Authority

4796 These provisions have been prepared in accordance with the provisions of 38
4797 M.R.S. §§ 435 to 449.

4798 C. Applicability and boundaries

4799 The provisions of this section apply to all uses, lots and structures within areas
4800 where the existing predominant pattern of development is consistent with the
4801 allowed uses for this overlay zone, where consistent with dimensional requirements
4802 of the underlying base zone, and where the active use of lands, buildings, wharves,
4803 piers, floats or landings with the principal intent of such activity is the production
4804 of income by an individual or legal business entity through the operation of a
4805 vessel(s) as shown on the Zoning Map. The activity may be either a principal or
4806 accessory use, as defined in this title.

4807 D. Permitted uses: Functionally water-dependent Commercial Fisheries/Marine Activities.

4808 E. Special exception uses: none

4809 F. Standards. Dimensional standards of the underlying base and overlay zone(s).

4810 G. Prohibited uses. All permitted uses in the base zones, including R-KPV, R-U, R-S, IND
4811 and MU-KF, except as permitted herein.

4812

1 **16.5 General Performance Standards**

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16.5.1 General

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The purpose of this chapter is to outline development design and performance standards to ensure public health, safety and welfare.

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16.5.2 Abutter Notice

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A. Purpose.

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It is the intent of this article to impose standards to identify abutting property owners who must be notified in writing when new development or redevelopment is proposed within 150 feet of their property boundary(ies).

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B. Applicability.

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(1). The Town Planner must cause written notice of the public hearing to be sent by postage paid, first-class mail (cost to be paid by applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notices does not invalidate any Board action.

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(2). As used herein, relates solely to the notification of property owners who must be notified in writing when new development or redevelopment is proposed within 150 feet of their property boundary(ies). This notification must include intertidal land below the normal high-water line, but not that land beyond 100 rods (1,650 feet) distant from the normal high water line, or that land below the normal low-water line. Where question exists regarding to ownership of intertidal lands, consult Figure 1 entitled, "Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters," attached to this chapter.

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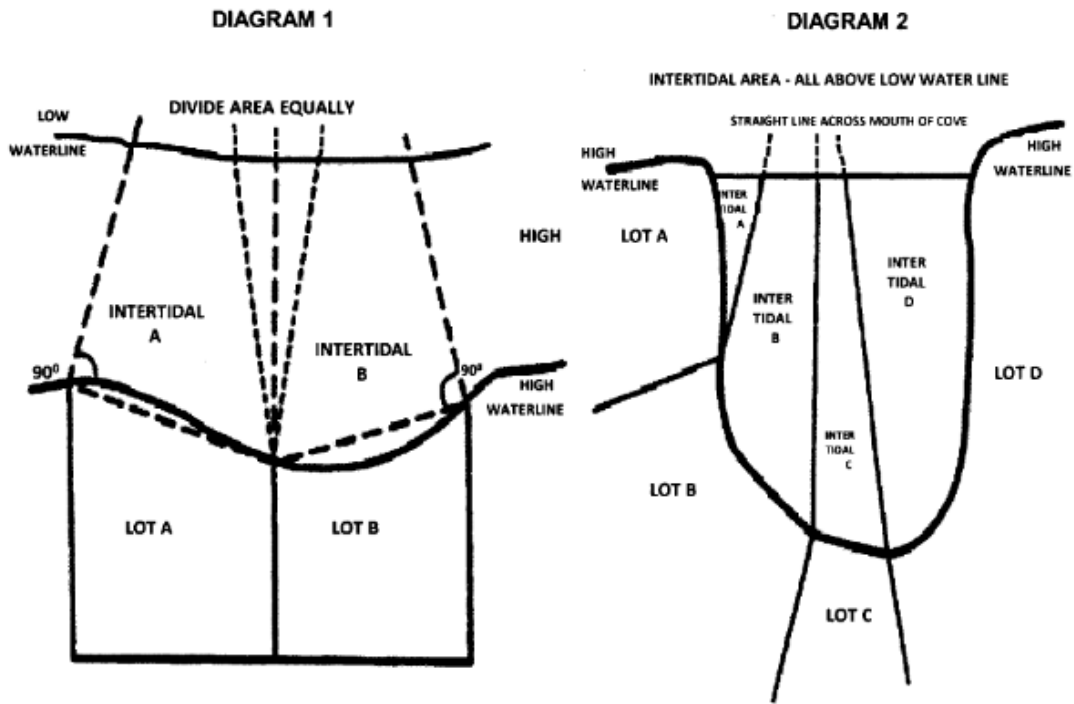
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Figure 1. Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters



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- (3). For a wireless communication system facility (WCSF) plan application, the Town Planner must cause written notice of the hearing sent by postage paid, first-class mail, provided by the applicant, at least seven days prior to the hearing to all owners of abutting property and property located within 1,000 feet of any property line of the property located within 1,000 feet of the proposed telecommunications facility. The applicant must provide this notification and must present proof of such notification to the Town Planner. The notification must include: the name of the applicant, location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.

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16.5.3 Accessory Dwelling Units

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A. Purpose.

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It is the intent of this article to provide standards that enable homeowners to create accessory dwelling units that are compatible with this title and to provide a means for residents, including seniors, single parents, and families with grown children, to remain in their homes and neighborhoods, and increase the housing stock of existing neighborhoods in a manner that is compatible with their size and scale, and allow more efficient use of existing housing stock and infrastructure, and provide a broader range of affordable housing options. The purpose of this article is not intended to create a new supply of short-term rental (STR) units, such as those commonly advertised to tourists.

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B. Applicability.

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- (1). An accessory dwelling unit is allowed in all zoning districts where the use is permitted in Chapter 16.4. The unit must be located:
- a. Within an existing structure, either principal or accessory on the property; or
 - b. Attached to the existing principal structure, sharing a common wall; or
 - c. Within a new accessory structure constructed for this purpose on the property.

89 (2). Accessory dwelling units that have a valid certificate of occupancy or have vested rights in
90 the permitting process with an active building permit as of April 28, 2020 are exempted
91 from the use standard, § 16.5.3.D.(3).

92 C. Application for accessory dwelling unit.

93 (1). An application for an accessory dwelling unit must be made by the owner of the parcel on
94 which the primary residential unit sits. The completed application and associated fees must
95 be submitted to the Code Enforcement Officer for review.

96 (2). Applications for an accessory dwelling unit that meets the unit size standards and
97 development standards contained in this article may be approved administratively and
98 require approval by the Code Enforcement Officer.

99 (3). An accessory dwelling unit that fails to meet the standards provided in this article may not
100 receive administrative approval; however, the accessory dwelling unit may still be
101 allowed. See § 16.5.3.D.(4) below.

102 D. Accessory dwelling unit standards.

103 (1). Lot standards.

104 a. Legal lot/residence. An accessory dwelling unit is allowed only on lots within the
105 Town that contain one legal, single-family residence as the primary unit.

106 b. Number of accessory dwelling units per lot. No more than one accessory dwelling
107 unit is permitted on a lot.

108 c. Zone lot size and unit density. The property on which an accessory dwelling unit is
109 located must meet the size required by the applicable zoning standards for the
110 principal residence, except in the case of legally nonconforming lots. However, an
111 accessory dwelling unit is exempt from the density requirements of the zone in
112 which they are located.

113 d. Setbacks and coverage. Yard setbacks for the zone must be met. However, for
114 legally nonconforming lots where a proposed accessory dwelling unit will be
115 attached to a principal dwelling unit and cannot meet the zone's side and rear yard
116 setbacks, the percentage by which a lot is smaller than the required lot size for the
117 zone will dictate the required setback for that lot. For example, a 30,000 square
118 foot legally nonconforming lot in a zone that requires 40,000 square feet would
119 require side and rear yard setbacks that are 75% of the zone's side and rear yard
120 setbacks. Building coverage requirements will remain as required by the zone.

121 e. Utility connections. Accessory dwelling units must be connected to adequate water
122 and wastewater services.

123 i. Public sewer.

124 i. Service: verification, in writing, of adequate service to support the
125 additional flow from the Superintendent of Wastewater Treatment
126 Facilities.

127 ii. Fees: Payment of appropriate fees for connection to the municipal
128 sewer system is required prior to obtaining the certificate of
129 occupancy.

130 ii. Septic systems. Verification of adequate sewage disposal for subsurface
131 waste disposal is required. The septic system, existing or proposed, must
132 be verified as adequate or reconstructed as required. Plans for subsurface
133 waste disposal must be prepared by a Maine- licensed site evaluator in full
134 compliance with the State of Maine Subsurface Wastewater Disposal Rules,
135 10-144C.M.R. 241.

136 iii. Public water. Verification in writing is required from the Kittery Water
137 District for volume and supply.

- 138 iv. Wells. Verification of the potable water supply for private wells is required.
139 Tests of the existing well or proposed well, if applicable, must indicate that
140 the water supply is potable and acceptable for domestic use and must
141 conform to the recommendations included in the "Manual for Evaluating
142 Public Drinking Water Supplies, Public Health Service No. 1180 (1969)."
- 143 f. Parking. Each accessory dwelling unit must have one on-site parking space in
144 addition to the parking for the primary dwelling unit. Tandem parking is permitted.
- 145 g. Private road or right-of-way access. Where an applicant seeks to locate an
146 accessory dwelling unit on a privately maintained road or right-of-way the
147 following applies:
- 148 i. Applicant must submit written consent from the road or homeowner's
149 association or owner and parties responsible for street maintenance.
- 150 (2). Unit standards.
- 151 a. Unit size. The size of an accessory dwelling unit must meet the minimum size for a
152 dwelling unit as set by building code standards adopted and amended from time to
153 time by Maine's Bureau of Building Codes and Standards, and be no larger than
154 1,000 square feet. For principal dwelling units 1,000 square feet or smaller, an
155 accessory dwelling unit may be no greater than 80% of the size of the principal
156 dwelling unit, as measured in square feet. An accessory dwelling unit may have no
157 more than two bedrooms.
- 158 b. Unit location.
- 159 i. An accessory dwelling unit must meet one or more of the following
160 conditions:
- 161 i. Be fully constructed within the existing footprint of any legal
162 primary residence or accessory building; or
- 163 ii. Share a common wall with the principal residence, providing yard
164 setbacks per § 16.5.3.(2).a; or
- 165 iii. Be constructed as a new accessory building containing an accessory
166 dwelling unit, providing yard setbacks can be met for the zone.
- 167 ii. Accessory dwelling units will be allowed to be fully constructed within the
168 principal residence even if the building does not meet yard setbacks.
- 169 iii. Accessory dwelling units will not be allowed in accessory buildings
170 encroaching on yard setbacks.
- 171 (3). Use Standards. The accessory dwelling unit may not be rented to the same person or party
172 for less than a thirty-day period.
- 173 (4). Development standards. Should an accessory dwelling unit fail to meet the applicable unit
174 standards listed in this article, the accessory dwelling unit may still be allowed if the
175 applicant obtains approval from the Board of Appeals under the provisions of a
176 miscellaneous variation request, as outlines in § 16.2.12. The Board of Appeals shall
177 review any appeal decision in conformance with § 16.2.12.F, Basis for decision.
- 178 (5). Violations. A violation of the use standard § 16.5.3.D(3) will lose the certificate of
179 occupancy for the unit for no less than 30 days, and be assessed a penalty of \$500.
- 180

181 **16.5.4 Affordable Housing**

182 183 A. Purpose.

184 Recognizing that the market alone will not provide the range and diversity of housing types

185 needed for a vibrant community, the Town of Kittery desires to encourage affordable
186 housing for households of modest means and for all ages. The purpose of this ordinance is
187 to offer incentives to developers to include affordable housing, either for lease or sale,
188 particularly in those zones that offer utilities and/or services, and to mitigate the impacts of
189 market-rate housing development on the limited supply of land available for suitable using.
190 The Town looks to its comprehensive plan and finds that this ordinance will assist in
191 meeting housing goals and in promoting the public health, safety and welfare of its
192 residents.

193 B. Applicability.

- 194 (1). Affordable housing regulations are applicable only in zones which explicitly state so and
195 as follows:
- 196 a. All development involving three or more new dwelling units. The proposed
197 dwelling units may be new construction, created through a change of use or created
198 through a renovation, rehabilitation or remodel. Projects may not be phased or
199 segmented to avoid compliance with these requirements.
 - 200 b. All major subdivisions, including those planned in phases, in all zones that create 5
201 or more lots. Minor subdivisions are exempt.
 - 202 c. All developments as described in 1) and 2) above whether the dwelling units
203 proposed are intended for sale or for lease.
- 204 (2). Affordable housing regulations do not apply to hotels, motels, rooming houses, inns, bed
205 and breakfasts, residential care facilities or elder care facilities.

206 C. Requirements.

- 207 (1). For projects proposing five (5) or more dwelling units, at least 10% of the units, rounded
208 down to the nearest whole number, must be affordable housing units, as defined by this
209 code. Any fractional unit obligation left after the rounding results in a proportional
210 payment-in-lieu (see 3) below). For example, if 15 units are proposed, then one affordable
211 unit is required plus 50% of a payment-in-lieu. If an additional affordable unit is offered
212 for the fractional unit obligation, no payment-in-lieu is required.
- 213 (2). The affordable housing units must remain affordable (via a recorded land use restriction,
214 deed restriction or other legal instrument, a copy of which must be submitted to the Town
215 prior to issuance of any building permits) for the longest term permitted under federal,
216 state and local laws and ordinances, or 30 years, whichever is greater.
- 217 (3). As an alternative to providing affordable housing units, projects may pay a fee in lieu of
218 some or all of the units. In-lieu fees shall be paid into the Kittery Housing Reserve Fund,
219 as ordained by the Kittery Town Council. The fee for affordable units not provided must
220 be established by the Kittery Town Council in the schedule of fees.
- 221 (4). If the developer prefers to provide a payment-in-lieu instead of the required affordable
222 housing units, that proportional payment will be calculated based on the number of
223 affordable housing units that are required plus any fractional unit obligation. Using the
224 example above, if 15 units are proposed, the developer would provide 1.5 times the current
225 rate set by the Town.

226 D. Location.

- 227 (1). Required affordable housing may be located either on-site with any market rate dwelling
228 units or off-site within areas appropriately zoned for residential use. For development
229 proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable housing must be
230 located within one of those zones.
- 231 (2). Off-site affordable housing may be new construction, a rehabilitation, remodel or
232 renovation of an existing structure, or a change of use from non-residential to residential.

233 (3). Developers of market-rate units for sale who seek to provide the required affordable
234 housing units off-site may opt to provide such dwelling units as rentals, subject to review
235 and approval by the Planning Board.

236 E. Incentives.

- 237 (1). 51 Zoning districts having density incentives may be reviewed under the pertinent zone
238 located in §16.4 Land Use Zone Regulations.
- 239 (2). The Town will reduce the permitting costs for developments including affordable housing
240 as follows:
- 241 a. For developments comprised of 10% – 15% affordable housing units: 10% off total
242 permitting costs except for sewer connection fees.
 - 243 b. For developments comprised of 16% – 24% affordable housing units: 15% off total
244 permitting costs except for sewer connection fees.
 - 245 c. For developments comprised of 25% and over affordable housing units: 20% off
246 total permitting costs except for sewer connection fees.

247 F. Standards.

- 248 (1). Affordable housing units must be built in reasonable accordance with any market-rate units
249 such that at minimum, for every five market rate units built, one affordable unit must be
250 completed. All affordable housing units in a development must have received a certificate
251 of occupancy before the final market rate unit receives such. If a development is proposed
252 for five dwelling units, including one affordable unit, that affordable unit must be
253 completed before the last market rate unit receives its certificate of occupancy.
- 254 (2). When affordable housing units are part of a development which also includes market rate
255 housing units, the outside appearance of affordable units must be similar to the market rate
256 units and any affordable units must be integrated into the development as a whole.
257 Affordable units cannot be confined to one building of a multiple building development
258 except in the cases of cottage clusters, accessory dwelling units or two-family residences.
- 259 (3). Affordable housing units need not be the same size as market rate housing units but the
260 number of bedrooms in each such dwelling unit may not be less than 10% of the total
261 number of market rate bedrooms in the development, rounded up when the fractional
262 portion is .5 or more. For example, a five-unit multi-family dwelling with four market rate
263 housing units of 2 bedrooms each would be required to provide one affordable housing
264 unit with one bedroom.
- 265 a. Studio dwelling units will be counted as a one-bedroom unit. In cases where a
266 development is providing only studio apartments and one-bedroom apartments, the
267 Planning Board has the authority to decide whether each required affordable
268 housing unit will be a studio or one-bedroom unit.
- 269 (4). Affordable housing units to be located off-site must be of comparable quality with the
270 same number of bedrooms (see 3) above) as any new affordable housing units that would
271 be created by the project on-site. The Town will not accept off-site units that are run-down
272 or show signs of substantial wear or deterioration. This includes but is not limited to:
273 heating and cooling systems, plumbing, wiring, appliances, flooring, walls, counters,
274 cabinets, and fixtures as well as roofing, siding, doors and windows.

275 G. Eligibility and Restrictions.

- 276 (1). Affordable housing units or lots that will be owner-occupied must be:
- 277 a. Restricted to households having an income that does not exceed 120% of the area
278 median income for the family size having the same number of persons as the
279 subject household for the York-Kittery-South Berwick, Maine, Metro Fair Market
280 Area (HMFA), as published by the U.S. Department of Housing and Urban

- 281 Development as of the date of the buyer's application, and whose housing and
282 utility costs do not exceed 30 percent of the household's annual gross income; and
- 283 b. Maintained as affordable housing units through a land use restriction agreement
284 with the Town of Kittery or its designee for a period no less than the maximum
285 period permitted by Maine law or thirty (30) years, whichever is longer.
- 286 (2). Affordable housing units that will be leased must be:
- 287 a. Restricted to households having an income that does not exceed 80% of the area
288 median income for the family size having the same number of persons as the
289 subject household for the York-Kittery- South Berwick, Maine, Metro Fair Market
290 Area, as published by the U.S. Department of Housing and Urban Development as
291 of the date of the household's application, and whose housing and utility costs do
292 not exceed 30 percent of the household's annual gross income; and
- 293 b. Maintained as affordable housing units through a land use restriction agreement
294 with the Town of Kittery or its designee for a period no less than the maximum
295 period permitted Maine law or thirty (30) years, whichever is longer.
- 296 (3). Subleasing of any leased affordable housing unit is not permitted. Leasing or renting,
297 including short-term rentals, of any owner-occupied affordable housing unit is not
298 permitted.

299 H. Market and Pricing.

- 300 (1). Affordable housing units must be actively marketed for sale or lease, as applicable, to
301 eligible households, which active marketing must include, as a minimum, the following:
- 302 a. The owner shall provide a notice of availability to the Town of intent to lease or
303 sell an affordable housing unit. Such notice must be given at least 14 days prior to
304 advertising the unit.
- 305 b. The owner or their authorized representative shall provide an affidavit to the Town
306 confirming that household eligibility requirements have been met upon successful
307 sale or lease of an affordable housing unit. Any lease agreement must be in writing
308 and provided to the Town upon request.
- 309 c. A non-eligible household may occupy an affordable housing unit if, despite active
310 marketing, an eligible household is not available to lease the housing unit. If an
311 affordable housing unit is being offered for lease, a non-eligible household may
312 occupy it under the following conditions:
- 313 i. The housing unit must be marketed for 90 days after the Town's receipt of
314 notice of availability.
- 315 ii. If no eligible household is found, a lease may be signed with a non-eligible
316 household 14 days after the Town is notified of the failure to lease, with the
317 condition that the next housing unit that becomes available in the
318 development must be offered as an affordable unit so that the affordable
319 housing requirements for the development continue to be met.
- 320 d. If, 120 days after the Town's receipt of notice of availability, the initial sale of an
321 affordable housing unit by the developer has not occurred, a non-eligible household
322 may occupy it but that household may only lease the unit for one year from the
323 developer thus preserving the affordable restrictions. The unit must again be
324 offered for sale upon termination of the one-year lease. The lease may not be
325 renewed. The Town must be notified of the failure to sell 14 days before the lease
326 is signed and of the subsequent lease agreement within 30 days of such lease being
327 signed.
- 328 (2). Initial maximum sale pricing of new affordable units must be set as follows:
- 329 a. Establish the target percentage of area median income level from the York-Kittery-

330 South Berwick, Maine, Metro Fair market Area (HMFA), as published by the U.S.
 331 Department of Housing and Urban Development that the unit will be marketed to.
 332 For projects being funded privately, that number must be 110% of area median
 333 income. For projects that include state, federal or municipal funding, that number
 334 will be influenced by the stipulations attached to the funding.

- 335 b. From the table below, determine the minimum household size based on the number
 336 of bedrooms in the unit

	1 – bedroom or studio	2 - bedroom	3 - bedroom	4 - bedroom
Minimum Household Size	1	2	3	4

- 338
- 339 c. Calculate 30% of the gross median income based on the area median income from
 340 the York- Kittery-South Berwick, Maine, Metro Fair market Area (HMFA), as
 341 published by the U.S. Department of Housing and Urban Development for the
 342 minimum household size based on the number of bedrooms. For example:
 343 $(\text{Household's } 110\% \text{ AMI} \times .30) / 12 = \text{monthly income available for housing-related}$
 344 expenses
- 345 d. The amount obtained from the formula above must then have other housing-related
 346 expenses, such as mortgage insurance, real estate taxes, home insurance and any
 347 HOA/condominium fees removed. Mortgage insurance must be estimated similar
 348 to current rates utilized by the Federal Housing Administration unless otherwise
 349 agreed to by the Town or its designee. What remains after removing non-mortgage
 350 related housing expenses is that portion of a household's monthly income which is
 351 available for a mortgage payment.
- 352 e. The sale price will then be set based on a 30-year fixed-rate mortgage with a
 353 minimum 3.5% down payment. Larger down payments will not change the
 354 maximum allowable sale price.
- 355 f. No affordable housing unit may be sold for more than the maximum sale price.
- 356 (3). Affordable housing units located in a development for which a home owner association
 357 (HOA) or condominium association will be established must obtain the Town's review and
 358 approval of the draft budget and condominium/HOA documents. The Town or its designee
 359 may request quotes for costs such as replacement reserves and insurance. Fees will be
 360 shared proportionately based on the Town's tax assessment of the properties or if that
 361 information is not available, on the initial sales price of the units. Affordable units will be
 362 assessed with consideration given to the associated restrictions. The condominium/HOA
 363 fees may not increase more than 5% any given year and cannot exceed 15% within any
 364 five-year period without a supermajority 67% vote of the association. The Town may
 365 choose to have a consultant or the Town Attorney review the condominium/HOA
 366 documents, which fee is payable by the developer.
- 367 (4). Maximum resale pricing of affordable units must be set as follows:
- 368 a. Calculate the average percentage change in the area median income used for the
 369 initial pricing for the relevant minimum household size between the year of
 370 purchase and the present.
- 371 b. Using that percentage number, calculate the new selling price. For example, if the
 372 average percentage change in area median income over the time the home was
 373 owned is 2% then: $(\text{original purchase price}) * 1.02 = \text{new selling price}$.

- 374 (5). Monthly rental costs for affordable housing units will be set based on the following:
 375 a. Find the minimum household size based on the number of bedrooms from the table
 376 below:
 377

	1 – bedroom or studio	2 - bedroom	3 - bedroom	4 - bedroom
Minimum Household Size	1	2	3	4

- 378 b. Use the formula below to calculate the monthly rent:
 379 $0.30 \times (\text{annual income based on minimum household size}/12) \text{ minus utilities} =$
 380 affordable rental unit rent.

- 381 (6). The Town Manager or designee, with recommendation from the Affordable Housing
 382 Committee, may modify the requirements in 16.12.8 as needed to advance Kittery’s
 383 affordable housing goals and objectives.

384 I. Supplemental Standards for Approval.

- 385 (1). Prior to submission of any plan for review by a Town land use board such as the Planning
 386 Board or Board of Appeals, the developer shall submit a Housing Plan to the Planning
 387 Department outlining the incentives sought, target median income percentage for the
 388 affordable units, proposed location of affordable housing and standards satisfied from this
 389 section.
- 390 (2). The Town must review the plan and certify in writing that the development for which
 391 approval is sought, as described in the Housing Plan, is consistent with all applicable
 392 requirements of this Section. If the plan does not meet the requirements, the Town must
 393 notify the developer and the project may not proceed to the applicable land use board.
- 394 (3). In addition, all housing-related projects in the C-1 zone must undergo master site plan
 395 review even if only one building is proposed. See Chapter 16.6.
- 396 (4). Prior to the submittal of any development application for consideration by a Town land use
 397 board, a pre-application conference between the developer and the Town is required to
 398 discuss the application, site design and relevant requirements of the certified Housing Plan.
- 399 (5). Prior to issuance of a building permit, a land use restriction agreement shall be executed
 400 between the Town Manager and the developer, in a form promulgated by the Town and
 401 approved by the Town Attorney, based on the Housing Plan, which land use restriction
 402 agreement sets forth the land use restrictions required by this section.
- 403 (6). Prior to issuance of the certificate of occupancy for a development subject to this section,
 404 the developer shall provide the Town with a fully executed copy of the land use restriction
 405 agreement as recorded in the real property records maintained by the York County
 406 Registry of Deeds.

407 **16.5.5 Agriculture**

- 408 A. Agricultural practices must be conducted to minimize soil erosion, sedimentation, contamination
 409 and nutrient enrichment of groundwater and surface waters.
- 410 B. All spreading or disposal of manure must be accomplished in conformance with the Manure
 411 Utilization Guidelines, November 1, 2001, published by the Maine Department of Agriculture and
 412 the Nutrient Management Act (7 M.R.S. §§ 4201 to 4214).
- 413 C. Manure must not be stored or stockpiled within 100 feet, horizontal distance, of the normal high-
 414 water line of any water bodies, tributary streams, coastal wetlands or freshwater wetlands shown on
 415 the Map. Within five years of the effective date of this chapter, all manure storage areas within the

416 Shoreland Overlay and Resource Protection Overlay Zones must be constructed or modified so the
417 facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do
418 not meet the setback requirement may remain, but must meet the no-discharge provision within the
419 above five-year period.

- 420 D. Owners of agricultural activities involving tillage of soil greater than 40,000 square feet in surface
421 area or the spreading, disposal or storage of manure within the Shoreland Overlay Zone are
422 required to submit a soil and water conservation plan to the Planning Board for review and
423 approval. Nonconformance with the provisions of said approved plan will be considered to be a
424 violation of this section.
- 425 E. New tilling of soil within 100 feet, horizontal distance, of the normal high-water line of water
426 bodies or coastal wetlands; within 25 feet, horizontal distance, of the normal high-water line of
427 tributary streams and freshwater wetlands shown on the Map is prohibited. Operations in existence
428 on the effective date of this chapter and not in conformance with this provision may be maintained.
- 429 F. After the effective date of this section, newly established livestock grazing areas will not be
430 permitted within 100 feet, horizontal distance, of the normal high-water line of any water bodies or
431 coastal wetlands or within 25 feet, horizontal distance, of the normal high-water line of tributary
432 streams and freshwater wetlands shown on the Zoning Map. Livestock grazing associated with
433 ongoing farm activities, and which are not in conformance with the above setback provision, may
434 continue, provided that such grazing is conducted in accordance with a soil and water conservation
435 plan that has been approved by the Planning Board.

436 **16.5.6 Agriculture, Piggery**

- 437 A. Number of animals. There may be no more than three (3) pigs allowed on a lot.
- 438 B. Setbacks. The following distances are from the identified use to the nearest property not owned or
439 controlled by the operator/owner of the piggery:
- | | |
|--|---------|
| 440 (1). Structures: | 50 ft. |
| 441 (2). Feed lots, pens and extensively used areas: | 100 ft. |
- 442
- 443 C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement
444 Officer that erosion and sediment runoff will not enter an abutting property.
- 445 D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in
446 conformance with the, "Manual of Best Management Practices for Maine Agriculture," published
447 by the Maine Department of Agriculture in January 2007, and as this may be amended or
448 superseded.

449 **16.5.7 Agriculture, Poultry Facility**

- 450 A. Number of Animals. These standards apply to the keeping of ten (10) or more poultry animals that
451 are six (6) months old or older in zoning districts in which Agriculture, Poultry Facility is either a
452 permitted use or a special exception use.
- 453 B. Setbacks. The following distances are from the identified nearest property not owned or controlled
454 by the operator/owner of the poultry facility:
- | | |
|--|---------|
| 455 (1). Structure, including Barn or Coops: | 50 ft. |
| 456 (2). Feed lots, pens and extensively used areas: | 100 ft. |
- 457 C. Erosion and Sediment Control. The property owner shall demonstrate to the Code Enforcement
458 Officer that erosion and sediment runoff will not enter an abutting property.
- 459 D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in
460 conformance with the, "Manual of Best Management Practices for Maine Agriculture," published

461 by the Maine Department of Agriculture in January 2007, and as this may be amended or
462 superseded.

463 **16.5.8 Campgrounds and Campsites**

464 A. Campgrounds. Campgrounds must meet the minimum requirements according to state licensing
465 procedures and the following:

- 466 (1). Campgrounds must contain a minimum of 5,000 square feet of land, not including roads
467 and driveways, for each site.
- 468 (2). Land supporting wetland vegetation and land below the normal high-water line of a water
469 body is not to be included in calculating land area per site.
- 470 (3). The areas intended for placement of a recreational vehicle, tent or shelter, and utility and
471 service buildings must be set back a minimum of 75 feet, horizontal distance, from the
472 normal high-water line of water bodies, tributary streams or the upland edge of a wetland.

473 B. Individual private campsites. Individual private campsites not associated with campgrounds may be
474 permitted in a Shoreland Overlay Zone, provided the following conditions are met:

- 475 (1). One campsite per lot existing on the effective date of this chapter or 30,000 square feet of
476 lot area within the SL-OZ, whichever is less, may be permitted. [Amended 9-26-2011 by
477 Ord. No. 11-15]
- 478 (2). Campsite placement on any lot, including the area intended for a recreational vehicle or
479 tent platform, must be set back 75 feet, horizontal distance, from the normal high-water
480 line of water bodies, tributary streams or the upland edge of a wetland.
- 481 (3). Only one recreational vehicle is allowed on a campsite. Permanent foundations for
482 recreational vehicles are prohibited. Gravel pads for temporary recreational vehicle parking
483 are permissible. No structures, other than canopies, are allowed for attachment to the
484 recreational vehicle.
- 485 (4). The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter
486 in a Resource Protection Overlay Zone is limited to 1,000 square feet.
- 487 (5). A written sewage disposal plan describing the proposed method and location of sewage
488 disposal is required for each campsite and must be approved by the local Plumbing
489 Inspector. Where disposal is off site, written authorization from the receiving facility or
490 property owner is required.
- 491 (6). Recreational vehicles, tents or similar shelters are not allowed to remain on site for a
492 period longer than 120 days per year, unless it can be demonstrated that all requirements
493 for residential structures have been met, including the installation of a subsurface sewage
494 disposal system in compliance with the State of Maine Subsurface Wastewater Disposal
495 Rules and/or the site is served by public sewage facilities.

496 **16.5.9 Conservation of Wetlands Including Vernal Pools**

497 A. Purpose.

498 Wetlands are a fragile natural resource which, in their natural state, directly and indirectly
499 benefit the public by serving valuable functions such as pollution filtration systems (i.e.,
500 retention of suspended solids, phosphorus and other nutrients), control of floodwaters,
501 erosion control, groundwater recharge, educational and scientific study, wildlife habitat,
502 open space and recreation. Considerable wetland acreage has been lost or impaired by
503 draining, dredging, filling, excavating, building, pollution and other acts inconsistent with
504 the valuable functions and natural limitations of wetlands. It is, therefore, the intent of the
505 Town to:

- 506 a. Prevent the development of structures and land uses within wetlands and
507 wetland setback areas that may contribute to the pollution of surface water

- 508 and groundwater by sewage or toxic substances;
- 509 b. Prevent the destruction of, or significant changes to, wetlands which
- 510 provide flood and shoreline protection, recharge groundwater supplies, and
- 511 augment stream flow during dry periods;
- 512 c. Protect wetland areas and promote healthy wetland buffers that will
- 513 preserve and enhance the wetlands;
- 514 d. Protect wildlife habitats, such as vernal pools, deer habitat, nesting sites,
- 515 etc., and maintain ecological balances; and
- 516 e. Establish maintenance responsibility and/or fees to protect and maintain the
- 517 wetland areas.

518 (1). The number of healthy, functional wetlands in Kittery is decreasing; therefore, practices

519 and strategies, such as buffering and the avoidance of wetland alterations that serve to

520 protect functional wetlands and the repair of degraded wetlands, are encouraged. The

521 reviewing authority will review plans for proposed development within 100 feet of a

522 wetland to determine if wetlands of special significance are impacted. The applicant may

523 be required to pay the cost of an independent study. For the reviewing authorities, refer to

524 § 16.2.

- 525 (2). Wetlands of special significance have one or more of the following characteristics:
- 526 a. Critically imperiled or imperiled community. The freshwater wetland
- 527 contains a natural community that is "critically imperiled" as defined by the
- 528 Maine Natural Areas Program.
- 529 b. Significant wildlife habitat. The freshwater wetland contains significant
- 530 wildlife habitat as defined by 38 M.R.S. §480-B(10).
- 531 c. Location near coastal wetland. The freshwater wetland is located within 250
- 532 feet of a coastal wetland.
- 533 d. Location near a water body. The freshwater wetland is located within 250
- 534 feet of the normal high-water line and within the same watershed of a lake
- 535 or pond.
- 536 e. Aquatic vegetation, emergent marsh vegetation or open water. The
- 537 freshwater wetland contains, under normal circumstances, at least 20,000
- 538 square feet of aquatic vegetation, emergent marsh vegetation or open water,
- 539 unless the twenty-thousand or more square foot area is the result of an
- 540 artificial pond or impoundment.
- 541 f. Wetlands subject to flooding. The freshwater wetland is inundated with
- 542 floodwater during a one-hundred-year flood event based on flood insurance
- 543 maps produced by the Federal Emergency Management Agency or other
- 544 site-specific information.
- 545 g. Peatlands. The freshwater wetland is or contains peatlands, except that the
- 546 Planning Board may determine that a previously mined peatland, or portion
- 547 thereof, is not a wetland of special significance.
- 548 h. River, stream or brook. The freshwater wetland is located within 25 feet of
- 549 a river, stream or brook.
- 550 i. Monetary value. An estimation can be determined based on the importance
- 551 of the wetland with respect to the individual or collective functions it
- 552 provides.
- 553 j. Vernal pools. The wetland contains a particular aquatic habitat as defined
- 554 by the Maine Department of Environmental Protection (MDEP), including
- 555 those mapped as significant vernal pools by MDEP.

556 B. Wetlands boundaries.

557 The definition of wetland boundaries is as described in this section and in § 16.3. Planning Board
558 approval to alter a wetland area one acre or larger in size will not be issued until the applicant has
559 submitted to the Town a wetlands delineation map and summary prepared by a qualified wetlands
560 scientist or a Maine-certified soil scientist, at the applicant's expense. The qualified wetlands
561 scientist or Maine-certified soil scientist must determine through field investigation the presence,
562 location and configuration of wetlands on the area proposed for use.

- 563 (1). Disturbed areas. An area which has been disturbed or modified such that natural
564 vegetation, hydrology or soils are altered or removed may still satisfy the wetland criteria.
565 In the event disturbance of a wetland causes the wetland boundary to be altered, a new
566 boundary may need to be delineated in order to determine if the wetland is a regulated
567 wetland. Wetland boundaries are to be delineated according to procedures described in the
568 Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station
569 Technical Report Y-87-1, January 1987, (1987 Manual). Notwithstanding the above, areas
570 legally disturbed or modified prior to May 13, 1987 will be considered "wetlands" for the
571 purpose of this title if such disturbed areas currently meet the normal criteria for
572 delineating undisturbed wetlands.
- 573 (2). Settling disputes over wetland boundaries. If there is a dispute regarding the existence or
574 boundaries of the wetlands, the boundaries of the wetland are to be determined, at the
575 expense of the applicant, by a qualified wetlands scientist or a qualified Maine-certified
576 soils scientist agreeable to both the Planning Board and the applicant.
- 577 (3). Permits required from other agencies. The determination of wetlands boundaries for Town
578 jurisdiction by the Town Planning Board, the Conservation Commission, or the Code
579 Enforcement Officer does not eliminate the need for the applicant to seek jurisdictional
580 determinations and/or permits from the Maine Department of Environmental Protection
581 and the United States Army Corps of Engineers when required.

582 C. Regulated activities within wetlands. [Amended 9-26-2011 by Ord. No. 11-15]

- 583 (1). Unless otherwise specified, all new structures and activities within wetlands, including but
584 not limited to dredging and filling and expansions of existing structures and activities, are
585 subject to the provisions of these regulations. Proposed activities and structures within a
586 freshwater wetland smaller than 501 square feet in total size are exempt from the
587 regulations in this article.

588 D. Permitted activities within regulated wetlands. [Amended 9-26-2011 by Ord. No. 11-15] The
589 following uses are considered to be compatible within regulated wetlands and are permitted within
590 regulated wetlands without Planning Board approval, provided they are in conformance with all
591 local, federal and state regulations:

- 592 (1). Agriculture, including pasturing, farming, haying and harvesting of wild crops. Such
593 agriculture must not cause or contribute to surface water or groundwater pollution by use
594 of pesticides, toxic chemicals or other pollutants and must not cause soil erosion;
- 595 (2). Conservation areas and nature trails;
- 596 (3). Education and scientific research;
- 597 (4). Forestry, tree farming and timber harvesting using the best management practices in order
598 to protect streams from damage and prevent sedimentation. Timber harvesting must be
599 conducted during periods when the ground is frozen. The practice known as "clear cutting"
600 is not permitted by right and requires a special permit under § 16.5.29;
- 601 (5). Low-intensity recreation;
- 602 (6). Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks
603 or utilities. Such repair and maintenance must not negatively impact the wetland or alter
604 the existing watercourse and related hydrology;
- 605 (7). Repair and maintenance of existing permanent structures requiring the addition or removal

- 606 of 10 cubic yards or less of earth material to (form) a water body or wetland;
- 607 (8). Placement of drainage outfall pipes requiring the addition or removal of less than 10 cubic
608 yards of material;
- 609 (9). Repair in kind, maintenance and necessary upgrade of existing drainage facilities;
- 610 (10). Repair in kind and maintenance of existing transportation facilities;
- 611 (11). Placement of moorings, subject to Harbormaster approval;
- 612 (12). Wilderness areas and natural wildlife refuges;
- 613 (13). Piers, fences, blinds, footbridges and shelters to enhance wildlife, provided they do not
614 involve draining, grading, filling or dredging within the wetland. All such structures must
615 be constructed of nontoxic materials and designed in such a manner to permit the
616 unobstructed flow of waters and must preserve the natural contour and hydrology of the
617 wetland, unless otherwise authorized by special permit as per § 16.5.9.D;
- 618 (14). Emergency public safety operations; and
- 619 (15). Any other activity as determined by the Planning Board that does not result in a
620 measurable alteration of the wetland.

621 E. Prohibited uses within regulated wetlands.

622 The following structures and activities are considered to be incompatible with protecting wetlands
623 and are prohibited within regulated wetlands:

- 624 (1). Disposal or storage of waste and/or hazardous materials;
- 625 (2). Manure stockpiles;
- 626 (3). Road salt stockpiles;
- 627 (4). Topsoil removal except as permitted in § 16.5.9.D or with Planning Board approval;
- 628 (5). Bulk fuel storage;
- 629 (6). Herbicidal spraying;
- 630 (7). Invasive nonnative wetland plants; and
- 631 (8). Snow dumping.

632 F. Procedures for wetlands alteration application.

- 633 (1). Application and review process. The application and review process for the review of
634 proposals within regulated wetlands must conform to the procedures explained in § 16.5.9
635 of this chapter, except where specifically stated otherwise in this section.
- 636 (2). Submission requirements. An application to alter a wetland must be made in accordance
637 with the submission requirements in § 16.5.9.L to the Town Planner, or designee,
638 accompanied by a fee as determined in Appendix A. [**Amended 9-26-2011 by Ord. No.**
639 **11-15**]
- 640 (3). Advisory opinion. The Planning Board may request the Town Planner to acquire more
641 specific data and analysis from qualified sources and/or the opinion of the Conservation
642 Commission concerning the proposed activity.
- 643 (4). Timing after Board acceptance. The Planning Board will issue its decision within 35 days
644 of receipt of the completed wetlands alteration application, unless a public hearing is
645 necessary. A hearing is not necessary if the Planning Board finds that the activity is so
646 minor that it will not significantly affect the wetland or that the hearing will not produce
647 additional information useful to the review. A decision may be rendered at the scheduling
648 hearing if the Board determines that a complete application has been received and no
649 public hearing is necessary. If a public hearing is held, the Planning Board is required to
650 issue its decision within 35 days of completion of the public hearing.
- 651 (5). Abutter notice. Owners of property within 150 feet, horizontal distance, of the proposed
652 alteration must be notified by first class U.S. Mail of any public hearing on the application

653 for wetlands alteration.
654 (6). Coordination. Submission requirements for an application for a wetlands alteration will be
655 integrated into the required submissions for a subdivision or development review
656 application to the Planning Board.

657 G. Wetlands alteration approval criteria. [Amended 9-26-2011 by Ord. No. 11-15]

658 (1). In making the final determination as to whether a wetland application should be approved,
659 the Planning Board will consider existing wetland destruction and the cumulative effect of
660 reasonably anticipated future uses similar to the one proposed. Preference will be given to
661 activities that meet wetland setbacks, have a reasonable stormwater management plan
662 (subject to Planning Board review and approval), and that dedicate easements for the
663 purposes of maintaining the wetland and the associated drainage system. Approval to alter
664 a wetland will not be granted for dredging or ditching solely for the purpose of draining
665 wetlands and creating dry buildable land areas. An application for a wetlands alteration
666 will not be approved for the purpose of creating a sedimentation or retention basin in the
667 wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces
668 from development activities are not allowed.

669 (2). It is the responsibility and burden of the applicant to show that the proposed use meets the
670 purposes of this title and the specific standards listed below to gain Planning Board
671 approval to alter a wetland. The Planning Board will not approve a wetlands alteration
672 unless the applicant provides clear and convincing evidence of compliance with this title.

673 (3). In evaluating the proposed activity, the Planning Board may need to acquire expert
674 advisory opinions. The applicant must be notified in writing, by the Town Planner at the
675 Planning Board's request, that the applicant will bear the expenses incurred for the expert
676 persons or agencies. The Planning Board will consider the advisory opinion, including any
677 recommendations and conditions, provided by the Conservation Commission.

678 (4). When the Planning Board finds the demonstrated public benefits of the project as
679 proposed, or modified, clearly outweigh the detrimental environmental impacts, the
680 Planning Board may approve such development, but not prior to granting approval of a
681 reasonable and practicable mitigation plan (see § 16.5.9.I) and not prior to the completion
682 of all performance guaranties for the project (see § 16.8.11.F).

683 (5). The applicant must submit applicable documentation that demonstrates there is no
684 practicable alternative to the proposed alteration of the wetland. In determining if no
685 practicable alternative exists, the Planning Board will consider the following:

686 a. The proposed use:

- 687 i. Uses, manages or expands one or more other areas of the site that
688 will avoid or reduce the wetland impact;
- 689 ii. Reduces the size, scope, configuration or density of the project as
690 proposed, thereby avoiding or reducing the wetland impact;
- 691 iii. Provides alternative project designs, such as cluster development,
692 roof gardens, bridges, etc., that avoid or lessen the wetland impact;
693 and
- 694 iv. Demonstrates that the proposed development meets or exceeds best
695 management practices for stormwater management in the wetland
696 areas.

697 (6). In determining if the proposed development plan affects no more wetland than is
698 necessary, the Planning Board will consider if the alternatives discussed above in
699 Subsection (1) of this section accomplish the following project objectives:

700 a. The proposed use will not:

- 701 i. Unreasonably impair or diminish the wetland's existing capacity to

- 702 absorb, store and slowly release stormwater and surface water
703 runoff;
- 704 ii. Unreasonably increase the flow of surface waters through the
705 wetland;
- 706 iii. Result in a measurable increase in the discharge of surface waters
707 from the wetland;
- 708 iv. Unreasonably impair or diminish the wetland's capacity for retention
709 and absorption of silt, organic matter, and nutrients;
- 710 v. Result in an unreasonable loss of important feeding, nesting,
711 breeding or wintering habitat for wildlife or aquatic life; all
712 crossings must be designed to provide a moist soil bed in culvert
713 inverts and to not significantly impede the natural migration of
714 wildlife across the filled area;
- 715 vi. Result in a measurable increase of the existing seasonal temperature
716 of surface waters in the wetland or surface waters discharged from
717 the wetlands; or
- 718 vii. Result in a measurable alteration or destruction of a vernal pool.

719 H. Expiration of wetlands alteration approval. [Amended 1-28-2015 by Ord. No. 15-01]

- 720 (1). Wetlands alteration approval will expire if work has not commenced within one year of the
721 Planning Board date of approval. Where work has commenced within one year of
722 approval, such approval will expire unless work is complete within two years of the
723 original approval date.
- 724 (2). Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to
725 an approved plan expiration date upon written request by the developer for an inclusive
726 period from the original approval date, not to exceed five years for a subdivision plan and
727 three years for all other development plans.

728 I. Mitigation plan.

- 729 (1). Mitigation activities are actions taken to offset potential adverse environmental impact, as
730 well as the remittance of fees and a plan for the preservation of buildable/usable upland
731 areas when the applicant has proven to the Planning Board's satisfaction that there are no
732 practical alternatives to impacting a wetland.
- 733 (2). Required fees and compensation.
- 734 a. For activities which in total will alter or fill less than 501 square feet of
735 regulated wetlands, the mitigation plan must include the preservation of an
736 undisturbed upland buffer zone adjacent to the wetland boundary equal in
737 size to the area of the wetland to be altered.
- 738 b. For activities which in total alter or fill a five-hundred-and-one-square foot
739 to twenty-thousand-square-foot wetland, the mitigation plan must include
740 the preservation of an undisturbed upland buffer zone adjacent to the
741 wetland boundary equal in size to the area of the wetland to be altered. The
742 undisturbed buffer zone from the wetland boundary must be placed in deed
743 restrictions and be located and configured in a manner acceptable to the
744 Planning Board.
- 745 c. In addition, a wetlands preservation fee for each square foot of altered
746 wetland area, as determined in Appendix A, will be deposited into the
747 account of the Town to achieve one or more of the following objectives
748 related to the conservation of Kittery wetlands, with the Planning Board's
749 recommendation and release of funds by the Town Council: [Amended 9-
750 26-2011 by Ord. No. 11-15]

- 751 i. Restoration and preservation of wetlands;
752 ii. Purchase of buffer areas for wetlands deemed at risk;
753 iii. Monitoring and improvement of water quality;
754 iv. Environmental and conservation projects, such as, but not limited to,
755 education;
756 v. Matching grant funds;
757 vi. Open space land purchases in conjunction with the Open Space
758 Committee;
759 vii. Assistance to the Kittery Land Trust; and/or
760 viii. Purchase of signage to denote sensitive and wetland areas.
- 761 d. Assessment. A functional assessment and report of the wetlands to be
762 altered must be conducted in accordance with the requirements in
763 § 16.5.9.L(3). The assessment must demonstrate the existing wetland
764 functions and functional value and summarize the impairments, degradation
765 and/or loss of function due to the proposed development.
- 766 i. When required. Fees for deposit to the wetlands preservation
767 account are required whenever wetland areas or wetland functions
768 will be lost or degraded due to the project, as identified by the
769 functional assessment.
- 770 ii. Where required. Fees for deposit to the wetlands preservation
771 account must be used on the proposed site or on parcels adjacent to
772 the project site when possible. If not possible, the fees must be used
773 within the same watershed as the proposed alteration, or within the
774 project vicinity, except as allowed for mitigation banking approved
775 in writing by the Maine Department of Environmental Protection. In
776 all cases, use of the fees must occur within the boundaries of the
777 Town.
- 778 iii. Wetland impact mitigation process. Fees or developable land, or a
779 combination thereof, as determined by the Planning Board, will be
780 used to replace lost wetlands and wetland functions. Where the
781 Maine Department of Environmental Protection and this title require
782 and the Planning Board has approved a mitigation plan, such plan is
783 deemed to satisfy Town standards.
- 784 e. Homeowners' association documents, deed covenants, maintenance
785 agreements, and easements must establish responsibility for the
786 maintenance of wetlands. The association documents must stipulate
787 periodic maintenance of the surface and subsurface stormwater system,
788 including but not limited to catch basins, stormwater manholes, pipes,
789 ditches, curbs, settling basins and other structures designed to direct, retain
790 and/or discharge stormwater runoff. In the event the Code Enforcement
791 Officer and/or the Town's Engineer finds the wetlands are not in a natural
792 healthy state, the association will be required to hire a qualified wetlands
793 scientist or a Maine-certified soils scientists to evaluate all wetlands within
794 the development at the association's expense.

795 J. Coordination.

796 To reduce delays, the applicant may, upon written notice to the Town Planner, simultaneously
797 apply to the Army Corps of Engineers and the Maine Department of Environmental Protection for
798 permits during the Town review process. In addition, the applicant may simultaneously apply for
799 other local land use regulation approvals while applying for wetlands alteration approval.

- 800 K. Enforcement.
801 The provisions of this Section (§16.5.9), Conservation of Wetlands Including Vernal Pools, are to
802 be administered and enforced pursuant to the provisions of § 16.2, Administration and
803 Enforcement.
- 804 L. Submission requirements for wetland alteration application.
- 805 (1). Minimum requirements. Unless specifically waived by the Planning Board, all applications
806 must contain the following information:
- 807 a. Fifteen copies of the narrative, the site plan and the vicinity map required in
808 this subsection. [Amended 9-26-2011 by Ord. No. 11-15]
 - 809 b. A copy of the official documents showing legal interest of the applicant in
810 the property to be affected.
 - 811 c. A narrative, describing:
 - 812 i. The purpose of the project;
 - 813 ii. The type of alteration to the wetland (fill, culvert, dredge, etc.);
 - 814 iii. Why there is no practicable alternative to impacting the wetland;
815 and
 - 816 iv. How the proposed activity has been designed to minimize the
817 impact on the wetland.
 - 818 d. A plan view showing the site as viewed from above is required. The plan
819 view must:
 - 820 i. Be drawn at an appropriate scale, but no smaller scale than one inch
821 equals 100 feet, and show the proposed activity, the location and
822 size of all existing and proposed structures, roads, parking areas and
823 sewage treatment facilities.
 - 824 ii. Contain a code block in the lower right-hand corner. The block must
825 contain the:
 - 826 a. Name(s) and address(es) of the applicant or owner;
 - 827 b. Name and address of the preparer of the plan, with
828 professional seal, if applicable;
 - 829 c. Name of plan, date of plan preparation, and a revision
830 number and date, if applicable; and
 - 831 d. Map and lot number(s), according to Kittery tax maps,
832 shown in the lower right-hand corner in bold lettering and
833 1/4 inch high.
 - 834 iii. Show a North arrow.
 - 835 iv. Show property boundaries.
 - 836 v. Show the location of any wetlands, shorelines and floodplains.
837 Wetland boundaries must be delineated using the Corps of
838 Engineers Wetlands Delineation Manual — Waterways Experiment
839 Station Technical Report Y-87-1, January 1987," (1987 Manual).
 - 840 vi. Show the location (tied by measurement to identifiable structures or
841 boundary points) of all proposed draining, fill, grading, dredging
842 and vegetation removal, including specification of amount of
843 materials to be added or removed and procedures to be used.
 - 844 vii. Indicate the square footage of wetlands to be affected by the
845 proposed activity.
 - 846 viii. Show the direction of natural water flow over the land, in the
847 wetland, and in the proposed alteration area.

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- ix. Show the location of the one-hundred-year floodway and flood hazard boundaries as shown on the current effective National Flood Insurance Program maps, if applicable.
 - x. Specify the number of cubic yards and type of material to be used as fill, if fill material is involved.
 - xi. Specify the type of material, number of cubic yards, method of handling, and the location of fill and spoil disposal area, if dredge material is involved.
 - a. Show all owners of property within 150 feet of the proposed alteration, together with their mailing addresses and map and lot designations from the Assessor's records.
 - e. A vicinity map, utilizing a topographic map at a scale no smaller than one inch equals 600 feet, showing the boundary of the proposed activity.
 - f. One set of photographs, taken during the growing season if possible, showing the wetland, adjacent water bodies if applicable, and the alteration area before development begins.
- (2). Additional requirements. In its consideration of an application, the Board may at any point in the review require the applicant to submit additional materials, studies, analyses and agreement proposals that the Board may deem necessary for a complete understanding of the application. Such material may include the following items:
- a. A site plan showing existing and proposed topographic contours at two-foot intervals;
 - b. A hydrologic analysis in accordance with the requirements of this chapter;
 - c. Cross-section drawings showing the nature of the construction, the depth of excavation or height of fill, if applicable, and surface water and groundwater elevations; and
 - d. An evaluation, by a qualified wetlands scientist or a Maine-certified soils scientist, assessing the functions of the wetland and the impact of the proposed activity on these functions.
- (3). Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for activities which, in total, affect or fill more than 500 square feet of wetlands.
- a. The wetland mitigation plan and report must contain the following:
 - i. Plan at a scale of one inch equals 100 feet that shows two-foot contour intervals, existing wetland boundaries, the area of wetland to be altered, project dimensions and all off-site wetlands being extensions of the wetland to be altered;
 - ii. Existing wetland characteristics, including water depth, vegetation and fauna;
 - iii. Functional assessment, conducted by a qualified wetlands scientist or a Maine-certified soils scientist, on the wetland to be altered, which analyzes the wetland's value based on the functions it serves and how the wetland will be affected by the proposed alteration. The Wetland Evaluation Technique (WET) methodology, published by the U.S. Army Corps of Engineers, is one acceptable methodology. Other comparable assessment techniques may be accepted, provided the applicant submits documentation of how the methodology was developed, how the wetland functions and values are determined, and how much field testing the technique has undergone; and
 - iv. Photographs of the wetland to be altered which show its

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characteristics.

- b. Description of the overall proposed activity with particular reference to its impact on the wetland, including the precise location of the activity, its dimensions, the amount and type of fill (if any proposed), any proposed drainage, the timing and procedures proposed for the alteration, and any efforts proposed for reducing impacts. The Planning Board may require certain fill areas (such as stormwater storage basins, solid waste landfills, fill behind retaining walls, etc.) to be structurally engineered.
- c. Plan for the proposed wetlands work, if any, including a topographic plan at the scale of one inch equals 100 feet, showing two-foot contour intervals and proposed wetland boundaries. This plan must also include:
 - i. Proposed boundaries and characteristics of the mitigation site, including elevation, sources of water, and proposed vegetation;
 - ii. Narrative describing the specific goals in terms of particular wetland functions and values. These goals must be related to those of the original wetland;
 - iii. Narrative describing the available literature or experience to date (if any) for carrying out the mitigation work;
 - iv. Proposed implementation and management procedures for the wetlands work;
 - v. Description of the short-term and long-term sources of water for this wetland, including the water quality of these sources;
 - vi. Plans for replanting, including a description of plant species, sizes and sources of plant material, as well as how, when and where seeding or planting will take place;
 - vii. Proposed buffers or protective measures, such as sediment control methods;
 - viii. Plans for monitoring the wetlands work, showing capability for mid-course corrections; and
 - ix. Plans, if any, for control of nonindigenous plant species.
- d. For wetlands work involving creation, restoration and/or enhancement of degraded wetlands, a maintenance agreement must be approved by the Board and recorded in the York County Registry of Deeds. The maintenance agreement must be conveyed or a deed restriction imposed, and such maintenance responsibility is not dissolvable without Council approval. The maintenance agreement must meet or exceed the criteria listed in § 16.5.9.I.
- e. For projects involving preservation of wetlands or adjacent uplands, a conservation easement must be conveyed or deed restriction imposed so that the parcel will remain undeveloped in perpetuity.

16.5.10 Essential Services

A. Installation.

Where feasible, the installation of essential services will be limited to existing public ways and existing service corridors.

B. Location in CON or OZ-RP Zone.

The installation of essential services is not permitted in a Conservation Zone or Resource Protection Overlay Zone, except to provide services to a permitted use within said zone, or except where the applicant demonstrates no reasonable alternative exists. Where permitted, such structures and facilities must be located to minimize any adverse impacts on surrounding uses and resources,

946 including visual impacts.

947 C. Replacement of equipment without permit.

948 Damaged or destroyed public utility transmission and distribution lines, towers and related
949 equipment may be replaced or reconstructed without a permit.

950 **16.5.11 Floodplain Management**

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

952 A. Statement of purpose and intent.

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

956 (2). Therefore, the Town has chosen to become a participating community in the National
957 Flood Insurance Program and agrees to comply with the requirements of the National
958 Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this article.

959 (3). It is the intent of the Town to require the recognition and evaluation of flood hazards in all
960 official actions relating to land use in the floodplain areas having special flood hazards.
961 This body has the legal authority to adopt land use and control measures to reduce future
962 flood losses pursuant to 30-A M.R.S §§ 3001-3007, 4352 and 4401-4407.

963 B. Definitions.

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

966 C. Establishment of areas.

967 (1). The Town elects to comply with the requirements of the National Flood Insurance Act of
968 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the
969 aforesaid Act, provides that areas of the Town having a special flood hazard be identified
970 by the Federal Emergency Management Agency and that floodplain management measures
971 be applied in such flood hazard areas. This article establishes a flood hazard development
972 permit system and review procedure for development activities in the designated flood
973 hazard areas of the Town.

974 (2). The areas of special flood hazard, Zones A, A1 — 30, AE, AO, AH, V1 — 30 and/or VE,
975 identified by the Federal Emergency Management Agency in a report entitled "Flood
976 Insurance Study — Town of Kittery, Maine, York County," dated January 5, 1984, with
977 accompanying Flood Insurance Rate Map dated July 3, 1986, are adopted by reference and
978 declared to be a part of this article.

979 D. Permit required.

980 Before any construction or other development (as defined in § 16.3), including the placement of
981 manufactured homes, begins within any areas of special flood hazard established in § 16.5.11.C, a
982 flood hazard development permit is to be obtained from the Code Enforcement Officer. This permit
983 is in addition to any other building/regulated activity permits which may be required pursuant to
984 this title.

985 E. Application for permit.

986 The application for a flood hazard development permit is to be submitted to the Code Enforcement
987 Officer and include:

988 (1). The name and address of the applicant.

989 (2). An address and a map indicating the location of the construction site.

990 (3). A site plan showing the location of existing and/or proposed structures, sewage disposal
991 facilities, water supply facilities, areas to be cut and filled, and lot dimensions.

992 (4). A statement of the intended use of the structure.

- 993 (5). A statement as to the type of sewage system proposed.
994 (6). Specification of dimensions of the proposed structure.
995 (7). The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally
996 established datum in Zone A only, of the:
- 997 a. Base flood at the proposed site of all new or substantially improved
998 structures, which is determined:
 - 999 i. In Zones A1 — 30, AE, AO, AH, V1 — 30, and VE, from data
1000 contained in the "Flood Insurance Study — Town of Kittery,
1001 Maine," as described in § 16.5.10.C or
 - 1002 ii. In Zone A, to be the elevation of the ground at the intersection of the
1003 floodplain boundary and a line perpendicular to the shoreline which
1004 passes along the ground through the site of the proposed building.
 - 1005 b. Highest and lowest grades at the site adjacent to the walls of the proposed
1006 building.
 - 1007 c. Lowest floor, including basement, and whether or not such structures
1008 contain a basement.
 - 1009 d. Level, in the case of nonresidential structures only, to which the structure
1010 will be floodproofed.
- 1011 (8). A description of a base flood elevation reference point established on the site of all new or
1012 substantially improved structures.
- 1013 (9). A written certification by a registered land surveyor that the elevations shown on the
1014 application are accurate.
- 1015 (10). Certification by a registered professional engineer or architect that floodproofing methods
1016 for any:
- 1017 a. Nonresidential structures will meet the floodproofing criteria of Subsection
1018 7(d) of this section. Subsection 7 of § 16.5.11.H, and other applicable
1019 standards in § 16.5.11.H; and
 - 1020 b. Construction in coastal high-hazard areas, Zones V1 — 30 and VE, will
1021 meet the floodproofing criteria of Subsection 11 of § 16.5.11.H and other
1022 applicable standards in § 16.5.11.H
- 1023 (11). A description of the extent to which any watercourse will be altered or relocated as a result
1024 of the proposed development.
- 1025 (12). A statement of construction plans describing in detail how each applicable development
1026 standard in § 16.5.11.H will be met.
- 1027 F. Application fee and expert's fee.
- 1028 (1). A nonrefundable application fee as set out in Appendix A is to be paid to the Town Clerk,
1029 and a copy of a receipt for the same must accompany the application.
 - 1030 (2). An additional fee may be charged if the Code Enforcement Officer and/or Board of
1031 Appeals needs the assistance of a professional engineer or other expert. The expert's fee
1032 must be paid in full by the applicant within 10 days after the Town submits a bill to the
1033 applicant. Failure to pay the bill constitutes a violation of this title and is grounds for the
1034 issuance of a stop-work order. An expert may not be hired by the municipality at the
1035 expense of an applicant until the applicant has either consented to such hiring in writing or
1036 been given an opportunity to be heard on the subject. An applicant who is dissatisfied with
1037 a decision of the Code Enforcement Officer may appeal that decision to the Board of
1038 Appeals.
- 1039 G. Review of flood hazard development permit applications.
1040 The Code Enforcement Officer must:

- 1041 (1). Review all applications for a flood hazard development permit to assure that proposed
1042 building sites are reasonably safe from flooding and to determine that all pertinent
1043 requirements of § 16.5.11.H, Development standards, have or will be met.
- 1044 (2). Utilize, in the review of all flood hazard development permit applications, the base flood
1045 data contained in the "Flood Insurance Study — Town of Kittery, Maine," as described in
1046 § 16.5.11.C. In special flood hazard areas where base flood elevation data are not
1047 provided, the Code Enforcement Officer is to obtain, review and reasonably utilize any
1048 base flood elevation and floodway data from federal, state, or other sources, including
1049 information obtained pursuant to §16.5.11.E(7)a.ii, § 16.5.11.H(9) and §16.5.11.J, in order
1050 to administer § 16.5.11.H of this article.
- 1051 (3). Make interpretations of the location of boundaries of special flood hazard areas shown on
1052 the maps described in § 16.5.11.C.
- 1053 (4). In the review of flood hazard development permit applications, determine that all
1054 necessary permits have been obtained from those federal, state and local government
1055 agencies from which prior approval is required by federal or state law, including, but not
1056 limited to, Section 404 of the Federal Water Pollution Control Act Amendments of 1972,
1057 33 U.S.C. § 1334.
- 1058 (5). Notify adjacent municipalities, the Department of Environmental Protection, and the
1059 Maine Office of Community Development prior to any alteration or relocation of a
1060 watercourse and submit copies of such notifications to the Federal Emergency
1061 Management Agency.
- 1062 (6). Issue a two-part flood hazard development permit for elevated structures. Part I is to
1063 authorize the applicant to build a structure to and including the first horizontal floor only
1064 above the base flood level. At that time the applicant must provide the Code Enforcement
1065 Officer with an application for Part II of the flood hazard development permit and include
1066 an elevation certificate completed by a registered Maine surveyor for compliance with the
1067 elevation requirements of Subsections 6, 7, 8 and 11 of § 16.5.11.H. Following review of
1068 the application, which review must take place within three working days of receipt of the
1069 application, the Code Enforcement Officer is to issue Part II of the flood hazard
1070 development permit. Part II authorizes the applicant to complete the construction project.
- 1071 (7). Maintain, as a permanent record, copies of all flood hazard development permits issued
1072 and data relevant thereto, including reports of the Board of Appeals on variances granted
1073 under the provisions of § 16.2.12; and copies of elevation certificates and certificates of
1074 compliance required under the provisions of § 16.5.11.I.

1075 H. Development standards.

1076 All developments in areas of special flood hazard are to meet the following applicable standards:

- 1077 (1). New construction or substantial improvement of any structure must:
- 1078 a. Be designed or modified and adequately anchored to prevent flotation,
1079 collapse or lateral movement of the structure resulting from hydrodynamic
1080 and hydrostatic loads, including the effects of buoyancy;
 - 1081 b. Use construction materials that are resistant to flood damage;
 - 1082 c. Use construction methods and practices that will minimize flood damage;
1083 and
 - 1084 d. Use electrical, heating, ventilation, plumbing, and air-conditioning
1085 equipment, and other service facilities, that are designed and/or located so
1086 as to prevent water from entering or accumulating within the components
1087 during flooding conditions.
- 1088 (2). All new and replacement water supply systems are to be designed to minimize or eliminate
1089 infiltration of floodwaters into the systems.

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- (3). All new and replacement sanitary sewage systems are to be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters.
 - (4). On-site waste disposal systems are to be located and constructed to avoid impairment to them or contamination from them during floods.
 - (5). All development is to be constructed and maintained in such a manner that no reduction occurs in the flood-carrying capacity of any watercourse.
 - (6). New construction or substantial improvement of any residential structure located within:
 - a. Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 - b. Zones AO and AH is to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
 - c. Zone AO is to have the lowest floor (including basement) elevated above the highest adjacent grade:
 - i. At least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - ii. At least three feet if no depth number is specified.
 - d. Zone A is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to § 16.5.11.E(7)a.ii, 16.5.11.G(2) or 16.5.11.J(4).
 - e. Zones V1 — 30 and VE is to meet the requirements of Subsection **11** of this section.
 - (7). New construction or substantial improvement of any nonresidential structure located within:
 - a. Zones A1 — 30, AE and AH is to have the lowest floor (including basement) elevated to at least one foot above the base flood elevation or, together with attendant utility and sanitary facilities, must:
 - i. Be floodproofed to at least one foot above the base flood level so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
 - ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - iii. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification must be provided with the application for a flood hazard development permit, as required by § 16.5.11.E(10), and include a record of the elevation above mean sea level of the lowest floor, including basement.
 - b. Zones AO and AH is to have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
 - c. Zone AO is to have the lowest floor (including basement) elevated above the highest adjacent grade:
 - i. At least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or
 - ii. At least three feet if no depth number is specified; or
 - iii. Together with attendant utility and sanitary facilities, be floodproofed to meet the elevation requirements of this section and floodproofing standards of Subsection **7(a)** of this section.

- 1139 d. Zone A is to have the lowest floor (including basement) elevated to at least
1140 one foot above the base flood elevation utilizing information obtained
1141 pursuant to § 16.5.11.E(7)a.ii, 16.5.11.G(2) or 16.5.11.J
1142 e. Zones V1 — 30 and VE is to meet the requirements of Subsection **11** of
1143 this section.
- 1144 (8). New or substantially improved manufactured homes located within:
- 1145 a. Zones A1 — 30, AE or AH must:
- 1146 i. Be elevated on a permanent foundation such that the lowest floor is
1147 at least one foot above the base flood elevation; and
- 1148 ii. Be securely anchored to an adequately anchored foundation system
1149 to resist flotation, collapse, or lateral movement. Methods of
1150 anchoring may include, but are not limited to:
- 1151 a. Over-the-top ties anchored to the ground at the four corners
1152 of the manufactured home, plus two additional ties per side
1153 at intermediate points (manufactured homes less than 50 feet
1154 long require one additional tie per side); or
- 1155 b. By frame ties at each corner of the home, plus five
1156 additional ties along each side at intermediate points
1157 (manufactured homes less than 50 feet long require four
1158 additional ties per side).
- 1159 c. All components of the anchoring system described in
1160 Subsection 8(a)(ii)[a] and [b] of this section must be capable
1161 of carrying a force of 4,800 pounds.
- 1162 b. Zones AO and AH are to have adequate drainage paths around structures on
1163 slopes, to guide floodwater away from the proposed structures.
- 1164 c. Zone AO are to have the lowest floor (including basement) elevated above
1165 the highest adjacent grade:
- 1166 i. At least one foot higher than the depth specified in feet on the
1167 community's Flood Insurance Rate Map; or
- 1168 ii. At least three feet if no depth number is specified; and
- 1169 iii. Meet the requirements of Subsection 8(a)(i) and (ii) of this section.
- 1170 d. Zone A are to have the lowest floor (including basement) elevated to at
1171 least one foot above the base flood elevation utilizing information obtained
1172 pursuant to § 16.5.11.E(7)a.ii, 16.5.11.G(2) or 16.5.11.J.
- 1173 e. Zones V1 — 30 and VE are to meet the requirements of Subsection 11 of
1174 this section.

1175 (9). Floodways.

- 1176 a. In Zones A1 — 30 and AE, encroachments, including fill, new
1177 construction, substantial improvement, and other development, are not
1178 permitted in riverine areas, for which a regulatory floodway is designated
1179 on the community's "Flood Boundary and Floodway Map," unless a
1180 technical evaluation certified by a registered professional engineer is
1181 provided demonstrating that such encroachments will not result in any
1182 increase in flood levels within the community during the occurrence of the
1183 base flood discharge.
- 1184 b. In Zones A1 — 30 and AE riverine areas, for which no regulatory floodway
1185 is designated, encroachments, including fill, new construction, substantial
1186 improvement, and other development, are not permitted unless a technical
1187 evaluation certified by a registered professional engineer is provided

- 1188 demonstrating that the cumulative effect of the proposed development,
1189 when combined with all other existing development and anticipated
1190 development:
- 1191 i. Will not increase the water surface elevation of the base flood more
1192 than one foot at any point within the community; and
 - 1193 ii. Is consistent with the technical criteria contained in Section 2-7,
1194 entitled "Hydraulic Analyses," Flood Insurance Study — Guidelines
1195 and Specifications for Study Contractors, FEMA 37/September,
1196 1985, as amended.
 - 1197 c. In Zone A riverine areas, in which the regulatory floodway is determined to
1198 be the channel of the river or other watercourse and the adjacent land areas
1199 to a distance of 1/2 the width of the floodplain as measured from the normal
1200 high-water mark to the upland limit of the floodplain, encroachments,
1201 including fill, new construction, substantial improvement, and other
1202 development, are not permitted unless a technical evaluation certified by a
1203 registered professional engineer is provided meeting the requirements of
1204 Subsection **9(b)** of this section.
- 1205 (10). New construction or substantial improvement of any structure in Zones A1 — 30, AE, AO,
1206 AH and A that meets the development standards of this section, including the elevation
1207 requirements of Subsection **6, 7 or 8** of this section, and is elevated on posts, columns,
1208 piers, piles, "stilts" or crawl spaces less than three feet in height may be enclosed below the
1209 elevation requirements provided all the following criteria are met or exceeded:
- 1210 a. Walls, with the exception of crawl spaces less than three feet in height,
1211 must not be part of the structural support of the building; and
 - 1212 b. Enclosed areas are not "basements" as defined in § 16.5.11.B; and
 - 1213 c. Enclosed areas are to be designed to automatically equalize hydrostatic
1214 flood forces on exterior walls by allowing for the entry and exit of
1215 floodwater. Designs for meeting this requirement must either:
 - 1216 i. Be certified by a registered professional engineer or architect; or
 - 1217 ii. Meet or exceed the following minimum criteria:
 - 1218 a. A minimum of two openings having a total net area of not
1219 less than one square inch for every square foot of the
1220 enclosed area;
 - 1221 b. The bottom of all openings may be no higher than one foot
1222 above the lowest grade; and
 - 1223 c. Openings may be equipped with screens, louvers, valves, or
1224 other coverings or devices, provided that they permit the
1225 entry and exit of floodwaters automatically without any
1226 external influence or control, such as human intervention,
1227 including the use of electrical and other nonautomatic
1228 mechanical means; and
 - 1229 d. The enclosed area may not be used for human habitation; and
 - 1230 e. The enclosed area may be used for building maintenance, access, parking
1231 vehicles, or storing of articles and equipment used for maintenance of the
1232 building.
- 1233 (11). Coastal floodplains.
- 1234 a. All new construction located within Zones V1 — 30 and VE is to be
1235 located landward of the reach of the highest annual spring tide.
 - 1236 b. New construction or substantial improvement of any structure located

1237 within Zones V1 — 30 or VE must:

- 1238 i. Be prohibited unless the following criteria are met:
- 1239 a. The area is zoned for general development or its equivalent,
1240 as defined in the Mandatory Shoreland Zoning guidelines
1241 adopted pursuant to 38 M.R.S. § 438-A; or
- 1242 b. The area is designated as densely developed as defined in 38
1243 M.R.S. § 436-A, Subsection 3.
- 1244 ii. Be elevated on posts or columns such that:
- 1245 a. The bottom of the lowest structural member of the lowest
1246 floor (excluding the pilings or columns) is elevated to one
1247 foot above the base flood level;
- 1248 b. The pile or column foundation and the elevated portion of
1249 the structure attached thereto is anchored to resist flotation,
1250 collapse, and lateral movement due to the effects of wind
1251 and water loads acting simultaneously on all building
1252 components; and
- 1253 c. Water loading values used must be those associated with the
1254 base flood. Wind loading values used must be those required
1255 by applicable state and local building standards.
- 1256 iii. Have the space below the lowest floor:
- 1257 a. Free of obstructions; or
- 1258 b. Constructed with open wood lattice-work, or insect
1259 screening intended to collapse under wind and water without
1260 causing collapse, displacement, or other structural damage to
1261 the elevated portion of the building or supporting piles or
1262 columns; or
- 1263 c. Constructed with nonsupporting breakaway walls which
1264 have a design safe loading resistance of not less than 10 nor
1265 more than 20 pounds per square foot.
- 1266 c. A registered professional engineer or architect must:
- 1267 i. Develop or review the structural design, specifications and plans for
1268 the construction, which must meet or exceed the technical criteria
1269 contained in the Coastal Construction Manual (FEMA-55/February,
1270 1986); and
- 1271 ii. Certify that the design and methods of construction to be used are in
1272 accordance with accepted standards of practice for meeting the
1273 criteria of Subsection **11(b)** of this section.
- 1274 d. The use of fill for structural support in Zones V1 — 30 and VE is
1275 prohibited.
- 1276 e. Human alteration of sand dunes within Zones V1 — 30 and VE is
1277 prohibited unless it can be demonstrated that such alterations will not
1278 increase potential flood damage.
- 1279 f. The enclosed areas may be used solely for parking vehicles, building
1280 access, and storage.

1281 I. Certificate of compliance.

1282 No land in a special flood hazard area may be occupied or used and no structure which is
1283 constructed or substantially improved may be occupied until a certificate of compliance is issued
1284 by the Code Enforcement Officer subject to the following provisions:

- 1285 (1). The applicant must submit an elevation certificate completed by:
1286 a. A registered Maine surveyor for compliance with Subsection 6, 7, 8 or 11
1287 of § 16.5.11.H; and
1288 b. A registered professional engineer or architect in the case of:
1289 i. Floodproofed, nonresidential structures, for compliance with
1290 § 16.5.11.H(7); and
1291 ii. Construction of structures in the coastal floodplains for compliance
1292 with § 16.5.11.H(11)c.
1293 (2). The application for a certificate of compliance is to be submitted by the applicant in
1294 writing, along with a completed elevation certificate, to the Code Enforcement Officer.
1295 (3). The Code Enforcement Officer is to review the application within 10 working days of
1296 receipt of the application and issue a certificate of compliance, provided the building
1297 conforms with the provisions of this article.

1298 J. Review of subdivision and development proposals.
1299 The Planning Board must, when reviewing subdivisions and other proposed developments that
1300 require review under other federal law, state law or local ordinances or regulations, and all projects
1301 on five or more acres, or in the case of manufactured home parks divided into two or more lots,
1302 assure that:

- 1303 (1). All such proposals are consistent with the need to minimize flood damage.
1304 (2). All public utilities and facilities, such as sewer, gas, electrical and water systems, are
1305 located and constructed to minimize or eliminate flood damages.
1306 (3). Adequate drainage is provided so as to reduce exposure to flood hazards.
1307 (4). All proposals include base flood elevation and, in a riverine floodplain, floodway data.
1308 (5). Any proposed development plan must include a statement that the developer will require
1309 that structures on lots in the development be constructed in accordance with § 16.5.11.H
1310 and that such requirement will be included in any deed, lease, purchase and sale
1311 agreement, or document transferring or expressing an intent to transfer any interest in real
1312 estate or structure, including, but not limited to, a time-share interest. The statement must
1313 clearly articulate that the municipality may enforce any violation of the construction
1314 requirement and that fact is also to be included in the deed or any other document
1315 previously described. The construction requirement must also be clearly stated on any
1316 map, plat or plan to be signed by the Planning Board or local reviewing authority as part of
1317 the approval process.

1318 **16.5.12 Home Occupation**

1319 A. Purpose.

- 1320 (1). It is the intent of these regulations governing home occupations to balance the economic
1321 and community benefits of allowing home-based businesses with the goal of protecting the
1322 quality of life of the surrounding residential neighborhood from unreasonable or unsafe
1323 intrusions and nuisances inappropriate to a residential setting. The regulations attempt to
1324 ensure that any home-based business operates in a manner that respects the neighborhood
1325 in which it is situated.
1326 (2). Regulation of home occupations should not prohibit beneficial and unobtrusive uses and
1327 should provide standards to protect the health, safety and general welfare of the
1328 surrounding neighborhood. A home occupation should not degrade the residential
1329 character of the neighborhood.
1330 (3). These regulations take a two-tier approach to regulating home occupations. At the least
1331 intrusive level are business activities that by their nature and intensity will be compatible
1332 with a residential location. These types of businesses are considered minor home

1333 occupations and require only review by the Code Enforcement Officer for compliance with
1334 the standards. A major home occupation in a residential district has the potential to be
1335 incompatible with its neighborhood setting. Therefore, a public hearing with notification to
1336 abutting property owners and BOA approval is necessary.

- 1337 (4). A more extensive business activity that does not satisfy the standards for a major home
1338 occupation is treated as a type of commercial use and does not qualify as an acceptable
1339 type of home occupation. Such businesses should be located in an appropriately zoned area
1340 of the Town.

1341 B. Minor home occupation standards.

- 1342 (1). Compliance with the definition of a "home occupation."

- 1343 a. An applicant must be a resident of a dwelling on the premises where the
1344 home occupation will occur. An applicant who is not the owner of the
1345 property, but is residing on the premises, must submit written permission of
1346 the property owner for the proposed home occupation.
- 1347 b. As an accessory use, the home occupation(s) must be subordinate to the
1348 principal use. Quantitative measures that may be considered in determining
1349 whether a proposed activity is an accessory use include, but are not limited
1350 to, percentage and/or total amount of square footage attributed to the home
1351 occupation(s) use in relation to the residential use. Qualitative factors
1352 include, but are not limited to, the projected activity level of the home
1353 occupation(s) on the premises in relation to the residential use and whether
1354 the proposed home occupation is a traditional accessory use in the
1355 community.

- 1356 (2). Number of workers. There must be no more than three persons, inclusive of residents of
1357 the premises, working in the home occupation(s) at the site at any one time.

- 1358 (3). Prohibited uses. The following uses are categorically prohibited as minor home
1359 occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking;
1360 commercial outdoor storage; machine shop; wholesale use; junkyard; auto salvage yard;
1361 seafood cooking; processing and/or cleaning; bait sales; Marijuana Business.

- 1362 (4). Business hours. Business activities involving clients or customers on the premises or
1363 vehicular traffic to and from the premises must not be conducted between the hours of 7:00
1364 p.m. and 8:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally
1365 water-dependent use.

- 1366 (5). Nuisances.

- 1367 a. Any excessive noise, dust, smoke, vibrations, glare, direct lighting,
1368 objectionable fumes, traffic or electrical interference detected at the
1369 property boundary must not be greater in duration or intensity than that
1370 expected in the surrounding residential neighborhood.
- 1371 b. When reviewing a functionally water-dependent use, the above standards
1372 allow customary noises and smells caused by the use if all practicable steps
1373 are taken to manage and minimize the adverse impact on abutting property
1374 owners.

- 1375 (6). Parking. A plan must be submitted showing sufficient and safe parking for customers',
1376 clients' and workers' use during normal business operations. To the maximum extent
1377 practicable, parking should be arranged so as to avoid vehicles backing out into the street.
1378 In addition to parking required for the residence, the following parking is required:
1379 [Amended 9-26-2011 by Ord. No. 11-15]

- 1380 a. One parking space per nonresident worker at the site during the peak shift;
1381 b. One parking space if clients or customers frequently visit the site;

- 1382 c. One parking space per adult student up to the maximum class size; or
1383 d. One parking space per rental unit.
- 1384 (7). The parking design standards in Table 16.7.11.F of § 16.7 Site Plan Review, set out at the
1385 end of § 16.7.11.F, Parking Loading and Traffic (e.g., aisle width, stall size, etc.), may be
1386 modified for parking by workers if the parking arrangement will still provide for practical
1387 off-street parking adequate to prevent parking from overflowing the site.
- 1388 (8). With the exception of a bed-and-breakfast with more than three rooms for rent, three
1389 additional off-street parking spaces should satisfy the parking demand for a minor home
1390 occupation. Any recurring observed parking overflow is a violation of these standards.
- 1391 (9). The CEO may approve the joint use of a parking area where it is clearly demonstrated that
1392 the parking area will be available for use by customers or workers during the hours of
1393 operation due to the variation in time of use.
- 1394 (10). Outdoor storage. All outdoor storage of equipment, vehicles, items or equipment
1395 associated with the home occupation is prohibited except for the following:
- 1396 a. One vehicle used in conjunction with the home occupation;
1397 b. Seasonal storage of items necessary for functionally water-dependent uses,
1398 such as lobster traps; and
1399 c. Vehicles owned by residents of the premises with valid license plates.
1400 d. All bait must be stored indoors and must be kept refrigerated or otherwise
1401 stored to prevent offensive odors.
- 1402 (11). Business conduct. All business activities on the site must take place within the dwelling or
1403 enclosed buildings, except for outdoor recreational uses, agriculturally oriented uses or
1404 functionally water-dependent uses.
- 1405 (12). Refuse and recyclables. All refuse and recyclables must be stored within an enclosed
1406 building. No outdoor dumpsters are allowed. All waste materials from the home
1407 occupation must be removed from the premises on at least a monthly basis.
- 1408 (13). Traffic. The home occupation must not result in creating or significantly exacerbating a
1409 traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty-foot fixed
1410 axle, thirty-foot total length truck is prohibited.
- 1411 (14). Retail sales. Retail sales in which customers do not come to the premises are permissible,
1412 such as mail order or telephone sales. On-site retail sales are limited to the following:
- 1413 a. Sales of products grown, raised or produced on the premises. For the
1414 purposes of this subsection, the term "produced" is not to be construed to
1415 allow the assembly of a product from components produced elsewhere; and
1416 b. Sales of items customarily incidental and subordinate to a nonretail home
1417 occupation, such as sales of shampoo and hair brushes at a beauty salon.
1418 c. All other on-site retail sales are prohibited as a minor home occupation.
- 1419 (15). Health and safety. The proposed use must not create a health or safety hazard.

1420 C. Major home occupation standards.

1421 [Amended 5-22-2017 by Ord. No. 17-10]

- 1422 (1). Compliance with the Definition of a "Home Occupation."
- 1423 a. An applicant must be a resident of a dwelling on the premises where the
1424 home occupation will occur. An applicant who is not the owner of the
1425 property, but is residing on the premises, must submit written permission of
1426 the property owner for the proposed home occupation.
- 1427 b. As an accessory use, the home occupation(s) must be subordinate to the
1428 principal use. Quantitative measures that may be considered in determining
1429 whether a proposed activity is an accessory use include, but are not limited

- 1430 to, percentage and/or total amount of square footage attributed to the home
1431 occupation(s) use in relation to the residential use. Qualitative factors
1432 include, but are not limited to, the projected activity level of the home
1433 occupation(s) on the premises in relation to the residential use and whether
1434 the proposed home occupation is a traditional accessory use in the
1435 community.
- 1436 (2). Number of workers. There must be no more than five persons, inclusive of residents of the
1437 premises, working in the home occupation(s) at the site at any one time.
- 1438 (3). Prohibited uses. The following uses are categorically prohibited as major home
1439 occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking;
1440 commercial outdoor storage; junkyard; auto salvage yard; marijuana retail use; and
1441 marijuana medical use except the activities of a primary caregiver registered under 22
1442 M.R.S. § 2425.
- 1443 (4). Business hours. Business activities involving clients or customers on the premises or
1444 vehicular traffic to and from the premises must not be conducted between the hours of 7:00
1445 p.m. and 7:00 a.m., except for a bed-and-breakfast, a day-care facility or a functionally
1446 water-dependent use. This limitation may be modified by the BOA provided the proposal
1447 satisfies the intent of this section.
- 1448 (5). Nuisances.
- 1449 a. Any excessive noise, dust, smoke, vibrations, glare, direct lighting,
1450 obnoxious fumes or odors, traffic, or electrical interference detected at the
1451 property boundary must not be greater in duration or intensity than that
1452 expected in the surrounding residential neighborhood.
- 1453 b. When reviewing a functionally water-dependent use, the above standards
1454 allow customary noises and smells caused by the use if all practicable steps
1455 are taken to manage and minimize the adverse impact on abutting
1456 properties.
- 1457 (6). Parking. A plan must be submitted that provides safe and sufficient off-street parking to
1458 meet the needs of the business to prevent parking from overflowing off the site. Any
1459 recurring observed parking overflow is a violation of these standards. The creation of more
1460 than four off-street parking spaces must be located, designed, screened and landscaped to
1461 minimize adverse impact on abutting properties.
- 1462 (7). Outdoor storage. All outdoor storage of equipment, vehicles or items associated with the
1463 home occupation must be screened from view of abutting properties and from all streets
1464 except for the following:
- 1465 a. One vehicle used in conjunction with the home occupation;
- 1466 b. Seasonal storage of items necessary for functionally water-dependent uses,
1467 such as lobster traps; and
- 1468 c. Vehicles owned by residents of the premises with valid license plates.
- 1469 d. All bait must be stored indoors and must be kept refrigerated or otherwise
1470 stored to prevent offensive odors.
- 1471 (8). Business conduct. All business activities on the site must take place within an enclosed
1472 building or be screened from view of abutting properties and from all publicly maintained
1473 streets, except for outdoor recreational uses, agriculturally oriented uses or functionally
1474 water-dependent uses. This standard may be modified by the BOA provided the proposal
1475 satisfies the intent of this section.
- 1476 (9). Refuse and recyclables. All refuse and recyclables must be stored in containers that are
1477 screened from view of abutting properties and from streets. No emptying of dumpsters is
1478 allowed before 8:00 a.m. or after 7:00 p.m.
- 1479 (10). Traffic. The home occupation must not result in creating or significantly exacerbating a

1480 traffic hazard. Furthermore, the home occupation must not create an objectionable increase
1481 in vehicle traffic considering the type, time and amount of vehicle traffic generated and the
1482 design and capacity of the roads to the site and traffic normal for the neighborhood.

- 1483 (11). Retail sales. Retail sales on the premises are limited to the following:
- 1484 a. Sales in which customers do not come to the premises, such as mail order
1485 or telephone sales;
 - 1486 b. Sales of products grown, raised or produced on the premises;
 - 1487 c. Sales of seafood harvested by the residents of the premises;
 - 1488 d. Sales of items customarily incidental and subordinate to a nonretail home
1489 occupation, such as sales of shampoo and hair brushes at a beauty salon;
1490 and/or
 - 1491 e. Sales by appointment only for which any signage identifying the business
1492 states a "by appointment only" policy.
- 1493 (12). Health and safety. The proposed use must not create a health or safety hazard.
- 1494 (13). Neighborhood compatibility. The proposed use is determined to be compatible with the
1495 surrounding neighborhood. In reaching this determination, the following factors are to be
1496 considered:
- 1497 a. The nature of the property;
 - 1498 b. The physical characteristics of the neighborhood, including the amount of
1499 nonresidential activity;
 - 1500 c. Hours of operation;
 - 1501 d. Intensity of the activity;
 - 1502 e. Potential to degrade the quality of life for residents of the surrounding
1503 neighborhood; and
 - 1504 f. The cumulative impact of existing home occupations and other accessory
1505 uses both on the premises and in the surrounding neighborhood.
 - 1506 g. Medical marijuana use is restricted to single-family residences only.
- 1507 (14). Large lots. When a seventy-five-foot-deep buffer yard is provided between all business
1508 activities (including storage and parking, except a driveway) and contiguous properties,
1509 and the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to obscure
1510 the home occupation activities from an abutting property, the BOA may relax the above
1511 standards, except those pertaining to nuisances and prohibited uses, if the use is considered
1512 to comply with the intent of this subsection.
- 1513 (15). Annual renewal.
- 1514 a. Upon approval of a major home occupation by the Board of Appeals, the
1515 Code Enforcement Officer is authorized to issue a certificate of occupancy
1516 permit for not more than a one-year time period. Such permit may be
1517 renewed annually upon application to the Code Enforcement Officer.
1518 Operation of a major home occupation with an expired certificate of
1519 occupancy is a violation of this Code.
 - 1520 b. The annual permit may be renewed only if the Code Enforcement Officer
1521 finds the major home occupation complies with all applicable standards of
1522 this Code and any conditions required by the Board of Appeals in the
1523 original approval.

1524 **16.5.13 Junkyards and/or Automobile Salvage Yards**

1525 A. Buffering.

1526 Buffering will be 100 feet on all sides except on the street, where 200 feet will be the minimum.
1527 Trees, shrubbery and fencing not less than eight feet in height, or all three, may be required by the

- 1528 Board to restrict visibility of the area from the road and neighbors. Land contour is to be taken into
1529 consideration. Approval of the junkyard plan is required by the Police, Highway and Fire
1530 Departments before any permit is presented to the Town Council for consideration.
- 1531 B. Buildings.
1532 Office, control or storage building must be inside the buffered area and no more than a maximum
1533 of 30 feet in height. The adequacy of buffering is to be considered in allowing heights over 20 feet.
- 1534 C. Junk piles.
1535 Junk piles may only be inside the buffered area and piled no higher than 15 feet.
- 1536 D. Waste.
1537 No garbage, toxic waste or liquid or sanitary wastes are permitted. The Maine State Plumbing
1538 Code will apply for sanitary waste and any state laws regulating toxic waste. Separate storage must
1539 be maintained for toxic waste, including but not limited to oil, grease, gasoline and solvents. This
1540 waste must be removed at least twice a year by an accredited dealer in such wastes. All tanks of
1541 vehicles must be drained and contents properly disposed of.
- 1542 E. Drainage.
1543 Provision must be made for proper drainage of stormwater or other wastewater, so that
1544 contaminated, rusted or other noticeable effluent does not go beyond actual junk area or into
1545 buffering. Special attention is to be given to acceptable drainage of normal stormwater. § 16.7.11.C
1546 of this chapter also applies.
- 1547 F. Hours of operation.
1548 Work in connection with demolishing or wrecking cars or purchasing or selling items is permitted
1549 only on Monday through Saturday between the hours of 7:00 a.m. and 6:00 p.m.
- 1550 G. Signs.
1551 One four-foot-by-six-foot maximum, non-illuminated sign is permitted at the entrance to the
1552 property.
- 1553 H. Cleanliness.
1554 Junkyards and salvage yards should be kept reasonably neat and clean, with no debris or other
1555 nuisance permitted outside of the buffered area.
- 1556 I. Permits.
1557 A permit for not more than one year's operation is required in addition to the state permit. The
1558 Town fee is as set by the Town Council. Periodic inspections must be made by the Code
1559 Enforcement Officer during the year to ensure compliance with the state and local ordinances.
- 1560 J. Other standards application.
1561 All other applicable standards of this chapter not specifically mentioned here, such as parking,
1562 noise, etc., also apply to this use.

1563 **16.5.14 Lots**

1564 [Amended 9-28-2015 by Ord. No. 15-06]

- 1565 A. Dimensions.
1566 The lot size, width, depth and shape and orientation and the minimum building setback lines must
1567 be appropriate for the location of the development and for the type of development and use
1568 contemplated. The lot configuration should be designed to maximize access to solar energy for
1569 building sites with suitable orientation.
- 1570 B. Lot shape.
- 1571 (1). The ratio of lot length to width must not be more than 3:1. Flag-shaped lots are prohibited.
1572 Other odd-shaped lots in which narrow strips are joined to other parcels in order to meet
1573 minimum lot size requirements are also prohibited.

- 1574 (2). Spaghetti lots prohibited. If any lots in a proposed subdivision have shore frontage on a
1575 river, stream, brook or coastal wetland, as these features are defined in 38 M.R.S. §480-B,
1576 none of the lots created within the subdivision may have a lot depth to shore frontage ratio
1577 greater than 5:1.
- 1578 C. Double/reverse-frontage lots.
1579 Double-frontage and reverse-frontage lots are to be avoided except where essential to provide
1580 separation of residential development from traffic arteries or to overcome specific disadvantages of
1581 topography and orientation. A planting screen easement of at least 10 feet, across which there may
1582 be no right of access, is to be provided along the lot lines abutting such a traffic artery or other
1583 disadvantageous use.
- 1584 D. Side lot lines.
1585 Side lot lines must be substantially at right angles or radial to street lines.
- 1586 E. Substantially larger lots.
1587 Where a tract is subdivided into lots substantially larger than the minimum size required in the
1588 zone in which a subdivision is located, and where no covenants exist to preclude lots from
1589 resubdivision, the Board may require that streets and lots be laid out so as to permit future
1590 resubdivision in accordance with the requirements contained in these standards.
- 1591 F. Multiple frontages.
1592 When lots have frontage on two or more streets, the plan and deed restrictions must indicate
1593 vehicular access to be located only on the least-traveled way.
- 1594 G. Divided lots.
1595 If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum
1596 requirements for lot size, it may not be combined with a lot on the other side of such barrier to
1597 meet the minimum lot size unless in conformance with § 16.1.8.B, General Development
1598 Requirements, Conformity.
- 1599 H. Off-street parking.
1600 Depth and width of properties reserved or laid out for all purposes must be adequate to provide for
1601 off-street parking and service facilities for vehicles required by type of development and use
1602 contemplated.
- 1603 I. Access to arterial street.
1604 Where a major subdivision abuts or contains an existing or proposed arterial street, no residential
1605 lot may have vehicular access directly onto the arterial street. This requirement must be noted on
1606 the plan and in the deed of any lot with frontage on the arterial street.
- 1607 J. Land subdivision.
1608 The subdividing of land must conform to the requirements of § 16.4.

1609 **16.5.15 Manufactured Housing**

- 1610 A. Standards.
1611 Standards for manufactured housing include the following:
- 1612 (1). All mobile home units must be manufactured after June 15, 1976, and shall have a
1613 manufacturer-installed sticker indicating HUD approval.
- 1614 (2). All units must be manufactured with a pitched, shingled roof, with a minimum slope three
1615 inches on 12 inches (3:12).
- 1616 (3). All units must have residential-type siding, such as clapboards, shakes, horizontally
1617 applied aluminum, or vinyl resembling clapboards.
- 1618 (4). All units, excluding individual mobile home park installations, must have a permanent
1619 foundation, which may be either a full basement or a poured or block frost wall.
- 1620 (5). All other sections of this title must be adhered to.

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16.5.16 Mineral/earth material exploration and removal

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- A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this title, only after a special permit for such operations has been issued by the Code Enforcement Officer, upon approval and review of plans by the Planning Board in accordance with the provisions of this title, and provided that nothing herein may be deemed to apply to normal excavation operations incidental to construction activities for which a valid permit is held. The following standards must be met:

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- (1). The applicant must submit to the Code Enforcement Officer plans of the proposed extraction site, showing the property lines and names of all abutting owners and ways, indicating by not greater than five-foot contour intervals related to U.S. Geodetic Survey data, the location and slope of the grades existing and as proposed upon completion of the extraction operation; proposed fencing; buffer strips; signs; lighting; parking and loading areas; entrances and exits, together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation.

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- (2). Said plans and statement are to be promptly submitted with the recommendations of the Code Enforcement Officer to the Planning Board for its consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the Town, upon existing or approved land uses which might be affected by the operations. The Planning Board may recommend changes to the applicant for resubmission to the Planning Board. The Planning Board is to promptly call and hold a public hearing upon the final application in the same manner as provided for any final plan review.

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- (3). The Planning Board shall render a written decision as to whether, and under what conditions, the proposed operation may be permitted, consistent with public health and safety; the preservation of attractive natural features; compatibility, despite temporary and reasonable disturbance, with existing or approved land uses which might be affected; and implementation of the Comprehensive Plan. If the Planning Board approves the application, it may condition the special permit upon such alterations in the proposed operation or upon the performance or omission of such acts as it may deem proper to assure attainment of the objectives set forth in the preceding sentence, and it may require filing of a performance guaranty in an amount and form acceptable to the Town Manager to indemnify the Town against any claims arising from the proposed operations and to assure satisfactory performance of all conditions imposed or otherwise applicable.

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- B. Mandatory restrictions. All extraction operations and sites within the Town must be conducted and maintained in accordance with, and the Planning Board shall impose, such conditions upon any special permit issued under this subsection as it deems necessary or desirable to assure compliance with the following requirements:

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- (1). Mineral exploration to determine the nature or extent of mineral resources must be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the Code Enforcement Officer is required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, must immediately be capped, filled or secured by other equally effective measures so as to restore disturbed areas and to protect the public health and safety.

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- (2). Mineral extraction, including sand and gravel extraction, is prohibited within the Conservation, Shoreland Overlay and Resource Protection Overlay Zones.

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- (3). No part of any extraction operation may be permitted within 100 feet of any property or street line, and natural vegetation must be left and maintained on the undisturbed land. Minimize the volume of earth cut and fill, in general, with no cut or fill greater than seven feet for construction in an urban residential zone. Topographical change will not result in

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- 1671 cuts or fills exceeding seven feet.
- 1672 (4). No standing water may be permitted in any extraction site during or after extraction
- 1673 operations; except that, during or after extraction operations, standing water may be
- 1674 permitted under strict conditions with respect to fencing, safe levels of coliform bacteria
- 1675 count, and treatment to prevent breeding of insects so as to assure the public health and
- 1676 safety, as determined by the Town Health Officer.
- 1677 (5). No slopes steeper than three feet horizontal to one foot vertical may be permitted at any
- 1678 extraction site unless a fence at least three feet high is erected to limit access to such
- 1679 locations.
- 1680 (6). Before commencing removal of any earth materials, the owner or operator of the extraction
- 1681 site must present evidence to the Planning Board of insurance against liability arising from
- 1682 the proposed extraction operations and maintain such insurance throughout the period of
- 1683 operation.
- 1684 (7). Any topsoil and subsoil suitable for purposes of revegetation must, to the extent required
- 1685 for restoration, be stripped from the locations of extraction operations and stockpiled for
- 1686 use in restoring the location after extraction operations have ceased.
- 1687 (8). Upon completion of active extraction operations, the land must be left so that natural storm
- 1688 drainage and watercourses leave the location at the original natural drainage points and in a
- 1689 manner such that the amount of drainage at any point is not significantly increased.
- 1690 (9). The hours of operation at any extraction site are to be limited as the Planning Board deems
- 1691 advisable to ensure operational compatibility with residents of the Town.
- 1692 (10). Loaded vehicles must be suitably covered to prevent dust and contents from spilling or
- 1693 blowing from the load, and all trucking routes and methods are subject to approval by the
- 1694 Chief of Police.
- 1695 (11). All access roads leading from the extraction site to public ways must be treated with stone,
- 1696 calcium or other suitable materials to reduce dust and mud for a distance of at least 100
- 1697 feet from such public ways.
- 1698 (12). No equipment, debris, junk or other material is permitted at an extraction site except those
- 1699 directly relating to active extraction operations, and any temporary shelters or buildings
- 1700 erected for such operations and equipment used in connection therewith must be removed
- 1701 within 30 days following completion of active extraction operations.
- 1702 (13). Following the completion of extraction operations at any extraction site or at any one or
- 1703 more locations within any extraction site, ground levels and grades must be established in
- 1704 accordance with the approved plans filed with the Planning Board; all debris, stumps,
- 1705 boulders and similar materials must be removed and disposed of in an approved location
- 1706 or, in the case of inorganic material, buried and covered with a minimum of two feet of
- 1707 soil. Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they
- 1708 must be revegetated and properly restored to a stable condition adequate to meet the
- 1709 provisions of the "Maine Erosion and Sediment Control BMPs," March 2003.
- 1710 C. Issuance and renewal of permits. Special permits may be issued in accordance with the foregoing
- 1711 provisions for a period not to exceed one year, and they are renewable only upon application by the
- 1712 owner, after a finding by the Planning Board that the conduct of the operation has been
- 1713 substantially in accordance with any and all conditions imposed or material representations made
- 1714 in connection with the original special permit, and upon such additional and altered conditions as
- 1715 the Board may deem necessary in accordance with Subsection A(3) of this section.

1716 **16.5.17 Mobile Home Parks, Recreational Vehicle Parks and Campgrounds**

- 1717 A. Permit required. No person, firm, corporation or other legal entity may establish or maintain a
- 1718 Mobile Home Park, Recreational Vehicle Park or Campground within the Town without a permit
- 1719 issued in conformity with the provisions of this title. It is the park operator's responsibility to obtain

1720 the permit.

- 1721 (1). Application. Application for a Mobile Home Park, Recreational Vehicle Park or
1722 Campground permit must be filed with the Code Enforcement Officer, who will present
1723 said application to the Planning Board for review as a subdivision, except that permit
1724 renewals are not subject to Board review. The Board must review the proposal in
1725 accordance with the standards contained herein and inform the CEO of its decision. The
1726 CEO shall then act on the application as required.
- 1727 (2). Fee and expiration. Each application for a permit or a renewal thereof must be
1728 accompanied by a fee as established by the Town Council for a Mobile Home Park,
1729 Recreational Vehicle Park or Campground designed for the accommodation of no more
1730 than 10 Manufactured Housing units, Recreational Vehicles or tent sites and an additional
1731 fee, as established by the Town Council, for each additional Manufactured Housing unit,
1732 Recreational Vehicle or tent site located at the site. (See Appendix A for annual mobile
1733 home park fee schedule.) Permits expire on the first day of April next following date of
1734 issuance. Before any permit is renewed, the premises are subject to inspection by the
1735 Health Officer and CEO. If all requirements of this and other federal, state and local laws
1736 have been complied with, the same is to be certified and the permit renewed.
- 1737 (3). Permit display. Permits issued under this section must be conspicuously posted on the
1738 premises at all times and are not transferable.
- 1739 (4). Revocation. The CEO is authorized to revoke any permit issued under this section pursuant
1740 to the terms of this title if, after due investigation, it is determined the holder thereof has
1741 violated any of the provisions of this or any applicable code, law or statute.

1742 B. Compliance.

1743 Applications for development of Mobile Home Parks, Recreational Vehicle Parks or Campgrounds
1744 must comply with all state laws and local ordinances and meet the requirements of subdivision law,
1745 except as stipulated below. Such developments in existence prior to adoption of this title may be
1746 enlarged only if the extension complies with the terms specified herein.

1747 C. Recreational Vehicle Parks and Campgrounds.

1748 In any district where Campgrounds or Recreational Vehicle Parks are permitted under the terms of
1749 this title, the following regulations and minimum standards apply:

- 1750 (1). A time limit is placed on the occupancy of any one camping space on a continuing basis as
1751 follows: 12 weeks for the period May 15 to October 15 of each year and two weeks for all
1752 other periods. No Recreational Vehicles or Manufactured Housing units other than such as
1753 are camping units, as defined herein, are permitted within any camper park, temporarily or
1754 otherwise.
- 1755 (2). A Campground or Recreational Vehicle Park may not be constructed on less than five
1756 acres of land.
- 1757 (3). Each tent site must be provided with a masonry or metal fireplace approved by the Fire
1758 Chief.
- 1759 (4). Spaces in Campgrounds and Recreational Vehicle Parks may be used by travel trailers,
1760 equivalent facilities constructed in or on automotive vehicles, tents or other short-term
1761 shelter devices.
- 1762 (5). A Recreational Vehicle Park or Campground must provide water and sewerage systems,
1763 sanitary stations and convenience facilities in accordance with the regulations of the State
1764 Plumbing Code and the Maine Department of Human Services. In no case may less than
1765 one toilet, lavatory and shower be provided for each sex for every 10 camping and tent
1766 sites or major portion thereof.
- 1767 (6). Recreational Vehicles must be parked on sites containing a minimum of 2,500 square feet
1768 and having a minimum frontage along the traveled way of 50 feet, exclusive of drives and

- 1769 aisles.
- 1770 (7). Tent sites must contain a minimum of 2,500 square feet. There must be a minimum of 30
1771 feet between tents.
- 1772 (8). Recreational Vehicles must be so parked in spaces that:
- 1773 a. There will be a minimum of 15 feet between vehicles.
- 1774 b. There will be a minimum of 15 feet between all Recreational Vehicles and
1775 the exterior boundary of the park.
- 1776 c. There will be a minimum of 25 feet between all Recreational Vehicles and
1777 all public rights-of-way located inside the boundaries of the Recreational
1778 Vehicle Park or Campground. Setbacks from roads outside the Recreational
1779 Vehicle Park will be a minimum of 150 feet.
- 1780 d. No camping unit or structure may be located less than 100 feet from any
1781 residence.
- 1782 e. Buffering: planting, landscaping, disposition and form of building and other
1783 improvements, or fencing and screening is to be utilized to integrate the
1784 proposed development with the landscape and the character of any
1785 surrounding development.
- 1786 (9). The storage, collection and disposal of refuse must not create health hazards, rodent
1787 harborage, insect breeding areas, accident hazards or air pollution.
- 1788 (10). No unoccupied camping unit may be stored or exhibited for sale for commercial purposes
1789 within the park.

1790 D. Mobile Home Parks.

- 1791 (1). Mobile Home Parks, by special exception, may be located as indicated in § 16.4.
- 1792 (2). Lots within a shoreland zoning district must meet the lot area, setback and shore frontage
1793 requirements for that district.
- 1794 (3). Lots in a Mobile Home Park must meet the following lot size, width and density
1795 requirements:
- 1796 a. Lots by public sewer.
- 1797 i. Minimum lot area: 6,000 square feet.
- 1798 ii. Minimum lot width: 50 feet.
- 1799 b. Lots served by individual on-site subsurface wastewater disposal system.
- 1800 i. Minimum lot area: 20,000 square feet.
- 1801 ii. Minimum lot width: 100 feet.
- 1802 c. Lots served by a central on-site subsurface wastewater disposal system*.
- 1803 * The overall density of a Mobile Home Park served by a central on-site
1804 subsurface wastewater disposal system may be no greater than one unit per
1805 20,000 square feet of total park area
- 1806 i. Minimum lot area: 12,000 square feet.
- 1807 ii. Minimum lot width: 75 feet.
- 1808 d. The overall density of the Mobile Home Park is the combined area of its
1809 mobile home lots plus:
- 1810 i. The area required for road rights-of-way;
- 1811 ii. The area required for buffer strips, if any;
- 1812 iii. For areas served by public sewer, an open space area for storage and
1813 recreation equal to 10% of the combined area of the individual lots;
1814 and

- 1815 iv. The area within the municipality's shoreland setback.
- 1816 e. All buildings on the lot, including accessory buildings and structures, but
- 1817 excluding open decks and parking spaces, may not cover more than 50% of
- 1818 the lot area.
- 1819 (4). The following setback rules apply to all mobile homes and accessory buildings:
- 1820 a. Front and side setbacks are to be 20 feet; rear setbacks, 10 feet. If these
- 1821 requirements conflict with the requirements of the title, 38 M.R.S. § 435 et
- 1822 seq., Mandatory Shoreland Zoning, or subsequent amendments or revisions
- 1823 thereto, the stricter standards apply.
- 1824 b. If a lot is on a public road, the setback must conform with the residential
- 1825 setback requirements applicable to other residential dwelling units in the
- 1826 zone.
- 1827 c. So as to avoid monotony and sameness, the Code Enforcement Officer may
- 1828 allow:
- 1829 i. The front setback on a private road within a mobile home park to be
- 1830 varied, provided no mobile home may be closer than 10 feet from
- 1831 the right-of-way and the average distance is at least 20 feet for all
- 1832 units.
- 1833 ii. The replacement and/or relocation of a mobile home to be located
- 1834 no closer to the front yard setback than the existing mobile home or
- 1835 pad.
- 1836 d. Carports of noncombustible materials are not subject to setback
- 1837 requirements.
- 1838 e. The CEO may allow side yard setbacks to be reduced to five feet, provided
- 1839 a distance of 20 feet is maintained between mobile homes for the purpose of
- 1840 providing more usable yard space on one side of the home.
- 1841 f. A minimum twenty-foot separation must be maintained between all mobile
- 1842 homes in all directions.
- 1843 (5). All buildings on the lot, including accessory buildings and structures, but excluding open
- 1844 decks and parking spaces, may cover not more than 50% of the lot area.
- 1845 (6). Where a developer elects to create a Mobile Home Park where all land is under unified
- 1846 ownership, the park plan must demonstrate that the development standards described
- 1847 herein are met.
- 1848 (7). Privately owned roads within the Mobile Home Park must be designed by a professional
- 1849 engineer, registered in the State of Maine, and built according to accepted engineering
- 1850 standards.
- 1851 a. The layout and general development plan for major and minor access streets
- 1852 within the Mobile Home Park, together with the location and dimensions of
- 1853 access junctions with existing public streets and rights-of-way must be
- 1854 approved by the Planning Board.
- 1855 b. For Mobile Home Park expected to generate 200 trips per day or more,
- 1856 there must be at least two entrances from public streets or roads.
- 1857 (8). Mobile home park streets which intersect with public roads must meet the following
- 1858 standards:
- 1859 a. Angle of intersection. The desired angle of intersection is to be 90°. The
- 1860 minimum angle of intersection is to be 75°.
- 1861 b. Grade. The maximum permissible grade within 75 feet of the intersection is
- 1862 2%.
- 1863 c. Minimum sight distance. The minimum sight distance must be 10 times the

- 1864 posted speed limit on the existing road. Sight distance is measured from the
1865 driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder
1866 line with the height of the eye 3 1/2 feet above the pavement and the height
1867 of an object 4 1/4 feet.
- 1868 d. Distance from other intersections. The center line of any street within a park
1869 intersecting an existing public street must be at least 125 feet from the
1870 center line of any other street intersecting that public street.
- 1871 (9). Right-of-way and pavement width are to be as follows:
- 1872 a. Two-way park roads must have a minimum right-of-way of 23 feet and a
1873 minimum paved surface of 20 feet. On-street parking is prohibited.
- 1874 b. One-way streets must have a minimum right-of-way of 18 feet and a
1875 minimum paved surface of 14 feet. On-street parking is prohibited.
- 1876 c. Parking lanes are to be a minimum of eight feet in width, if provided.
- 1877 d. Cul-de-sac turnarounds are to have minimum radii of 50 feet at the outer
1878 edge of the pavement, exclusive of any parking areas.
- 1879 e. Curvilinear streets must be utilized wherever possible. No street within the
1880 park may be more than 200 feet without a curve or bend.
- 1881 f. If the developer intends to dedicate park streets to the public, such streets
1882 must meet municipal standards as contained in § 16.7.12.F and § 16.8.11.J
1883 of this chapter.
- 1884 (10). No mobile home lot may have vehicular access directly onto a state highway.
- 1885 (11). A traffic impact analysis is required if the park will generate more than 500 trips/day.
- 1886 (12). Parking requirements for Mobile Home Park areas follows:
- 1887 a. For each mobile home lot there must be provided and maintained at least
1888 two off-street parking spaces. This requirement may be waived if an
1889 equivalent number of spaces are provided by a parking lane. Each space is
1890 design-dependent as indicated in Table 16.7.11.F of this chapter, set out at
1891 the end of § 16.7.11.E and F, Parking Loading and Traffic. This
1892 requirement may be waived if an equivalent number of spaces are provided
1893 by a parking lane.
- 1894 b. In addition to occupant parking, off-street guest and service parking must
1895 be provided within the boundaries of the park at a ratio of one space for
1896 each four mobile home lots. Such parking must be reserved for that sole
1897 use. This requirement may be waived if a parking lane provides an
1898 equivalent number of spaces.
- 1899 c. On-street parking is prohibited unless an eight-foot parking lane is
1900 provided, in which case on-street parking may be permitted on the side of
1901 the road where the parking lane is located.
- 1902 (13). The mobile home park must contain pedestrian walkways that link all units and all service
1903 and recreational facilities. Such walkways are to be adequately surfaced and lit. A portion
1904 of the road surface may be reserved for walkways, provided the street width is increased
1905 accordingly. Walkways should be a minimum of width of three feet. [Amended 9-26-2011
1906 by Ord. No. 11-15]
- 1907 (14). Outdoor lighting is to be provided to adequately illuminate internal streets and pedestrian
1908 walkways. Lights are to be sized and directed to avoid adverse impacts on adjacent
1909 properties and vehicular traffic.
- 1910 (15). Open space calculations are as follows:
- 1911 a. For Mobile Home Park served by a public sewer, an area amounting to 10%
1912 of the total area devoted to individual lots must be set aside for open space

- 1913 and/or recreation. Such space is to be accessible and usable by all residents
 1914 of the park. Parking space, driveways and streets and buffer areas are not
 1915 considered usable open space but community recreation buildings, pools
 1916 and courts are considered as open space.
- 1917 b. At least 50% of the required open space must consist of land that is suitable
 1918 for active recreation.
- 1919 c. All developed open space is to be designed and landscaped for the use and
 1920 enjoyment of the park residents and maintained for their long-term use.
 1921 Plans for these areas must be submitted by the developer.
- 1922 d. To the maximum extent possible, undeveloped open space must be left in
 1923 its natural state. Improvements to make trails for walking and jogging or to
 1924 make picnic areas are permitted.
- 1925 e. The developer must submit, as part of the application, a copy of that portion
 1926 of the proposed park rules and a plan which specify how the open space is
 1927 to be used and maintained and what conditions apply to its use. The plan
 1928 must specify the area to be dedicated open space or recreation.
- 1929 f. Open space must be maintained and used for its approved purposes.
- 1930 (16). All Mobile Home Park must provide permanent electrical, water and sewage disposal
 1931 connections to each mobile home in accordance with applicable state and local rules and
 1932 regulations. If other than public water is to be utilized, the water system(s) must be capable
 1933 of delivering 250 gallons per day per lot of water certified to be of primary drinking water
 1934 standards.
- 1935 (17). Signs and advertising devices are prohibited in a Mobile Home Park, except:
- 1936 a. One identifying sign at each entrance of the Mobile Home Park sized in
 1937 compliance with § 16.5.16 of this chapter may be installed.
- 1938 b. Directional and informational signs for the convenience of tenants and the
 1939 public relative to parking, office, traffic movement, etc., are permitted.
- 1940 c. Mobile/manufactured home "for sale" signs, provided that such signs that
 1941 face a public road may be no more than 10 square feet and limited to two
 1942 signs per Mobile Home Park.
- 1943 d. Mobile/manufactured homes address signs are permitted when in
 1944 compliance with § 16.5.17 of this chapter.
- 1945 e. The styles and location of the identifying sign must not interfere with
 1946 vehicle sight distance and be constructed in accordance with § 16.5.17(17)
 1947 of this chapter.
- 1948 (18). At least 300 cubic feet of enclosed tenant storage facilities must be conveniently provided
 1949 on or near each mobile home lot for the storage of materials and equipment.
- 1950 (19). A storm drainage plan must be prepared by a professional engineer, registered in the State
 1951 of Maine, in accordance with § 16.7.11.C, Stormwater drainage. Such plan must be
 1952 approved by the York County Soil and Water Conservation District or found satisfactory
 1953 and compliant to the Code by the Town's Engineering Peer Reviewer prior to Planning
 1954 Board approval of the final plan. [Amended 9-26-2011 by Ord. No. 11-15]
- 1955 (20). Groundwater requirements for Mobile Home Park are as contained in § 16.7.11.J, which
 1956 must be complied with for all Mobile Home Park applications.
- 1957 (21). Each mobile home lot must be provided with an area for refuse storage. Within a
 1958 maximum 150 feet from each mobile home lot, there must be a fly tight, watertight and
 1959 rodent proof container capable of storing the amount of refuse that the mobile home park
 1960 for which it was designed could generate within one week as well as any separation
 1961 containers as required by the Kittery recycling program. The park management is

1962 responsible for disposal of refuse from such containers at least once a week.

1963 (22). Buffering requirements are as follows:

1964 a. A fifty-foot-wide buffer strip must be provided along all property boundary
1965 lines that:

1966 i. Abut residential land which has a gross density of less than half that
1967 proposed in the park; or

1968 ii. Abut residential land that is zoned at a density of less than half that
1969 proposed in the park.

1970 b. Further, no structures, streets or utilities may be placed in the buffer strip,
1971 except that they may cross a buffer strip to provide services to the park.

1972 c. Within 25 feet of any property line and within the buffer strip, visual
1973 screening and/or landscaping must be provided. The visual screening may
1974 consist of fences, berms, landscaping (such as shrubs or trees) and/or
1975 natural existing vegetation. This screening is to effectively screen at least
1976 80% of the homes from view from the adjacent property and be maintained
1977 throughout the life of the project.

1978 (23). The owner or operator of a mobile home park is responsible for ensuring the maintenance
1979 of all park-owned structures, open space areas, roads and pedestrianways/sidewalks. Park
1980 management must comply with state laws. Compliance with this title does not exempt the
1981 park owner, developer or manager from complying with other applicable local, state and
1982 federal codes and regulations. [Amended 9-26-2011 by Ord. No. 11-15]

1983 (24). No development or subdivision which is approved under this section as a mobile home
1984 park may be conveyed to another use without the approval of the Planning Board and
1985 meeting the appropriate lot size, lot width, setback and other requirements contained in this
1986 title. The approved final plan is to be recorded at the York County Registry of Deeds and
1987 filed with the Town and have noted the following restrictions as well as any other notes or
1988 conditions of approval: (1) "The land within this park must remain in a unified ownership
1989 and the fee to lots or portions of lots not be transferred." (2) "No dwelling unit other than a
1990 mobile home unit may be located within the park."

1991 **16.5.18 Net Residential Acreage**

1992 [Added 9-28-2015 by Ord. No. 15-05]

1993 A. Purpose.

1994 To determine for regulatory purposes the land area suitable for dwelling units. This land area, the
1995 net residential acreage, is used to determine the maximum number of dwelling units allowed on a
1996 parcel that is subject to subdivision. The total number of dwelling units allowed is equal to the net
1997 residential acreage divided by the minimum land area per dwelling unit for a given land use zone.

1998 B. Net residential acreage calculation.

1999 To calculate net residential acreage, the land area listed below must be subtracted from a parcel's
2000 gross area. Where land areas to be subtracted overlap, the area therein is subtracted once.

2001 (1). All land located below the highest annual tide elevation as published in the Maine DEP
2002 Highest Annual Tide (HAT) levels for the most-current year.

2003 (2). All land located within the floodplain as defined in the definition of "flood, one-hundred-
2004 year" in § 16.3.

2005 (3). All wetlands as defined in the definition of "wetland" in § 16.3, as well as vernal pools,
2006 ponds, lakes, streams and other water bodies, including 50% of the associated setbacks
2007 described in other Buildings and Structures, Table 16.5.30, § 16.5 of this title.

2008 (4). All land located on filled tidal lands, per the definition of "tidal land, filled" in § 16.3.

2009 (5). All land located within existing rights-of-way and other existing easements wherein

- 2010 dwelling units cannot be built.
- 2011 (6). All land located within proposed rights-of-way, including parking and travel ways.
- 2012 Driveways are excluded.
- 2013 (7). All land isolated from the principal location for development on the parcel by a road/street,
- 2014 existing land uses, or any physical feature, natural or man-made, such that it creates a
- 2015 barrier to the central development of the site and no means of access is proposed nor likely
- 2016 to be provided in the future. However, to demonstrate that identified isolated land may be
- 2017 considered developable for the purpose of this calculation, the applicant must submit a
- 2018 plan and supporting documentation for the Board's consideration.
- 2019 (8). All land zoned commercial (C-1, C-2, or C-3).
- 2020 (9). All land one acre or more of contiguous area with sustained slopes of 20% or greater.
- 2021 (10). All land identified as exposed bedrock, and soils with a drainage class of "poorly drained"
- 2022 and/or "very poorly drained" as defined in the definition of "soils" in § 16.3.
- 2023 (11). Fifty percent of all land characterized as drainage class of "somewhat poorly drained,"
- 2024 unless public sewer is used, in which case no land area is subtracted.
- 2025 (12). All land area within a cemetery and burying ground as defined in § 16.3, including
- 2026 associated setback per 13 M.R.S.A. § 1371-A, Limitations on construction and excavation
- 2027 near burial sites.
- 2028 (13). All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource
- 2029 Protection Overlay Zone not included in Subsection **12** above.

2030 C. Documentation.

2031 The net residential acreage calculation must be supported by verifiable information and accurate

2032 data and be shown on the subdivision plan or other plan when applicable.

2033 D. Exemptions to net residential acreage calculations.

- 2034 (1). The maximum number of dwelling units for residential development not subject to
- 2035 subdivision is based on minimum land area per dwelling unit defined in § 16.2, Definitions
- 2036 of this title.
- 2037 (2). The creation of dwelling units subject to subdivision within existing buildings that are
- 2038 connected to Town sewer and are located in the Mixed Use - Kittery Foreside, Mixed Use
- 2039 - Badgers Island, Residential Village, Business Local, or Business Local-1 Zones are
- 2040 exempt from the net residential acreage calculations in § 16.5.18.A. The total number of
- 2041 dwelling units permitted is determined by dividing the gross lot area by the minimum land
- 2042 area per dwelling unit allowed in the zone. The exemption is allowed in the above base
- 2043 zones when subject to the Shoreland Overlay Zone.
- 2044 (3). The Mixed-Use – Neighborhood Zone (MU-N) and certain residential uses in the C-1 and
- 2045 C-3 zone as noted in 16.4.19 and 16.4.21 are exempt from § 16.5.18, Net residential
- 2046 acreage calculation, but is subject to the minimum land area per dwelling unit as defined in
- 2047 Chapter 2, Definitions, except that 50% of all wetlands may be subtracted, rather than
- 2048 100%.
- 2049

2050 **16.5.19 Nonstormwater Discharge**

2051 [Amended 5-22-2017 by Ord. No. 17-06]

2052 A. Basis/purpose/objectives.

- 2053 (1). The Maine Department of Environmental Protection, through its promulgation of the
- 2054 "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm
- 2055 Sewer Systems" dated July 2013, has listed the Town of Kittery as having a regulated
- 2056 small municipal separate storm sewer system ("small MS4"); under this general permit,

2057 listing as a regulated small MS4 necessitates enactment of this article as part of the
2058 municipality's stormwater management plan.

2059 (2). The purpose of this article is to provide for the health, safety, and general welfare of the
2060 citizens of the Town of Kittery, through the regulation of nonstormwater discharges to the
2061 municipality's storm drainage system as required by federal and state law. This article
2062 establishes methods for controlling the introduction of pollutants into the Town's storm
2063 drainage system in order to comply with requirements of the federal Clean Water Act and
2064 state law.

2065 (3). The objectives of this article are:

- 2066 a. To prohibit unpermitted or unapproved nonstormwater discharges to the
2067 storm drainage system; and
- 2068 b. To set forth the legal authority and procedures to carry out all inspection,
2069 monitoring and enforcement activities necessary to ensure compliance with
2070 this article.

2071 B. Applicability.

2072 This article shall apply to all persons discharging stormwater and/or nonstormwater discharge from
2073 any premise into the storm drainage system.

2074 C. Responsibility for administration.

2075 The Code Enforcement Officer is the enforcement authority who shall administer, implement, and
2076 enforce the provisions of this article.

2077 D. Prohibition of nonstormwater discharges.

2078 (1). Except as allowed or exempted herein, a person may not create, initiate, originate or
2079 maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater
2080 discharges are prohibited even where the municipality has approved the connections,
2081 drains or conveyances through which a person creates an illicit nonstormwater discharge to
2082 the storm drainage system.

2083 (2). The creation, initiation, origination and maintenance of the following nonstormwater
2084 discharges to the storm drainage system are allowed as long as they do not cause or
2085 contribute to a violation of the state's water quality standards:

- 2086 a. Flow: Landscape irrigation; diverted stream flows; rising groundwaters;
2087 uncontaminated groundwater infiltration [as defined at 40 CFR
2088 35.2005(20)]; uncontaminated pumped groundwater; uncontaminated flows
2089 from foundation drains; air conditioning and compressor condensate;
2090 irrigation water; flows from uncontaminated springs; uncontaminated water
2091 from crawlspace pumps; uncontaminated flows from footing drains; lawn
2092 watering runoff; flows from riparian habitats and wetlands; residual street
2093 wash water (where spills/leaks of toxic or hazardous materials have not
2094 occurred, unless all spilled material has been removed and detergents are
2095 not used); hydrant flushing and firefighting activity runoff; water line
2096 flushing and discharges from potable water sources; individual residential
2097 car washing; and dechlorinated swimming pool discharges, as defined as
2098 having 0.5 ppm or less. Pools may only be emptied a minimum of 48 hours
2099 after any chemical treatments were added.
- 2100 b. Discharges specified in writing by the enforcement authority as being
2101 necessary to protect public health and safety; and
- 2102 c. Dye testing, with verbal notification to the enforcement authority prior to
2103 the time of the test.

2104 E. Exempt person or discharge.

2105 This article shall not apply to an exempt person or discharge, except that the enforcement authority

2106 may request from exempt persons and persons with exempt discharges copies of permits, notices of
2107 intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

2108 F. Suspension of access to municipality's storm drainage system.

2109 (1). The enforcement authority may, without prior notice, physically suspend discharge access
2110 to the storm drainage system to a person when such suspension is necessary to stop an
2111 actual or threatened nonstormwater discharge to the storm drainage system which presents
2112 or may present imminent and substantial danger to the environment, or to the health or
2113 welfare of persons, or to the storm drainage system, or which may cause the municipality
2114 to violate the terms of its environmental permits. Such suspension may include, but is not
2115 limited to, blocking pipes, constructing dams or taking other measures, on public ways or
2116 public property, to physically block the discharge to prevent or minimize a nonstormwater
2117 discharge to the storm drainage system.

2118 (2). If the person fails to comply with a suspension order issued in an emergency, the
2119 enforcement authority may take such steps as deemed necessary to prevent or minimize
2120 damage to the storm drainage system, or to minimize danger to persons. Only with the
2121 consent of the premises' owner, occupant or agent may the enforcement authority enter the
2122 premises that are the source of the actual or threatened nonstormwater discharge to the
2123 storm drainage system.

2124 G. Monitoring of discharges.

2125 In order to determine compliance with this article, the enforcement authority may enter upon and
2126 inspect premises subject to this article at reasonable hours with the consent of the premises' owner,
2127 occupant or agent: to inspect the premises and connections thereon to the storm drainage system;
2128 and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

2129 H. Enforcement and penalties.

2130 See §§ 16.2.7 and 16.2.14.

2131 I. Ultimate responsibility of discharger.

2132 The standards set forth herein are minimum standards; therefore this article does not intend nor
2133 imply that compliance by any person will ensure that there will be no contamination, pollution, nor
2134 unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article
2135 shall not create liability on the part of the municipality, or any officer agent or employee thereof for
2136 any damages that result from any person's reliance on this article or any administrative decision
2137 lawfully made hereunder.

2138 **16.5.20 Outdoor Dining**

2139 A. Applicability.

2140 (1). Outdoor dining, as defined in Chapter §16.3 of this Title, is allowed as follows:

2141 a. Within the buildable lot area in all zoning districts where restaurants are allowed as
2142 either a permitted or a special exception use;

2143 b. Within the front, side and/or rear yards (setbacks) of the C-1, C-2, C-3, B-L, B-L1,
2144 MU, MU-BI, MU-KF and MU-N zones where such a setback does not abut a
2145 residential use; and

2146 c. Outdoor dining in the public way is permitted subject to Title 5 and all Town
2147 requirements.

2148 (2). Any existing restaurant that meets the above requirements may apply for approval for
2149 outdoor dining on-site.

2150 (3). New restaurants to be constructed may include outdoor dining plans on-site as part of their
2151 site plan review.

2152 B. Standards.

- 2153 (1). Outdoor dining on-site must meet all the requirements of the pertinent zone's buffering
2154 and screening requirements.
- 2155 (2). Proposed outdoor dining on-site must comply with all conditions pertaining to any existing
2156 variances, special exceptions or other approvals granted for the property as well as any
2157 conditions imposed by the granting of the site plan review approval for the outdoor dining
2158 itself.
- 2159 (3). All the proposed outdoor dining activities must be conducted on private property owned,
2160 leased or otherwise controlled by the applicant unless separate approval for the use of any
2161 public rights-of-way has been obtained from the Town.
- 2162 (4). The proposed outdoor dining must not impede a site's internal circulation or its access and
2163 egress.
- 2164 (5). No additional parking is required for outdoor dining at existing restaurants where on-street
2165 parking is available. For outdoor dining areas in existing restaurants where on-street
2166 parking is not available, if the outdoor dining area is 1,000 square feet or less, no
2167 additional parking is required. For outdoor dining areas in existing restaurants over 1,000
2168 square feet but less than 2,000 square feet, one additional parking space is required.
2169 Thereafter, one additional parking space is required for every additional 1,000 sf.

2170 C. Site Plan Review submission requirements

- 2171 (1). The site plan must be drawn to scale, showing the dimensions of the proposed outdoor
2172 dining area, and its location relative to the structure where the restaurant is located.
- 2173 (2). The site plan must show the location of any proposed or existing pavement, hardscaping,
2174 landscaping, planters, fencing, canopies, umbrellas, awnings or barriers surrounding or
2175 delineating the outside dining area.
- 2176 (3). Calculations demonstrating the number of tables that may be placed within the proposed
2177 outdoor dining area according to state and local regulations must be submitted.
- 2178 (4). The above submission requirements are all that is required for outdoor dining areas that
2179 require Code Enforcement approval under §16.2.6. For outdoor dining areas that must be
2180 reviewed under site plan review, the above requirements must be met in addition to the
2181 submission requirements of §16.7 unless a submission requirements waiver is granted by
2182 the Planning Board.

2183 **16.5.21 Overboard Discharge Systems**

2184 A. Treated overboard discharge system defined.
2185 "Treated overboard discharge system" means any sand-filter system, mechanical system or primary
2186 treatment with disinfection system designed to State of Maine Department of Environmental
2187 Protection specifications which discharges effluent or other liquids into any water body or
2188 watercourse.

2189 B. Permit requirement.
2190 No person, firm or corporation may construct, install or maintain any treated overboard discharge
2191 system without first obtaining a Town permit for the same. Such permit is in addition to any other
2192 permit or license required by state or federal authorities for the same.

2193 C. Permit application.

- 2194 (1). Application for permit; fee. All applicants for permits must first apply to the Board of
2195 Appeals with a copy of the application given to the Code Enforcement Officer. The
2196 application form for a treated overboard discharge system must include the property
2197 owner's name and mailing address and telephone number, the applicant's name and address
2198 and telephone number, the location address; tax maps and lot numbers; engineer's scale
2199 drawing showing all relevant details of the system; and any other information deemed
2200 relevant or necessary by either the Board of Appeals or the Code Enforcement Officer. A

2201 fee as set out in Appendix A is required for each application. Application forms are to be
2202 available from the Code Enforcement Officer.

- 2203 (2). Issuance of permits; fee. The treated overboard discharge permit may be issued by the
2204 Code Enforcement Officer only after Board of Appeals approval. A permit issue fee as set
2205 out in Appendix A is required for each system.
- 2206 (3). Notice of hearing.
- 2207 a. Upon receipt of the completed application, the Board must timely notify the
2208 Code Enforcement Officer of the established hearing date, which may be no
2209 more than 30 days from the date of the receipted application. The Code
2210 Enforcement Officer must also notify the Planning Board, abutters and
2211 applicant of the hearing date. The Code Enforcement Officer must also give
2212 public notice of the permit hearing date by advertising the same in a
2213 newspaper of general circulation within the Town at least seven days prior
2214 to the hearing date.
- 2215 b. For the purposes of this section, the abutting owners of property are
2216 considered to be the parties listed by the Assessors of taxes for the Town as
2217 those against whom taxes are assessed. Failure of any property owner to
2218 receive a notice of public hearing does not necessitate another hearing or
2219 invalidate any action by the Board of Appeals.
- 2220 (4). Conduct of hearing and standards. The Board must conduct the hearing on the application
2221 for a treated overboard discharge system permit by following the same procedures
2222 established for the consideration of a special exception under the terms of § 16.2.12.
- 2223 a. The Board may receive oral and documentary evidence and testimony. At
2224 the close of the evidentiary portion of the hearing, the Board must consider
2225 whether the effluent or discharge from the proposed treated overboard
2226 discharge system will have a negative impact on any aquatic or fowl life,
2227 will lower the water quality standard or impair the uses designated by the
2228 classification of the receiving waters. In addition, the Board may consider
2229 any relevant provisions of the performance standards set forth in § 16.5,
2230 16.7 and 16.8.
- 2231 b. The Board may also consider any relevant state or federal statute, rules or
2232 regulations bearing on the same. After applying the standards contained
2233 herein, the Board must issue its decision containing its findings of fact and
2234 conclusions and approve the application if the Board is satisfied that the
2235 standards have been met.
- 2236 (5). Notice of decision. The Board of Appeals must notify the applicant in writing of its
2237 decision no later than 10 days thereafter.

2238 D. Systems exempted.

2239 The permit requirement of this chapter does not apply to any sewage disposal system in operation
2240 at the time this chapter is adopted or the subsequent repair or replacement of any such system,
2241 including replacement by treated overboard discharge system, except that any treated overboard
2242 discharge system, as defined herein and operating as of the date of the adoption of this chapter or
2243 subsequently installed as a replacement for an existing malfunction in-ground or overboard system
2244 under license by the State of Maine, is required to conform to the standards of maintenance and
2245 monitoring set forth in § 16.5.21.E.

2246 E. Standards of maintenance and monitoring.

2247 Treated overboard discharge systems that are operating by virtue of a permit issued under the terms
2248 of this chapter, or any such system operating as of the date of the enactment of this chapter
2249 pursuant to a license issued by the State of Maine, must be maintained and monitored pursuant to
2250 the following standards:

- 2251 (1). Disinfection. Disinfection is to be provided in a manner acceptable to the Maine
2252 Department of Environmental Protection. An approved disinfectant must be used and
2253 maintained according to the replacement or renewal schedule established by the
2254 Department of Environmental Protection.
- 2255 (2). Septic tanks. Septic tanks which are part of an overboard discharge system must be
2256 pumped annually to ensure that the accumulated sludge is never nearer than 12 inches to
2257 the invert of the outlet pipe leading from the septic tank to the sand filter.
- 2258 (3). Monitoring.
- 2259 a. The permit holder and/or the property owner must supply to the Code
2260 Enforcement Officer, prior to August 1 of each year, a report of the effluent
2261 analysis conducted by a recognized testing laboratory. All water samples
2262 for evaluation must be obtained and analyzed during the month of July.
2263 Each analysis must include the following tests:
- 2264 i. Fecal coliform (number of colonies per milligram of water);
2265 ii. Biological oxygen demand (BOD) and suspended solids (mg/l); and
2266 iii. Settleable solids (mg/l after a twenty-minute settling period in an
2267 Imhoff cone).
- 2268 b. In addition to the requirements contained in this subsection, the Code
2269 Enforcement Officer may require periodic operational reports from
2270 recognized laboratories in such form and containing such information as the
2271 Code Enforcement Officer may require.
- 2272 (4). Sand filters. Whenever the BOD levels exceed the limits specified in the regulations of the
2273 Maine Department of Environmental Protection, or when there are other indications of the
2274 sand-filter malfunctioning, the sand filter is to be inspected by a qualified professional. If
2275 the sand filter is found to be clogged, it must be replaced with new material meeting
2276 specifications of the Maine Department of Environmental Protection.
- 2277 (5). Emergency measures. In the event that a treated overboard discharge system is found to be
2278 malfunctioning, for any reason, the septic or settling tank must be pumped immediately
2279 and continue to be pumped as often as required until the malfunctioning is corrected.

2280 F. Malfunctioning of systems.

2281 The permit owner and/or property owner must immediately notify the Code Enforcement Officer
2282 of any malfunction of any component of the treated overboard discharge system. In the event that
2283 the system malfunctions, the Code Enforcement Officer may order that the effluent discharge cease
2284 within a time set by the Code Enforcement Officer.

2285 G. System construction.

- 2286 (1). Notice to Code Enforcement Officer and DEP. Before any work is undertaken pursuant to
2287 a permit issued under the terms of this chapter, the permit holder and/or property owner
2288 must notify the Code Enforcement Officer and the Department of Environmental
2289 Protection (DEP) at least seven days prior to commencement of the system's construction
2290 in order that all proper inspections of the proposed construction may be made by the Code
2291 Enforcement Officer and the DEP.
- 2292 (2). Certificate of compliance. Upon the completion of the construction of the treated
2293 overboard discharge system and prior to its operation, the Code Enforcement Officer is to
2294 issue a certificate of compliance, certifying that the system complies with all municipal
2295 ordinances, rules and regulations.

2296 H. Violations and penalties.

2297 Failure to conform to the provisions of the chapter constitutes a violation. A written notice of
2298 violation must be sent by the Code Enforcement Officer to the permit holder and/or the property
2299 owner operating the treated overboard discharge system which is in noncompliance with this

2300 chapter.

- 2301 (1). This notice is to be sent by certified mail, return receipt requested, and must inform the
2302 permit holder and/or property owner of the deadline for correcting the malfunction. The
2303 permit holder and/or property owner is to be given a reasonable time, not to exceed 30
2304 days, to correct the malfunction.
- 2305 (2). If the violation is not corrected within this specified time period, the Code Enforcement
2306 Officer must notify the permit holder and/or the property owner by certified mail, return
2307 receipt requested, that the permit is revoked.
- 2308 (3). Each day that the system is allowed to discharge after the notice of permit revocation is
2309 received constitutes a separate offense. A fine of not more than \$100 will be levied for
2310 each such separate offense. In addition to the remedy contained herein, said violation
2311 constitutes a nuisance for which the municipality, through its Code Enforcement Officer,
2312 may seek adequate remedy.
- 2313 (4). Any actual and direct expenses incurred by the Town in abatement of such nuisance may
2314 be recovered from the permit holder and/or property owner by civil complaint.

2315 I. Property rights.

2316 The issuance of any permit authorized by this chapter does not convey any property rights to the
2317 permit holder. The permit holder and/or the property owner, by accepting the permit under the
2318 terms of this chapter, consent to allow the Code Enforcement Officer or authorized agent, at all
2319 reasonable and proper times, to enter upon the property for inspection of the system or otherwise
2320 enforce the terms of this chapter.

2321 J. Permit expiration date.

2322 Such permit automatically expires within 90 days after the municipal sanitary sewer system
2323 becomes available within 200 feet of the property line of the lot or parcel of land on which the
2324 treated overboard discharge system is located, as measured along the public way.

2325 **16.5.22 Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies**

2326 A. Standards.

2327 Development involving piers, wharves, marinas and other uses projecting into water bodies must
2328 conform to the following standards:

- 2329 (1). In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all dimensional
2330 and other standards (excluding setbacks from water bodies) of this title apply to structures
2331 and uses projecting into a water body beyond the normal high-water mark.
- 2332 (2). Boathouses, while convenient to locate near the water, are not considered functionally
2333 water-dependent uses and must meet the same setback requirement as principal structures.
2334 The State of Maine no longer issues permits for construction of boathouses below the
2335 normal high-water line due to the adverse environmental impact; therefore, new
2336 boathouses must be located on uplands.
- 2337 (3). Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
2338 other structure beyond the normal high-water line.
- 2339 (4). Access from shore must be developed on soils appropriate for such use and constructed so
2340 as to control erosion.
- 2341 (5). The location must not interfere with existing developed recreational and maritime
2342 commerce or natural beach areas.
- 2343 (6). The facility must be located so as to minimize adverse effects on fisheries.
- 2344 (7). The facility must be a water-dependent use and no larger in dimension than necessary to
2345 carry on the activity and must be consistent with existing conditions, use and character of
2346 the area.
- 2347 (8). No new structure may be built on, over or abutting a pier, wharf, dock or other structure

- 2348 extending beyond the normal high-water line of a water body or within a wetland unless
2349 the structure requires direct access to the water as an operational necessity.
- 2350 (9). No existing structures built on, over or abutting a pier, dock, wharf or other structure
2351 extending beyond the normal high-water line of a water body or within a wetland may be
2352 converted to residential dwelling units in any district.
- 2353 (10). Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on, over
2354 or abutting a pier, wharf, dock or other structure extending beyond the normal high-water
2355 line of a water body or within a wetland must not exceed 20 feet in height above the pier,
2356 wharf, dock or other structure.
- 2357 (11). Applicants proposing any construction or fill activities in a waterway or wetland requiring
2358 approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water
2359 Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine
2360 Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.
- 2361 (12). Proposals for any principal marine structure use, any residential joint- and/or shared-use
2362 pier, or any residential-development-use pier require Planning Board approval.
- 2363 (13). A residential development containing five or more lots in a zone permitting a residential-
2364 development-use pier may construct only one residential development use pier.
- 2365 (14). Commercial development of the shorefront must provide for access by the general public
2366 as part of a shorefront development plan.
- 2367 (15). Only one pier, ramp and float structure is permitted on any noncommercial or
2368 nonindustrial lot.
- 2369 (16). Marine-related permanent structures located below the mean low-water line require the
2370 following permits, leases and approvals:
- 2371 a. Port Authority approval;
- 2372 b. Department of Environmental Protection permit pursuant to the Natural
2373 Resources Protection Act, 38 M.R.S. § 480-C;
- 2374 c. Army Corps of Engineers permit;
- 2375 d. Maine State Department of Conservation, Bureau of Parks and Lands,
2376 Submerged Land Coordinator approval; and
- 2377 e. Building permit.

2378 **16.5.23 Signs**

2379 A. Purpose.

2380 The purpose of this article is to balance the need for adequate identification and advertising for
2381 land uses to promote the economic well-being of the Town with the need to protect the public
2382 safety and maintain and enhance the physical appearance of the community. This objective is to be
2383 achieved by:

- 2384 (1). Allowing adequate signage for the effective use of signs as a means of identifying,
2385 advertising and communication of land uses;
- 2386 (2). Establishing the appropriate bounds for location, size, number, type and use of signs to
2387 protect traffic safety, preserve property values and to promote visual order and clarity; and
- 2388 (3). Establishing procedures and regulations for the fair and consistent administration and
2389 enforcement of these sign restrictions.

2390 B. Nonconforming existing signs.

- 2391 (1). All signs lawfully existing on October 1, 1997 that do not conform to the terms of this
2392 article may be continued and maintained, subject to § 16.5.23.B(2), but may neither be
2393 enlarged nor substantially altered except in conformity with this article.
- 2394 (2). Lawfully nonconforming signs must be made to conform or be removed if any of the

2395 following circumstances occur, individually or in combination, for a consecutive three-
2396 year time period:

- 2397 a. The sign has ceased to be accurate by reason of vacancy or closure of the
2398 business which the sign advertises.
- 2399 b. The sign face is blank, illegible, obscured, painted over, concealed or
2400 otherwise not decipherable.

- 2401 (3). In no event may the degree of nonconformity of any sign or type of signage on any lot be
2402 increased.

2403 C. General requirements.

- 2404 (1). No sign may be erected, posted, enlarged, or substantially changed without a permit issued
2405 by the Code Enforcement Officer (CEO) and also approved by the Town Planner, except
2406 where § 16.5.23.J provides otherwise. [Amended 9-26-2011 by Ord. No. 11-15]
- 2407 (2). No exterior sign may be artificially illuminated except where hooded or shielded or
2408 otherwise designed to prevent direct light spilling onto traveled ways or neighboring
2409 property.
- 2410 (3). No sign may contain a moving message board or intermittent illumination, except where
2411 necessary in time/temperature/date signs. [Amended 9-26-2011 by Ord. No. 11-15; 12-8-
2412 2014 by Ord. No. 14-08]
- 2413 (4). Any sign that interferes with or closely imitates any official traffic sign, signal or device is
2414 prohibited.
- 2415 (5). No sign designed to be transported by means of wheels is allowed, unless said vehicle is
2416 used in the normal day-to-day transportation operations of the business. All trailer signs
2417 are prohibited.
- 2418 (6). Any changeable message signs must be integrated into a permanently-mounted sign. Such
2419 a changeable message board is to be mounted a minimum of 3 1/2 feet above ground level.
- 2420 (7). All signs must be maintained in a safe and sound structural condition.
- 2421 (8). Advertising. No advertising or signage is permitted on wireless communication services
2422 facilities.
- 2423 (9). Any sign not expressly permitted herein is prohibited.

2424 D. Sign location.

- 2425 (1). All signs must be permanently installed on the premises of the activity to which the
2426 advertising message refers, except where § 16.5.23.H provides otherwise or upon approval
2427 by the Town Council.
- 2428 (2). All signs must be located outside the full width of the right-of-way of any public way,
2429 unless authorized by the Town Council.
- 2430 (3). Except for signs authorized in §§ 16.5.23.H and 16.5.23.J, freestanding signs erected after
2431 October 1, 1997 must be located at least 33 feet from the center line of any U.S. or state
2432 numbered highway less than 66 feet in width and at least 20 feet from the outside edge of
2433 the paved portion of any travel lane of any U.S. or state numbered highway which has both
2434 more than two travel lanes and a total paved portion in excess of 24 feet in width.
- 2435 (4). Signs must not be placed on or above the roof of any building. All signs must be located
2436 below the level of the eaves of the portion of building where the sign is to be erected,
2437 except as follows:
 - 2438 c. Signage may be located above the eaves on a gable or dormer of a building,
2439 providing it does not extend above or beyond the roofline of the gable or
2440 dormer; and
 - 2441 d. Signage may be located on a parapet wall, provided the sign neither extends
2442 any more than eight feet above the roof-wall junction of the parapet wall

2443 nor extends beyond the height of the parapet wall.

2444 Note: Please see Figure 3 of § 16.5 at the end of this article to assist the
2445 reader in understanding acceptable and unacceptable locations of building-
2446 mounted signs according to the terms of § 16.5.23.D

- 2447 (5). Building-mounted signs which extend more than six inches from the surface of the
2448 structure must provide a minimum of eight feet of vertical clearance to a walkway, parking
2449 area, private drive and ground surface. Such signs must not extend beyond the street right-
2450 of-way boundary unless authorized by the Town Council.
- 2451 (6). Freestanding signs must not extend higher than 20 feet above the original ground level or
2452 the elevation of the center line of the nearest street measured at the closest point to the
2453 sign, whichever is greater.
- 2454 (7). Signs must not be posted on trees, utility poles, traffic control devices, or unregistered
2455 motor vehicles or trailers. Signs posted on fences are treated as a type of freestanding sign.
2456 Any unpermitted and unallowed sign located in a public road right-of-way may be caused
2457 to be removed by the Town without notice to the owner of such sign.
- 2458 (8). No sign may be located so that it interferes with the safe sight distances necessary for
2459 motorists to proceed safely through intersections or to enter onto or exit from public
2460 streets, private roads or driveways.
- 2461 (9). All building-mounted signs must be located only on the building that contains the activities
2462 or businesses advertised, except that up to 10% of the allowed signage for building-
2463 mounted signs in § 16.5.23.K may be allocated to signs mounted on fuel pumps and/or fuel
2464 pump canopies.
- 2465 (10). In cases where multiple freestanding signs are permitted, any additional allowed smaller
2466 freestanding sign must face and be located along a separate publicly maintained street.

2467 E. Number of freestanding signs.

- 2468 (1). Except as otherwise authorized in this section, as well as §§ 16.5.23.I and 16.5.23.J, each
2469 development is prohibited from having more than one freestanding sign.
- 2470 (2). Multisided signs are considered as one sign; however, the square footage of each sign face
2471 is calculated to determine total sign area.
- 2472 (3). Where a development fronts on two publicly maintained streets and has designed and
2473 approved access onto both those publicly maintained streets, the development is allowed
2474 one additional freestanding sign that faces and is located along a second publicly
2475 maintained street in accordance with § 16.5.23.G.
- 2476 (4). Where a development fronts on three publicly maintained streets and has designed and
2477 approved access onto each publicly maintained street, a third freestanding sign facing and
2478 located along the third publicly maintained street may be authorized at the Planning
2479 Board's discretion if it finds that other freestanding signage is not visible from the third
2480 street and that there is a need for a third freestanding sign to adequately communicate the
2481 business location to travelers on a third road fronted by the business.

2482 F. Number of building-mounted signs.

2483 To prevent sign clutter, except for those signs authorized by § 16.5.23.I or 16.5.23.J, each business
2484 facility which is on a site where two or more businesses occupy the same building, lot or
2485 development is prohibited from having more than two building-mounted, nontemporary signs.

2486 G. Sign area.

2487 [Amended 9-26-2011 by Ord. No. 11-15]

- 2488 (1). Residential Zones. Zones designated Residential - Rural Conservation, Residential - Rural,
2489 Residential - Suburban, Residential - Urban, and Residential - Village on the Zoning Map
2490 are residential zones for the purpose of this section.

- 2491 a. Accessory uses, including home occupations, are allowed sign area no
2492 greater than eight square feet.
- 2493 b. Other permitted uses are allowed sign area no greater than 16 square feet,
2494 except as otherwise provided. Residential developments are also allowed 24
2495 square feet, provided that signs are located within the development on
2496 premises owned by the developer or an owners' association.

2497 (2). All other zones.

- 2498 a. A single business situated on a lot of record is allowed a total sign area no
2499 greater than 300 square feet or 1 1/2 square feet for every linear foot of
2500 building frontage, whichever is smaller. In any case, a single business on a
2501 lot of record is allowed a minimum sign area of 72 square feet.
- 2502 b. Where two or more business facilities occupy the same building, lot or
2503 development, allowable sign area is calculated as follows:
- 2504 i. Total building-mounted sign area equals 1 1/2 square feet per linear
2505 foot of building frontage for each business facility. The total
2506 allowed building-mounted sign area may be allocated among
2507 individual business facilities at the property owner's discretion.
- 2508 ii. The development is allowed one freestanding sign not greater than
2509 150 square feet in sign area. An additional freestanding sign no
2510 greater than 72 square feet in sign area facing and located along that
2511 secondary street is allowed if the development fronts on multiple
2512 streets and has designed and approved access onto each publicly
2513 maintained street. A third freestanding sign may be permitted at the
2514 Planning Board's discretion in accordance with § 16.5.23.E.

2515 H. Off-premises signs.

- 2516 (1). An individual business or service, upon application, may be assigned no more than three
2517 off-premises business directional signs (OBDS). An OBDS must be designed and located
2518 so as to avoid conflict with other signs and minimize impact on the scenic environment
2519 through the following standards:
- 2520 a. Dimensions: 12 inches by 48 inches.
- 2521 b. Coloring: state standard blue background, white lettering, logo may be any
2522 color.
- 2523 c. Reflectorization: optional.
- 2524 d. Location: on existing assemblies (posts) where possible. No more than two
2525 assemblies per intersection approach.
- 2526 e. Restricted areas: An OBDS must not be placed on an inbound leg of the
2527 Kittery traffic circle within 400 feet of its outer perimeter, or adjacent to
2528 points of scenic or historical interest, including but not limited to federal,
2529 state and local parks and reserves, recognized historic sites and buildings,
2530 water bridges and cemeteries.
- 2531 (2). An off-premises sign which advertises commercial or other activity without advertising
2532 any specific enterprise (generic signs) may be approved by the Planning Board at size and
2533 location to be specified.

2534 I. Temporary signs.

2535 All temporary signs must be installed on the premises of the activity to which the advertising
2536 message refers. Moveable signs are prohibited as temporary signs. The following types of
2537 temporary signs are allowed with an approved sign permit:

- 2538 (1). The use of one temporary sign, other than a trailer sign, at any one time per business, that
2539 is mounted to the building or attached to a freestanding sign structure for the purpose of

2540 advertising special events, provided that such signs are displayed for no longer than a
2541 combined total of 21 days in any calendar quarter (January 1 to March 30, etc.), may be
2542 permitted. Total sign area for a temporary sign must not exceed 72 square feet. The
2543 allowed twenty-one-day display period may be divided into no more than three separate,
2544 nonoverlapping temporary periods of not less than seven days.

- 2545 (2). One additional temporary sign, other than a trailer sign, mounted to the building or to a
2546 freestanding sign structure, is permitted per legally participating site for the duration of
2547 each Town Council-approved sidewalk sales event.

2548 J. Signs allowed without sign permit.

2549 The following types of signs, in sizes and under conditions stated, are allowed without a Town sign
2550 permit, but must conform with all other provisions of § 16.5.23 of this chapter except for the
2551 provisions restricting the number of signs (§§ 16.5.23.E and 16.5.23.F) and limiting the total sign
2552 area (§ 16.5.23.G).

- 2553 (1). Public information signs. Signs for the control of traffic and other regulatory purposes,
2554 route markers, street signs, warning signs, utility, danger or warning signs, signs which
2555 indicate direction to hospitals, churches or other places of worship, or other public
2556 facilities.
- 2557 (2). General information signs. Signs which provide direction or instruction, such as location of
2558 telephone, restrooms, parking, automatic teller machines (ATMs), transit stops, entrances
2559 and exits, open and closed signs, where installed entirely upon the property to which they
2560 pertain. "Enter" and "Exit" signs must not exceed four square feet in size. All other general
2561 information signs must not exceed two square feet in size. Except for identifying approved
2562 off-premises parking stalls, no logos, trademarks or names of businesses are permitted on
2563 general information signs. The Planning Board may approve increased sizes and/or the use
2564 of logos or names of businesses on general information signs when considered necessary
2565 to promote safety or eliminate confusion.
- 2566 (3). Memorial tablets. Grave markers, signs commemorating a historical figure or event, names
2567 or dates of buildings to which a sign is attached.
- 2568 (4). Public notices and community signs. Official notices posted by public employees in
2569 performance of their duties, and any sign for Town sponsored or supported events or
2570 facilities as approved by the Town Council.
- 2571 (5). Flags of any government or recognized political subdivision. The flag of any government
2572 or recognized political subdivision is allowed, provided it is displayed no higher than 50
2573 feet above the original ground level or the elevation of the center line of the nearest street
2574 measured at the closest point to the flag, whichever is greater. A single memorial flagpole
2575 installation sponsored by private funding not to exceed 129 feet in height installed on
2576 Town-owned or regulated property at Memorial Circle is allowed. [Amended 9-26-2011
2577 by Ord. No. 11-15]
- 2578 (6). Religious symbols.
- 2579 (7). Building street numbers. In accordance with the street-numbering map on file with the
2580 Town Assessing Department;
- 2581 (8). Political campaign signs. Signs bearing political messages relating to an election, primary
2582 or referendum, provided these signs may be displayed on: [Amended 9-26-2011 by Ord.
2583 No. 11-15]
- 2584 a. Public property not earlier than 30 days prior to the election, primary or
2585 referendum to which they relate and are removed not later than two days
2586 thereafter.
- 2587 b. Private property without time constraints.
- 2588 (9). Interior signs. Signs placed inside a building which are located at least 10 feet inside the
2589 building or otherwise not oriented to be viewed from outside the building;

- 2590 (10). Vehicular signs. Signs painted on or affixed to registered motor vehicles or trailers where
2591 such signs are clearly incidental to the regular transportation function of the vehicle.
- 2592 (11). Service club signs. Service club signs may be placed within the right-of-way of a street
2593 with approval of the Commissioner of Public Works. Such signs are encouraged to be
2594 consolidated on a single designated assembly structure at major entranceways to the Town.
2595 In addition, such signs not exceeding four square feet in size may be erected at locations
2596 where meetings of such service clubs are convened.
- 2597 (12). Real estate signs. Any sign advertising real estate for sale, lease or rent, provided:
2598 a. Each sign does not exceed 12 square feet;
2599 b. Each sign is located on the property being advertised, except one sign may
2600 be located as an off-premises directional sign, provided the sign does not
2601 restrict safe sight distances or impair safety;
2602 c. No more than two signs are erected per property being advertised; and
2603 d. Each sign is removed within 60 days of transfer of title.
- 2604 (13). Window signs. Any sign that is placed inside a window and is visible from the exterior of
2605 the window, provided such signage covers no more than 50% of the area of any window.
- 2606 (14). Legally required signs. Any sign required by local, state or federal law with sign area no
2607 greater than two square feet or the minimum size required by law, whichever is larger.
- 2608 (15). Food menu signs. Up to two signs advertising food items for sale on the premises at a
2609 legally existing restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed,
2610 provided that:
2611 a. The total sign area of each such food menu sign on the site must not exceed
2612 32 square feet; and
2613 b. Such food menu signs must either be building-mounted or comply with the
2614 front yard requirements for structures and be located within 75 feet of the
2615 restaurant.
- 2616 (16). Undercanopy, pedestrian-oriented signs. One building-mounted business identification
2617 sign per business facility, not to exceed 10 square feet in size per sign, where two or more
2618 businesses occupy the same building with a pedestrian walkway and canopy that parallels
2619 and connects the front entrances of the business facilities. The sign must be oriented
2620 toward pedestrians using the walkway, be located under the canopy near the main entrance
2621 to the business advertised and solely identify the business name or logo.
- 2622 (17). Construction phase and contractor signs. Signs, other than trailer signs, identifying the
2623 name of a contractor working on the premises or describing a construction project, erected
2624 only during the construction phase of a development, provided each sign does not exceed
2625 75 square feet.
- 2626 (18). Garage sale signs as allowed by § 5.4.9A(2).

2627 K. Signs in Shoreland Overlay and Resource Protection Overlay Zones.

2628 The following provisions govern signs in the Conservation, Shoreland Overlay and Resource
2629 Protection Overlay Zones, except where either is overlaid by the Commercial Fisheries/Maritime
2630 Uses Overlay Zone:

- 2631 (1). Signs relating to goods and services sold on the premises are allowed, provided such signs
2632 do not exceed six square feet in area and do not exceed two signs per premises.
- 2633 (2). Signs relating to goods or services not sold or rendered on the premises are prohibited.
- 2634 (3). Name signs are allowed, provided such signs do not exceed two signs per premises and do
2635 not exceed 12 square feet in the aggregate.
- 2636 (4). Residential users may display a temporary single sign not over three square feet in area
2637 relating to the sale, rental or lease of the premises.

- 2638 (5). Signs relating to trespassing and hunting are allowed without restriction as to number,
2639 provided no such sign exceeds two square feet in area.
- 2640 (6). Signs relating to public safety are allowed without restriction.
- 2641 (7). Signs higher than 20 feet above the ground are prohibited.
- 2642 (8). Signs may be illuminated only by shielded, nonflashing lights.
- 2643 L. Sign permit application procedures.
- 2644 (1). No person may erect, post, enlarge, relocate, replace or modify a sign except in
2645 conformance with a permit issued by the Code Enforcement Officer and also approved by
2646 the Town Planner. Notwithstanding the above statement, the following signs may be
2647 erected or modified without a sign permit: [Amended 9-26-2011 by Ord. No. 11-15]
- 2648 a. Signs authorized in § 16.5.23.J.
- 2649 b. Changes to nameplates or "shingles" to reflect occupancy changes on an
2650 existing approved freestanding sign identifying individual occupants on the
2651 site, provided no change is made to the shape or size of the sign or sign
2652 area.
- 2653 c. Characters, letters and numbers may be changed on approved changeable
2654 message signs without a sign permit, provided no other change is made to
2655 the sign.
- 2656 d. Signs may be maintained, cleaned or repainted, provided no change is made
2657 to the shape or size of the sign or to the sign area, and provided no new
2658 business name is advertised.
- 2659 (2). A complete sign application submission consists of the following items submitted to the
2660 Code Enforcement Officer:
- 2661 a. A completed sign permit application form provided by the Town;
- 2662 b. An application fee in accordance with a fee schedule established by the
2663 Town Council; and
- 2664 c. A self-addressed, stamped envelope.
- 2665 (3). Complete applications must be reviewed by the CEO for compliance with this title.
2666 Complete sign permit application submissions must be returned by the CEO after
2667 rendering a decision to the applicant if accompanied by an SASE. Incomplete sign permit
2668 application submissions will only be returned to the applicant if accompanied by an SASE.
- 2669 (4). Unless the proposed sign is located within the Shoreland Zone, the CEO must issue, deny
2670 or seek a formal Planning Board opinion within 14 working days of receiving a complete
2671 sign permit application submission. If either a Planning Board opinion is sought or the
2672 proposed sign is located within the Shoreland Zone, the CEO must issue or deny the
2673 application within 35 calendar days of receiving a complete sign permit application
2674 submission.
- 2675 (5). The sign permit must be approved if the proposed sign conforms in every respect with the
2676 requirements of this article. In the CEO's absence, or if no action is taken by the CEO
2677 within the above time limits, the Town Manager or the Town Manager's designee may
2678 approve or deny the sign permit application submission.
- 2679 (6). All new signs approved as of October 1, 1997 must display a numbered sign permit sticker
2680 provided by the Town in a visible location at the lower right-hand corner of the sign face.
2681 Failure to display such sign permit sticker on signs erected as of October 1, 1997 will be
2682 considered a violation of this article. Replacement stickers are available from the CEO
2683 based on a fee schedule established by the Town Council.

2684 M. Sign violations and appeal.

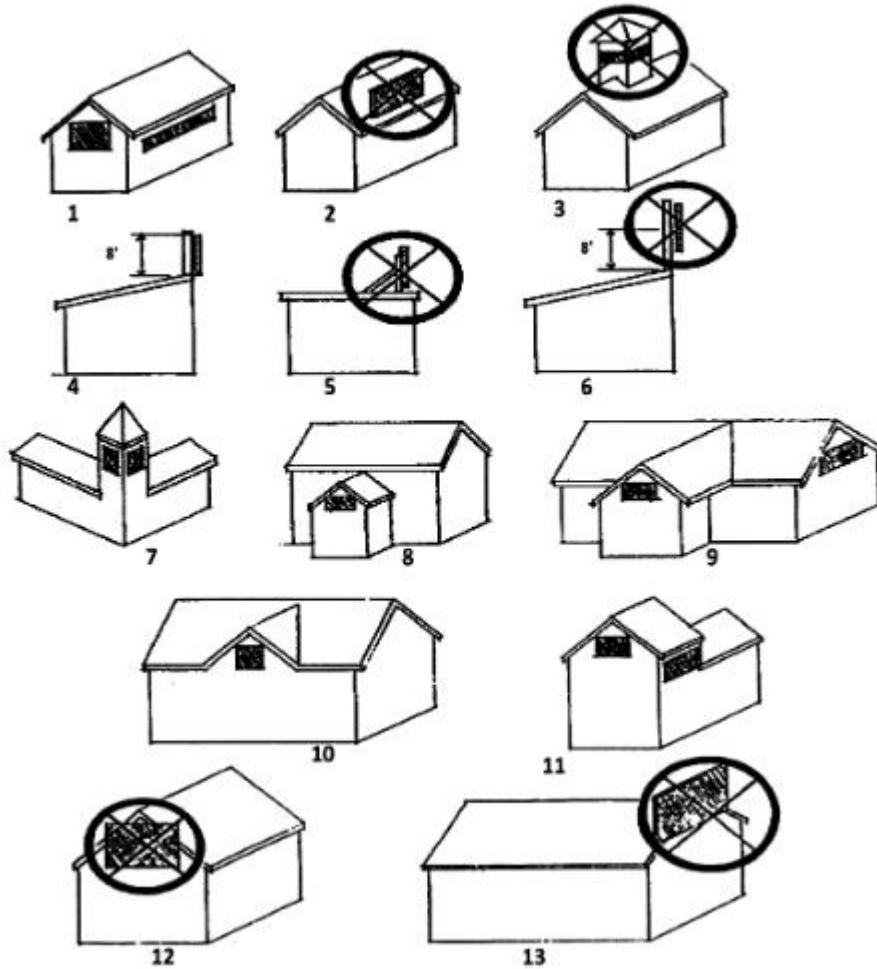
- 2685 (1). The CEO must notify and order the owner to immediately correct any sign that endangers

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public safety. Signs that endanger public safety include, but are not limited to, those which are dangerous by reason of structural defect or those that interfere or obstruct a driver's safe operation of a motor vehicle.

- (2). A nonconforming sign which is required to conform to the sign regulations per § 16.5.23.B must be brought into conformity.
- (3). Enforcement of the provisions of this article is in accordance with §16.2.

Figure 3
Examples of Allowed and Prohibited Sign Placement
 These drawings are illustrative and meant to be an aid to the reader; refer to § 16.5.21, for full details.



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16.5.24 Dwellings in Resource Protection and Shoreland Overlay Zones

A. Dwellings in Resource Protection and Shoreland Overlay Zones.
 [Amended 1-28-2015 by Ord. No. 15-01]

The Code Enforcement Officer may issue a permit for a new dwelling outside the base zone setback ion the Shoreland Overlay Zone only provided the structure us conforming with all base zone standards. In addition to the criteria specified in § 16.2.12.F, § 16.8.9.D(5) and § 16.7.10.D(6), applicable to the granting of a special exception use request, the Planning Board may approve an application for a single- family dwelling special exception use request within the Resource Protection Overlay Zone, where applicable, provided the applicant demonstrates all of the following conditions are met:

- (1). There is no location on the property, other than a location within Resource Protection

- 2710 Overlay Zones, where a single-family dwelling can be built, provided the structure us
2711 conforming with all base zone standards.
- 2712 (2). The lot on which the structure is proposed is undeveloped and was established and
2713 recorded in the York County Registry of Deeds before inclusion in the Shoreland or
2714 Resource Protection Overlay Zones.
- 2715 (3). All proposed buildings, sewage disposal systems, other than municipal sewer, and other
2716 improvements are located:
- 2717 a. On natural ground slopes of less than 20%;
- 2718 b. Outside the floodway of the one-hundred-year floodplain along rivers; and
- 2719 c. Outside the velocity zone in areas subject to tides, based on detailed flood
2720 insurance studies and as delineated on the Federal Emergency Management
2721 Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate
2722 Maps.
- 2723 (4). The lowest floor elevation or openings of all buildings and structures, including basements,
2724 must be elevated at least one foot above the elevation of the one-hundred-year flood, the
2725 flood of record or, in the absence of these, the flood as defined by soil types identified as
2726 recent floodplain soils.
- 2727 (5). If the floodway is not shown on the Federal Emergency Management Agency Maps, it is
2728 deemed to be 1/2 the width of the one-hundred-year floodplain.
- 2729 (6). The total ground-floor area, including cantilevered or similar overhanging extensions, of
2730 all principal and accessory structures is limited to a maximum of 1,500 square feet. This
2731 limitation may not be altered by variance.
- 2732 (7). All structures, except functionally water-dependent structures, are set back from the
2733 normal high-water line of a water body, tributary stream or upland edge of a wetland to the
2734 greatest practical extent but not less than 75 feet horizontal distance. In determining the
2735 greatest practical extent, the Planning Board must consider the depth of the lot, the slope of
2736 the land, the potential for soil erosion, the type and amount of vegetation to be removed,
2737 the proposed building site's elevation in regard to the floodplain and its proximity to the
2738 wetlands.

2739 **16.5.25 Sprinkler Systems**

2740 A. Requirement.

- 2741 (1). An approved automatic sprinkler system must be installed in all areas of new buildings
2742 meeting any or all of the following criteria:
- 2743 a. Three or more stories in height; or
- 2744 b. Thirty-six or more feet in height; or
- 2745 c. One hundred thousand cubic feet in volume or 10,000 square feet in floor
2746 area; or
- 2747 d. Multiple-family or multiple-occupant dwelling and/or all lodging units; or
- 2748 e. Any single-family attached units, such as garden apartments or townhouse
2749 with three or more units attached together; or
- 2750 f. All motels, hotels, rooming houses, inns or other structures containing more
2751 than two dwelling or living units, hotel or motel rooms.
- 2752 (2). An approved automatic sprinkler system must be installed in new additions to existing
2753 buildings and to the existing building(s) meeting any or all of the following criteria:
- 2754 a. When the addition causes the building to become three or more stories in
2755 height; or
- 2756 b. When the addition causes the building to become 36 or more feet in height;

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or

- c. When the addition causes the building to become 100,000 cubic feet in volume or 10,000 square feet in area;
- d. When the addition to or renovation of the existing building results in the end use becoming a motel, hotel, rooming house, inn or other structure which contains more than two dwelling or living units, hotel or motel rooms; or
- e. When the addition to or renovation of the existing building results in the end use becoming single-family attached units, such as garden apartments or townhouses with three or more units attached together.

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B. Sprinkler system standards.

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- (1). An approved automatic sprinkler system means a system installed in accordance with the National Fire Protection Association (NFPA) Standard 13 or NFPA 13D, or a system otherwise lawfully approved in writing by the State Fire Marshal's office; provided, however, any such system remains subject to the Fire Chief's approval under Subsection (3) of this section.
- (2). Any structure requiring the installation of a NFPA Standard 13 system must have a Fire Department connection with location approved by the Fire Chief.
- (3). The type of system to be installed and its adequacy of life safety from fire in accordance with the provisions of this title must be reviewed and approved by the Fire Chief or duly authorized designee, provided adequate provision is made for life and property safety.
- (4). All sprinkler systems installed under this title must have the following:
 - a. A tamper-switch alarm at the system shutoff.
 - b. An evacuation alarm for the building that will sound when the sprinkler system is activated; such evacuation alarm is to be audible throughout the entire structure.
 - c. An outside water-flow alarm.
 - d. Butterfly valves will not be allowed on any Standard 13 system.
 - e. Local fire alarm panel.
- (5). Occupied or unoccupied buildings or portions thereof or any under construction having a sprinkler system in place must maintain all sprinklers and standpipe systems and all component parts in a workable condition at all times, and it is unlawful for any owner, occupant or other person whatever to reduce the effectiveness of the protection these systems provide, except that this does not prohibit the owner or occupant from temporarily reducing or discontinuing the protection where necessary for the purposes of conducting tests, repairs, alterations or additions, provided that the test, repairs, alterations or additions are done in such a way as to avoid the creation of a safety hazard.
- (6). For the purposes of this section, the term "building" means any structure excluding single-family dwellings, two-family dwellings and any barn or stable used exclusively for agricultural purposes, having a roof supported by columns or walls and intended for the shelter, storage, housing or enclosure of persons, animals or property. The term "building" also includes any garage, outbuilding or other accessory building used for any commercial or industrial purposes.
- (7). Any building having more than one sprinkler riser must have the risers separately zoned and wired to a local fire alarm panel to provide zone identification upon activation. The fire alarm panel is to be located as near as possible to the main exit door. There must also be a building map located at the fire alarm panel showing each zone of the building.
- (8). A lock box must be provided outside the main entrance to any buildings regulated hereunder, containing a key to allow access to all Fire Department areas. So as to be

2806 compatible with existing lock box systems, the type of lock box must be approved by the
2807 Fire Chief.

2808 (9). Any structure containing a sprinkler system is required to have a yearly test completed on
2809 the system by a qualified sprinkler technician. A written copy of the yearly test report must
2810 be forwarded to the Fire Chief.

2811 C. Permit.

2812 (1). A permit must be obtained from the Fire Chief before the start of construction of the
2813 system and a set of blueprints showing the entire sprinkler system and the rate of flow
2814 provided to and approved by the Fire Chief in order to obtain the permit.

2815 (2). A copy of the permit must be forwarded to the CEO, and no certificate of occupancy may
2816 be issued until the system has been properly installed, tested by a qualified technician and
2817 approved by the Fire Chief or duly authorized designee.

2818 D. Fees and fines.

2819 (1). A sprinkler system permit fee is to be paid with the permit request in such amount as
2820 established by Council. The fee for a sprinkler permit is as set out in Appendix A.
2821 [Amended 9-26-2011 by Ord. No. 11-15]

2822 (2). Any person, firm or corporation being the owner or having control or use of any building
2823 or premises who violates this section of this title will be assessed a penalty under Title 1,
2824 Chapter 1.3. Each day such violation is permitted to exist after notification constitutes a
2825 separate offense.

2826 E. Sprinkler administrative appeal.

2827 If any party is aggrieved by a determination of the Fire Chief under the requirements of this
2828 section, a written appeal may be filed with the BOA within 10 days from the date of notification of
2829 such determination by the Fire Chief. Such written appeal must set forth a concise statement of the
2830 grounds upon which the party contends the Fire Chief's determination to be in error.

2831 **16.5.26 Street Signage**

2832 A. Names.

2833 Streets which join or are in alignment with streets of abutting or neighboring properties must bear
2834 the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to, the
2835 names of existing streets within the municipality and are subject to the approval of the Planning
2836 Board.

2837 B. Signs provided.

2838 Street name signs are to be furnished and installed by the developer; the type, size and location to
2839 be approved by the Commissioner of Public Works.

2840 **16.5.27 Streets and Pedestrianways/Sidewalks Site Design Standards**

2841 [Amended 9-24-2012 by Ord. No. 12-11]

2842 A. Purpose.

2843 The design of streets must provide for proper continuation of streets from adjacent development
2844 and for proper projection into adjacent undeveloped and open land. These design standards must be
2845 met by all streets within Kittery and control street shoulders, curbs, pedestrianways/sidewalks,
2846 drainage systems, culverts and other appurtenances.

2847 B. Layout.

2848 (1). Streets are to be designed to discourage through traffic on minor streets within a residential
2849 subdivision.

2850 (2). Reserve strips controlling access to streets are prohibited except where control is definitely
2851 placed with the municipality.

- 2852 (3). Any development expected to generate average daily traffic of 201 or more trips per day is
2853 to have at least two street connections with existing public street(s).
- 2854 (4). Where a development borders an existing narrow street (below standards set herein) or
2855 when the Comprehensive Plan indicates plans for realignment or widening of a street that
2856 would require use of some of the land in a development, the plans must indicate reserved
2857 areas for widening or realigning such streets, marked on the plan "reserved for street
2858 widening/realignment purposes." Land reserved for such purposes may not be included in
2859 computing lot area or setback requirements of this title.
- 2860 (5). Where a development abuts or contains an existing or proposed arterial street, the Board
2861 may require marginal access streets (i.e., street parallel to arterial street providing access to
2862 adjacent lots), reverse frontage (i.e., frontage on a street other than the existing or proposed
2863 arterial street) with screen planting contained in a non-access reservation along the rear
2864 property line, or such other treatments as may be necessary for adequate protection of
2865 residential properties and to afford separation of through and local traffic.
- 2866 (6). Entrances onto existing or proposed arterial highways/secondary arterials may not exceed
2867 a frequency of one per 1,000 feet of street frontage.

2868 C. Street classification.

2869 Streets are classified by purpose, function and use frequency.

- 2870 (1). Arterial highways are major traffic ways that provide connections with other thoroughfare
2871 or interstate roads and have a high potential for the location of significant community
2872 activity centers as well as retail, commercial and industrial facilities. The average daily
2873 traffic count (ADT) would be 9,001 or more trip ends.
- 2874 (2). Secondary arterials carry relatively high volumes of traffic to or from arterial highways,
2875 adjacent communities and through local residential areas, activity centers and minor
2876 commercial establishments. The ADT would be 3,001 to 9,000 trip ends.
- 2877 (3). Commercial, light industrial and mixed-use zone developments are located in areas where
2878 street design is oriented to accommodate community-wide and regional interests with
2879 limited residential uses. The intended uses, ADT, peak hour traffic, and any other
2880 additional information that may be required by the Board will determine their
2881 classification, which may not be lower than a secondary collector.
- 2882 (4). Primary collectors may be residential or business, or both, and serve both as collectors to
2883 lesser residential streets and as connections to or between arterials. The ADT would be
2884 from 801 to 3,000 trip ends, and in the interests of traffic and public safety must be owned
2885 and maintained by the Town.
- 2886 (5). Secondary collectors may be residential or business, or both, and connect to or between
2887 streets of a higher classification, and/or may collect traffic from minor streets or private
2888 ways. The ADT would be 201 to 800 trip ends.
- 2889 (6). Minor streets are predominantly single-family residential short or dead-end streets, which
2890 may have branching minor streets, private lanes or private ways and conduct traffic to
2891 streets of higher classification. This is the lowest level of public street in the hierarchy and
2892 must serve at least four dwelling units. The ADT would be 35 to 200 trip ends.
- 2893 (7). Private streets function exclusively as residential streets serving high-density housing
2894 developments, including clustered housing, multi-family dwellings, elderly housing, and
2895 mobile home parks, and may not be dedicated for public acceptance. Maintenance and
2896 improvements must be controlled by proprietorship, corporation, association or deed
2897 covenants. The ADT would be 72 to 800 trip ends. Design and construction is to be in
2898 accordance with the applicable standards and specifications for minor streets or secondary
2899 collectors.
- 2900 (8). Private lanes are short low-traffic volume residential dead-end streets which may serve
2901 part of a high-density development or other residential uses conforming to the applicable

2902 standard residential space requirements enumerated in this title. Private ways may not be
2903 dedicated for public acceptance, and improvements must be controlled by proprietorship,
2904 corporation, association or deed covenants. The ADT would be 35 to 71 trip ends.

2905 (9). Private ways are dead-end, very-low-volume residential streets that connect to streets of a
2906 higher classification and function similar to an individual driveway by providing a low
2907 standard two-way traffic flow. Private ways may not be used in high-density residential
2908 developments or subdivisions of four or more lots. Private ways cannot be dedicated for
2909 public acceptance, and all maintenance and improvements must be controlled by
2910 proprietorship, corporation, association or deed covenants. The ADT would be 12 to 35
2911 trip ends.

2912 (10). Average daily traffic (ADT) is computed using the latest Institute for Transportation
2913 Engineers (ITE) codes and figures.

2914 D. Street design standards.

2915 Design standards for classified streets and sidewalks are those contained in attachment Table 1
2916 Design and Construction Standards for Streets and Pedestrianways, which is attached to this
2917 chapter.

2918 E. Access control and traffic impacts.

2919 Provision must be made for vehicular access to a development and circulation upon the lot in such
2920 a manner as to safeguard against hazards to traffic and pedestrians in the street and within the
2921 development, to avoid traffic congestion on any street and to provide safe and convenient
2922 circulation on public streets and within the development. Access and circulation must also conform
2923 to the standards and criteria listed below.

2924 (1). Vehicular access to the development must be arranged to avoid traffic use of local
2925 residential streets.

2926 (2). Where a lot has frontage on two or more streets, the access to the lot must be provided to
2927 the lot across the frontage and to the street where there is lesser potential for traffic
2928 congestion and for hazards to traffic and pedestrians.

2929 (3). The street giving access to the lot and neighboring streets which can be expected to carry
2930 traffic to and from the development must have traffic-carrying capacity and be suitably
2931 improved to accommodate the amount and types of traffic generated by the proposed use.
2932 No development may increase the volume/capacity ratio of any street above 0.8 nor reduce
2933 any intersection or link level of service to "D" or below.

2934 (4). Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid
2935 traffic congestion, provision must be made for turning lanes, traffic directional islands,
2936 frontage roads, driveways and traffic controls within public streets.

2937 (5). Accessways must be of a design and have sufficient capacity to avoid hazardous queuing
2938 of entering vehicles on any street.

2939 (6). Where topographic and other conditions allow, provision must be made for circulation
2940 driveway connections to adjoining lots of similar existing or potential use:

2941 a. When such driveway connection will facilitate fire protection services as
2942 approved by the Fire Chief; or

2943 b. When such driveway will enable the public to travel between two existing
2944 or potential uses, generally open to the public, without need to travel upon a
2945 street.

2946 F. Center line.

2947 The center line of a roadway must be the center line of the right-of-way.

2948 G. Dead-end streets.

2949 (1). Where a permanent cul-de-sac is placed in an area, wooded prior to development, a stand

2950 of trees must be maintained within the center of the cul-de-sac.

2951 (2). The Board may require the reservation of a twenty-foot easement in line with the street to
2952 provide continuation of pedestrian traffic or utilities to the next street.

2953 (3). The Board may also require the reservation of a fifty-foot easement in line with the street
2954 to provide for continuation of the road where future development is possible.

2955 H. Grades, intersections and sight distances.

2956 (1). Grades of all streets are to conform, where feasible, to the terrain, so that cut and fill are
2957 minimized while maintaining the grade standards of this title.

2958 (2). All changes in grade are to be corrected by vertical curves in order to provide the
2959 following minimum stopping distance where based on street design speed calculated with a
2960 height of eye at 3.5 feet and the height of object at 0.5 feet:

Design speed (mph)	20	25	30	35
Stopping sight distance (feet)	125	150	200	250

2961 (3). Intersections of streets are to be at angles as close to 90° as possible, and in no case may
2962 two streets intersect at an angle smaller than 60°. To this end, where one street approaches
2963 another between 60° and 90°, the former street should be curved approaching the
2964 intersection.

2965 (4). Where new street intersections or curb cuts are proposed, sight distances, as measured
2966 along the street onto which traffic would be turning, is based on the posted speed limit and
2967 must conform to the table following:

Posted speed limit (mph)	25	30	35	40	45	50	55
Sight distance (feet)	250	300	350	400	450	500	550

2968 a. Sight distance is the length of roadway visible to a driver exiting an
2969 intersection or curb cut. Such sight distance is measured from a point that is
2970 located at the center line of the exit lane and 15 feet back from the edge of
2971 the travel way to the center line of the oncoming lane(s), with the height of
2972 eye at 3.5 feet and the height of an object 4.25 feet above the pavement.

2973 b. When the actual traveling speed of normal traffic on a road is substantially
2974 higher than the posted speed limit, the sight distance is computed by
2975 multiplying the 85th percentile of such speed as measured by a qualified
2976 traffic engineer by a factor of 10. The result, in feet, is the minimum sight
2977 distance required.

2978 c. Where necessary, corner lots must be cleared of all growth or other sight
2979 obstructions, including ground excavations, to achieve the required
2980 visibility.

2981 (5). Cross (four-cornered) intersections are to be avoided insofar as possible.

2982 I. Side slopes.

2983 Side slopes of all streets must be graded, covered with appropriate compost or loamed, fertilized
2984 and seeded in accordance with the specifications of the erosion and sedimentation plan.

2985 J. Right-of-way (ROW) grading.

2986 Streets are to be rough-graded full width.

2987 K. Street construction standards.

2988 (1). The subgrade of the roadway. On soils which have been identified by the Commissioner of
2989 Public Works as not suitable for roadways, the subsoil must be removed from such
2990 locations to a depth of two feet below subgrade and replaced with material meeting the
2991 specifications for gravel aggregate subbase or a substitute acceptable to the Commissioner
2992 of Public Works.

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- (2). The aggregate subbase course must be sand or gravel of hard, durable particles, free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three-inch-square mesh sieve must meet the following grading requirements and contain no particles of rock exceeding four inches in diameter [MDOT Specification 703.06(b) Type D]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/4 inch	25% to 70%
No. 40	0% to 30%
No. 200	0% to 7%

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- (3). The aggregate base course must be sand or gravel of hard, durable particles, free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a three-inch square mesh sieve must meet the following requirements [MDOT Specification 703.06(a) Type A]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
1/2 inch	45% to 70%
1/4 inch	30% to 55%
No. 40	0% to 20%
No. 200	0% to 5%

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L. Street plantings.

When appropriate, the Board may require a street design that incorporates a green space/planting area within the street's ROW. Said plantings must be installed at the developer's expense according to a plan drawn up by a landscape architect.

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M. Sidewalks.

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- (1). Where required, sidewalks must be installed to meet minimum requirements as specified in Table 1 of this chapter.
- (2). The position of any sidewalk within the street ROW in relation to the pavement surface is to be determined by the Planning Board.

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N. Road and driveway standards in Shoreland and Resource Protection Overlay Zones.

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- (1). Road construction and parking facilities are allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan approval is required by the Planning Board.

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- (2). The following standards apply to the construction of roads and/or driveways and drainage systems, culverts and other related features in the Shoreland and Resource Protection Overlay Zones:

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a. Roads and driveways must be set back:

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- i. At least 100 feet from the normal high-water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland; and
- ii. Seventy-five feet from the normal high-water line of any water bodies or the upland edge of a wetland on Badgers Island, unless no reasonable alternative exists, as determined by the Planning Board.

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- iii. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than 50 feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Said erosion and sediment control measures for roads and driveways

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must meet "Maine Erosion and Sediment Control Best Management Practices," March 2003.

- b. On slopes of greater than 20%, the road and/or driveway setback must be increased by 10 feet, horizontal distance, for each five-percent increase in slope above 20%.
- c. Existing public roads may be expanded within the legal road right-of-way, regardless of their setback from a water body.
- d. New roads and driveways are prohibited in a Resource Protection Overlay Zone, except the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the zone. A road or driveway also may be approved by the Planning Board in a Resource Protection Overlay Zone, upon a finding no reasonable alternative route or location is available outside the zone. When a road or driveway is permitted in a Resource Protection Overlay Zone, the road and/or driveway must be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- e. The maximum slope for road and driveway banks is two horizontal to one vertical (2:1). Bank slopes must be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section.
- f. The maximum slope for road and driveway grades is 10%, except for segments of less than 200 feet.
- g. To prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways must be designed, constructed and maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the average slope [50 feet + (2 x S average)], in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream or upland edge of a wetland. Surface drainage that is directed to an unscarified buffer strip must be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- h. Ditch relief (cross drainage) culverts, drainage dips and points of stormwater discharge must be designed and constructed so that drainage is diverted onto unscarified buffer strips before the flow gains sufficient volume or head. The following criteria should be implemented where possible to deter and prevent excessive erosion:
 - i. Ditch relief culverts, drainage dips and associated water turnouts must be spaced along the road or driveway at intervals no greater than indicated in the following table:

Grade (percent)	Spacing (feet)
0 to 2%	250 maximum
3 to 5%	135 to 200 maximum
6 to 10%	80 to 100 maximum
11 to 14% maximum	60 to 80 maximum

- ii. Drainage dips may be used in place of ditch relief culverts only where the grade is 10% or less.
- iii. On sections having slopes greater than 10%, ditch relief culverts must be placed at approximately a thirty-degree angle downslope from a line perpendicular to the center line of the road or driveway.

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- 3074 iv. Ditch relief culverts must be sufficiently sized and properly installed
3075 to allow for effective functioning, and their inlet and outlet ends
3076 appropriately stabilized with acceptable materials and construction
3077 techniques.
- 3078 i. Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff
3079 control installations associated with roads and driveways must be
3080 maintained by the owner(s) on a regular basis to assure effective
3081 functioning.
- 3082 j. In a Shoreland or Resource Protection Overlay Zone, when replacing an
3083 existing culvert the watercourse must be protected so the crossing does not
3084 block fish passage, and adequate erosion control measures must be taken to
3085 prevent sedimentation of the water in the watercourse.
- 3086 k. A permit is not required for the replacement of an existing road culvert,
3087 provided the replacement culvert is:
- 3088 i. Not more than one standard culvert size larger in diameter than the
3089 culvert being replaced;
- 3090 ii. Not more than 25% longer than the culvert being replaced; and
- 3091 iii. Not longer than 75 feet.

3092 **16.5.28 Temporary Housing**

- 3093 A. Purpose. The intent of this section is to provide temporary housing for resident owners (exclusive
3094 of corporations, trusts and estates) and their immediate families who have lost primary dwellings
3095 through fire or natural disaster.
- 3096 B. Dwellings uninhabitable by disaster. In case a fire or natural disaster destroys, or damages, or
3097 renders a dwelling or dwelling unit uninhabitable, the following apply:
- 3098 (1). The dwelling owner may apply to the CEO for a permit to place a mobile home on the lot
3099 as a temporary residence for the dwelling owner for a period of six months;
- 3100 (2). The applicant must file such an application within six months from the date of the disaster
3101 and agree, in writing, that a time limit of six months is acceptable. Proof of financial
3102 ability to reconstruct the building must be furnished;
- 3103 (3). If at the end of six months substantial work has been completed to the satisfaction of the
3104 CEO, the permit may be extended for an additional six months. No further extensions may
3105 be granted;
- 3106 (4). A multifamily dwelling may be temporarily replaced by a single mobile home unit for the
3107 use of the dwelling owner only; and
- 3108 (5). Setback requirements may be waived for temporary mobile homes by the CEO, provided
3109 matters of public health and safety are not impaired.

3110 **16.5.29 Timber Harvesting**

- 3111 A. Timber harvesting (as permitted in R-RLC and MU Zones).
- 3112 (1). Repeal of the timber harvesting regulation. Subsequent to the establishment of the State of
3113 Maine Department of Conservation's Bureau of Forestry Timber Harvesting Standards, the
3114 state will commence administration of all timber harvesting within the Shoreland Overlay
3115 Zone. Under 38 M.R.S. § 438-A(5), the following provisions of this title will be repealed:
3116 In § 16.3, the definitions of "forest management activities" and "residual basal area."
- 3117 (2). Timber harvesting must conform to the following provisions:
- 3118 a. Selective cutting of no more than 40% of the total volume of trees four
3119 inches or more in diameter, measured at 4 1/2 feet above ground level, on
3120 any lot in any ten-year period is permitted. In addition:

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- i. Within 75 feet, horizontal distance, of the normal high-water line of water bodies, tributary streams or the upland edge of a wetland, clear-cut openings are prohibited and a well-distributed stand of trees and other vegetation, including existing ground cover, must be maintained.
 - ii. At distances greater than 75 feet, horizontal distance, of the normal high-water line of water bodies or the upland edge of a wetland, harvesting operations are limited to single clear-cut openings of 10,000 square feet or less in the forest canopy. Where such openings exceed 5,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such clear-cut openings must be included in the calculation of total volume removal. For purposes of these standards, volume may be considered equivalent to basal area.
 - b. Timber harvesting operations exceeding the forty-percent limitation in § 16.5.29.(2).a above may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine-licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this title. The Planning Board is required to notify the Commissioner of the Department of Environmental Protection of each exception allowed within 14 days of the Planning Board's decision.
 - c. No accumulation of slash is to be left within 50 feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash must either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream must be removed.
 - d. Timber harvesting equipment is prohibited from using stream channels as travel routes, except when:
 - i. Surface waters are frozen; and
 - ii. The activity will not result in any ground disturbance.
 - e. All crossings of flowing water require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
 - f. Skid trail approaches to water crossings must be located and designed to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts must be removed and areas of exposed soil revegetated.
 - g. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil must be located so an unscarified strip of vegetation of at least 75 feet, horizontal distance, in width for slopes up to 10% must be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten-percent increase in slope, the unscarified strip must be increased by 20 feet, horizontal distance. The provisions of this section apply only to a face sloping toward the water body or wetland; provided, however, that no portion of such exposed mineral soil on a back face can be closer than 25 feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

3171 **16.5.30 Wetland Setbacks for Special Situations**

- 3172 A. Wetland setbacks extending beyond publicly accepted streets.
 3173 The required setback distances do not extend beyond the center line of publicly accepted street that
 3174 generally parallels the normal high-water line of a water body, tributary stream or the upland edge
 3175 of a wetland.
- 3176 B. Newly created wetlands and water bodies.
 3177 Setbacks are not required from a wetland or water body created from upland land area, provided
 3178 the newly created wetland or water body is not part of a required mitigation plan.
- 3179 (1). Wetland setbacks for the zoning district and the Shoreland Overlay District apply.
 3180 (2). A performance guarantee, such as an escrow or bond, is required to guarantee that new
 3181 vegetation will survive. Prior to the release or drawdown of funds in such accounts, a
 3182 written statement from a qualified wetlands scientist that says the vegetation is thriving
 3183 must be submitted to the Town Manager.
- 3184 C. Setbacks from altered wetlands or water bodies. [Amended 9-26-2011 by Ord. No. 11-15]
- 3185 (1). The illegal altering of a water body or wetland area, where the surface area of the water
 3186 body is decreased (lowered), after May 13, 1987, may not be used to change the location
 3187 from which a setback is measured. The illegal filling of a water body or wetland area,
 3188 where the normal water surface area of the water body is increased (raised), after May 13,
 3189 1987, must be measured from the most recent edge of the normal water surface elevation.
- 3190 (2). Alterations to the wetland boundaries that have been approved by the Planning Board and
 3191 are in compliance with regulations of the Army Corps of Engineers and the Maine
 3192 Department of Environmental Protection may be constructed per the Planning Board's
 3193 approved wetlands alteration plan.
- 3194 D. Setbacks for utility poles.
 3195 Setbacks for utility poles must be shown and identified on the development plans. Distances from
 3196 utility pole structures and the upland edge of wetlands of any type may not have to be set back
 3197 from the wetland. Such setback distances require Planning Board approval.
- 3198 E. Utilities within wetland.
 3199 Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the
 3200 applicant's engineer must provide trench details for depth, distance between pipes, if applicable, fill
 3201 materials, minimum compaction and/or encasement.
- 3202 (1). Rotted material, muck and unsuitable soils must be removed from the trench and replaced
 3203 with select materials that provide the required compaction, pipe support and protection.
- 3204 (2). Trenches for shallow-depth pipes (having less than four feet of cover) must be designed to
 3205 avoid pipe movement that may result in breakage.

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies* [Amended 9-24-2012 by Ord. No. 12-11]			
Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
Local distribution utility pole, fence, flagpole, signs or drainage structure	0	0	0
Functionally water-dependent uses	0	0	0
Roads and Driveways			
Traveled way of road or driveway of 18 feet or less in width ¹	0	10 from toe of slope	10 from toe of slope
Traveled way of road or driveway	0	30 or 10 from toe of slope,	30 or 10 from toe of

**Table 16.5.30
Minimum Setbacks from Wetlands and Water Bodies* [Amended 9-24-2012 by Ord. No. 12-11]**

Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
greater than 18 feet in width ¹		whichever is greater	slope, whichever is greater
Parking Areas			
Parking areas for one- and two-family residential uses	0	10	20
1 to 5 stall parking area	0	30	50
6 to 20 stall parking area incorporating BMPs for stormwater management ²	0	40	75
6 to 20 stall parking area without incorporating BMPs for stormwater management ²	0	75	100
21 or more stall parking area ³ incorporating BMPs for stormwater management	0	50	75
Patios, Decks, Accessory Buildings			
Patio or deck area no larger than 500 square feet in size	0	30	50
Detached residential storage shed no larger than 120 square feet in size	0	30	50
Other Buildings and Structures			
Building or structure (including patio or deck area larger than 500 square feet in size)	0	50	100
Activities and structures permitted within regulated wetlands	0	0	0
Subsurface Sewage Disposal			
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of less than 2,000 GPD	0	50	100
Treatment tanks and disposal areas for new subsurface sewage disposal systems with design flows of 2,000 GPD or more	0	100	100
Recreational Uses and Structures			
Low-intensity recreation	0	0	0
Recreational facility or structure excluding a golf course	0	50	100
Topsoil Removal			
Removal of more than 10 cubic yards of topsoil except for approved projects	0	50	100
Topsoil removal with a Soil Conservation Service-endorsed erosion and sedimentation plan	0	25	25

Table 16.5.30			
Minimum Setbacks from Wetlands and Water Bodies* [Amended 9-24-2012 by Ord. No. 12-11]			
Structure/Activity	Total Size of Wetland and/or Water Body		
	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
Special Uses			
Junkyard ¹	0	100	150
Bulk salt storage not in an enclosed structure ¹	0	100	150
Gravel and mineral extraction or processing ¹	0	100	150
Storage of hazardous chemicals or special wastes other than amounts normally associated with individual households/farms ¹	0	100	150
Commercial painting, wood preserving or furniture stripping ¹	0	100	150
Laundromats, auto wash, printing, dry-cleaning, photographic processing, if not connected to a sanitary sewer ⁴	0	100	150
Metal plating, finishing, polishing ¹	0	100	150
NOTES:			
*	All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.		
1	The street setback does not serve to negate a wetland crossing project for which a wetlands permit has been approved by the Planning Board.		
2	Written endorsement by the York County Soil and Water Conservation District (YCSWCD) or the Town's Peer Review Consultant that best management practices (BMPs) for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff are incorporated to the maximum extent practicable is required to satisfy this condition. The Planning Board may waive the requirement for written endorsement by the SWCD or the Town's Peer Review Consultant when it finds a drainage plan has adequately protected the wetland from adverse impacts.		
3	Parking areas with 21 or more stalls must incorporate BMPs.		
4	Wetland setback may be reduced to 100 feet if the YCSWCD or the Town's Peer Review Consultant finds the stormwater management plan incorporates BMPs for protecting water quality by minimizing pollutants leaving the site in the stormwater.		

3206 **16.5.31 Wireless Communication Services Facilities**

- 3207 A. Purpose. This article is designed and intended to balance the interests of the residents of the Town,
3208 telecommunications providers, and telecommunications customers in the siting of wireless
3209 communication services facilities (WCSF) within the Town. These standards are also intended:
- 3210 (1). To avoid or minimize the adverse impacts of such facilities on visual, environmental,
3211 historically significant areas, health and safety, and property value;
 - 3212 (2). To require the use of alternative structures for the purposes of co-location of carriers and
3213 minimize the total number of towers located within the Town;
 - 3214 (3). To permit the construction of new towers only where all other opportunities have been

- 3215 exhausted;
- 3216 (4). To require the users of WCSF and antenna structures to configure them in a way that
3217 minimizes the need for additional WCSF in the Town;
- 3218 (5). To provide for the removal of WCSF and associated development which are no longer
3219 being used for telecommunications purposes;
- 3220 (6). These regulations are not intended to place any restrictions on privately operated and
3221 licensed amateur radio operators as per FCC regulations.

3222 B. Location, height and setback requirements.

- 3223 (1). New WCSF are permitted within 1,000 feet from the I-95 corridor center line north of
3224 Dennett Road with Planning Board approval conforming to the performance standards and
3225 dimensional requirements. Shared use of preexisting accessory-use towers and alternative
3226 tower structures in all zones is permitted with Town Planner's approval, provided the tower
3227 or structure height is not increased. Location on existing structures in a manner that
3228 camouflages or conceals the presence of antennas or towers, also referred by the industry
3229 as "stealth," is permitted with Town Planner's approval in all districts except the Resource
3230 Conservation, Shoreland and Resource Protection Overlay Zones. The Town Planner may
3231 request Planning Board review of any proposed siting of a WCSF facility.
- 3232 (2). Height. Towers, antennas and all WCSF may not exceed a height of 150 feet, except for
3233 those towers expressly satisfying all co-location requirements for four or more carriers,
3234 which may be constructed to a maximum height of 199 feet.
- 3235 (3). Setbacks.
- 3236 a. All telecommunications towers must be set back from the lot lines a
3237 distance equal to at least 125% of the tower height.
- 3238 b. Tower, guyed wires and accessory facilities must meet the minimum zoning
3239 district setback requirements.

3240 C. Aesthetics, landscaping, buffers and fencing.

- 3241 (1). Towers and antennas are to have a neutral finish or be painted a neutral color as approved
3242 so as to reduce visual impact.
- 3243 (2). All WCSF must maintain the required setbacks as undisturbed vegetated buffers, except
3244 for the access road. Access roads are to be constructed in a nonlinear manner so as not to
3245 provide a direct view corridor to the support structures. The Planning Board/Town Planner
3246 may require additional plantings in the buffer area to enhance the quality and effectiveness
3247 of the buffer area to serve as a visual screen. The size and quantity of plantings is subject
3248 to Planning Board/Town Planner approval.
- 3249 (3). At a WCSF, the design of the buildings and related structures must, to the extent possible,
3250 use materials, colors, textures, screenings and landscaping that will blend the facilities to
3251 be compatible with the natural setting and built environment. The building and related
3252 structures must be planned in a manner to accept equipment of co-locators. Underground
3253 utilities must be used to serve the WCSF.
- 3254 (4). Towers may not be artificially lighted.
- 3255 (5). Road access to the telecommunications structure is to be the minimum size necessary to
3256 allow safe access.
- 3257 (6). The base of a telecommunications tower may not be located in wetland, floodplain,
3258 Resource Conservation, Shoreland and Resource Protection Overlay Zones.
- 3259 (7). A security fence to be approved by the Planning Board/Town Planner of not fewer than
3260 eight feet in height from the finished grade is to be provided around the tower and painted
3261 a neutral color as approved to minimize visual impacts. Access to the tower is to be
3262 through a gate that can be secured.

- 3263 D. Investigation of existing alternative towers, sites and structures.
3264 Applicants must identify all existing and proposed towers, including their heights, located in the
3265 Town and within two miles beyond Town boundaries. Applicants must provide evidence of the
3266 lack of antenna space on all such towers and identify alternative tower structures and sites which
3267 have been investigated as an alternative to constructing a new tower. Applicant must address the
3268 pros and cons of utilizing co-location and other alternative tower structures with respect to their
3269 application and demonstrate that they cannot provide adequate communication service utilizing
3270 such existing towers or structures.
- 3271 E. Co-location.
- 3272 (1). The applicant and owner must allow other future wireless service carriers, including
3273 providing space at no charge to public agencies (including but not limited to police, fire,
3274 ambulance, communications and highway if requested at the time of review by the
3275 Planning Board), using functionally equivalent personal wireless technology to co-locate
3276 antennas, equipment and facilities on a telecommunications tower and site, unless
3277 satisfactory evidence is presented and the Planning Board/Town Planner concurs that
3278 technical constraints prohibit co-location. Applicant and other wireless service carriers
3279 must provide a mechanism for the construction and maintenance of shared facilities and
3280 infrastructure and for reasonable sharing of cost in accordance with industry standards. (A
3281 reasonable charge for shared use is based on generally accepted accounting principles.
- 3282 (2). This charge may include, but not be limited to, a pro rata share of the cost of site selection,
3283 planning, project administration, land costs, site design, construction and maintenance,
3284 financing, return of equity, depreciation and all of the costs of adapting the tower or
3285 equipment to accommodate a shared user without causing electromagnetic interference, all
3286 being pertinent to the southern Maine market area.)
- 3287 (3). To ensure co-location, the Planning Board/Town Planner may require co-location on a
3288 tower so as to prevent the need for new carriers to build new towers, may deny an
3289 application for a telecommunications facility because of inadequate provisions and/or
3290 arrangements for co-location, and may require an existing tower to be extended in height
3291 (provided that a structural analysis indicates that such extension is structurally feasible and
3292 safe) in order to provide for co-location.
- 3293 F. Performance guarantees.
3294 No building permit may be issued until the applicant has filed a performance guarantee and
3295 approved by the Town Manager equal to 125% of the cost of completing the following
3296 improvements:
- 3297 (1). The construction of any drainage systems involving piping, culverts, or retention or
3298 detention facilities;
- 3299 (2). The construction of erosion and sedimentation control measures or landscaping required to
3300 meet the standards of this article; and
- 3301 (3). Other site improvements required by the Board/Town Planner to meet the standards of this
3302 article.
- 3303 G. Removal of abandoned or unused facilities.
- 3304 (1). The owner of a telecommunications facility is required to remove the tower and associated
3305 facilities should it not be used for the use or uses approved for a period of 90 consecutive
3306 days. This period may be extended by the Planning Board/Town Planner if there are
3307 extenuating circumstances beyond the control of the applicant. An applicant for a permit
3308 under this article must post a performance guarantee approved by the Town Manager with
3309 the Town prior to obtaining a permit that is equal to 125% of the cost of removing the
3310 structure. The performance guarantee must be in effect for the life of the WCSF;
- 3311 (2). The performance guarantee covering such removal must be reviewed for renewal at a

3312 maximum term of five years, to account for cost adjustments. It must contain a
3313 mechanism, satisfactory to the Town, for review of the cost of removal of the structure
3314 every five years and a mechanism for increasing the amount of the guarantee should the
3315 revised cost estimate so necessitate.

3316 H. Annual permit renewal.

3317 To ensure compliance with the prescribed ordinances, all approvals will be subject to an annual
3318 permit renewal conducted by the Town Planner. The Town Planner at a minimum is to review the
3319 continued use of the facility; maintenance of the facility and site improvements; availability for co-
3320 location of new service; and review of bonding documents. The documents and permit renewal fee
3321 must be submitted to the Town Planner no later than October 1 of each year following the original
3322 approval.

3323 **16.5.32 Marijuana Business**

3324 A. General.

3325 (1). This section regulates Marijuana Businesses as defined uses within the Town of Kittery.
3326 The permitting standards outlined here must be adhered to for all Marijuana Businesses, in
3327 addition to other applicable standards in this and other ordinances or state law.

3328 B. Standards.

3329 Marijuana Businesses must meet the following standards:

- 3330 (1). Marijuana Businesses may not locate within 1,000 feet of a public or private school or a
3331 public recreation facility measured from the exterior wall of the Marijuana Business in a
3332 straight line to the property line of the protected use. This section does not prohibit the
3333 activity of a caregiver or other authorized individual from administering medical marijuana
3334 to a qualified patient who is located within one of these protected areas.
- 3335 (2). Marijuana Businesses may not have any odor of marijuana detectible beyond the area
3336 controlled by the business, whether that be a leased or owned area that is a portion or all of
3337 a recorded parcel of land. Odors must be controlled by whatever best practices exist.
- 3338 (3). Marijuana grown by any Marijuana Business may be grown indoors only. For the purpose
3339 of this section hoop houses or outdoor tunnels must not be considered as an indoor
3340 growing facility and are prohibited for marijuana cultivation by a Marijuana Business.
- 3341 (4). The design of any building containing a Marijuana Business must conform to the standards
3342 within this Title and the Town of Kittery Design Handbook.
- 3343 (5). The area of any Marijuana Business accessible to customers must be no less than 400 nor
3344 more than 2,000 square feet.
- 3345 (6). Parking must conform to Article IX.
- 3346 (7). Any building containing a Marijuana Business must be protected by fire suppression
3347 measures and fire alarms to the satisfaction of the Fire Chief and in accordance with all
3348 applicable building codes.
- 3349 (8). The Owner of any Marijuana Business, at the time of application for a building permit,
3350 must provide an affidavit from a master electrician or electrical engineer certifying that the
3351 electrical components can meet the electrical load demands of the use.
- 3352 (9). Security.
- 3353 a. The Licensed Premises must have video surveillance capable of covering the
3354 exterior and interior of the facility. The video surveillance system must be
3355 operated with continuous recording twenty-four hours per day, seven days per
3356 week and video retained for a minimum duration of thirty (30) days. Such records
3357 must be made available to law enforcement agencies when investigating a criminal
3358 compliant.

- 3359 (10). The Licensed Premises must have an approved wastewater discharge plan in accordance
3360 with this Title and Title 13.
- 3361 (11). The Licensed Premises must have exterior lighting that conforms with this Title and the
3362 Town of Kittery’s Design Handbook. The Planning Board, at its discretion, may require
3363 motion sensors covering the full perimeter of the building(s).
3364

3365 **16.5.33 Medical Marijuana Registered Caregiver Home Establishment**

3366 A. General.

- 3367 (1). Pursuant to 22 MRS §2429-D, municipalities are prohibited from restricting the number of
3368 registered caregivers operating within their jurisdiction. The regulation of registered
3369 caregivers as provided for herein is not intended to proscribe their operation, but rather to
3370 promote the health, safety and welfare of the Town of Kittery by ensuring that a registered
3371 caregiver home establishment is compatible with both the area it is situated and the
3372 community as a whole.
- 3373 (2). A Medical Marijuana Registered Caregiver Home Establishment may not conduct
3374 activities that would qualify the use as a Medical Marijuana Registered Dispensary, Adult
3375 Use Marijuana Store, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing
3376 Facility or Marijuana Testing Facility.
- 3377 (3). Any Medical Marijuana Registered Caregiver legally operating with Town approval as a
3378 Home Occupation as of the Effective Date of this Section, but otherwise not meeting the
3379 definition of a Medical Marijuana Registered Caregiver Home Establishment, may
3380 continue to operate provided it has a valid Medical Marijuana Registered Caregiver Home
3381 Establishment license from the Town and any applicable State License, and is maintained
3382 in accordance with this Title. Such operations may not be built, used or occupied in any
3383 way that constitutes a material difference from any representations in either the approved
3384 application, Findings of Fact, or approval conditions for the Major Home Occupation. If
3385 majority ownership of such an operation is transferred to any other person(s), the business
3386 must be brought into conformance with the definition and standards applicable to a
3387 Medical Marijuana Registered Caregiver Home Establishment, or may be permitted and
3388 licensed as any other type of Marijuana Business allowed on the property.

3389 B. Permit Required.

- 3390 (1). An applicant seeking Planning Board approval for a Medical Marijuana Registered
3391 Caregiver Home Establishment must submit a complete application with the following
3392 furnished documents:
- 3393 a. Proof of property ownership or lease agreement in the Town of Kittery;
 - 3394 b. Proof of residency in Town of Kittery as determined by voter registration, vehicle
3395 registration or other documentation deemed acceptable to the Town;
 - 3396 c. All relevant State of Maine license information demonstrating the applicant as a
3397 valid registered caregiver;
 - 3398 d. A site plan that depicts all proposed outdoor growing areas. The Planning Board
3399 may require a site plan designed by a licensed surveyor or civil engineer registered
3400 in the State of Maine.
 - 3401 e. A floor plan of the building showing the existing and proposed layout and square
3402 footage.
 - 3403 f. Narrative describing the nature of the registered caregiver operation.
- 3404 (2). An application will be approved or approved with conditions if the Planning Board makes
3405 a positive finding based on the information presented that the proposed Medical Marijuana
3406 Registered Caregiver Home Establishment demonstrates compliance with §16.5.33.C

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C. Standards

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- (1). Medical Marijuana Registered Caregiver Home Establishment must meet the following standards, except that a Medical Marijuana Registered Caregiver legally operating with Town approval as a Major Home Occupation as of the Effective Date of this Section is not required to meet these standards to the extent the Major Home Occupation application, as approved, specifically allowed activities, uses or development that are not in conformance with these standards.
- (2). Manufacturing of medical marijuana products may occur only in zoning districts where a Marijuana Manufacturing Facility is permitted.
- (3). A Medical Marijuana Registered Caregiver Home Establishment is restricted to the property of a dwelling unit serving as the primary residence of the Registered Caregiver. Proof of primary residence will be determined by voter registration, vehicle registration, property tax bill and/or other documentation acceptable to the Town.
- (4). The Registered Caregiver must provide documentation demonstrating ownership of the dwelling unit or a lease agreement permitting the registered caregiver to operate a Medical Marijuana Registered Caregiver Home Establishment.
- (5). A Medical Marijuana Registered Caregiver Home Establishment must be an accessory use of the property, and is limited to utilize 40% or 400-square feet, whichever is greater, of the total floor area available within the dwelling unit.
- (6). A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see patients, provide consultations, and perform other functions, pursuant to 22 M.R.S. 558-C §2423-A.
- (7). Hours of operation may be between 7 am and 7 pm Sunday through Saturday inclusive, and must be by appointment only.
- (8). A Medical Marijuana Registered Caregiver Home Establishment may not have more than three (3) employees.
- (9). There must be adequate parking on the lot to accommodate the property's residents in accordance with this Title and zone-specific standards of this Title; provided that at a minimum the site must include two parking spots plus one spot for each employees.
- (10). A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive odors such that they are not detectable by reasonable means at the property lines. Odors must be controlled by whatever best practices exist.
- (11). A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate a cumulative total of 30 mature plants or 500 square feet of plant canopy, 60 immature plants, and unlimited seedlings. Cultivation may occur indoors, outdoors, or both.
- (12). The installation and displaying of signage advertising the presence of a Medical Marijuana Registered Caregiver Home Establishment on a lot is prohibited.

1 **16.6 Master Site Development Plan Review**

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14 **16.6.1 General**

15 Master Site Development Plans are intended to show an overall development scheme for a large
16 property so that the Planning Board can ensure that development of large sites, with potential town-
17 wide or regional impacts, proceeds in an orderly sequence with coordinated phasing. Further, a
18 master site development plan intends to be a framework for a conceptual, integrated design and
19 infrastructure plan for the development of a property, in which:

- 20 A. The development standards are applied to the land as defined by its perimeter, rather than
21 by the individual lots, tracts and parcels into which the land may be divided; and
22 B. The standards are applied to the zone rather than to individual lots, tracts and parcels
23 within the zone.

24 Master Site Development Plans are to assure adequate provisions are made to protect the public health
25 and safety, taking into account such factors as traffic safety and access; water supply and sewage
26 disposal; management of stormwater, erosion, and sedimentation; protection of the environment; and
27 other criteria as noted below.

28 **16.6.2 Applicability**

- 29 A. A person who has right, title, or interest in a parcel of land shall obtain Master Site
30 Development Plan approval for a site when:
31 (1). The cumulative lot area is one acre or larger, and
32 (2). The site is designed as a cohesive and integral development program consisting of
33 multiple buildings and associated site improvements proposed to be built in phases.

34 **16.6.3 Review Process & Submission Requirements**

- 35 A. Pre-application and Conference
36 (1). Process
37 Before submitting a proposed Master Site Development Plan to the Board, the
38 owner must meet with the Town Planner to discuss the feasibility and conceptual
39 design, including sketch plans, regarding land use, parcel layout, public
40 improvement, and the surrounding existing development and environment.
41 A. Sketch Plan Review
42 (1). Process
43 The applicant must prepare and submit, for review and consideration by the
44 Planning Board, a sketch plan and subsequently, for review and possible approval
45 by the Planning Board, a Master Site Development Plan for the development of the
46 parcel(s).
47 (2). Plan Requirements
48 A Master Site Development Sketch Plan must include, at a minimum:
49 a. Location, type and amount of the uses proposed to be developed on the
50 parcel, including the proposed area, percentage and intensity of each
51 proposed use;
52 b. Proposed provisions for utilities, access roads, parking and public and
53 private ways;
54 c. Areas proposed to be permanently dedicated for public or private open
55 space or other public purpose;
56 d. Proposed phasing of the overall site development, including the general
57 sequence in which related public and private improvements are to be
58 completed, clearly defined on Master Site Development Plan.
59 (3). Written Submission Requirements

- a. A project narrative, describing the nature of the proposed project along with an anticipated timeframes for project phases and overall project buildout.
 - b. In the event the development site is not comprised of a single parcel, the master site development plan must detail the manner in which multiple parcels will be consolidated into a single parcel and subsequently subdivided, if necessary, to facilitate the completion of the plan.
- (4). Decisions.
- a. The Planning Board must determine whether the Sketch Plan proposal complies with the standards contained within Title 16 and must, where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
 - b. If the concept is approved, inform the applicant in writing.

B. Final Master Site Development Plan

(1). Process

- a. The Planning Board may approve the Final Master Site Development Plan as submitted, return the Final Development Master Plan for additional information or revision, or deny the Final Development Master Plan.
- b. The Final Master Site Development Plan becomes the plan with which subsequent submittals must conform. The Planning Board must sign and date the Final Master Site Development to indicate approval by the Board.
- c. The approved Master Site Development Plan remains valid as set forth in this chapter but may be amended and extended as set forth in this chapter.

(2). Plan Requirements

The Final Master Site Development Plan must include the following elements:

- a. land use,
- b. public sites, environmental design,
- c. vehicular, pedestrian and bicycle circulation, recreation, water, wastewater, drainage and other elements as set forth in this title.
- d. The Planning Board may waive one or more elements of the plan, if they are determined inapplicable.

(3). Written Submission Requirements

- a. A project narrative describing the project, including updates and changes proposed from the Sketch Plan to the Final Plan.

16.6.4 Performance Standards and Approval Criteria

A. Outside agency approvals.

- (1). Any applicable approvals from Maine DEP, MaineDOT, the Army Corps of Engineers or other state or federal agencies must be sought for the entire Master Site Development Plan, not individual phases.

B. Infrastructure.

- (1). Improvements within the right-of-way, including streetlights, sidewalks, streets, and guardrails shall be consistent in construction details, design and materials throughout the Master Site Development Plan.

C. Stormwater.

- (1). Each phase of the project shall include stormwater treatment adequate to treat that phase of the project. It is acceptable to oversize stormwater infrastructure in early phases to treat later development. It is not acceptable for proposed development to

107 rely on later phase construction for necessary stormwater treatment.

108 D. Traffic.

109 (1). New streets in the Master Site Development Plan will include provisions for
110 adequate turnarounds between project phases. Hammerheads or cul-de-sacs
111 installed at the end of each phase may be removed if the street is extended in future
112 phases.

113 **16.6.5 Decisions**

114 A. The Planning Board shall approve, approve with conditions, or deny a Master Site
115 Development Plan application based on the applicable review standards. An approval,
116 including any approval of waivers from Performance Standards, establishes the general
117 parameters to be adhered to for the development, including the supporting documentation
118 for floor area and/or residential density, general types of uses, building coverage,
119 generalize open space plans and infrastructure systems.

120 (1). A Master Site Development Plan approval shall not be construed as final
121 authorization of the development. Approval shall confer pending proceeding status
122 upon the development with the effect of maintaining the applicability of regulations
123 in effect at the time of approval for as long as the Master Site Development Plan
124 remains valid, including permissible extensions, if granted.

125 (2). Final approved Master Site Development Plan signing. The Planning Board must
126 sign and date the plan to indicate that it is the Master Site Development Plan
127 approved by the Board.

128 B. A Master Site Development Plan and each subsequent development plan thereof has final
129 approval only when the Planning Board has indicated approval by formal action and the
130 plan has been properly signed by a majority of the Planning Board members or by the
131 Chair only, if so voted by the Planning Board.

132 **16.6.6 Post-Approval Activities**

133 A. Recording of master planned property survey.

134 (1). The owner must record the signed Master Site Development Plan at the York
135 County Registry of Deeds after Planning Board approval.

136 B. Land division applications.

137 (1). After approval of the Master Site Development Plan and recording of the master
138 site development plan property survey, the owner may initiate land division
139 applications.

140 (2). The Code Enforcement Officer may issue permits only after the Master Site
141 Development Plan property survey has been recorded and all other applicable state
142 and local approvals have been obtained.

1 **16.7 Site Plan Review**

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16.7.1 General

The Site Plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion and sedimentation; protection of groundwater, environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

16.7.2 Applicability

- A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval prior to commencing any of the following activities on the parcel, including contracting or offering for the conveyance regulated activity permit for any structure within the development is issues, or undertaking work on any improvements, including installation of roads or utilities or land clearing.
 - (1). The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of all structures of one thousand (1,000) square feet or more measured cumulatively over a five (5) year period.
 - (2). The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five (5) year period by more than twenty (20) percent of the existing total floor area or one thousand (1,000) square feet, whichever is greater.
 - (3). The conversion of an existing building in which one thousand (1,000) or more square feet of total floor area are converted from residential to nonresidential use.
 - (4). The establishment of a new nonresidential use even if no buildings or structures are proposed, that involves the Development of more than twenty-five thousand (25,000) square feet of land. This includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.
 - (5). The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on- or off-site impacts of the use subject to the standards and criteria of site plan review described in this section.
 - (6). The construction of a residential building containing three (3) or more dwelling units.
 - (7). The modification or expansion of an existing residential structure that

- 89 increases the number of dwelling units in the structure by three (3) or
90 more in any five (5) year period.
- 91 (8). The conversion of an existing nonresidential building or structure, in
92 whole or in part, into three (3) or more dwelling units within a five (5)
93 year period.
- 94 (9). The cumulative Development of an area equal to, or greater than, one (1)
95 acre within any five (5) year period. The applicability of this section does
96 not include the construction of streets that are reviewed as part of a
97 Subdivision application.
- 98 (10). Marijuana Businesses and Medical Marijuana Registered Caregiver Home
99 Establishments.
- 100 B. Other development review [Amended 9-26-2011 by Ord. No. 11-15; 7-25-
101 2016 by Ord. No. 16-02]
102 Unless subject to a shoreland development plan review or Right of Way
103 Plan per § 16.7.3A, the following do not require Planning Board approval:
- 104 (1). Single and duplex family dwellings.
- 105 (2). Division of land into lots (i.e., two lots), which division is not otherwise
106 subject to Planning Board review as a subdivision.
- 107 (3). Business use as provided in § 16.4.26.C.(13)
- 108
- 109 (4). Phasing plan. Upon applicant's request, the Planning Board may permit
110 phasing of the plans, where it can be demonstrated to the Planning Board's
111 satisfaction that such phasing would result in a safe and orderly
112 development of the plan.
- 113 a. The applicant may file a section of the approved plan with the
114 municipal officials and the York County Registry of Deeds if said
115 section constitutes at least 25% of the total number of lots, or for
116 plans including buildings, 25% of the gross area, contained in the
117 approved plan. In all circumstances, plan approval of the
118 remaining sections of the plan will remain in effect for three years
119 unless the applicant requests and the Planning Board grants
120 extensions of time equivalent to the requirements for approved
121 plans in § 16.7.12.
- 122 b. Phasing is subject to any conditions deemed necessary to assure a
123 reasonable mixture of uses is completed within each separate phase
124 of the plan.
- 125 c. Where projects are to be constructed in phases, phasing of
126 stormwater management, water mains and streets are part of the
127 review process.
- 128 d. Portions of both the developed and undeveloped site impacted by
129 interim infrastructure conditions such as unlooped water systems,
130 stormwater runoff from unfinished areas onto finished areas and
131 vice versa, dead-end streets, etc., must be clearly defined and

- 132 shown on the plans.
- 133 e. The Planning Board may permit construction of phases out of
- 134 order only when the storm drainage plan and the water plan, etc.,
- 135 have been reviewed, and it has been demonstrated that the impact
- 136 on both the developed and undeveloped sections is negligible.
- 137

138 **16.7.3 Other Potential Reviews**

- 139 A. Shoreland development review. [Amended 7-25-2016 by Ord. No. 16-02]
- 140 (1). All development in the Shoreland, Resource Protection, and Commercial
- 141 Fisheries/Maritime Uses Overlay Zones involving the use, expansion,
- 142 change or replacement of an existing use or structure, or renewal of a
- 143 discontinued nonconforming use, must be reviewed and approved as
- 144 provided in § 16.9.1 and elsewhere in this title, and tracked as a shoreland
- 145 development for reporting purposes.
- 146 (2). All development in the Shoreland, Resource Protection, and Commercial
- 147 Fisheries/Maritime Uses Overlay Zones must be approved by the Planning
- 148 Board except for the following:
- 149 a. Proposed development of principal and accessory structures in
- 150 compliance with § 16.9.1.B.(1), when not subject to Planning
- 151 Board review as explicitly required elsewhere in this title. Such
- 152 proposed development must be reviewed and approved by the
- 153 Code Enforcement Officer (CEO) prior to issuing a building
- 154 permit. The total devegetated area of the lot (that portion within the
- 155 Shoreland Overlay Zone) must be calculated by the applicant and
- 156 verified by the CEO and recorded in the Town's property records.
- 157 Any development proposed in the Resource Protection and
- 158 Shoreland - Stream Protection Area Overlay Zones must be
- 159 approved by the Planning Board.
- 160 b. Piers, docks, wharves, bridges and other structures and uses
- 161 extending over or below the highest annual tide (HAT) elevation,
- 162 subject to review and approval by the Port Authority as outlined in
- 163 Chapter 16.9.1, Marine-related development.
- 164 c. Division of a conforming parcel that is not subject to subdivision
- 165 as defined in § 16.3.
- 166 d. Clearing of vegetation for activities other than timber harvesting.
- 167 These are subject to review and approval by the Shoreland
- 168 Resource Officer or Code Enforcement Officer.

169 **16.7.4 Review and Approval Authority**

- 170 A. Application Classification. The review and approval authority for Site Plans
- 171 shall depend on the classification of the project.
- 172 (1). Major Site Plan. The Planning Board is authorized to review and act on
- 173 all Site Plans for Major Site Plan applications. In considering Site Plans

174 under this section, the Planning Board may act to approve, disapprove, or
175 approve with project with such conditions as are authorized by this
176 section.

177 (2). Minor Site Plan. The Kittery Director of Planning and Development
178 authorized to review all Site Plans for Minor Site Plan applications and
179 may approve, disapprove, or approve the project with such conditions as
180 are authorized by this section. This administrative review will be made in
181 consultation with the Town Planner and Code Enforcement Officer. In
182 addition, the Director may reclassify a Minor Site Plan as a Major Site
183 Plan, due to the scope or anticipated impacts of a project, and forward it to
184 the Planning Board with recommendations for Planning Board action.

185 B. Technical Review Committee Established. The Technical Review
186 Committee is to provide advisory comments on all Site Plan applications.
187 Membership will consist of Town department heads and senior staff. The
188 Technical Review Committee will meet on an as needed basis, dependent
189 upon the timing Site Plan application submissions.

190 **16.7.5 Classification of Projects**

191 A. The Town Planner shall classify each project as a Major or Minor Site Plan.
192 Minor Site Plans are smaller scale projects for which a minor review process
193 is adequate to protect the Town's interest. Major Site Plans are larger, more
194 complex projects for which a more detailed review process and additional
195 information are necessary. The following review thresholds shall be used
196 by the Town Planner in classifying each project. The Town Planner may,
197 due to the scope or anticipated impacts of a project, classify any project as a
198 Major Site Plan.

199 (1). Minor Site Plans shall include those projects involving:

- 200 a. The cumulative construction or addition of fewer than twenty-five
201 hundred (2,500) square feet of gross nonresidential floor area.
- 202 b. Any individual or cumulative construction or addition of twenty-
203 five hundred (2,500) square feet or more of gross nonresidential
204 floor area within an approved subdivision.
- 205 c. The establishment of a new nonresidential use even if no buildings
206 or structures are proposed, that involves the Development of more
207 than twenty-five thousand (25,000) square feet but less than one
208 (1) acre of land.

209 (2). Major Site Plans shall include projects involving:

- 210 a. The individual or cumulative construction or addition of five
211 thousand (5,000) or more square feet of gross nonresidential floor
212 area on a lot that is not part of an approved subdivision,
- 213 b. The individual or cumulative Development of one (1) acre or more
214 land, unless the Development is part of a Site Plan application in
215 an approved subdivision,
- 216 c. Any mixed-use project that contains residential and non-residential

- 217 uses,
218 d. Projects that involve Wireless Communication System Facilities
219 (WCSF),
220 e. Projects that require any waiver from performance standards.
221 f. Projects that also require subdivision or special exception
222 approval, or
223 g. Other projects requiring review which are not classified as a minor
224 development.

225 **16.7.6 Application and Review Fees**

- 226 A. Review fee(s); reimbursements.
227 (1). All applications for plan approval for properties which come under this
228 title must be accompanied by a fee as determined by the Town Council.
229 (2). The applicant must reimburse the Town for all expenses incurred for
230 notifying abutters of the proposed plan and advertising of any public
231 hearing regarding a development.
232 B. Independent peer review.
233 [Amended 9-28-2015 by Ord. No. 15-08]
234 (1). The Planning Board or, after the Town Manager's approval, the Town
235 Planner and the Code Enforcement Officer, may require an independent
236 consultant or specialist engaged by the Town, at the applicant's expense,
237 to:
238 a. Determine compliance with all requirements of this title related to
239 public health, safety and welfare and the abatement of nuisances;
240 or
241 b. Assist with the technical review of applications submitted for new
242 or amended development.
243 C. When peer review is required of the applicant, sufficient funds, based on a
244 written estimate by the required consultant, must be deposited in an
245 applicant's service account per Chapter 3.3, prior to commencing said
246 review and continuing with the review of the development plan application.

247 **16.7.7 Applicant attendance at review meeting(s).**

248 The applicant or duly authorized representative must attend all Board meetings for which
249 the applicant's application has been placed on the agenda. Relief may be given from this
250 requirement by the Board Chairperson.

251 **16.7.8 Waivers [Amended 9-26-2011 by Ord. No. 11-14]**

- 252 A. Waiver authorization.
253 Where the Planning Board finds, due to special circumstances of a particular
254 plan, certain required improvements or performance standards do not
255 promote the interest of public health, safety and general welfare, , upon
256 written request, it may waive or modify such requirements, subject to

- 257 appropriate conditions as determined by the Planning Board.
- 258 B. Only waivers from submission requirements may be considered for Minor
259 Site Plans, and not waivers from performance standards. Projects seeking
260 such waivers must be classified as Major Site Plan applications to be
261 reviewed by the Planning Board.
- 262 C. Objectives secured.
263 In granting modifications or waivers, the Planning Board must require such
264 conditions as will, in its judgment, secure substantially the objectives of the
265 requirements so waived or modified.

266 **16.7.9 Other Requirements**

- 267 A. Burden of proof.
268 In all instances, the burden of proof is upon the applicant proposing the
269 development.
- 270 B. Site walk determination.
- 271 (1). The Planning Board should make a determination on whether a site walk
272 would be beneficial in order to become fully informed about the site and
273 in a knowledgeable position to prescribe contour intervals to be employed
274 on topographic maps and grading plans for the development, the applicant
275 must arrange a joint inspection of the site with the Planning Board.
- 276 (2). If a site inspection is required, the applicant must stake out property
277 corners, entrance locations, and building corners, along with other site
278 features to help orient the Board and members of the public.
- 279 (3). The applicant must provide each Board member with a copy of the plan on
280 an 11"x17" sheet at the site walk.
- 281 C. Safe use.
282 The land/water area to be developed must be of such character that it can be
283 used without danger to health or peril from fire, flood, soil failure or other
284 hazard.

285 **16.7.10 Review Process and Submission Requirements**

- 286 A. Pre-Application and Conference
- 287 (1). Process. Pre-Application Conference. Applicants for Site Plan review are
288 encouraged to schedule a Pre-Application conference with the Town
289 Planner. The purpose of this meeting is to familiarize the applicant with
290 the review procedures and submission requirements, and approval criteria,
291 and to familiarize the Planner with the nature of the project.
- 292 a. Such review shall not cause the plan to be a pending application or
293 proceeding under 1 M.R.S.A. §302. No decisions relative to the
294 plan may be made at this meeting.
- 295 b. To request a Pre-Application conference the applicant shall submit,
296 at a minimum, a brief narrative describing the project, the location
297 of the project on a US Geologic Survey (USGS) topographic map,

298 a rough drawing of the proposal for the subject property, and a
299 copy of the Tax Map showing the development parcel.

300 B. Sketch Plan Review

301 (1). Major Site Plan applicants may choose to submit a development sketch
302 plan with design concept, at their discretion. The purpose of Sketch Plan
303 Review with the Planning Board is a chance for the applicant to ask
304 questions and get feedback and guidance from the Board before
305 proceeding with an advance site plan design, and for the Board to provide
306 guidance on submission requirements.

307 (1). Any person requiring Site Plan review must submit an application on
308 forms prescribed by the Planning Board. No more than one
309 application/plan for a piece of property may be under review before the
310 Planning Board. .

311 a. A completed application must be submitted to the Town Planner
312 no later than 21 days prior to the meeting date for the item to be
313 included on the agenda.

314 i. Refer to current Planning Department application checklist
315 for required number of paper copies.

316 ii. One electronic submission in PDF format of the complete
317 submission including all forms, plans, and documentation.

318 (2). Planning Board review. The Planning Board must, within 65 days of
319 Sketch Plan submission, act upon the Sketch Plan as follows:

320 a. The Planning Board must determine whether the Sketch Plan
321 proposal complies with the standards contained herein.

322 b. Where it deems necessary, make specific suggestions in writing to
323 be incorporated by the applicant in subsequent submissions.

324 c. The Planning Board should determine as to whether or not an on-
325 site walk will be required.

326 d. The applicant should provide an indication as to whether or not
327 waivers from the submission requirements or performance
328 standards will be part of the next phase of review.

329 e. Any plan may be continued for a total period not to exceed 90
330 calendar days for good and sufficient reason (i.e., for revisions to
331 be made, studies completed, or additional information submitted)
332 and acceptable to both the applicant and the Planning Board. Such
333 plan is automatically scheduled for the agenda of the next regular
334 Planning Board meeting after the 90th day and action completed in
335 accordance with the requirements and timing contained in this title,
336 whether the applicant has accomplished the purposes for which
337 continued or not.

338 i. The action to table by the Planning Board must be an action
339 to temporarily suspend action and not to suppress a vote on
340 the plan.

- 341 (3). Plan Requirements
342 a. The Sketch Plan must be submitted to the Planning Board at the
343 time of, or prior to, the on-site inspection.
344 b. The Sketch Plan must show in simple form on a topographic map
345 the proposed site, subdivision, landscape architectural or
346 architectural design concept, including streets, lots, structures and
347 other features, in relation to existing conditions and municipal land
348 use zone(s) regulations.
349 c. The sketch may be a freehand penciled sketch and must include the
350 data listed below.

- 351 (4). Written Submission Requirements
352 a. Any person requiring development review must submit an
353 application on forms prescribed by the Planning Board, together
354 with a development plan and such submission contents as may be
355 required in § 16.7.10.C. A complete application consists of all the
356 required elements. No more than one application/plan for a piece
357 of property may be under review at a time. No more than one
358 approved Final Plan for a piece of property may exist.
359 b. General project information must describe or outline the existing
360 conditions of the site, including:
361 i. Covenants.
362 ii. Available community facilities.
363 iii. Utilities.
364 c. Proposed development, such as:
365 i. Number of residential or business lots and/or dwelling
366 units;
367 ii. Typical lot width and depth;
368 iii. Price range;
369 iv. Business areas;
370 v. Playgrounds, park areas and other public areas;
371 vi. Protective covenants;
372 vii. Utilities; and
373 viii. Street improvements.

374 C. Preliminary Plan Review

- 375 (1). General Process
376 a. Within six months after Planning Board acceptance of a Sketch
377 Plan, if applicable, the applicant must submit an application for
378 preliminary Site Plan approval in the form prescribed herein.
379 **[Amended 9-26-2011 by Ord. No. 11-15]**
380 b. Preliminary Plan application filing and completeness review. A
381 determination as to whether the Town Planner validates an

382 application is based on a review of the application in accordance
383 with the submission contents checklist filed with the plan, which
384 indicates all elements required under §§ 16.7.10.C and 16.7.10.D
385 have been received, or written request for any waivers of
386 submission requirements or performance standards is included.
387 The application must be accompanied by a plan and the required
388 fee, together with a certification the applicant has notified abutters
389 by mail of the filing of the plan application for approval.

390 c. Receipt and scheduling review. Upon validation, the Town Planner
391 must place the application on the Planning Board's agenda for
392 Planning Board completeness review and vote to find the
393 Preliminary Plan application complete and, upon Planning Board
394 approval, issue a dated notice to the applicant, which is thereafter
395 the official time of submission. [Amended 9-26-2011 by Ord. No.
396 11-15]

397 d. Site inspection. In the course of the review of the plan, the Planner
398 must, and the Planning Board may at its discretion, make a
399 physical inspection and may make photographic record of the
400 existing conditions on the site. [Amended 9-26-2011 by Ord. No.
401 11-15; 1-23-2012 by Ord. No. 12-01]

402 e. Advisory opinions. At any time during review, the Planner may
403 request an advisory opinion from the Planning Board,
404 Conservation Commission or Port Authority on issues related to
405 the application. Where applications are for land within wetland
406 setbacks or the Resource Protection Overlay Zone, the
407 Conservation Commission must be invited to review and offer
408 recommendations from an environmental protection perspective.
409 The Planner also must make recommendation on the necessity for
410 independent review.

411 f. Planner analysis. The Planner must analyze the application and
412 forward comments and recommendations to the applicant and the
413 Planning Board. .

414 g. A completed application must be submitted to the Town Planner
415 no later than 21 days prior to the meeting date for the item to be
416 included on the agenda. The submission must include on the plan
417 or attached thereto, the requirements of subsection (4) Plan
418 Requirements and subsection (5) Written Submission
419 Requirements, unless upon the applicant's written request, the
420 Planning Board, by formal action, waives or defers any
421 requirement(s) for submission.

422 i. Refer to current Planning Department application checklist
423 for required number of paper copies.

424 ii. One electronic submission in PDF format of the complete
425 submission including all forms, plans, and documentation.

426 (2). Public hearing

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- a. Scheduling
 - i. A Major Site Plan application must be scheduled for review and public hearing once the Preliminary Plan application has been found complete by the Planning Board.
 - b. Public notice.
 - i. The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and not more than 14 days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least 10 days prior to the hearing; and, in the case of a plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Planning and Development Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior to the hearing.
 - c. Abutter notice.
 - i. The Town Planner must cause written notice of the public hearing to be sent by postage paid, first-class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any Board action.
 - ii. Abutter notice must follow applicability as described in §16.5.2 Abutter Notice.
 - iii. For a wireless communication system facility (WCSF) plan application, the Town Planner must cause written notice of the hearing sent by postage paid, first-class mail, provided by the applicant, at least seven days prior to the hearing to all owners of abutting property and property located within 1,000 feet of any property line of the property for which the permit is requested. Notice must also be given to any town located within 1,000 feet of the proposed telecommunications facility. The applicant must provide this notification and must present proof of such notification to the Town Planner. The notification must include: the name of the applicant, location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.
 - d. Public Hearing Procedure
 - i. The Planning Board may receive oral and documentary evidence, but must exclude evidence which it considers

- 472 irrelevant, immaterial or unduly repetitious.
- 473 ii. The Chairperson of the Planning Board must determine the
474 order of presentation by parties to the hearing. Each party
475 must have the right to proceed without interruption, except
476 that rulings by the Chairperson prevail. The applicant's
477 presentation must proceed in accordance with the checklist
478 provided.
- 479 iii. Any party may be represented by agent or attorney.
- 480 iv. The Town Planner, in consultation with other Town
481 officials as may have an interest in the application, must
482 present into evidence a written summary of findings and
483 recommendations.
- 484 v. The Planning Board may continue the hearing to another
485 time and location, including the site of the development, as
486 it deems necessary.
- 487 (3). Planning Board review schedule and decision on Preliminary Plan
488 application.
- 489 a. Within 35 days of a Public Hearing, the Planning Board must
490 approve the plan, approve the plan with conditions, disapprove the
491 plan, postpone action on the plan, or continue the review to another
492 time/location.
- 493 b. Continuation or tabling of a review beyond the thirty-five-day
494 period for Site Plan applications must be for good and sufficient
495 reason and be acceptable to both the applicant and the Planning
496 Board.
- 497 c. Any plan may be continued for a total period not to exceed 90
498 calendar days for good and sufficient reason (i.e., for revisions to
499 be made, studies completed or additional information submitted)
500 and acceptable to both the applicant and the Planning Board. Such
501 plan is automatically scheduled for the agenda of the next regular
502 Planning Board meeting after the 90th day and action completed in
503 accordance with the requirements and timing contained in this title,
504 whether the applicant has accomplished the purposes for which
505 continued or not.
- 506 d. The action to table by the Planning Board must be an action to
507 temporarily suspend action and not to suppress a vote on the plan.
- 508 e. Failure to act within thirty-five-days constitutes disapproval of the
509 plan, in which case the applicant may resubmit the plan without
510 payment of an additional application fee.
- 511 f. Conditions of approval may include, but are not limited to, type of
512 vegetation, increased setbacks and yard space, specifications for
513 sewage and water supply facilities, buffers and screens, period of
514 maintenance sureties, deed restrictions, locations of piers, docks,
515 parking or signs, type or style of construction, and the amount of

516 all guarantees which may be required.
517 g. The decision of the Planning Board plus any conditions imposed
518 must be noted on three copies of the Preliminary Plan. One copy
519 must be returned to the applicant, one retained by the Planning
520 Board and one forwarded to the municipal officials.

521 (4). Plan Requirements

- 522 a. Plan sheets drawn on a reproducible medium and must measure no
523 less than 11 inches by 17 inches and no larger than 24 inches by 36
524 inches;
- 525 b. With scale of the drawings no greater than one inch equals 30 feet
526 for developments less than 10 acres, and one inch equals 50 feet
527 for all others;
- 528 c. Code block in the lower right-hand corner. The block must
529 contain:
- 530 i. Name(s) and address(es) of the applicant and owner;
 - 531 ii. Name of the project;
 - 532 iii. Name and address of the preparer of the plan, with
533 professional seal, if applicable;
 - 534 iv. Date of plan preparation/revision, and a unique ID number
535 for the plan and any revisions;
- 536 d. Standard boundary survey conducted by a surveyor licensed in the
537 State of Maine, in the manner recommended by the State Board of
538 Registration for Land Surveyors;
- 539 e. An arrow showing true North and the magnetic declination, a
540 graphic scale, and signature blocks for the owner(s) and members
541 of the Planning Board;
- 542 f. Locus map showing the property in relation to surrounding roads,
543 within 2,000 feet of any property line of the development;
- 544 g. Vicinity map and aerial photograph showing the property in
545 relation to surrounding properties, roads, geographic, natural
546 resource (wetland, etc.), historic sites, applicable comprehensive
547 plan features such as proposed park locations, land uses, zones,
548 and other features within 500 feet from any boundary of the
549 proposed development;
- 550 h. Surveyed acreage of the total parcel, of rights-of-way, wetlands,
551 and area to be disturbed and amount of street frontage;
- 552 i. Names and addresses of all owners of record of property abutting
553 the development, including those across a street;
- 554 j. Existing Development Area Conditions, including but not limited
555 to:
- 556 i. Location and description of all structures, including signs,
557 existing on the site, together with accesses located within
558 100 feet of the property line;

- 559 ii. Essential physical features such as watercourses, wetlands,
560 floodplains, wildlife habitat areas, forest cover, and
561 outcroppings;
- 562 iii. Utilities existing, including power, water, sewer, holding
563 tanks, bridges, culverts and drainageways.
- 564 k. Proposed development area conditions including, but not limited
565 to:
- 566 i. Structures: their location and description, including signs,
567 to be placed on the site, floor plans and elevations of
568 principal structures as well as detail of all structures,
569 showing building materials and colors, and accesses located
570 within 100 feet of the property line.
- 571 ii. Utilities proposed including power, water, sewer, holding
572 tanks, bridges, culverts and drainageways;
- 573 iii. Sewage facilities type and placement. Test pit locations, at
574 least two of which must meet the State of Maine Plumbing
575 Code requirements, must be shown;
- 576 iv. Domestic water source;
- 577 v. Parks, open space, or conservation easement locations;
- 578 vi. Lot lines, interior and exterior, right-of-way, and street
579 alignments;
- 580 vii. Road and other paved ways plans, profiles and typical
581 sections including all relevant data;
- 582 viii. Setbacks existing and proposed;
- 583 ix. Machinery permanently installed locations likely to cause
584 appreciable noise at the lot lines;
- 585 x. Raw, finished or waste materials to be stored outside the
586 buildings, and any stored material of a toxic or hazardous
587 nature;
- 588 xi. Topographic contours of existing contours and finished
589 grade elevations within the development;
- 590 xii. Pedestrian ways/sidewalks, curbs, driveways, fences,
591 retaining walls and other artificial features locations and
592 dimensions proposed;
- 593 xiii. Temporary marker locations adequate to enable the
594 Planning Board to readily locate and appraise the layout of
595 the development;
- 596 xiv. Land proposed to be dedicated to public use and the
597 conditions of such dedication;
- 598 (5). Natural features or site elements to be preserved. Written Submission
599 Requirements
- 600 a. Legal interest documents showing legal interest of the applicant in
601 the property to be developed. Such documents must contain the

- 602 description upon which the survey was based;
- 603 b. Property encumbrances currently affecting the property, as well as
- 604 any proposed encumbrances;
- 605 c. Water District approval letter, if public water is used, indicating
- 606 there is adequate supply and pressure to be provided to the
- 607 development;
- 608 d. Erosion and sedimentation control plan endorsed by the York
- 609 County Soil and Water Conservation District or the Town's
- 610 engineering consultant;
- 611 e. Stormwater management preliminary plan for stormwater and
- 612 other surface water drainage prepared by a registered professional
- 613 engineer including the general location of stormwater and other
- 614 surface water drainage areas;
- 615 f. Soil survey for York County covering the development. Where the
- 616 soil survey shows soils with severe restrictions for development, a
- 617 high intensity Class "A" soil survey must be provided;
- 618 g. Vehicular traffic report estimating the amount and type of
- 619 vehicular traffic that will be generated by the development on a
- 620 daily basis and for peak hours;
- 621 h. Traffic impact analysis in accordance with § 16.5.27.E for
- 622 developments involving 40 or more parking spaces or which are
- 623 projected to generate more than 400 vehicle trips per day;
- 624 i. Test pit(s) analysis prepared by a licensed site evaluator when
- 625 sewage disposal is to be accomplished by subsurface disposal, pits,
- 626 prepared by a licensed site evaluator;
- 627 j. Town Sewage Department or community system authority letter,
- 628 when sewage disposal is to be through a public or community
- 629 system, approving the connection and its location;
- 630 k. Letters of evaluation of the development by the Chief of Police,
- 631 Fire Chief, Commissioner of Public Works, and, for residential
- 632 applications, the superintendent of schools, must be collected and
- 633 provided by the Town Planner.
- 634 l. Additional submissions as may be required by other sections of
- 635 this title such as for clustered development, mobile home parks, or
- 636 junkyards must be provided.
- 637 (6). Additional requirements. In its consideration of an application/plan, the
- 638 Planning Board may at any point in the review require the applicant to
- 639 submit additional materials, studies, analyses, and agreement proposals as
- 640 it may deem necessary for complete understanding of the application.
- 641 Such materials may include:
- 642 a. Traffic impact analysis, for projects that are not otherwise required
- 643 to submit a traffic impact analysis by submission requirement
- 644 C.(5).h., above.

- 645 b. Environmental analysis. An analysis of the effects that the
- 646 development may have upon surrounding lands and resources,
- 647 including intensive study of groundwater, ecosystems, or pollution
- 648 control systems;
- 649 c. Hydrologic analysis. An analysis of the effects that the
- 650 development may have on groundwater must be conducted in
- 651 accordance with § 16.7.11.J. This analysis is always required for
- 652 mobile home park proposals.

653 (7). Additional Submittal Content Required for Review of Wireless
654 Communication Services Facilities (WCSF).

- 655 a. A visual impact analysis prepared by a landscape architect or other
- 656 qualified professional acceptable to the Town that quantifies the
- 657 amount of visual impact on properties located within 500 feet,
- 658 within 2,500 feet and within two miles of the WCSF. This analysis
- 659 will include recommendations to mitigate adverse visual impacts
- 660 on such properties;
- 661 b. An analysis prepared by a qualified professional acceptable to the
- 662 Town that describes why this site and structure is critical to the
- 663 operation for which it is proposed. The analysis must address, at a
- 664 minimum: existing and proposed service area; how this WCSF is
- 665 integrated with other company operations, particularly other
- 666 structures in Kittery and surrounding communities; future
- 667 expansion needs in the area; the effect on company operations if
- 668 this structure is not constructed in this location; other sites
- 669 evaluated for location of this structure and how such sites compare
- 670 to the proposed site; other options, if any, which could be used to
- 671 deliver similar services, particularly if the proposed equipment can
- 672 be co-located (shared use) on an existing structure; and an analysis
- 673 to the projected life cycle of this structure and location;
- 674 c. Certification by a structural engineer that construction of the
- 675 structure satisfies all federal, state and local building code
- 676 requirements as well as the requirement of maximum permitted co-
- 677 location at the site as approved by the Planning Board/Town
- 678 Planner;
- 679 d. A plan note stating the payment of all required performance
- 680 guarantees as a condition of plan approval;
- 681 e. Payment of the Planning Board application fees;
- 682 f. And all other requirements per this chapter.

683 D. Final Plan Review

684 (1). Process, Major Site Plan

- 685 a. Final Plan application. The applicant must, within six months after
- 686 approval of a Preliminary Plan, file with the Planning Board an
- 687 application for approval of the Final Plan in the form prescribed
- 688 herein.

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- b. Failure to submit Final Plan application. If the Final Plan is not submitted to the Planning Board within six months after the approval of the Preliminary Plan, the Planning Board may refuse to act on the Final Plan and require resubmission of the Preliminary Plan. Any plan resubmitted must comply with all application requirements, including payment of fees.
 - c. A completed application must be submitted to the Town Planner no later than 21 days prior to the meeting date for the item to be included on the agenda. The submission must include on the plan or attached thereto, the requirements of subsection (3) Final Plan Requirements, unless upon the applicant's written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.
 - i. Refer to current Planning Department application checklist for required number of paper copies.
 - ii. One electronic submission in PDF format of the complete submission including all forms, plans, and documentation.
 - iii. GIS data for all property corners and site plan elements.
 - d. Application/plan review expiration.
 - i. Uncounted time. When an approved plan is required to be reviewed/approved by another agency (e.g., DEP, BOA, KPA), any period the plan is at such an agency or that a plan is continued by the Planning Board in accordance with § 16.7.10.C(3) from time of submission to time of decision inclusive, verifiable by recorded documentation, is not counted as part of the cumulative time periods described in this section.
 - ii. Requests for extension. The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis.
- (2). Process, Minor Site Plan
- a. The Final Plan application may be submitted concurrently with Preliminary Plan submission requirements to the Director of Planning and Development for administrative review and decision.
- (3). Final Plan Requirements
- A complete Final Plan application must fulfill all the requirements of a Preliminary Plan as indicated in § 16.7.10.C of this section and must show the following items, unless the Planning Board, by formal action, upon the applicant's written request, waives or defers any requirement(s) for submission. If no changes occurred to the Preliminary Plan, it also may be considered to be the Final Plan.
- a. Preliminary Plan information, including vicinity map and any amendments thereto suggested or required by the Planning Board or other required reviewing agency.

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- b. Street names and lines, pedestrianways, lots, easements and areas to be reserved for or dedicated to public use.
 - c. Street length of all straight lines, the deflection angles, radii, lengths of curves and central angles of all curves, tangent distances and tangent bearings.
 - d. Lots and blocks within a subdivision, numbered in accordance with local practice.
 - e. Markers/permanent reference monuments: Their location, source references and, where required, constructed in accordance with specifications herein.
 - f. Structures: their location and description, including signs, to be placed on the site, floor plans and elevations of principal structures as well as detail of all structures, showing building materials and colors, and accesses located within 100 feet of the property line.
 - g. Outdoor lighting and signage plan if the application involves the construction of more than 5,000 square feet of nonresidential floor area; or the creation of more than 20,000 square feet of impervious area; or the creation of three or more dwelling units in a building — prepared by a qualified lighting professional, showing at least the following at the same scale as the site plan:
 - i. All buildings, parking areas, driveways, service areas, pedestrian areas, landscaping and proposed exterior lighting fixtures and snow storage;
 - ii. All proposed lighting fixture specifications and illustrations, including photometric data, designation as "cutoff" fixtures, color rendering index (CRI) of all lamps (bulbs), and other descriptive information on the fixtures;
 - iii. Mounting height of all exterior lighting fixtures;
 - iv. Lighting analyses and luminance level diagrams or photometric point-by-point diagrams on a twenty-foot grid, showing that the proposed installation conforms to the lighting level standards of the ordinance codified in this section together with statistical summaries documenting the average luminance, maximum luminance, minimum luminance, average-to-minimum uniformity ratio, and maximum-to-minimum uniformity ratio for each parking area, drive, canopy and sales or storage area;
 - v. Drawings of all relevant building elevations, showing the fixtures, the portions of the walls to be illuminated, the luminance levels of the walls, and the aiming points for any remote light fixtures; and
 - vi. A narrative that describes the hierarchy of site lighting and how the lighting will be used to provides safety, security and aesthetic effects.

- 777 h. Machinery in permanently installed locations likely to cause
- 778 appreciable noise at the lot lines.
- 779 i. Materials (raw, finished or waste) storage areas, their types and
- 780 location, and any stored toxic or hazardous materials, their types
- 781 and locations.
- 782 j. Fences, retaining walls and other artificial features locations and
- 783 dimensions proposed.
- 784 k. Landscaping plan, including location, size and type of plant
- 785 material.
- 786 l. Stormwater management plan for stormwater and other surface
- 787 water drainage prepared by a registered professional engineer,
- 788 including the location of stormwater and other surface water
- 789 drainage area; a post-construction stormwater management plan
- 790 that defines maintenance responsibilities, responsible parties,
- 791 shared costs, and schedule for maintenance; a draft maintenance
- 792 agreement for stormwater management facilities; and, where
- 793 applicable, draft documents creating a homeowners' association
- 794 referencing the maintenance responsibilities. Where applicable, the
- 795 maintenance agreement must be included in the document of
- 796 covenants, homeowners' documents and/or as riders to the
- 797 individual deed and recorded with the York County Registry of
- 798 Deeds. **[Added 9-26-2011 by Ord. No. 11-15;7-25-2016 by Ord.**
- 799 **No. 16-06]**

800 (4). Written Submission Requirements

- 801 a. Municipal impact analysis of the relationship of the revenues to the
- 802 Town from the development and the costs of additional publicly
- 803 funded resources, including:
 - 804 i. Review for impacts. A list of the construction items that
 - 805 will be completed by the developer prior to the sale of lots.
 - 806 ii. Municipal construction and maintenance items. A list of
 - 807 construction and maintenance items that must be borne by
 - 808 the municipality, which must include, but not be limited to:
 - 809 a. Schools, including busing;
 - 810 b. Road maintenance and snow removal;
 - 811 c. Police and fire protection;
 - 812 d. Solid waste disposal;
 - 813 e. Recreation facilities;
 - 814 f. Runoff water disposal drainageways and/or storm
 - 815 sewer enlargement with sediment traps.
 - 816 iii. Municipal costs and revenues. Cost estimates to the Town
 - 817 for the above services and the expected tax revenue of the
 - 818 development.
- 819 b. Open space land cession offers. Written offers of cession to the

820 municipality of all public open space shown on the plan, and
821 copies of agreements or other documents showing the manner in
822 which space(s), title to which is reserved by the subdivider, are to
823 be maintained.

- 824 c. Open space land cession offers acknowledgement by Town.
825 Written evidence that the municipal officers are satisfied with the
826 legal sufficiency of the documents referred to in § 16.7.10.D(4)b.
827 Such written evidence does not constitute an acceptance by the
828 municipality of any public open space referred to in
829 § 16.7.10.D(4)b.
- 830 d. Maintenance plan and agreement defining maintenance
831 responsibilities, responsible parties, shared costs and schedule.
832 Where applicable, a maintenance agreement must be included in
833 the document of covenants, homeowners' documents and/or as
834 riders to the individual deed.
- 835 e. Estimated costs. Specify the estimated total cost of the
836 development and itemize the estimated major expenses. The
837 itemization of major costs should include, but not be limited to, the
838 costs of the following activities: roads, sewers, structures, water
839 supply, erosion control, pollution abatement and landscaping.

840 (5). Findings of Fact.

- 841 a. After considering all submissions, evidence and testimony in
842 accordance with the requirements of all applicable state and the
843 Town Code, the Planning Board or Director of Planning and
844 Development must make a finding of facts for each and every
845 proposed phase of development, including the development master
846 plan and each subsequent development plan, and take formal
847 action as required in this title.
- 848 b. Findings of fact. Action by the Planning Board must be based upon
849 findings of fact which certify or waive compliance with all the
850 required standards of this title and which certify the development
851 meets the following requirements:
 - 852 i. Development conforms to local ordinances. The proposed
853 development conforms to a duly adopted Comprehensive
854 Plan as per adopted provisions in the Town Code, zoning
855 ordinance, subdivision regulation or ordinance,
856 development plan or land use plan, if any. In making this
857 determination, the municipal reviewing authority may
858 interpret these ordinances and plans.
 - 859 ii. Water supply sufficient. The proposed development has
860 sufficient water available for the reasonably foreseeable
861 needs of the development.
 - 862 iii. Sewage disposal adequate. The proposed development will
863 provide for adequate sewage waste disposal and will not
864 cause an unreasonable burden on municipal services, if

- 865 they are utilized.
- 866 iv. Stormwater managed. The proposed development will
867 provide for adequate stormwater management.
- 868 v. Traffic managed. The proposed development will:
- 869 a. Not cause unreasonable highway or public road
870 congestion or unsafe conditions with respect to the
871 use of the highways or public roads existing or
872 proposed; and
- 873 b. Provide adequate traffic circulation, both on site and
874 off site.
- 875 vi. Parking and Loading. Provisions have been made for safe
876 internal vehicular circulation, loading and service areas,
877 and parking associated with the proposed development.
- 878 vii. Utilities. The size, type, and locations of all public utilities
879 and private utilities to serve the proposed development will
880 be installed per accepted engineering practices.
- 881 viii. Erosion controlled. The proposed development will
882 not cause unreasonable soil erosion or a reduction in the
883 land's capacity to hold water so that a dangerous or
884 unhealthy condition results.
- 885 ix. Groundwater protected. The proposed development will
886 not, alone or in conjunction with existing activities,
887 adversely affect the quality or quantity of groundwater.
- 888 x. Freshwater wetlands identified. All freshwater wetlands
889 within the project area have been identified on any maps
890 submitted as part of the application, regardless of the size
891 of these wetlands.
- 892 xi. River, stream or brook identified. Any river, stream or
893 brook within or abutting the proposed project area has been
894 identified on any maps submitted as part of the application.
895 For purposes of this section, "river, stream or brook" has
896 the same meaning as in 38 M.R.S. § 480-B, subsection 9.
- 897 xii. Municipal solid waste disposal available. The proposed
898 development will not cause an unreasonable burden on the
899 municipality's ability to dispose of solid waste, if municipal
900 services are to be used.
- 901 xiii. Water body quality and shoreline protected.
902 Whenever situated entirely or partially within 250 feet of
903 any wetland, the proposed development will not adversely
904 affect the quality of that body of water or unreasonably
905 affect the shoreline of that body of water.
- 906 xiv. Flood areas identified and development
907 conditioned. All flood-prone areas within the project area
908 have been identified on maps submitted as part of the

- 909 application.
- 910 xv. Water and air pollution minimized. The proposed
- 911 development will not result in undue water or air pollution.
- 912 In making this determination, the following must be
- 913 considered:
- 914 a. Elevation of the land above sea level and its relation
- 915 to the floodplains;
- 916 b. Nature of soils and subsoils and their ability to
- 917 adequately support waste disposal;
- 918 c. Slope of the land and its effect on effluents;
- 919 d. Availability of streams for disposal of effluents;
- 920 e. Applicable state and local health and water resource
- 921 rules and regulations; and
- 922 f. Safe transportation, disposal and storage of
- 923 hazardous materials.
- 924 xvi. Aesthetic, cultural and natural values protected. The
- 925 proposed development will not have an undue adverse
- 926 effect on the scenic or natural beauty of the area, aesthetics,
- 927 historic sites, significant wildlife habitat identified by the
- 928 Department of Inland Fisheries and Wildlife or the
- 929 municipality, or rare and irreplaceable natural areas, or any
- 930 public rights for physical or visual access to the shoreline.
- 931 xvii. Environmental Considerations. The proposed
- 932 development will not result in undue levels of lighting,
- 933 noise, vibrations, smoke, heat, glare, fumes, dust, toxic
- 934 matter, odors, or electromagnetic interference.
- 935 xviii. Utilization of the site. The proposed development
- 936 does reflect the natural capabilities of the site to support
- 937 development.
- 938 xix. Developer financially and technically capable.
- 939 Developer is financially and technically capable to meet the
- 940 standards of this section.
- 941 c. For wireless communication system facility (WCSF). In
- 942 development, the WCSF:
- 943 i. Tower or other structure height does not exceed that which
- 944 is essential for its intended use and public safety;
- 945 ii. Proximity of tower to residential development or zones is
- 946 acceptable;
- 947 iii. Nature of uses on adjacent and nearby properties is
- 948 compatible;
- 949 iv. Surrounding topography is protected;
- 950 v. Surrounding tree coverage and foliage is protected;
- 951 vi. Design of the tower, antenna or facility with particular

- 952 reference to design characteristics effectively eliminating or
953 significantly reducing visual obtrusiveness is minimized;
- 954 vii. Proposed ingress and egress to the site is adequate;
- 955 viii. Co-location with another existing WCSF has been
956 thoroughly pursued and is not feasible;
- 957 ix. Visual impacts on viewsheds, ridgelines and other impacts
958 caused by tower location, tree and foliage clearing and
959 placement of structures and associated development is
960 minimized;
- 961 x. Will not unreasonably interfere with the view of or from
962 any public park, natural scenic vista, and historic building
963 or major view corridor and the Kittery waterfront and
964 harbor;
- 965 xi. Is not constructed in such a manner as to result in needless
966 height, mass and guy-wire supports, with documentation
967 having been provided and reviewed regarding the design
968 capacity and/or the remaining co-location capacity of the
969 tower/facility; and
- 970 xii. "Stealth" technology has been pursued and is not a viable
971 option.
- 972 d. In Shoreland, Resource Protection or Commercial
973 Fisheries/Maritime Use Overlay Zones, the proposed use will:
- 974 i. Maintain safe and healthful conditions;
- 975 ii. Not result in water pollution, erosion or sedimentation to
976 surface waters;
- 977 iii. Adequately provide for the disposal of all wastewater;
- 978 iv. Not have an adverse impact on spawning grounds, fish,
979 aquatic life, bird or other wildlife habitat;
- 980 v. Conserve shore cover and visual, as well as actual, points
981 of access to inland and coastal waters;
- 982 vi. Protect archaeological and historic resources as designated
983 in the comprehensive plan;
- 984 vii. Not adversely affect existing commercial fishing or
985 maritime activities in a commercial fisheries/maritime
986 activities district;
- 987 Avoid problems associated with floodplain development and
988 use; and
- 989 viii. Is in conformance with the provisions of this title.
- 990 e. For a right-of-way plan. The proposed right-of-way:
- 991 i. Does not create any nonconforming lots or buildings; and
- 992 ii. Could reasonably permit the right of passage for an
993 automobile.

- 994 f. For special exception use – special exception use permitted. If a
- 995 special exception use is requested, the special exception use will:
- 996 [Added 9-26-2011 by Ord. No. 11-15]
- 997 i. Not prevent the orderly and reasonable use of adjacent
- 998 properties or of properties in adjacent use zones;
- 999 ii. Not prevent the orderly and reasonable use of permitted or
- 1000 legally established uses in the zone wherein the proposed
- 1001 use is to be located, or of permitted or legally established
- 1002 uses in adjacent use zones; and
- 1003 iii. Not adversely affect the safety, the health, and the welfare
- 1004 of the Town.
- 1005 iv. Be in harmony with and promote the general purposes and
- 1006 intent of this title.
- 1007 (6). Final Plan approval and recording.
- 1008 a. Agreement form. An approval by the Planning Board or Director
- 1009 of Planning and Development must take the form of an agreement
- 1010 between the Town and the applicant, incorporating as elements the
- 1011 application, the Planning Board's findings of fact, and such
- 1012 conditions as the Planning Board may impose upon approval.
- 1013 b. Agreement distribution. The Planning Board must send copies of
- 1014 the agreement to the Town Manager and Code Enforcement
- 1015 Officer. [Amended 9-26-2011 by Ord. No. 11-15]
- 1016 c. Updated GIS information. The applicant shall provide revised GIS
- 1017 data with any changes made during the review process for Major
- 1018 Site Plans, if necessary.
- 1019 d. Approved Final Plan signing. A plan has final approval only when
- 1020 the Planning Board has indicated approval by formal action and the
- 1021 plan has been properly signed by a majority of the Planning Board
- 1022 members or by the Chair only, if so voted by the Planning Board.
- 1023 e. Approved Final Plan recording. An approved plan involving the
- 1024 division of land, easements, or property boundary modification
- 1025 must be recorded by the York County Registry of Deeds.
- 1026 [Amended 9-26-2011 by Ord. No. 11-15]

1027 **16.7.11 Performance Standards and Approval Criteria**

- 1028 A.
- 1029 A.
- 1030 A.
- 1031 A.
- 1032 A.
- 1033 A. Water Supply
- 1034 (1). The development shall be provided with a system of water supply that
- 1035 provides each use with an adequate supply of water.
- 1036 (2). If the project is to be served by a public water supply, the applicant shall
- 1037 secure and submit a written statement from the Kittery Water District that
- 1038 the proposed water supply system conforms with its design and

1039 construction standards, will not result in an undue burden on the source of
1040 distribution system, and will be installed in a manner adequate to provide
1041 needed domestic and fire protection flows.

1042 B. Sewage Disposal [Amended 10-14-2015 by Ord. No. 15-10]

1043 (1). Sewers.

- 1044 a. As per Chapter 13.1, Sewer Service System, connection to public
1045 sewer is required, provided said sewer, located within an abutting
1046 public way, is within 100 feet of the property line as measured
1047 along the said public way. Individual dwellings and structures in
1048 approved and recorded developments where public sewer becomes
1049 available as described in this subsection must connect per the
1050 requirements of Title 13, Chapter 13.1.
- 1051 b. Notwithstanding the provision above and Chapter 13.1, connection
1052 to public sewer is required for a commercial or industrial
1053 development or a residential subdivision, where public sewer,
1054 within an abutting public way, is within 1,000 feet of the property
1055 line as measured along said public way. In such an event, the
1056 developer shall connect to public sewer per the Town's
1057 Superintendent of Sewer Services (SSS) specifications and in
1058 accordance with Title 13. The developer shall provide written
1059 certification to the Planning Board from the SSS that the proposed
1060 addition to public sewer is within the capacity of the collection and
1061 wastewater treatment system.
- 1062 c. Sewer mains, service lines and related improvements must be
1063 installed at the developer's expense. Service lines must extend to
1064 each lot's boundary line. Connections to public sewer must be
1065 installed in accordance with this article and Chapter 13.1, Sewer
1066 Service System, of the Kittery Town Code.
- 1067 d. Proposal and construction drawings must be approved in writing
1068 by the Town's SSS. All required approvals must be secured before
1069 the start of Final Plan review.
- 1070 e. When public sewer connection pursuant to Subsection b above is
1071 not feasible as determined by the Planning Board or Director of
1072 Planning and Development, the applicable review authority may
1073 allow individual or common subsurface wastewater disposal
1074 systems in accordance with § 16.7.11.B(2). To determine
1075 feasibility, the developer shall submit information that considers
1076 the unique physical circumstances of the property and sewer
1077 connection alternatives to conventional construction/installation
1078 techniques, such as, but not limited to, horizontal/directional
1079 boring and low-pressure sewer. The developer's information must
1080 be accompanied by findings and recommendations of the Town
1081 Peer Review Engineer. In determining feasibility, the Board may
1082 not base its decision solely on additional costs associated with a
1083 sewer connection. The intent of this subsection is not to avoid the

- 1084 requirements of Chapter 13.1, Sewer Service System, of the
1085 Kittery Town Code.
- 1086 (2). Subsurface wastewater disposal systems.
- 1087 a. The developer shall submit plans for subsurface wastewater
1088 disposal designed by a Maine licensed site evaluator in full
1089 compliance with the requirements of the State of Maine Plumbing
1090 Code, Subsurface Wastewater Disposal Rules, and this title.
1091 Subsurface wastewater disposal systems (SWDS) must be
1092 constructed according to the approved plan.
- 1093 b. All first-time subsurface wastewater disposal systems must be
1094 installed in conformance with State of Maine Subsurface
1095 Wastewater Disposal Rules and this title. The following also apply:
- 1096 i. The minimum setback distance for a first-time subsurface
1097 disposal system may not be reduced by variance.
- 1098 ii. Clearing or removal of woody vegetation necessary to site
1099 a first-time system, and any associated fill extensions may
1100 not extend closer than is allowed in Table 16.5.30,
1101 Minimum Setbacks from Wetlands and Water Bodies, for
1102 subsurface sewage disposal.
- 1103 c. Replacement of subsurface wastewater disposal systems (SWDS)
1104 for existing legal uses:
- 1105 i. Where no expansion is proposed, the SWDS must comply
1106 with § 16.7.11.B(2) and Table 16.5.30 to the extent
1107 practicable and otherwise are allowed per the Maine
1108 Subsurface Wastewater Disposal Rules; or
- 1109 ii. Where expansion is proposed, the SWDS must comply
1110 with § 16.7.11.B(2) and Table 16.5.30 in addition to the
1111 Maine Subsurface Wastewater Disposal Rules.
- 1112 NOTE: For the purposes of this subsection, “expansion” is
1113 defined in Section 9 of the Maine Subsurface Wastewater
1114 Disposal Rules.
- 1115 d. Subsurface wastewater disposal systems on unimproved lots
1116 created after April 26, 1990. Where public sewer connection is not
1117 feasible, the developer must submit evidence of soil suitability for
1118 subsurface wastewater disposal systems, i.e., test pit data and other
1119 information as required by the State of Maine Subsurface
1120 Wastewater Disposal Rules and this title. In addition:
- 1121 i. On lots with a limiting factor identified as being within 24
1122 inches of the surface, a second site with suitable soils must
1123 be shown as a reserve area for future replacement should
1124 the primary site fail. Such reserve area is to be shown on
1125 the plan; not be built upon; and, must comply with all the
1126 setback requirements of the Subsurface Wastewater
1127 Disposal Rules and this title.

- 1128 ii. In no instance may a primary or reserve disposal area be
 1129 permitted on soils or on a lot requiring a first-time system
 1130 variance request per the State of Maine Subsurface
 1131 Wastewater Disposal Rules.
- 1132 iii. Test pits must be of sufficient numbers (a minimum of two)
 1133 and so located at representative points within each disposal
 1134 area (primary and reserve sites) to ensure that the proposed
 1135 disposal system can be located on soils and slopes that meet
 1136 the criteria of the State of Maine Subsurface Wastewater
 1137 Disposal Rules and the State Plumbing Code. All passing
 1138 and failing test pits must be shown on the plan.
- 1139 e. The developer shall install advanced pretreatment to subsurface
 1140 wastewater disposal systems that are located inside or within 100
 1141 feet of areas that include a sand and gravel aquifer as indicated on
 1142 the Maine Department of Agriculture, Conservation and Forestry
 1143 (DACF) Geological Survey Maps or determined by Maine DACF
 1144 staff.
- 1145 (3). Holding tanks.
- 1146 a. Holding tanks are not allowed for a first-time residential use.
- 1147 (4). Sanitary facilities/restrooms.
- 1148 a. Any development containing a retail use or a food service use, or a
 1149 combination thereof, exceeding 10,000 square feet must provide
 1150 public toilet facilities in accordance with Subsections **b**, **c** and **d** of
 1151 this section.
- 1152 b. Public toilet facilities are to consist of at least one separate toilet
 1153 for each sex; be clearly marked; maintained in a sanitary condition
 1154 and in good repair. Lavatory facilities must be located within or
 1155 immediately adjacent to all toilet rooms or vestibules. There may
 1156 be no charge for their use.
- 1157 c. Where a retail development exceeds 60,000 square feet, each toilet
 1158 facility must contain a minimum of two water closets.
- 1159 d. Requirements for handicapped accessibility to sanitary facilities
 1160 are pursuant to applicable state standards.
- 1161 C. Stormwater and Surface Drainage
- 1162 (1). Adequate provision must be made for drainage of all stormwater generated
 1163 with the development and any drained groundwater through a
 1164 management system of natural and constructed features. Where possible,
 1165 existing natural runoff control features, such as berms, swales, terraces
 1166 and wooded areas must be retained to reduce runoff and encourage
 1167 infiltration of storm waters. Otherwise drainage may be accomplished by a
 1168 management system of constructed features such as swales, culverts,
 1169 underdrains and storm drains.
- 1170 (2). To ensure proper functioning, stormwater runoff control systems must be

- 1171 maintained in good working order per § 16.7.11.D, Post-construction
1172 stormwater management.
- 1173 (3). Where a development is traversed by a stream, river or surface water
1174 drainageway, or where the Planning Board or Director of Planning and
1175 Development determines that surface runoff should be controlled,
1176 easements and or drainage rights-of-way must be provided which conform
1177 substantially to the lines of existing natural drainage paths. The minimum
1178 width of the drainage easements or rights-of-way is 30 feet.
- 1179 a. The minimum pipe size for any storm drainage pipe must be 12
1180 inches. Maximum trench width at the pipe crown must be the
1181 outside diameter of the pipe plus two feet. The pipe must be
1182 bedded in a fine granular material, containing no stones larger than
1183 three inches, lumps of clay, or organic matter, reaching a minimum
1184 of six inches below the bottom of the pipe extending to six inches
1185 above the top of the pipe.
- 1186 b. Except for normal thinning and landscaping, existing vegetation
1187 must be left intact to prevent soil erosion.
- 1188 (4). When proposed development does not require Maine Department of
1189 Environmental (MDEP) approval under MDEP Chapters 500 and 502, the
1190 following applies:
- 1191 a. All components of the stormwater management system must be
1192 designed to limit peak discharge to predevelopment levels for the
1193 two-year and twenty-five-year, twenty-four-hour duration,
1194 frequencies, based on the rainfall data for Portsmouth, NH. When
1195 the development discharges directly to a major water body, peak
1196 discharge may be increased from predevelopment levels, provided
1197 downstream drainage structures are suitably sized.
- 1198 b. The stormwater management system must be designed to
1199 accommodate upstream drainage, taking into account existing
1200 conditions and approved or planned developments not yet built and
1201 must include a surplus design capacity factor of 25% for potential
1202 increases in upstream runoff.
- 1203 c. Downstream drainage requirements must be studied to determine
1204 the effect of the proposed development. The storm drainage must
1205 not overload existing or future planned storm drainage systems
1206 downstream from the development. The developer is responsible
1207 for financing any improvements to existing drainage systems
1208 required to handle the increased storm flows.
- 1209 i. Wherever the storm drainage system is not within the right-
1210 of-way of a public street, perpetual easements must be
1211 provided to the Town allowing maintenance and
1212 improvement to the system.
- 1213 ii. All sediment and erosion control measures must be
1214 designed in accordance with MDEP's "Maine Erosion and
1215 Sediment Control BMPs," March 2003.

- 1216 iii. Catch basins in streets and roads must be installed where
1217 necessary and located at the curblin. In parking lots and
1218 other areas, catch basins must be located where necessary
1219 to ensure proper drainage.
- 1220 iv. Where soils require a subsurface drainage system, the
1221 drains must be installed and maintained separately from the
1222 stormwater drainage system.
- 1223 v. Where the Board has required a stormwater management
1224 and erosion control plan and MDEP approval under
1225 Chapters 500 and 502 is not required, said plan must be
1226 endorsed by the York County Soil and Water Conservation
1227 District.
- 1228 vi. Drainage easements for existing or proposed drainageways
1229 located outside a public way must be maintained and/or
1230 improved in accordance with § 16.7.11.D, Post-
1231 construction stormwater management.

1232 D. Post-construction stormwater management.

- 1233 (1). Purposes. This section is enacted to provide for the health, safety and
1234 general welfare of the citizens of Kittery through monitoring and
1235 enforcement of compliance with post-construction stormwater
1236 management plans in order to comply with minimum control measures
1237 requirements of the federal Clean Water Act, of federal regulations and of
1238 Maine's Small Municipal Separate Storm Sewer Systems General Permit.
1239 This section seeks to ensure that post-construction stormwater
1240 management plan are followed and stormwater management facilities,
1241 including but not limited to any parking areas, catch basins, drainage
1242 swales, detention basins and ponds, pipes and related structures that are
1243 part of the storm drainage system, are properly maintained and pose no
1244 threat to public safety.
- 1245 (2). Authority. The Maine Department of Environmental Protection, through
1246 its dissemination of the General Permit for the Discharge of Stormwater
1247 from Small Municipal Separate Storm Sewer Systems, has listed the Town
1248 of Kittery, Maine, as having a regulated small municipal separate storm
1249 sewer system ("small MS4"); under this general permit, listing as a
1250 regulated small MS4 requires enactment of this section as part of the
1251 Town's stormwater management program in order to satisfy the minimum
1252 control measures required by Part IV D 5 ("Post-construction stormwater
1253 management in new development and redevelopment").
- 1254 (3). Applicability.
- 1255 a. In general. This section applies to all new development or
1256 redevelopment (any construction activity on premises already
1257 improved that alters stormwater drainage patterns) including one
1258 acre or more of disturbed area, or activity with less than one acre
1259 of total land area that is part of a subdivision, if the subdivision

1260 will ultimately disturb an area equal to or greater than one acre.
1261 [Amended 7-25-2016 by Ord. No. 16-06]

1262 b. Exception. This section does not apply to new development or
1263 redevelopment on a lot, tract or parcel where that lot, tract or
1264 parcel is part of a subdivision that has received approval of its
1265 post-construction stormwater management plan and stormwater
1266 management facilities under the Town's subdivision or other
1267 zoning, planning or other land use ordinances; said lot, tract or
1268 parcel will not require additional review under this section but
1269 must comply with the post-construction stormwater management
1270 plan for that approved subdivision.

1271 c. Post-construction stormwater management plan approval.

1272 i. General requirement. Notwithstanding any ordinance
1273 provision to the contrary, and except as provided in
1274 § 16.7.11.D.(3).b, Exception, no applicant for a building
1275 permit, Subdivision approval, Site Plan approval or other
1276 zoning, planning or other land use approval for new
1277 development or redevelopment to which this section is
1278 applicable will receive such permit or approval for that new
1279 development or redevelopment unless the applicant also
1280 receives approval for its post-construction stormwater
1281 management plan and stormwater management facilities.

1282 ii. Notice of BMP discharge to Town's MS4. At the time of
1283 application for a building permit, subdivision approval, Site
1284 Plan approval or other zoning, planning or other land use
1285 approval for new development or redevelopment to which
1286 this section is applicable, the applicant must notify the
1287 Town Planner if its post-construction stormwater
1288 management plan includes any BMP(s) that will discharge
1289 to the Town's MS4 and must include in this notification a
1290 listing of which BMP(s) will so discharge.

1291 iii. Engineering and administrative fees. At the time of
1292 application, the applicant must pay an amount to the Town
1293 estimated to be sufficient to pay the engineering review
1294 costs and administrative costs incurred by the Town in
1295 review of the post-construction stormwater management
1296 plan. The Town will deduct from this amount the
1297 engineering and administrative costs incurred by the Town
1298 based upon the hours of engineering review time and
1299 prevailing hourly rate for reimbursement of the Town's
1300 administrative costs. Any remaining engineering and
1301 administrative review costs owed by the applicant must be
1302 paid in full by the applicant prior to the issuance of any
1303 temporary or permanent certificate of occupancy, and any
1304 unused balance remaining at that time will be refunded to

1305 the applicant.

1306 d. Post-construction stormwater management plan compliance.

1307 i. General requirements. Any person owning, operating,
1308 leasing or having control over stormwater management
1309 facilities required by a post-construction stormwater
1310 management plan approved under the Town's Subdivision,
1311 Site Plan or other zoning, planning or other land use
1312 ordinances must demonstrate compliance with that plan as
1313 follows:

1314 a. That person or a qualified post-construction
1315 stormwater inspector hired by that person must, at
1316 least annually, inspect the stormwater management
1317 facilities in accordance with all municipal and state
1318 inspection, cleaning and maintenance requirements
1319 of the approved post-construction stormwater
1320 management plan;

1321 b. If the stormwater management facilities require
1322 maintenance to function as intended by the
1323 approved post-construction stormwater
1324 management plan, that person must take corrective
1325 action(s) to address the deficiency or deficiencies;
1326 and

1327 c. That person or a qualified post-construction
1328 stormwater inspector hired by that person must, on
1329 or by July 1 of each year, provide a completed and
1330 signed certification to the Code Enforcement
1331 Officer in a form provided by the Town, certifying
1332 that the person has inspected the stormwater
1333 management facilities and that they are adequately
1334 maintained and functioning as intended by the
1335 approved post-construction stormwater
1336 management plan or that they require maintenance
1337 or repair, describing any required maintenance and
1338 any deficiencies found during inspection of the
1339 stormwater management facilities, and if the
1340 stormwater management facilities require
1341 maintenance or repair of deficiencies in order to
1342 function as intended by the approved post-
1343 construction stormwater management plan, the
1344 person must provide a record of the required
1345 maintenance or deficiency and corrective action(s)
1346 taken.

1347 ii. Right of entry. In order to determine compliance with this
1348 section and with the post-construction stormwater
1349 management plan, the Code Enforcement Officer may enter

1350 upon property at reasonable hours with the consent of the
1351 owner, occupant or agent to inspect the stormwater
1352 management facilities.

- 1353 e. Annual report. Beginning July 1, 2009, and each year thereafter,
1354 the Town must include the following in its annual report to the
1355 Maine Department of Environmental Protection:
- 1356 i. Cumulative number of sites that have stormwater
1357 management facilities discharging into its MS4;
 - 1358 ii. Summary of the number of sites that have stormwater
1359 management facilities discharging into its MS4 that were
1360 reported to the Town;
 - 1361 iii. Number of sites with documented functioning stormwater
1362 management facilities; and
 - 1363 iv. Number of sites that require routine maintenance in order
1364 to continue the original line and grade, the hydraulic
1365 capacity, and the original purpose of improvements; or
1366 remedial action to ensure that stormwater management
1367 facilities are functioning as intended.
- 1368 f. Enforcement. It is the duty of the Code Enforcement Officer to
1369 enforce the provisions of this section and take appropriate actions
1370 to seek the correction of violations. Enforcement of the post-
1371 construction stormwater management regulations are conducted in
1372 accordance with Chapter 16.7.11.(D).

1373 (4). Storm drainage construction standards.

- 1374 a. Materials:
- 1375 i. Reinforced concrete pipe must meet the requirements of
1376 ASTM Designation C-76 (AASHTO M170). Pipe classes
1377 are required to meet the soil and traffic loads with a safety
1378 factor of 1.2 on the 0.01 inch crack strength with Class B
1379 bedding. Joints are to be of the rubber gasket type, meeting
1380 ASTM Designation C443-70, or of an approved performed
1381 plastic jointing material such as "Ramnek." Perforated
1382 concrete pipe must conform to the requirements of
1383 AASHTO M175 for the appropriate diameters.
 - 1384 ii. Corrugated metal pipe must be bituminous-coated, meeting
1385 the requirements of AASHTO Designation M190 Type C
1386 for an iron or steel pipe or AASHTO Designation M196 for
1387 aluminum alloy pipe for sectional dimensions and type of
1388 bituminous coating. Pipe gauge is to be as required to meet
1389 the soil and traffic loads with a deflection of not more than
1390 5%.
 - 1391 iii. SDR-35 plastic pipe installed in conformance with
1392 AASHTO bedding requirements.
 - 1393 iv. Aluminized steel (AASHTO M274) and aluminum pipe

1394 (AASHTO M46).

- 1395 v. Catch basins are to be precast concrete truncated cone
1396 section construction, meeting the requirements of ASTM
1397 Designation C478, or precast concrete manhole block
1398 construction, meeting the requirements of ASTM C139,
1399 radial type. Castings are to be square cast iron sized for the
1400 particular inlet condition with the gratings perpendicular to
1401 the curbline. Bases may be cast-in-place 3,000 psi twenty-
1402 eight-day strength concrete or may be of precast concrete,
1403 placed on a compacted foundation of uniform density.
1404 Metal frames and traps must be set in a full mortar bed with
1405 tops and are to conform to the requirements of AASHTO
1406 M103 for carbon steel casings, AASHTO M105, Class 30
1407 for gray iron castings or AASHTO M183 (ASTM A283,
1408 Grade B or better) for structure steel.
- 1409 b. Drain inlet alignment is to be straight in both vertical and
1410 horizontal alignment unless specific approval for curvilinear drain
1411 is obtained in writing from the Commissioner of Public Works.
- 1412 c. Manholes are to be provided at all changes in vertical or horizontal
1413 alignment and at all junctions. On straight runs, manholes are to be
1414 placed at a maximum of three-hundred-foot intervals.
- 1415 d. Upon completion, each catch basin or manhole must be cleared of
1416 all accumulation of silt, debris or other foreign matter and kept
1417 clean until final acceptance.

1418 E. Vehicular Traffic

- 1419 (1). Adequacy of Road System. Vehicular access to the site shall be on roads
1420 which have adequate capacity to accommodate the additional traffic
1421 generated by the development. Intersections on arterial streets within a
1422 half (0.5) mile of any entrance road which are functioning at a Level of
1423 Service of D or better prior to the development shall function at a
1424 minimum at Level of Service D after development. If any such
1425 intersection is functioning at a Level of Service E or lower prior to the
1426 development, the project shall not reduce the current level of service. This
1427 requirement may be waived by the Planning Board if the project is located
1428 within a growth area designated in the Town's adopted Comprehensive
1429 Plan and the Board determines that the project will not have an
1430 unnecessary adverse impact on traffic flow or safety.
- 1431 a. A development not meeting this requirement may be approved if
1432 the applicant demonstrates that:
- 1433 i. A public agency has committed funds to construct the
1434 improvements necessary to bring the level of access to this
1435 standard, or
- 1436 ii. The applicant will assume financial responsibility for the
1437 improvements necessary to bring the level of service to this

1438 standard and will assure the completion of the
1439 improvements with a financial guarantee acceptable to the
1440 municipality.

1441 (2). Traffic Impact Study. When required by the Planning Board or Director
1442 of Planning and Development, a Traffic Impact Study will include the
1443 following elements related to the project and surrounding street network.

- 1444 a. An executive summary outlining the study findings and
1445 recommendations.
- 1446 b. A physical description of the project site and study area
1447 encompassed by the report with a diagram of the site and its
1448 relationship to existing and proposed development sites within the
1449 study area.
- 1450 c. A complete description of the proposed uses for the project site (in
1451 cases where specific uses have not been identified, the highest
1452 traffic generators within the category best fitting the proposed
1453 development must be used to estimate traffic generators).
- 1454 d. Existing land uses and zone(s) in the vicinity of the site must be
1455 described. Any proposals for the development of vacant parcels or
1456 redevelopment of parcels within the study area of which the
1457 municipality makes the applicant aware, must be included in the
1458 description.
- 1459 e. Street geometry and existing traffic control devices on all major
1460 streets and intersections affected by the anticipated traffic
1461 generated.
- 1462 f. Trip generation must be calculated for the proposed project and
1463 other proposed new projects and redevelopment projects within the
1464 study area using the most recent data available from the Institute of
1465 Transportation Engineers' (ITE) Trip Generation Guide, and/or
1466 actual field data collected from a comparable trip generator (i.e.,
1467 comparable in size, location and setting). This data will be
1468 presented in a summary table such that assumptions on trip
1469 generation and rates arrived at by the engineer are fully
1470 understandable to the Planning Board.
- 1471 g. The anticipated trip distribution of vehicles entering and exiting
1472 the proposed site during the appropriate peak hour(s) must be
1473 described and diagrammed.
- 1474 h. Trip assignment, the anticipated utilization of study area streets by
1475 traffic generated by the proposed project, must be described and
1476 diagrammed.
- 1477 i. Existing traffic conditions in the study area will be identified and
1478 analyzed based upon actual field counts and/or recent available
1479 machine counts.
- 1480 j. Existing traffic conditions in the study area will be described and
1481 diagrammed, specifically AADT, appropriate peak design hour(s),

- 1482 traffic volumes, street and intersection capacities, and levels of
1483 service.
- 1484 k. Existing safety conditions must be evaluated based upon the traffic
1485 accident data available for the most current three years and
1486 described including link and node critical rate factors (CRF).
- 1487 l. Future traffic conditions on the street system will be estimated
1488 based on existing volumes, projected traffic growth in the general
1489 study area, projected traffic from approved development, and
1490 traffic generated by the proposed project, specifically AADT
1491 traffic, appropriate peak hour(s) traffic volumes, street and
1492 intersection capacity, street and intersection levels of service will
1493 be analyzed. When other projects are being proposed within the
1494 impact area of the project, the Planning Board may require these
1495 projects to be incorporated into the analysis.
- 1496 m. When the analysis of the proposed project's impact on traffic
1497 indicates unsatisfactory CRF, levels of service or operating
1498 capacity on study area streets and intersections, a description of
1499 proposed improvements to remedy identified deficiencies must be
1500 included.
- 1501 n. The base data collected and analyzed during the course of the
1502 traffic impact study.
- 1503 o. If a development that requires a traffic impact study is within 500
1504 feet of York or Eliot, Maine, or if the study identifies impacts on
1505 segments of Route 1 or Route 236 or on their intersections located
1506 in York or Eliot, Maine, the applicant must provide evidence that a
1507 copy of the impact study has been given to the impacted
1508 municipality's chief administrative officer;
- 1509 (3). Access to the Site. Vehicular access to and from the development shall be
1510 safe and convenient.
- 1511 a. Any driveway or proposed street shall be designed so as to provide
1512 the minimum sight distance according to the Maine Department of
1513 Transportation standards.
- 1514 b. Points of access and egress shall be located to avoid hazardous
1515 conflicts with existing turning movements and traffic flows.
- 1516 c. The grade of any proposed drive shall be not more than $\pm 3\%$ for a
1517 minimum of fifty (50) feet, from the intersection.
- 1518 d. The intersection of any access/egress drive or proposed street shall
1519 function: (a) at a Level of Service of D following development if
1520 the project will generate one thousand (1,000) or more vehicle trips
1521 per twenty-four (24) hour period.
- 1522 e. Where a lot has frontage on two (2) or more streets, the primary
1523 access to and egress from the lot shall be provided from the street
1524 where there is less potential for traffic congestion and for traffic
1525 and pedestrians hazards. Access from other streets may be allowed

- 1526 if it is safe and does not promote shortcutting through the site.
- 1527 f. Where it is necessary to safeguard against hazards to traffic and
- 1528 pedestrians and/or to avoid traffic congestion, the applicant shall
- 1529 be responsible for providing turning lanes, traffic directional
- 1530 islands, and traffic controls within public streets.
- 1531 g. Accessways shall be designed and have sufficient capacity to avoid
- 1532 queuing of entering vehicles on any public street.
- 1533 h. The following criteria shall be used to limit the number of
- 1534 driveways serving a proposed project:
- 1535 i. No use which generates less than one hundred (100)
- 1536 vehicle trips per day shall have more than one (1) two-way
- 1537 driveway onto a single roadway. Such driveway shall be no
- 1538 greater than forty (40) feet wide.
- 1539 ii. No use which generates one hundred (100) or more vehicle
- 1540 trips per day shall have more than two (2) points of entry
- 1541 from and two (2) points of egress to a single roadway. The
- 1542 combined width of all accessways shall not exceed sixty
- 1543 (60) feet.
- 1544 iii. The Planning Board or Technical Review Committee may
- 1545 limit a development to one (1) point of ingress/egress onto
- 1546 US Route 1, Route 236 and US Route 1 Bypass..
- 1547 (4). Accessway Location and Spacing. Accessways shall meet the following
- 1548 standards:
- 1549 a. Private entrances/exits shall be located at least fifty (50) feet from
- 1550 the closest unsignalized intersection and one hundred fifty (150)
- 1551 feet from the closest signalized intersection, as measured from the
- 1552 point of tangency for the corner to the point of tangency for the
- 1553 accessway. This requirement may be reduced if the shape of the
- 1554 site does not allow conformance with this standard.
- 1555 b. Private accessways in or out of a development shall be separated
- 1556 by a minimum of seventy-five (75) feet where possible.
- 1557 c. Accessways shall be aligned with accessways on the opposite side
- 1558 of a public street to the greatest extent possible.
- 1559 (5). Internal Vehicular Circulation. The layout of the site shall provide for the
- 1560 safe movement of passenger, service, and emergency vehicles through the
- 1561 site.
- 1562 a. Nonresidential projects that will be served by delivery vehicles
- 1563 shall provide a clear route for such vehicles with appropriate
- 1564 geometric design to allow turning and backing for a minimum of
- 1565 SU-30 vehicles.
- 1566 i. If the project is to be served by “tractor-trailer” delivery
- 1567 vehicles, a clear route for such vehicles with appropriate
- 1568 geometric design shall allow for turning and backing for a
- 1569 minimum of WB-50 vehicles.

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- b. Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
 - c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
 - d. All roadways shall be designed as follows:
 - i. To harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion,
 - ii. By fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction,
 - iii. The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.
 - e. Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

1590 F. Parking and Loading

1591 (1). General standards.

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- a. All development, special exceptions and changes in use must comply with the performance standards herein and, where applicable, those contained in § 16.5.27 of this chapter. The Planning Board may impose additional reasonable requirements, which may include off-site improvements, based on the following considerations:
 - i. Sight distances along public rights-of-way;
 - ii. The existence and impact upon adjacent access points and intersections;
 - iii. Turning movements of vehicles entering and leaving the public streets;
 - iv. Snow removal; and
 - v. General condition and capacity of public streets serving the facility.
 - b. Such requirements are intended to maintain traffic safety and an acceptable level of service throughout the impact area of the facility.
 - c. In front of areas zoned and designed for commercial use, or where a change of zoning to one which permits commercial use is contemplated, the street right-of-way and/or pavement width must be increased by such amount on each side as may be deemed

1613 necessary to assure the free flow of through traffic without
 1614 interference by parked or parking vehicles, and to provide adequate
 1615 and safe parking space for such commercial or business district.

1616 d. The Town reserves the right to designate in conjunction with the
 1617 Maine State Department of Transportation all ingress and egress
 1618 points to the public highway and to select areas for the grouping
 1619 and placement of signs and traffic directions.

1620 e. All traffic flow in parking areas is to be clearly marked with signs
 1621 and/or surface directions at all times.

1622 f. Off-street parking must be constructed in accordance with Table 2
 1623 of this chapter, set out at the end of § 16.7.11.F, Parking Loading
 1624 and Traffic.

1625 (2). Corner clearances.

1626 For purposes of traffic safety in all zoning districts, no building or
 1627 structure other than public utility structures and traffic control devices may
 1628 be erected, and no vegetation other than shade trees may be maintained
 1629 above a height of two feet above the plane through the curb grades of
 1630 intersection streets within a triangle, two sides of which are the edges of
 1631 the traveled public ways for 20 feet measured from their point of
 1632 intersection or, in the case of rounded street corners, the point of
 1633 intersection of their tangents. The Town is not responsible for violations
 1634 which lead to accidents. The Town will direct, however, a continued
 1635 program designed to identify intersections having traffic safety problems.

1636 (3). Off-street loading standards.

1637 a. In those districts where off-street loading is required, the following
 1638 minimum off-street loading bays or loading berths must be
 1639 provided and maintained in the case of new construction,
 1640 alterations and changes of use:

- 1641 i. Office buildings, hospitals, long-term nursing care
 1642 facilities, convalescent care facilities, elder-care facilities,
 1643 hotels and motels with a gross floor area of more than
 1644 100,000 square feet: one bay.
- 1645 ii. Retail, wholesale, warehouse and industrial operations with
 1646 a gross floor area of more than 10,000 square feet:

10,001 to 40,000 square feet	1 bay
40,001 to 100,000 square feet	2 bays
100,001 to 160,000 square feet	3 bays
160,001 to 240,000 square feet	4 bays
240,001 to 320,000 square feet	5 bays
320,001 to 400,000 square feet	6 bays
Each 90,000 square feet over 400,000	1 additional bay

1647 b. Each loading bay is to have minimum dimensions of 70 feet by 14
 1648 feet and may be located either within a building or outside and

1649 adjoining an opening in the building. Every part of such loading
 1650 bay is to be located completely off the street. In case of trucks,
 1651 trailers or other motor vehicles larger than the dimensions of the
 1652 minimum loading bay habitually serve the building in question, or
 1653 so that said equipment can be kept on site while awaiting loading
 1654 or unloading, additional space is to be provided, so that such
 1655 vehicle parks or stands completely off the street.

1656 c. The provisions of this section for off-street loading do not prohibit
 1657 incidental curbside business deliveries, dispatches or services,
 1658 provided that they are in compliance with all applicable state and
 1659 local traffic regulations.

1660 d. The Board of Appeals has full authority to waive the requirements
 1661 of this section if it is shown that appropriate parking and loading
 1662 spaces will be maintained sufficient for intended use.

1663 (4). Off-street parking standards.

1664 a. Off-street parking, in addition to being a permitted use, is
 1665 considered as an accessory use when required or provided to serve
 1666 conforming uses located in any district.

1667 b. The following minimum off-street parking and loading
 1668 requirements must be provided and maintained in case of new
 1669 construction, alterations and changes of use. Such parking may be
 1670 provided in the open air in design-dependent spaces dimensioned
 1671 as may be required to suit the particular use as indicated in Table 2
 1672 of this chapter, set out at the end of § 16.7.11.F, Parking Loading
 1673 and Traffic, or in garages.

1674 c. All spaces must be accessible from lanes of adequate size and
 1675 location as per Table 2 of this chapter, set out at the end of §
 1676 16.7.11.F, Parking Loading and Traffic. In cases not specifically
 1677 covered, the Town Board or officer with jurisdiction to approve the
 1678 application is authorized to determine the parking requirements
 1679 and projected development use intensity. Existing parking
 1680 standards are to be used as a guide where applicable to ensure that
 1681 a sufficient number of parking spaces are provided to
 1682 accommodate the number and type of vehicles attracted to the
 1683 development during peak parking demand times.

1684 d. When determination of the number of parking spaces required
 1685 results in a requirement of a fractional space, any fraction of 1/2 or
 1686 less may be disregarded, while a fraction in excess of 1/2 is
 1687 counted as one parking space. [Amended 9-26-2011 by Ord. No.
 1688 11-15]

1689

Use	Parking Spaces Required
Automobile, truck and tractor repair and filling station	<ul style="list-style-type: none"> ▪ 1 parking space for each regular employee plus 1 space for each 200 square feet of

Use	Parking Spaces Required
	floor area used for service work
Dwellings	<ul style="list-style-type: none"> ▪ 2 vehicle spaces per each dwelling unit
Age-Restricted Housing	<ul style="list-style-type: none"> ▪ 1.5 parking spaces for each dwelling unit with 2 or fewer bedrooms ▪ 2 parking spaces for each dwelling unit with more than 2 bedrooms
Residential Care facilities	<ul style="list-style-type: none"> ▪ 1 parking space per dwelling unit ▪ 0.65 parking spaces per residential care unit
Motels, hotels, tourist homes, rooming houses, or other rooming spaces associated with a permitted use	<ul style="list-style-type: none"> ▪ 1 parking space for each rental unit plus 1 space for each 100 square feet of meeting room
Schools	
Nursery school and day-care facilities	<ul style="list-style-type: none"> ▪ 1 space for every 100 square feet of gross floor area used as school area
Elementary and junior high schools	<ul style="list-style-type: none"> ▪ 1 parking space for each adult employee, plus 15 parking spaces for each 100 students or major fraction thereof of total enrollment
Senior high schools	<ul style="list-style-type: none"> ▪ 1 parking space for each adult employee, plus 20 parking spaces for each 100 students or major fraction thereof of total enrollment
Marinas and other water-oriented recreational facilities	
With launching facilities	<ul style="list-style-type: none"> ▪ 3 parking spaces for every 2 slips or moorings, arranged for trailers
Without launching facilities	<ul style="list-style-type: none"> ▪ 1 parking space for each slip or mooring
Hospitals	<ul style="list-style-type: none"> ▪ 1 parking space per each three beds
Long-term nursing care facilities and convalescent care facilities	<ul style="list-style-type: none"> ▪ 1 parking space for each 4 beds
Theaters, auditoria, churches and arenas	<ul style="list-style-type: none"> ▪ 1 parking space for each 4 seats or for each 100 square feet or major fraction thereof of assemblage space if no fixed seats
Mortuary chapels	<ul style="list-style-type: none"> ▪ 5 parking spaces for each chapel
Retail stores and financial institutions	<ul style="list-style-type: none"> ▪ 1 parking space for each 175 square feet of gross floor area
Bowling alley	<ul style="list-style-type: none"> ▪ 4 parking spaces for each bowling lane
Drive-in restaurants, snack bars and fast food outlets	<ul style="list-style-type: none"> ▪ Minimum 15 parking spaces, plus 1 space

Use	Parking Spaces Required
	for each three seats. Seating is calculated by dividing the total floor area with customer access by 15
Restaurant	<ul style="list-style-type: none"> ▪ 1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15
Offices, professional and public buildings	<ul style="list-style-type: none"> ▪ 2 parking spaces for each office unit plus 1 space for each 250 square feet of gross floor area
Convenience stores or neighborhood grocery facilities	<ul style="list-style-type: none"> ▪ 6 spaces in the rural residential zone; all other zones, 10 parking spaces
Mobile home	<ul style="list-style-type: none"> ▪ 2 vehicle spaces per each mobile home
Transportation terminals	<p>In addition to meeting all applicable standards as enumerated above, transportation terminals must meet the following:</p> <ul style="list-style-type: none"> ▪ 1 parking space for each employee; ▪ 1 parking space for each three seats of the terminal's major carrier vehicle; and ▪ 1 parking space for each rented vehicle to be based on site
Warehouse and storage	<ul style="list-style-type: none"> ▪ 1 parking space for each 500 square feet of gross floor area except that portion of such facility which is used for retail sales and display or office area, which adds additional parking in accordance with the standards for those uses
Industry, manufacturing and business	<ul style="list-style-type: none"> ▪ 1 parking space for each 500 square feet of floor area, or major fraction thereof, or 1.1 spaces per employee on the maximum shift, for that part of every business, manufacturing and industrial building not catering to retail trade
Bus parking	<ul style="list-style-type: none"> ▪ For each 25,000 square feet of gross floor area, retail business must provide one bus parking area. Said area(s) are to be 12 feet by 50 feet in dimension, marked on the parking lot surface and labeled as such. Bus parking must be located in the parking area as far from the store entrance(s) as possible

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- e. A parking area is allowed in the Resource Protection Overlay Zone only where no reasonable alternative route or location is available outside the Resource Protection Overlay Zone, in which case a

1693 permit or Site Plan or Subdivision plan approval is required by the
1694 Planning Board.

1695 f. A parking area must meet the wetland and water body setback
1696 requirements for structures for the district in which such areas are
1697 located, per Table 16.5.30, Minimum Setback from Wetlands and
1698 Water Bodies; except, in the Commercial Fisheries/Maritime Uses
1699 Overlay Zone, parking area must be set back at least 25 feet from
1700 the normal high-water line or the upland edge of a wetland. The
1701 setback requirement for a parking area serving public boat-
1702 launching facilities, in zones other than the Commercial, Business-
1703 Local, Residential-Urban Zones, and the Commercial
1704 Fisheries/Maritime Uses Overlay Zone, may be reduced to no less
1705 than 50 feet from the normal high-water line or upland edge of a
1706 wetland if the Planning Board finds no other reasonable alternative
1707 exists.

1708 g. Parking landscaping is required for parking areas containing 10 or
1709 more parking spaces and must have at least one tree per eight
1710 spaces. Such trees are to be located either within the lot or within
1711 five feet of it. Such trees are to be at least 1 1/2 inches in diameter,
1712 with no less than 25 square feet of unpaved soil or permeable
1713 surface area per tree. At least 10% of the interior of any parking
1714 area having 25 or more spaces is to be maintained with
1715 landscaping, including trees, in plots of at least five feet in width.

1716 h. Required off-street parking in all residential districts is to be
1717 located on the same lot as the principal building or use, except that
1718 where it cannot reasonably be provided on the same lot, the Board
1719 of Appeals may authorize residential off-street parking to be
1720 located on another lot within 300 feet of the residential uses
1721 served, as measured along lines of public access. Such parking
1722 areas must be held under the same ownership or lease as the
1723 residential uses served, and evidence of such control or lease is
1724 required. Leases obtained for this purpose must be reviewed by the
1725 Town Attorney at the developer's expense and include requirement
1726 for notice to the Town upon termination of lease. Approval for
1727 uses dependent on such lease is terminated upon termination of the
1728 lease.

1729 i. If parking spaces are provided for employees, customers or
1730 visitors, then accessible parking spaces must be included in each
1731 such parking area in conformance with the following table:

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2

Total Parking in Lot	Required Minimum Number of Accessible Spaces
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
1,001 and over	20 plus 1 for each 100 over 1,000

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- i. Each accessible parking space must contain a rectangular area at least 19 feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces are to be identified by a vertical sign displaying the international symbol of accessibility; pavement marking alone is not adequate to identify accessible parking spaces.
- ii. The total number of accessible parking spaces is to be distributed to serve the various accessible entrances as well as possible.
- iii. At least one accessible route is to connect from each accessible parking space to the accessible building entrance.
- j. Required off-street parking in all commercial, business and industrial zones must be located on the same lot with the principal building or use, or within 100 feet measured along lines of public access; except that, where off-street parking cannot be provided within these limits, the Board of Appeals may permit such off-street parking to be located a reasonable distance from the principal building or use, measured along lines of public access. Such parking areas must be held under the same ownership or lease, and evidence of such control or lease is required. Such lots must be located within business or industrial districts.
- k. The Planning Board or Board of Appeals may, in specific cases of hardship, reduce the requirements for off-street parking where it is clearly demonstrated that such reduction will not detract from neighborhood values, inconvenience the public or increase congestion in the streets.
- l. The Planning Board or Board of Appeals may approve the joint use of a parking facility by two or more principal buildings or uses

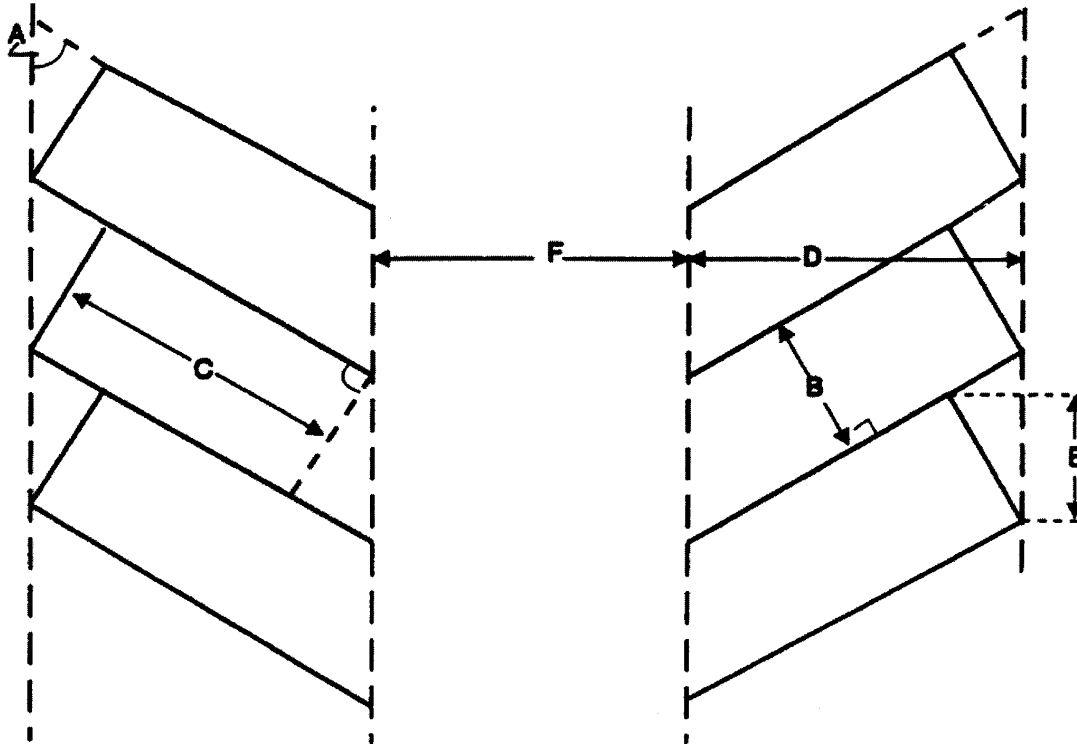
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where it is clearly demonstrated that said parking facility will substantially meet the intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees among such establishments.

- m. Compact-size parking spaces, unless restricted for use by and located adjacent to a dwelling unit, must be located in one (1) or more continuous areas and cannot be intermixed with spaces designed for full size vehicles.
- n. Compact-size parking spaces shall be clearly designated by pavement marking and by direction sign in conformance with Table 16.7.11.F.(B)

Table 16.7.11.F.(A) Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	A	B	C	D	E	F (Aisle Width)	
To curb	Angle (degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Parallel	0	9	22	9.0	22.0	13	19
Diagonal	30	9	19	17.3	18.0	11	20
Diagonal	45	9	19	19.8	12.9	13	21
Diagonal	60	9	19	21.0	10.5	18	23
Perpendicular	90	9	19	19.0	9.0	24	24

Table 16.7.11.F.(B) Compact Car Parking Space Design (minimum dimensions) (Dimensions in feet unless otherwise indicated.)							
	A	B	C	D	E	F (Aisle Width)	
To curb	Angle (degrees)	Stall Width	Stall Depth	Stall to Curb	Skew Width	One-Way Traffic	Two-Way Traffic
Parallel	0	8	16	8.0	16.0	12	19
Diagonal	45	8	16	17.0	5.7	13	20
Diagonal	60	8	16	17.8	6.9	18	20
Perpendicular	90	8	16	16.0	8.0	22	22



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G. Utilities

- (1). Approval.
 The size, type and location of public utilities, such as streetlights, electricity, telephone, cable television, natural gas lines, fire hydrants, water and sewer lines, etc., must be approved by the Board and installed in accordance with accepted engineering practice.
- (2). Underground installation.
 Utilities, where feasible, are to be installed underground. The Board must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved.

H. Exterior Lighting [Amended 3-25-2013 by Ord. No. 13-01]

- (1). General requirements.
 All new or revised exterior lighting, including the replacement or modification of existing lighting fixtures that result in a change in the lighting characteristics of the fixture, must be designed to provide only the minimum lighting necessary to ensure adequate vision, safety and comfort and may not cause glare beyond the limits of the property boundaries. New and replacement exterior lighting must conform to the current recommended practices of the Illuminating Engineering Society of North America (IESNA) unless more restrictive requirements are established by this article. Exterior lighting should also be consistent with the Design

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Handbook. When the lamps or bulbs of existing lighting installations are replaced, the replacements must conform to the requirements of IESNA and this article to the extent reasonable.

(2). Lighting fixtures.

All new or replacement exterior lighting fixtures and installations for multifamily housing and nonresidential uses other than outdoor sports and recreational facilities that are located outside the right-of-way of a public street must meet the following standards:

- a. Lighting fixtures mounted on masts or poles must be cutoff fixtures except for period or historical fixtures meeting the provisions of Subsection g of this section.
- b. Floodlighting or other directional lighting may be used for supplemental illumination of sales or storage areas, provided that the floodlights are installed no higher than 12 feet above ground level, are aimed to avoid the source of the light being seen from adjacent streets or properties, and utilize lamps with an initial lumen rating not exceeding 39,000 lumens. The Town has the right to inspect the completed lighting installation and, if floodlights are used, to require that the floodlights be re-aimed or fitted with face louvers if necessary to control direct brightness or glare.
- c. Except for ornamental lighting fixtures that utilize lamps with initial lumen ratings of 8,500 lumens or less, wall-mounted building lights must include full-face shielding consisting of either a solid panel or full-face louvers. Exposed lamps, reflectors or refractors may not be visible from any part of the fixture except the bottom light-emitting surface.
- d. Light fixtures located on or within canopies must be recessed into the ceiling of the canopy so that the lamp, reflector and lens are not visible from public streets. Fixtures must limit the direction of light as required for a cutoff fixture. Refractors or diffusing panels that are dropped below the canopy ceiling surface are not permitted.
- e. Light fixtures must be mounted at the lowest level that allows reasonable compliance with IESNA-recommended practices and the provisions of this article.
 - i. In approving new or modified lighting, the Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures located between the building and the front lot line of not more than 15 feet, unless the applicant demonstrates that a higher height is necessary to allow reasonable compliance with the lighting standards and the Planning Board finds that no practicable alternative for lighting of the site exists.
 - ii. The Planning Board may permit a maximum light fixture height for pole-mounted or mast-mounted light fixtures for other areas of the site of not more than 20 feet, unless the

1844 applicant demonstrates that a higher height is necessary to
1845 allow reasonable compliance with the lighting standards
1846 and the Planning Board finds that no practicable alternative
1847 for lighting of that area of the site exists.

1848 iii. The maximum light fixture height for building-mounted
1849 light fixtures is the equivalent of that allowed for a pole-
1850 mounted light illuminating the same area. See the Design
1851 Handbook for examples of acceptable lighting installations.

1852 f. Lamps in exterior light fixtures must be incandescent, metal halide,
1853 high-pressure sodium, compact fluorescent or light-emitting diode
1854 (LED). This provision does not prohibit the use of fluorescent
1855 lamps in internally lighted signs where such signs are otherwise
1856 permitted, provided such signs meet the requirements of this
1857 article. See the Design Handbook for appropriate examples of
1858 signs. With the use of LED lighting, the applicant is required to
1859 demonstrate that standards within this article are met and/or meet
1860 comparable accepted standards for LED exterior lighting. Required
1861 photometric test reports for LED lighting must be based on the
1862 IESNA LM-79-08 test procedure.

1863 g. Period or historical fixtures that do not meet the requirements of
1864 this section may be used as an alternative to cutoff fixtures,
1865 provided the maximum initial lumens generated by each fixture
1866 does not exceed 2,000. The maximum initial lumens for metal
1867 halide lamps may be increased to 8,500 if the lamp is internally
1868 recessed within the fixture or is shielded by internal louvers or
1869 refractors. The mounting height of period or historical fixtures may
1870 not exceed 12 feet above the adjacent ground. See the Design
1871 Handbook for examples.

1872 h. State and national flags that are flown on flagpoles may be
1873 illuminated by ground-mounted lighting that shines vertically as
1874 long as exposed lamps, reflectors or refractors are not visible from
1875 any public street.

1876 (3). Illumination standards for nonresidential uses and multifamily housing.
1877 New or revised exterior lighting serving nonresidential uses and
1878 multifamily housing must conform to the following standards:

1879 a. The illumination of access drives must provide for a uniformity
1880 ratio of not more than 4:1 (ratio of average to minimum
1881 luminance). The illumination of parking lots and outdoor sales and
1882 service areas must provide for a uniformity ratio of not more than
1883 20:1 (ratio of maximum to minimum luminance).

1884 b. The maximum illumination level within access drives, parking lots
1885 and sales and service areas may not exceed eight footcandles
1886 measured at the ground surface.

1887 c. The maximum illumination level at the property line of a
1888 nonresidential or multifamily housing use with abutting properties

- 1889 in a residential district may not exceed 0.1 footcandle.
- 1890 d. Areas directly under canopies must be illuminated so that the
- 1891 uniformity ratio (ratio of average to minimum luminance) will be
- 1892 not greater than 3:1 with an average illumination level at ground
- 1893 level of not more than 30 footcandles. Areas of access drives,
- 1894 parking lots, sales display areas, etc., which are adjacent to
- 1895 canopies must taper down in illumination level from the
- 1896 illumination level permitted under the canopy to the maximum
- 1897 illumination level permitted in Subsection **b** of this section for the
- 1898 access drive, parking lot or sales display area adjacent to the
- 1899 canopy within a horizontal distance equivalent to the height of the
- 1900 canopy.
- 1901 e. The maximum illumination levels and uniformity ratios for areas
- 1902 other than parking lots, access drives and canopies must be
- 1903 consistent with IESNA-recommended practices and be compatible
- 1904 with the overall lighting of the project and be specifically approved
- 1905 by the Planning Board.
- 1906 f. Illuminated signs must not produce glare and are otherwise
- 1907 governed by § 16.7.11.H of this chapter.
- 1908 (4). Illumination standards for outdoor sports and recreational facilities.
- 1909 New or revised exterior lighting serving sports fields and outdoor
- 1910 recreational facilities, including commercial recreational uses, must
- 1911 conform to the following standards:
- 1912 a. Such fields and facilities may be illuminated for use during
- 1913 daylight hours and until 10:00 p.m. unless the Planning Board
- 1914 specifically approves a later time based upon the applicant
- 1915 demonstrating that such later time is needed for the reasonable
- 1916 operation of the facility and will be compatible with and will not
- 1917 result in adverse impacts on neighboring properties. If a later hour
- 1918 is approved, the Planning Board may impose conditions on the
- 1919 approval, including provisions for the periodic review of the time
- 1920 limit.
- 1921 b. The illumination levels and mounting heights of the lighting
- 1922 fixtures may not exceed the minimum necessary to provide
- 1923 reasonable illumination for the proposed use consistent with
- 1924 IESNA-recommended practices.
- 1925 c. The maximum illumination level at the property line of the use
- 1926 with abutting properties in a residential district may not exceed 0.1
- 1927 footcandle.
- 1928 (5). Illumination standards for single- and two-family residential uses.
- 1929 New or revised exterior lighting serving single- and two-family residential
- 1930 uses must be located and designed so that it does not result in excessive
- 1931 illumination levels on adjoining properties such as to amount to a public or
- 1932 private nuisance and must be compatible with the zone requirements in the
- 1933 neighborhood in which it is located. A maximum illumination level at the

1934 property line of more than 0.1 footcandle is considered to be excessive if
1935 the lighting level is in dispute. In the case of a major home occupation, the
1936 application must include a lighting plan meeting the requirements of
1937 § 16.7.10.D(3)g.

1938 I. Prevention of erosion

1939 [Amended 9-26-2011 by Ord. No. 11-15; 10-26-2015 by Ord. No. 15-12]

1940 (1). No person may perform any act or use the land in a manner which would
1941 cause substantial or avoidable erosion, create a nuisance, or alter existing
1942 patterns of natural water flow in the Town. This does not affect any
1943 extractive operations complying with the standards of performance
1944 specified elsewhere in this title.

1945 a. When an excavation contractor, as defined in § 16.3, performs an
1946 activity that requires or results in more than one cubic yard of soil
1947 disturbance within the Shoreland or Resource Protection Overlay
1948 Zones, there must be a person responsible for management of
1949 erosion and sedimentation control practices on site, and that person
1950 must be certified in erosion control practices by the Maine
1951 Department of Environmental Protection. This person must be
1952 present at the site each day earthmoving activity occurs for a
1953 duration that is sufficient to ensure that proper erosion and
1954 sedimentation control practices are followed. This is required until
1955 erosion and sedimentation control measures have been installed,
1956 which will either stay in place permanently or stay in place until
1957 the area is sufficiently covered with vegetation necessary to
1958 prevent soil erosion. The name and certification number of the
1959 person who will oversee the activity causing or resulting in soil
1960 disturbance must be included on the permit application. Excavation
1961 contractors will have one year from the date of the adoption of this
1962 subsection to comply with certification requirements.

1963 b. The above requirement of § 16.7.11.I(1)a does not apply to a
1964 property owner performing work themselves, or a person or firm
1965 engaged in agriculture or timber harvesting when best management
1966 practices for erosion and sedimentation control are used.

1967 c. The above requirement of § 16.7.11.I(1)a only applies to regulated
1968 activities requiring local, state or federal permits and/or Planning
1969 Board approval.

1970 (2). All development must generally comply with the provisions of the
1971 "Environmental Quality Handbook, Erosion and Sediment Control,"
1972 published by the Maine Soil and Water Conservation Commission.

1973 a. The developer must:

1974 i. Select a site with the right soil properties, including natural
1975 drainage and topography, for the intended use;

1976 ii. Utilize for open space uses those areas with soil unsuitable
1977 for construction;

- 1978 iii. Preserve trees and other vegetation wherever possible;
- 1979 iv. Hold lot grading to a minimum by fitting the development
- 1980 to the natural contour of the land; avoid substantial areas of
- 1981 excessive grade;
- 1982 v. Spread jute matting, straw or other suitable material during
- 1983 construction in critical areas subject to erosion;
- 1984 vi. Construct sediment basins to trap sediment from runoff
- 1985 waters during development; expose as small an area of
- 1986 subsoil as possible at any one time during development and
- 1987 for as short a period as possible;
- 1988 vii. Provide for disposing of increased runoff caused by
- 1989 changed land formation, paving and construction, and for
- 1990 avoiding sedimentation of runoff channels on or off the
- 1991 site;
- 1992 viii. Plant permanent and, where applicable, indigenous,
- 1993 vegetation and install structures as soon as possible for the
- 1994 purpose of soil stabilization and revegetation;
- 1995 b. All logging or woodlot roads must be located, constructed and
- 1996 maintained in conformance with the erosion prevention provisions
- 1997 of "Permanent Logging Roads for Better Woodlot Management,"
- 1998 published by the United States Department of Agriculture.
- 1999 (3). Where the Board has required a stormwater management and erosion
- 2000 control plan, said plan must be endorsed by the York County Soil and
- 2001 Water Conservation District or found satisfactory by the Town's
- 2002 Engineering Peer Reviewer.
- 2003 (4). All activities which involve filling, grading, excavation or other similar
- 2004 activities that potentially may result in unstable soil conditions, and which
- 2005 require a permit, must be made known in a written soil erosion and
- 2006 sedimentation control plan in accordance with the "Maine Erosion and
- 2007 Sediment Control Practices Field Guide for Contractors," 2015, and as
- 2008 amended. The plan must be submitted to the permitting authority for
- 2009 approval and must include, where applicable, provisions for:
- 2010 a. Mulching and revegetation of disturbed soil;
- 2011 b. Temporary runoff control features, such as straw bales, silt
- 2012 fencing, filter socks or diversion ditches;
- 2013 c. Permanent stabilization structures, such as retaining walls or
- 2014 riprap.
- 2015 (5). To create the least potential for erosion, development must be designed to
- 2016 fit with the topography and soil of the site. Areas of steep slopes where
- 2017 high cuts and fills may be required are to be avoided wherever possible,
- 2018 and natural contours must be followed as closely as possible.
- 2019 (6). Erosion and sedimentation control measures apply to all aspects of the
- 2020 proposed project involving land disturbance and must be in operation
- 2021 during all stages of the activity. The amount of exposed soil at every phase

- 2022 of construction must be minimized to reduce the potential for erosion.
- 2023 (7). Any exposed ground area must be temporarily or permanently stabilized in
- 2024 accordance with the "Maine Erosion and Sediment Control Practices
- 2025 Field Guide for Contractors," 2015, and as amended. All erosion control
- 2026 measures that are no longer necessary as determined by the CEO or
- 2027 Shoreland Resource Officer must be removed at the owner's expense.
- 2028 (8). Natural and man-made drainageways and drainage outlets must be
- 2029 protected from erosion from water flowing through them. Drainageways
- 2030 must be designed and constructed in order to carry water from a twenty-
- 2031 five-year storm or greater and be stabilized with vegetation or lined with
- 2032 riprap.
- 2033 J. Water quality and wastewater pollution
- 2034 (1). No activity is allowed to deposit on or into the ground or discharge to any
- 2035 river, stream or brook, pond, or wetland any pollutant that, by itself or in
- 2036 combination with other activities or substances, will impair designated
- 2037 uses or the water classification of the water body.
- 2038 (2). Wastewater to be discharged into Kittery Sewer Department sewers,
- 2039 should they be available, must be in such quantities and/or of such quality
- 2040 as to be compatible with standards established by the municipality or the
- 2041 Sewer Department.
- 2042 (3). To meet those standards, the municipality or Sewer Department may
- 2043 require that such wastes undergo pretreatment or full treatment at the site
- 2044 in order to render them acceptable for the treatment processes.
- 2045 (4). The disposal of wastewater by means other than a public system must
- 2046 comply with the laws of the State of Maine and the Town concerning
- 2047 water pollution. Where a public sanitary sewer system is located within
- 2048 200 feet of the property line as measured along a public way, the Town
- 2049 requires individual entrance into said sewer.
- 2050 (5). Discharge of sanitary wastes to any water body is subject to the issuance
- 2051 of Maine State Department of Environmental Protection licenses, but no
- 2052 such off-site discharge will be allowed unless same is buried or not visible
- 2053 to a point below normal low water and is secured against damage and
- 2054 uncovering by the tides, erosion or other foreseeable action.
- 2055 (6). Flood prone areas must be identified on plan submissions, and based on
- 2056 the Federal Emergency Management Agency's Flood Boundary and
- 2057 Floodway Maps and Flood Insurance Rate Maps and information
- 2058 presented by the applicant.
- 2059 (7). If the proposed development, or any part of it, is in such an area, the
- 2060 applicant must determine the one-hundred-year flood elevation and flood
- 2061 hazard boundaries within the project area. The proposed plan must include
- 2062 a condition of plan approval requiring that principal structures in the
- 2063 development will be constructed with their lowest floor, including the
- 2064 basement, at least one foot above the one-hundred-year flood elevation.

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K. Air pollution

All air pollution control shall comply with the minimum state requirements, and detailed plans shall be submitted to the State of Maine Department of Environmental Protection for approval before a building/regulated activity permit is granted. In any case, no objectionable odor, dust or smoke shall be detectable beyond the property line.

L. Noise abatement

- (1). Excessive noise at unreasonable hours shall be controlled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.
- (2). The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this title shall be as established by the time period and type of land use district listed below. Sound pressure levels shall be measured at all major lot lines at a height of at least four feet above the ground surface. Sound from any source controlled by this title shall not exceed the following limits at the property line of the "receiver" premises.

Sound Pressure Level Limit Measured in dBs		
Districts	7:00 a.m. to 9:00 p.m.	9:00 p.m. to 7:00 a.m.
Industrial	65	60
Commercial and Business	60	50
Residential Districts, Kittery Foreside District, Badgers Island District, Rural Conservation and Resource Protection	55	45

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- a. Where the emitting and receiving premises are in different zones, the limits governing the stricter zone shall apply to any regulated noise entering that zone.
- b. The levels specified may be exceeded by 10 dB for a single period no longer than 15 minutes in any one day.
- (3). Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.4-1961, American Standard Specification for General Purpose Sound Level Meters). The instrument shall be set to the A-weighted response scale and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1.2-1962, American Standard Meter for the Physical Measurements of Sound.
- (4). No person shall engage in, cause or permit to be engaged in construction activities producing excessive noise on a site abutting any residential use between the hours of 9:00 p.m. on one day and 7:00 a.m. of the following day. Construction activities shall be subject to the maximum permissible sound level specified for commercial districts for the periods within which

- 2100 construction is to be completed pursuant to any applicable
2101 building/regulated activity permit.
- 2102 (5). The following uses and activities shall be exempt from the sound pressure
2103 level regulations:
- 2104 a. Home maintenance activities (i.e., mowing lawns, cutting one's
2105 own firewood, etc.) between the hours of 7:00 a.m. and 9:00 p.m.;
 - 2106 b. Timber harvesting (felling trees and removing logs from the
2107 woods);
 - 2108 c. Noise created by construction and maintenance activities between
2109 7:00 a.m. and 9:00 p.m.;
 - 2110 d. The noises of safety signals, warning devices and emergency
2111 pressure relief valves and any other public emergency activity; and
 - 2112 e. Traffic noise on existing public roads, railways or airports.
- 2113 (6). These noise regulations are enforceable by law enforcement officers and
2114 by the Code Enforcement Officer (who may measure noise levels, and
2115 who shall report documented violations to the police). For the purposes of
2116 enforcement, sounds exceeding the above limits shall be deemed to
2117 constitute "loud and unreasonable noise" under Title 17-A M.R.S. § 501-A
2118 ("disorderly conduct").

2119 M. Radiation

2120 No dangerous radiation shall be detectable at the property line, in
2121 accordance with the applicable state and federal laws. In the case of
2122 electromagnetic pulses emanating from electrical service components, the
2123 Planning Board or Director of Planning and Development shall require the
2124 developer to adopt a "prudent avoidance" approach, wherever possible.

2125 N.

2126 N. Utilization of the Site

- 2127 (1). The plan for the development shall reflect the natural capabilities of the
2128 site to support development. Buildings, lots, and support facilities shall be
2129 clustered in those portions of the site that have the most suitable
2130 conditions for development. Environmentally sensitive areas, including
2131 but not limited to, wetlands, steep slopes, floodplains, significant wildlife
2132 habitats, fisheries, scenic areas, habitat for rare and endangered plants and
2133 animals, unique natural communities and natural areas, and sand and
2134 gravel aquifers shall be maintained and preserved to the maximum extent.
2135 Natural drainage areas shall also be preserved to the maximum extent. The
2136 development shall include appropriate measures for protecting these
2137 resources, including but not limited to, modification of the proposed
2138 design of the site, timing of construction, and limiting the extent of
2139 excavation.

2140 O. Storage of Materials

- 2141 (1). Exposed nonresidential storage areas, exposed machinery, and areas used
2142 for the storage or collection of discarded automobiles, auto parts, metals or

2143 other articles of salvage or refuse shall have sufficient setbacks and
2144 screening (such as a stockade fence or a dense evergreen hedge) to provide
2145 a visual buffer sufficient to minimize their impact on abutting residential
2146 uses and users of public streets.

- 2147 (2). All dumpsters or similar large collection receptacles for trash or other
2148 wastes shall be located on level surfaces which are paved or graveled. The
2149 dumpster or receptacle shall be screened by fencing or landscaping.
2150 (3). Where a potential safety hazard to children is likely to arise, physical
2151 screening sufficient to deter small children from entering the premises
2152 shall be provided and maintained in good condition.

2153 P. Technical and Financial Capacity

2154 (1). Financial Capacity. The applicant shall have adequate financial resources
2155 to construct the proposed improvements and meet the criteria of the
2156 standards of these regulations. In making its determination the Planning
2157 Board shall consider all relevant evidence to the effect that the developer
2158 has the financial capacity to construct, operate, and maintain all aspects of
2159 the development.

2160 (2). Technical Capacity. The applicant shall retain qualified contractors and
2161 consultants to supervise, construct and inspect the required improvements
2162 in the proposed site plan.

2163 a. In determining the applicant's technical ability the Planning Board
2164 shall consider the applicant's previous experience, the experience
2165 and training of the applicant's consultants and contractors, and the
2166 existence of violations of previous approvals granted to the
2167 applicant.

2168 **16.7.12 Post-Approval**

2169 A. Approved plan expiration. [Amended 1-28-2015 by Ord. No. 15-01]

2170 (1). A Site Plan approval will expire if work has not commenced within one
2171 year from the date of Planning Board or Director of Planning and
2172 Development approval. Where work has commenced within one year of
2173 such approval, the approval will expire if work is not complete within two
2174 years of the original date of approval.

2175 (2). Prior to expiration, the approval authority may, on a case-by-case basis,
2176 grant extensions to an approved plan expiration date upon written request
2177 by the developer for an inclusive period from the original approval date,
2178 not to exceed three years.

2179 (3). When a plan's approval expires, the applicant may reapply subject to the
2180 Town Code current at the time of reapplication.

2181 B. Inspection of required improvements.

2182 [Amended 9-28-2015 by Ord. No. 15-08]

2183 (1). A preconstruction meeting is required for an approved Site Plan. Prior to
2184 the commencement of any work associated with development approved in

2185 accordance with this title, the developer or duly authorized representative
2186 must provide a schedule of expected construction activities by phase to the
2187 inspecting official [the Code Enforcement Officer (CEO) or their
2188 representative or, when applicable, the Town's Peer Review Engineer],
2189 and coordinate a preconstruction meeting. Attendance at said meeting
2190 must at a minimum include authorized representation from the Town, the
2191 developer and their general contractor. Meeting minutes must be prepared
2192 by the Town's representative and distributed to all attendees and the Town
2193 Planner.

2194 (2). The developer or general contractor shall coordinate inspections with the
2195 inspecting official and provide written notice at least seven days prior to
2196 commencing each major phase of construction as outlined in the
2197 construction schedule. When all phases of work are complete, the general
2198 contractor shall request a final inspection from the inspecting official, who
2199 shall prepare a punch list of any outstanding items to be completed, within
2200 seven days of the final inspection. Once all outstanding items have been
2201 completed, the developer or the general contractor shall coordinate a final
2202 walk-through where the inspecting official determines if the construction
2203 has been completed in accordance with the approved plans. The inspecting
2204 official shall provide, in writing, to the developer or the general contractor
2205 within seven days of the final walk-through what, if any, construction is
2206 not complete or confirm that the development is complete and has been
2207 constructed according to the approved plans.

2208 (3). If the inspecting official finds, upon inspection of the required
2209 improvements, that any of the required improvements have not been
2210 constructed in accordance with the approved plans and specifications, the
2211 inspecting official must report, in writing, to the Town Planner, the
2212 developer or duly authorized representative of the developer, and, when
2213 applicable, the CEO. The Town Planner shall inform the Planning Board
2214 of any issues identified by the inspections. The Town shall take any steps
2215 necessary to preserve the municipality's rights.

2216 (4). Where applicable and in advance of any construction, the developer must
2217 deposit sufficient funds for said inspections in an applicant's service
2218 account per Chapter 3.3. The amount is based on a scope of services and
2219 fee prepared by the Town's Peer Review Engineer after review of the
2220 developer's construction estimate prepared by a professional engineer or a
2221 qualified contractor.

2222 (5). Stormwater and erosion control inspection.

2223 a. During October to November of each year in which construction
2224 for grading, paving and landscaping occurs on a development site,
2225 the Town will, at the expense of the developer, cause the site to be
2226 inspected by a qualified individual. By December 1, the inspector
2227 must submit a site report to the Town Planner that describes the
2228 inspection findings and indicates whether stormwater and erosion
2229 control measures (both temporary and permanent) are in place and

- 2230 properly installed. The report must include a discussion and
2231 recommendation on any and all problem areas encountered.
- 2232 b. After major construction activities have been completed on a
2233 development site, the developer must, on or by July 1 of each year,
2234 provide a completed and signed certification to the Code
2235 Enforcement Officer per § 16.7.11.D, Post-construction
2236 stormwater management.
- 2237 c. Erosion control debris. The owner or occupant of any land in any
2238 zone must not allow erosion control materials, such as plastic
2239 erosion control fences and related stakes or other materials, to
2240 remain on the site but must remove the same within six months of
2241 the date such erosion control materials were installed, or the date
2242 when no longer required, whichever is later. When a violation is
2243 discovered, the Code Enforcement Officer will order compliance
2244 by written notice of violation to the owner of any land in any zone
2245 requesting removal of such violation within 30 days of the date of
2246 written notice. An extension of time to correct may be made by the
2247 Code Enforcement Officer for good and sufficient reason.

2248 C. Plan revisions after approval.

2249 No changes, erasures, modifications or revisions may be made to any
2250 Planning Board approved Final Plan, unless in accordance with the Planner's
2251 and CEO's powers and duties as found in § 16.2, or unless the plan has been
2252 resubmitted and the Planning Board specifically approves such
2253 modifications. In the event a Final Plan is recorded without complying with
2254 this requirement, the same is null and void, and the Planning Board must
2255 institute proceedings to have the plan stricken from Town records and the
2256 York County Registry of Deeds. [Amended 9-26-2011 by Ord. No. 11-15]

2257 (1). Field changes. [Amended 9-24-2012 by Ord. No. 12-11]

- 2258 a. If at any time before or during the construction of the required
2259 improvements it appears to be necessary or desirable to modify the
2260 required improvements, the Code Enforcement Officer and Town
2261 Planner are authorized to approve minor plan amendments due to
2262 unforeseen field circumstances, such as encountering hidden
2263 outcrops of bedrock, natural springs, etc. The Code Enforcement
2264 Officer and Town Planner must issue any approval under this
2265 subsection in writing and transmit a copy of the approval to the
2266 Planning Board. Revised plans must be filed with the Town and
2267 recorded, where appropriate. The developer must provide the
2268 revised plan to the Town Planner, and it shall be recorded in the
2269 York County Register of Deeds when applicable.

2270 (2). Modifications to approved plan.

- 2271 a. Minor modifications. Modifications to an approved plan that do
2272 not require review per § 16.7.2.A may be approved by the Code
2273 Enforcement Officer and Town Planner. Such approvals must be

2274 issued in writing to the developer with a copy to the Planning
2275 Board. The developer must provide the revised plan to the Town
2276 Planner, and it shall be recorded in the York County Register of
2277 Deeds, when applicable. [Amended 9-24-2012 by Ord. No. 12-11]

2278 b. Major modifications. Major modifications (e.g., relocations of
2279 principal structures, rights-of-way or property boundaries; changes
2280 of grade by more than 1%) require Planning Board or Director of
2281 Planning and Development approval.

2282 D. Maintenance of improvements.

2283 The developer, or owner, is required to maintain all improvements and
2284 provide for snow removal on streets and pedestrianways/sidewalks unless
2285 and until the improvement has been accepted by the Town Council.

2286 E. Acceptance of Streets and Ways

2287 (1). Conditions. A street or way constructed on private lands by the owner(s)
2288 thereof and not dedicated for public travel prior to the enactment of this
2289 title must be laid out and accepted as a public street or way by the Town
2290 Council only upon the following conditions:

2291 a. The owners must give the Town a deed to the property within the
2292 boundaries of the street at the time of acceptance by the Town.

2293 b. A plan of said street or way must be recorded in the York County
2294 Registry of Deeds at the time of its acceptance.

2295 c. A petition for laying out and acceptance of said street or way must
2296 be submitted to the Town Council upon a form prescribed by the
2297 Commissioner of Public Works. Said petition must be
2298 accompanied by a plan, profile and cross section of said street as
2299 follows:

2300 i. A plan drawn, when practical, to a scale of 40 feet to one
2301 inch and to be on one or more sheets of paper not
2302 exceeding 24 inches by 36 inches in size. Said plan must
2303 show the North point; the location and ownership of all
2304 adjoining lots of land; rights-of-way and easements;
2305 streetlights and electric lines; boundary monuments;
2306 waterways, topography and natural drainage courses with
2307 contour at not greater than two-foot intervals; all angles,
2308 bearings and radii necessary for the plotting of said street
2309 and lots and their reproduction on the ground; the distance
2310 to the nearest established street or way, together with the
2311 stations of their side lines;

2312 ii. A profile of said street or way drawn to a horizontal scale
2313 of 40 feet to one inch and a vertical scale of four feet to one
2314 inch. Said profile must show the profile of the side lines
2315 and center line of said street or way and the proposed
2316 grades thereof. Any buildings abutting the street or way

- 2317 must be shown on said profile;
- 2318 iii. A cross section of said street or way drawn to a horizontal
- 2319 scale of five feet to one inch and a vertical scale of one foot
- 2320 to one inch; and
- 2321 iv. The location and size of water and sewer mains and surface
- 2322 water drainage systems, as installed.
- 2323 (2). Such street or way must have been previously constructed in accordance
- 2324 with the standards and criteria established in § 16.5.27 of this chapter.
- 2325 (3). Acceptance of streets and ways required in public interest.
- 2326 a. Notwithstanding the provisions of any other section hereof, the
- 2327 Town may at any time lay out and accept any street or way in the
- 2328 Town as a public street or way of said Town whenever the general
- 2329 public interest so requires. The cost of said street or way may be
- 2330 borne by the Town.
- 2331 (4). Easements.
- 2332 a. The Board may require easements for sewerage, other utilities,
- 2333 drainage and stream protection. In general, easements may not be
- 2334 less than 20 feet in width. Wider easements may be required.
- 2335 (5). No street or way to be accepted until after report.
- 2336 a. No street or way may be laid out and accepted by the Town
- 2337 Council until the Planning Board and the Public Works
- 2338 Commissioner have made a careful investigation thereof and
- 2339 reported to the Town Council their recommendations in writing
- 2340 with respect thereto.
- 2341 b. Upon completion of construction of any street/road intended for
- 2342 proposal for acceptance as a Town way, a written certification that
- 2343 such way meets or exceeds the design and construction standards
- 2344 of this title, signed by a professional engineer registered by the
- 2345 State of Maine, prepared at the developer's expense, must be
- 2346 submitted to the Board. If underground utilities are laid in such
- 2347 way, the developer must also provide written certification from the
- 2348 servicing utility(ies), that such installation was in a manner
- 2349 acceptable to the utility. The Board is to review the proposal and
- 2350 forward a recommendation to the Town Council regarding
- 2351 acceptance.
- 2352 F. Recordkeeping in Shoreland and Resource Protection Overlay Zones.
- 2353 The Code Enforcement Officer is to keep a complete record of all essential
- 2354 transactions of development in the Shoreland and Resource Protection
- 2355 Overlay Zones, including applications submitted, permits granted or denied,
- 2356 variances granted or denied, revocation actions, revocation of permits,
- 2357 appeals, court actions, violations investigated, violations found, and fees
- 2358 collected. On a biennial basis, a summary of this record must be submitted
- 2359 to the Director of the Bureau of Land and Water Quality within the

2360 Department of Environmental Protection.

2361 G. Nonstormwater discharge.

2362 No person, except where exempted in § 16.5.19, may create, initiate,
2363 originate, or maintain a nonstormwater discharge to the storm drainage
2364 system. Such nonstormwater discharges are prohibited notwithstanding the
2365 fact that the municipality may have approved the connections, drains or
2366 conveyances by which a person discharges unallowable nonstormwater
2367 discharges to the storm drainage system. [Amended 5-22-2017 by Ord. No.
2368 17-06; 5-30-2018 by Ord. No. 04-18]

2369 H. Nuisances.

2370 Any violation of this title is deemed to be a nuisance.

2371

1 16.8 Subdivision Review

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32 16.8.1 General

33 The purpose of this chapter is to assure the comfort, convenience, safety, health, and
34 welfare of the people, to protect the environment and to promote the development of
35 an economically sound and stable community. To that end, the Planning Board will
36 evaluate proposed subdivisions using the following criteria. The subdivision
37 provisions set forth in these regulations are intended to protect the public health and
38 safety, promote the general welfare of the community, and conserve the environment
39 by assuring that nonresidential and multifamily construction is designed and
40 developed in a manner that assures that adequate provisions are made for traffic
41 safety and access; emergency access; water supply; sewage disposal; management of
42 storm water, erosion, and sedimentation; protection of groundwater; protection of the
43 environment, wildlife habitat, fisheries, and unique natural areas; protection of
44 historic and archaeological resources; minimizing the adverse impacts on adjacent
45 properties; and fitting the project harmoniously into the fabric of the community.

46 16.8.2 Authority and Statutory Review Criteria

- 47 A. These standards have been prepared in accordance with the provisions of 30-A
48 M.R.S.A. § 4401 et seq., and all amendments thereto.
- 49 B. When reviewing any application for a subdivision, the Planning Board shall find
50 that the criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as
51 all applicable provisions of Title 16, Land Use and Development Code have been
52 met, before granting approval.

53 16.8.3 Preapproval development prohibited

54 The applicant or applicant's authorized agent must obtain final Planning Board
55 approval before:

- 56 A. Any contract or offer for the conveyance of the proposed development (or portion
57 thereof) has been made;
- 58 B. Any subdivision into three or more lots has been recorded in the York County
59 Registry of Deeds;
- 60 C. A building/regulated activity permit for any structure within the development is
61 issued; or
- 62 D. Work on any improvements (including installation of roads or utilities or land
63 clearing) has begun.

64 16.8.4 Other Potential Reviews

- 65 A. Shoreland development review.
66 [Amended 7-25-2016 by Ord. No. 16-02]
- 67 (1). All development in the Shoreland, Resource Protection, and Commercial

68 Fisheries/Maritime Uses Overlay Zones involving the use, expansion,
69 change or replacement of an existing use or structure, or renewal of a
70 discontinued nonconforming use, must be reviewed and approved as
71 provided in § 16.4.30 and elsewhere in this title, and tracked as a
72 shoreland development for reporting purposes.

73 (2). All development in the Shoreland, Resource Protection, and Commercial
74 Fisheries/Maritime Uses Overlay Zones must be approved by the Planning
75 Board except for the following:

76 a. Proposed development of principal and accessory structures in
77 compliance with § 16.9.1.B.(1), when not subject to Planning
78 Board review as explicitly required elsewhere in this title. Such
79 proposed development must be reviewed and approved by the
80 Code Enforcement Officer (CEO) prior to issuing a building
81 permit. The total devegetated area of the lot (that portion within the
82 Shoreland Overlay Zone) must be calculated by the applicant and
83 verified by the CEO and recorded in the Town's property records.
84 Any development proposed in the Resource Protection and
85 Shoreland - Stream Protection Area Overlay Zones must be
86 approved by the Planning Board.

87 b. Piers, docks, wharves, bridges and other structures and uses
88 extending over or below the highest annual tide (HAT) elevation,
89 subject to review and approval by the Port Authority as outlined in
90 Chapter 16.9.1, Marine-related development.

91 c. Division of a conforming parcel that is not subject to subdivision
92 as defined in § 16.3.

93 d. Clearing of vegetation for activities other than timber harvesting.
94 These are subject to review and approval by the Shoreland
95 Resource Officer or Code Enforcement Officer.

96 (3). Establishment of new commercial or business entity in an existing facility,
97 where intensity of use is not significantly different.

98 16.8.5 Application and Review Fees

99 A. Review fee(s); reimbursements.

100 (1). All applications for plan approval for properties which come under this
101 title must be accompanied by a fee as determined by the Town Council.

102 (2). The applicant must reimburse the Town for all expenses incurred for
103 notifying abutters of the proposed plan and advertising of any public
104 hearing regarding a development.

105 B. Independent peer review.

106 [Amended 9-28-2015 by Ord. No. 15-08]

107 (1). The Planning Board or, after the Town Manager's approval, the Town
108 Planner and the Code Enforcement Officer, may require an independent
109 consultant or specialist engaged by the Town, at the applicant's expense,

- 110 to:
- 111 a. Determine compliance with all requirements of this title related to
- 112 public health, safety and welfare and the abatement of nuisances;
- 113 or
- 114 b. Assist with the technical review of applications submitted for new
- 115 or amended development.
- 116 (2). When peer review is required of the applicant, sufficient funds, based on a
- 117 written estimate by the required consultant, must be deposited in an
- 118 applicant's service account per Chapter 3.3, prior to commencing said
- 119 review and continuing with the review of the development plan
- 120 application.

121 16.8.6 Applicant attendance at review meeting(s)

122 The applicant or duly authorized representative must attend all Board meetings for

123 which the applicant's application has been placed on the agenda. Relief may be given

124 from this requirement by the Board Chairperson.

125 16.8.7 Waivers

126 [Amended 9-26-2011 by Ord. No. 11-14]

127 A. Waiver authorization.

128 Where the Planning Board finds, due to special circumstances of a particular plan,

129 certain required improvements do not promote the interest of public health, safety

130 and general welfare, or are inappropriate because of inadequacy or lack of

131 connecting facilities adjacent or in proximity to the proposed development, upon

132 written request, it may waive or modify such requirements, subject to appropriate

133 conditions as determined by the Planning Board.

134 B. Objectives secured.

135 In granting modifications or waivers from requirements in 16.5 General

136 Performance Standards or 16.8.10 Performance Standards and Approval Criteria,

137 below, the Planning Board must require such conditions as will, in its judgment,

138 secure substantially the objectives of the requirements so waived or modified.

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

144 16.8.8 Other Requirements

145 A. Burden of proof.

146 In all instances, the burden of proof is upon the applicant proposing the

147 development.

148 B. Comprehensive Plan.

149 Any proposed development or use must be consistent with the Town
150 Comprehensive Plan guidance adopted into the provisions of this title.

151 C. Site inspection.

152 (1). So the Planning Board may be fully informed about the site and in a
153 knowledgeable position to prescribe contour intervals to be employed on
154 topographic maps and grading plans for the development, the applicant
155 must arrange a joint inspection of the site with the Planning Board.

156 D. Safe use.

157 (1). The land/water area to be developed must be of such character that it can
158 be used without danger to health or peril from fire, flood, soil failure or
159 other hazard.

160 16.8.9 Review Process and Submission Requirements

161 A. Preapplication and Conference

162 (1). Process. The purpose of this meeting is to familiarize the applicant with
163 the review procedures and submission requirements, and approval criteria,
164 and to familiarize the Planner with the nature of the project.

165 a. This meeting is optional for Minor Subdivisions, but required for
166 Major Subdivisions.

167 a. Such review shall not cause the plan to be a pending application or
168 proceeding under 1M.R.S.A. §302. No decisions relative to the
169 plan may be made at this meeting.

170 b. To request a preapplication conference the applicant shall submit,
171 at a brief narrative describing the project, the location of the
172 project on a US Geologic Survey (USGS) topographic map, and a
173 copy of the Tax Map showing the development parcel.

174 B. Sketch Plan Review

175 (1). Review application form.

176 Any person requiring subdivision review must submit an application on
177 forms prescribed by the Planning Board, together with a development plan
178 and such submission contents as may be required in §16.8.9.B.3 and
179 §16.8.9.B.4. A complete application consists of all the required elements.
180 No more than one application/plan for a piece of property may be under
181 review before the Planning Board. No more than one approved final plan
182 for a piece of property may exist.

183 (2). Planning Board review and decision. The Planning Board must, within 30
184 days of sketch plan submission, act upon the sketch plan as follows:

185 a. The Planning Board must determine whether the sketch plan
186 proposal complies with the standards contained herein and must,
187 where it deems necessary, make specific suggestions in writing to
188 be incorporated by the applicant in subsequent submissions.

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- b. If the concept is approved, inform subdivision applicants in writing of the contour interval which will be required for the plans; classify the sketch plan into one of two categories defined herein, as a minor subdivision or a major subdivision, and authorize submission of the next application stage. The next application stage for a Minor Subdivision is a Final Plan application and the next application stage for a Major Subdivision is a Preliminary Plan application.
 - c. Any plan may be continued for a total period not to exceed 90 calendar days for good and sufficient reason (i.e., for revisions to be made, studies completed, or additional information submitted) and acceptable to both the applicant and the Planning Board. Such plan is automatically scheduled for the agenda of the next regular Planning Board meeting after the 90th day and action completed in accordance with the requirements and timing contained in this title, whether the applicant has accomplished the purposes for which continued or not.
 - d. The action to table by the Planning Board must be an action to temporarily suspend action and not to suppress a vote on the plan.

208 (3). Plan Requirements

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- a. The sketch plan must show in simple form on a topographic map the proposed site, subdivision, landscape architectural or architectural design concept, including streets, lots, structures and other features, in relation to existing conditions and municipal land use zone(s) regulations.
 - b. The sketch may be a freehand penciled sketch and must include the data listed below.

216 (4). Written Submission Requirements

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- a. General subdivision information must describe or outline the existing conditions of the site, including:
 - i. Covenants.
 - ii. High-intensity Class "A" soil survey and soil interpretation sheets.
 - iii. Available community facilities.
 - iv. Utilities.
 - b. Proposed development, such as:
 - i. Number of residential or business lots and/or dwelling units;
 - ii. Typical lot width and depth;
 - iii. Price range;
 - iv. Business areas;
 - v. Playgrounds, park areas and other public areas;
 - vi. Protective covenants;

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written request, the Planning Board, by formal action, waives or defers any requirement(s) for submission.

- i. Refer to current Planning Department application checklist for required number of paper copies.
- ii. One electronic submission in PDF format of the complete submission including all forms, plans and documentation.
- g. Submission contents complete. Upon determination by the Planner that the preliminary plan application is complete, the Planner must receive it, together with an application fee in the amount set by the Town Council. (See Appendix A, Fee Schedules.) No application may be deemed complete by the Planning Board until payment of the proper fees.
 - i. Once the Planning Board makes a finding that the preliminary plan is complete in regard to the submission requirements, it must determine if any studies/review or analysis is required in accordance with §16.8.9.C.7.1 and §16.8.9.C.8 and schedule the date for a public hearing.

(3). Public hearing

a. Scheduling

- i. In the case of an accepted subdivision plan application, such public hearing must be scheduled no later than 30 days from the date of Planning Board acceptance. With the concurrence of the applicant, this deadline may be modified.
- ii. For all other development plan applications (i.e., right-of-way plan application and development in the Shoreland Overlay Zone), at the Planning Board’s discretion, a public hearing may or may not be held.

b. Public notice.

- i. The Town Planner must place a public notice of such public hearing in a newspaper of general circulation in the Town at least seven and not more than 14 days prior to the scheduled hearing date; said notice must also be posted in at least three prominent public locations in Town at least 10 days prior to the hearing; and, in the case of a plan located within 500 feet of the Towns of Eliot or York, Maine, must be forwarded to the Southern Maine Regional Planning Commission and to the Town Clerk of Eliot or York, Maine, at least 10 days prior to the hearing.
- ii. A subdivision public notice must be published at least two times in a newspaper of general circulation in the Town. The date of the first notice must be at least seven days before the scheduled public hearing date.

c. Abutter notice.

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- i. The Town Planner must cause written notice of the public hearing to be sent by postage paid, first-class mail (cost to be paid by the applicant) to all owners of abutting property, as herein defined (within 150 feet of the property), and by regular mail to the Code Enforcement Officer, the Commissioner of Public Works, and where applicable, the Port Authority or Conservation Commission, at least seven days prior to the scheduled date. Failure of the parties to receive said notice does not invalidate any Board action.
 - ii. As used herein, relates solely to the notification of property owners who must be notified in writing when new development or redevelopment is proposed within 150 feet of their property boundary(ies). This notification must include intertidal land below the normal high-water line, but not that land beyond 100 rods (1,650 feet) distant from the normal high water line, or that land below the normal low-water line. Where question exists regarding ownership of intertidal lands, consult Figure 1 in 16.5.2, entitled, "Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters," attached to this chapter.
- d. Preliminary Plan Public Hearing Procedure
- i. The Planning Board may receive oral and documentary evidence, but must exclude evidence which it considers irrelevant, immaterial or unduly repetitious.
 - ii. The Chairperson of the Planning Board must determine the order of presentation by parties to the hearing. Each party must have the right to proceed without interruption, except that rulings by the Chairperson prevail. The applicant's presentation must proceed in accordance with the checklist provided.
 - iii. Any party may be represented by agent or attorney.
 - iv. The Town Planner, in consultation with the Code Enforcement Officer, Commissioner of Public Works, and such other Town officials as may have an interest in the application, must present into evidence a written summary of findings and recommendations.
 - v. The Planning Board may continue the hearing to another time and location, including the site of the development, as it deems necessary.
- (4). Planning Board Preliminary Plan review schedule.
- a. Within six months after approval/classification of a sketch plan by the Board, the applicant must submit an application for approval of a subdivision Preliminary Plan in the form prescribed herein.
 - b. Within 30 days after acceptance by the Planning Board of a

- 364 subdivision plan, the Planning Board must approve the plan,
365 approve the plan with conditions, disapprove the plan, postpone
366 action on the plan, or continue the review to another time/location.
- 367 c. Continuation or tabling of a review beyond the thirty-day period
368 for subdivision applications must be for good and sufficient reason
369 and be acceptable to both the applicant and the Planning Board.
 - 370 d. Any plan may be continued for a total period not to exceed 90
371 calendar days for good and sufficient reason (i.e., for revisions to
372 be made, studies completed or additional information submitted)
373 and acceptable to both the applicant and the Planning Board. Such
374 plan is automatically scheduled for the agenda of the next regular
375 Planning Board meeting after the 90th day and action completed in
376 accordance with the requirements and timing contained in this title,
377 whether the applicant has accomplished the purposes for which it
378 was continued or not.
 - 379 e. The action to table by the Planning Board must be an action to
380 temporarily suspend action and not to suppress a vote on the plan.
 - 381 f. Failure of the Planning Board to act within the thirty-day period
382 for an accepted subdivision application constitutes disapproval of
383 the plan, in which case the applicant may resubmit the plan without
384 payment of an additional application fee.
- 385 (5). Planning Board review and decision.
- 386 a. The Planning Board must approve, approve with conditions or
387 deny the preliminary plan.
 - 388 b. Approval of a preliminary plan does not constitute approval of a
389 final plan, but rather it is be deemed an expression of approval of
390 the design submitted on the preliminary plan as a guide to the
391 preparation of the final plan.
 - 392 c. Conditions of the Planning Board's approval may include, but are
393 not limited to, type of vegetation, increased setbacks and yard
394 space, specifications for sewage and water supply facilities, buffers
395 and screens, period of maintenance sureties, deed restrictions,
396 locations of piers, docks, parking or signs, type or style of
397 construction, and the amount of all guarantees which may be
398 required.
 - 399 d. Conditions required by the Planning Board at the preliminary plan
400 review phase must have been met before the final plan may be
401 given final approval unless specifically waived, upon written
402 request by the applicant, by formal Planning Board action, wherein
403 the character and extent of such waivers which may have been
404 requested are such that they may be waived without jeopardy to the
405 public health, safety and general welfare.
 - 406 e. The decision of the Planning Board plus any conditions imposed
407 must be noted on three copies of the preliminary plan. One copy

- 408 must be returned to the applicant, one retained by the Planning
409 Board and one forwarded to the municipal officials.
- 410 f. If the final plan is not submitted to the Planning Board within six
411 months after classification of the sketch plan, the Planning Board
412 may refuse to act on the subdivision preliminary plan and require
413 resubmission of the sketch plan. All such plans resubmitted must
414 comply with all normal application requirements.
- 415 (6). Plan Requirements, Preliminary Plan
- 416 a. Plan sheets drawn on a reproducible medium and must measure no
417 no larger than 24 inches by 36 inches;
- 418 b. With scale of the drawings no greater than one inch equals 30 feet
419 for developments less than 10 acres, and one inch equals 50 feet
420 for all others;
- 421 c. Code block in the lower right-hand corner. The block must
422 contain:
- 423 i. Name(s) and address(es) of the applicant and owner;
- 424 ii. Name of the project;
- 425 iii. Name and address of the preparer of the plan, with
426 professional seal, if applicable;
- 427 iv. Date of plan preparation/revision, and a unique ID number
428 for the plan and any revisions;
- 429 d. Standard boundary survey conducted by a surveyor licensed in the
430 State of Maine, in the manner recommended by the State Board of
431 Registration for Land Surveyors;
- 432 e. An arrow showing true North and the magnetic declination, a
433 graphic scale, and signature blocks for the owner(s) and members
434 of the Planning Board;
- 435 f. Locus map showing the property in relation to surrounding roads,
436 within 2,000 feet of any property line of the development;
- 437 g. Vicinity map and aerial photograph showing the property in
438 relation to surrounding properties, roads, geographic, natural
439 resource (wetland, etc.), historic sites, applicable comprehensive
440 plan features such as proposed park locations, land uses, zones,
441 and other features within 500 feet from any boundary of the
442 proposed development;
- 443 h. Surveyed acreage of the total parcel, of rights-of-way, wetlands,
444 and area to be disturbed and amount of street frontage;
- 445 i. Names and addresses of all owners of record of property abutting
446 the development, including those across a street;
- 447 j. Existing Development Area Conditions, including but not limited
448 to:
- 449 i. Location and description of all structures, including signs,
450 existing on the site, together with accesses located within

- 451 100 feet of the property line;
- 452 ii. Essential physical features such as watercourses, wetlands,
453 floodplains, wildlife habitat areas, forest cover, and
454 outcroppings;
- 455 k. Utilities existing, including power, water, sewer, holding tanks,
456 bridges, culverts and drainageways.
- 457 l. Proposed development area conditions including, but not limited
458 to:
- 459 i. Structures; their location and description including signs, to
460 be placed on the site, floor plan of exterior walls and
461 accesses located within 100 feet of the property line;
- 462 ii. Utilities proposed including power, water, sewer, holding
463 tanks, bridges, culverts and drainageways;
- 464 iii. Sewage facilities type and placement. Test pit locations, at
465 least two of which must meet the State of Maine Plumbing
466 Code requirements, must be shown;
- 467 iv. Domestic water source;
- 468 v. Parks, open space, or conservation easement locations;
- 469 vi. Lot lines, interior and exterior, right-of-way, and street
470 alignments;
- 471 vii. Road and other paved ways plans, profiles and typical
472 sections including all relevant data;
- 473 viii. Setbacks existing and proposed;
- 474 ix. Machinery permanently installed locations likely to cause
475 appreciable noise at the lot lines;
- 476 x. Raw, finished or waste materials to be stored outside the
477 buildings, and any stored material of a toxic or hazardous
478 nature;
- 479 xi. Topographic contours of existing contours and finished
480 grade elevations within the development;
- 481 xii. Pedestrian ways/sidewalks, curbs, driveways, fences,
482 retaining walls and other artificial features locations and
483 dimensions proposed;
- 484 xiii. Temporary marker locations adequate to enable the
485 Planning Board to readily locate and appraise the layout of
486 the development;
- 487 xiv. Land proposed to be dedicated to public use and the
488 conditions of such dedication;
- 489 xv. Natural features or site elements to be preserved.
- 490 (7). Written Submission Requirements, Preliminary Plan
- 491 a. Legal interest documents showing legal interest of the applicant in
492 the property to be developed. Such documents must contain the

- 493 description upon which the survey was based;
- 494 b. Property encumbrances currently affecting the property, as well as
- 495 any proposed encumbrances;
- 496 c. Water District approval letter, if public water is used, indicating
- 497 there is adequate supply and pressure to be provided to the
- 498 development;
- 499 d. Erosion and sedimentation control plan endorsed by the York
- 500 County Soil and Water Conservation District or the Town's
- 501 engineering consultant;
- 502 e. Stormwater management preliminary plan for stormwater and
- 503 other surface water drainage prepared by a registered professional
- 504 engineer including the general location of stormwater and other
- 505 surface water drainage areas;
- 506 f. Soil survey for York County covering the development. Where the
- 507 soil survey shows soils with severe restrictions for development, a
- 508 high intensity Class "A" soil survey must be provided;
- 509 g. Vehicular traffic report estimating the amount and type of
- 510 vehicular traffic that will be generated by the development on a
- 511 daily basis and for peak hours;
- 512 h. Traffic impact analysis in accordance with § 16.8.9.C.8.a for
- 513 developments involving 40 or more parking spaces or which are
- 514 projected to generate more than 400 vehicle trips per day;
- 515 i. Test pit(s) analysis prepared by a licensed site evaluator when
- 516 sewage disposal is to be accomplished by subsurface disposal, pits,
- 517 prepared by a licensed site evaluator;
- 518 j. Town Sewage Department or community system authority letter,
- 519 when sewage disposal is to be through a public or community
- 520 system, approving the connection and its location;
- 521 k. Letters of evaluation of the development by the Chief of Police,
- 522 Fire Chief, Commissioner of Public Works, Sewage Department,
- 523 Kittery Water District and, for residential applications, the
- 524 superintendent of schools, must be collected and provided by the
- 525 Town Planner.
- 526 l. Additional submissions as may be required by other sections of
- 527 this title such as for clustered development, mobile home parks, or
- 528 junkyards must be provided.
- 529 (8). Additional requirements. In its consideration of an application/plan, the
- 530 Planning Board may at any point in the review require the applicant to
- 531 submit additional materials, studies, analyses, and agreement proposals as
- 532 it may deem necessary for complete understanding of the application.
- 533 Such materials may include:
- 534 a. Traffic impact analysis, including the following data:
- 535 i. An executive summary outlining the study findings and

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- recommendations.
- ii. A physical description of the project site and study area encompassed by the report with a diagram of the site and its relationship to existing and proposed development sites within the study area.
 - iii. A complete description of the proposed uses for the project site (in cases where specific uses have not been identified, the highest traffic generators within the category best fitting the proposed development must be used to estimate traffic generators).
 - iv. Existing land uses and zone(s) in the vicinity of the site must be described. Any proposals for the development of vacant parcels or redevelopment of parcels within the study area of which the municipality makes the applicant aware, must be included in the description.
 - v. Street geometry and existing traffic control devices on all major streets and intersections affected by the anticipated traffic generated.
 - vi. Trip generation must be calculated for the proposed project and other proposed new projects and redevelopment projects within the study area using the most recent data available from the Institute of Transportation Engineers' (ITE) Trip Generation Guide, and/or actual field data collected from a comparable trip generator (i.e., comparable in size, location and setting). This data will be presented in a summary table such that assumptions on trip generation and rates arrived at by the engineer are fully understandable to the Planning Board.
 - vii. The anticipated trip distribution of vehicles entering and exiting the proposed site during the appropriate peak hour(s) must be described and diagrammed.
 - viii. Trip assignment, the anticipated utilization of study area streets by traffic generated by the proposed project, must be described and diagrammed.
 - ix. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.
 - x. Existing traffic conditions in the study area will be described and diagrammed, specifically AADT, appropriate peak design hour(s), traffic volumes, street and intersection capacities, and levels of service.
 - xi. Existing safety conditions must be evaluated based upon the traffic accident data available for the most current three years and described including link and node critical rate

- 580 factors (CRF).
- 581 xii. Future traffic conditions on the street system will be
582 estimated based on existing volumes, projected traffic
583 growth in the general study area, projected traffic from
584 approved development, and traffic generated by the
585 proposed project, specifically AADT traffic, appropriate
586 peak hour(s) traffic volumes, street and intersection
587 capacity, street and intersection levels of service will be
588 analyzed. When other projects are being proposed within
589 the impact area of the project, the Planning Board may
590 require these projects to be incorporated into the analysis.
- 591 xiii. When the analysis of the proposed project's impact
592 on traffic indicates unsatisfactory CRF, levels of service or
593 operating capacity on study area streets and intersections, a
594 description of proposed improvements to remedy identified
595 deficiencies must be included.
- 596 xiv. The base data collected and analyzed during the
597 course of the traffic impact study.
- 598 xv. If a development that requires a traffic impact study is
599 within 500 feet of York or Eliot, Maine, or if the study
600 identifies impacts on segments of Route 1 or Route 236 or
601 on their intersections located in York or Eliot, Maine, the
602 applicant must provide evidence that a copy of the impact
603 study has been given to the impacted municipality's chief
604 administrative officer;
- 605 b. Environmental analysis. An analysis of the effects that the
606 development may have upon surrounding lands and resources,
607 including intensive study of groundwater, ecosystems, or pollution
608 control systems;

609 D. Final Plan Review

610 (1). Process

- 611 a. Final plan application. The applicant must, within six months after
612 approval of a preliminary plan, file with the Planning Board an
613 application for approval of the final plan in the form prescribed
614 herein.
- 615 b. Failure to submit final plan application. If the final plan is not
616 submitted to the Planning Board within six months after the
617 approval of the preliminary plan, the Planning Board may refuse to
618 act on the final plan and require resubmission of the preliminary
619 plan. Any plan resubmitted must comply with all application
620 requirements, including payment of fees.
- 621 c. Within 30 days after the filing of a Final Subdivision plan, the
622 Planning Board must approve the plan, approve the plan with
623 conditions, disapprove the plan, postpone action on the plan, or

- 624 continue the review to another time/location.
- 625 d. Continuation or tabling of a review beyond the thirty-day period
- 626 for subdivision applications must be for good and sufficient reason
- 627 and be acceptable to both the applicant and the Planning Board.
- 628 e. Any plan may be continued for a total period not to exceed 90
- 629 calendar days for good and sufficient reason (i.e., for revisions to
- 630 be made, studies completed or additional information submitted)
- 631 and acceptable to both the applicant and the Planning Board. Such
- 632 plan is automatically scheduled for the agenda of the next regular
- 633 Planning Board meeting after the 90th day and action completed in
- 634 accordance with the requirements and timing contained in this title,
- 635 whether the applicant has accomplished the purposes for which it
- 636 was continued or not.
- 637 f. The action to table by the Planning Board must be an action to
- 638 temporarily suspend action and not to suppress a vote on the plan.
- 639 g. Failure of the Planning Board to act within the thirty-day period
- 640 for an accepted subdivision application, and the thirty-five-day
- 641 period for other Planning Board accepted applications, constitutes
- 642 disapproval of the plan, in which case the applicant may resubmit
- 643 the plan without payment of an additional application fee.
- 644 h. Application/plan review expiration.
- 645 i. Uncounted time. When an approved plan is required to be
- 646 reviewed/approved by another agency (e.g., DEP, BOA,
- 647 KPA), any period the plan is at such an agency or that a
- 648 plan is continued by the Planning Board in accordance with
- 649 this section from time of submission to time of decision
- 650 inclusive, verifiable by recorded documentation, is not
- 651 counted as part of the cumulative time periods described in
- 652 this section.
- 653 ii. Requests for extension. The Planning Board may grant
- 654 extensions to expiration dates upon written request by the
- 655 developer, on a case-by-case basis.
- 656 i. A completed application must be submitted to the Town Planner
- 657 no later than 21 days prior to the meeting date for the item to be
- 658 included on the agenda. The submission must include on the plan
- 659 or attached thereto, the following items, unless upon the applicant's
- 660 written request, the Planning Board, by formal action, waives or
- 661 defers any requirement(s) for submission.
- 662 i. Refer to current Planning Department application checklist
- 663 for required number of paper copies.
- 664 ii. One electronic submission in PDF format of the complete
- 665 submission including all forms, plans and documentation.
- 666 (2). Final Plan Requirements
- 667 A complete final plan application must fulfill all the requirements of a

668 preliminary plan as indicated in § 16.8.9.C.(6) through (8) and must show
669 the following items, unless the Planning Board, by formal action, upon the
670 applicant's written request, waives or defers any requirement(s) for
671 submission. If no changes occurred to the preliminary plan, it also may be
672 considered to be the final plan.

- 673 a. Preliminary plan information, including vicinity map and any
674 amendments thereto suggested or required by the Planning Board
675 or other required reviewing agency.
- 676 b. Street names and lines, pedestrian ways, lots, easements and areas
677 to be reserved for or dedicated to public use.
- 678 c. Street length of all straight lines, the deflection angles, radii,
679 lengths of curves and central angles of all curves, tangent distances
680 and tangent bearings.
- 681 d. Lots and blocks within a subdivision, numbered in accordance with
682 local practice.
- 683 e. Markers/permanent reference monuments: Their location, source
684 references and, where required, constructed in accordance with
685 specifications herein.
- 686 f. Structures: their location and description, including signs, to be
687 placed on the site, floor plans and elevations of principal structures
688 as well as detail of all structures, showing building materials and
689 colors, and accesses located within 100 feet of the property line.
- 690 g. Outdoor lighting and signage plan if the application involves the
691 construction of more than 5,000 square feet of nonresidential floor
692 area; or the creation of more than 20,000 square feet of impervious
693 area; or the creation of three or more dwelling units in a building
694 — prepared by a qualified lighting professional, showing at least
695 the following at the same scale as the site plan:
 - 696 i. All buildings, parking areas, driveways, service areas,
697 pedestrian areas, landscaping and proposed exterior
698 lighting fixtures;
 - 699 ii. All proposed lighting fixture specifications and
700 illustrations, including photometric data, designation as
701 "cutoff" fixtures, color rendering index (CRI) of all lamps
702 (bulbs), and other descriptive information on the fixtures;
 - 703 iii. Mounting height of all exterior lighting fixtures;
 - 704 iv. Lighting analyses and luminance level diagrams or
705 photometric point-by-point diagrams on a twenty-foot grid,
706 showing that the proposed installation conforms to the
707 lighting level standards of the ordinance codified in this
708 section together with statistical summaries documenting the
709 average luminance, maximum luminance, minimum
710 luminance, average-to-minimum uniformity ratio, and
711 maximum-to-minimum uniformity ratio for each parking

- 712 area, drive, canopy and sales or storage area;
- 713 v. Drawings of all relevant building elevations, showing the
- 714 fixtures, the portions of the walls to be illuminated, the
- 715 luminance levels of the walls, and the aiming points for any
- 716 remote light fixtures; and
- 717 vi. A narrative that describes the hierarchy of site lighting and
- 718 how the lighting will be used to provides safety, security
- 719 and aesthetic effects.
- 720 h. Machinery in permanently installed locations likely to cause
- 721 appreciable noise at the lot lines.
- 722 i. Materials (raw, finished or waste) storage areas, their types and
- 723 location, and any stored toxic or hazardous materials, their types
- 724 and locations.
- 725 j. Fences, retaining walls and other artificial features locations and
- 726 dimensions proposed.
- 727 k. Landscaping plan, including location, size and type of plant
- 728 material.
- 729 l. Location of snow storage areas.
- 730 m. Stormwater management plan for stormwater and other surface
- 731 water drainage prepared by a registered professional engineer,
- 732 including the location of stormwater and other surface water
- 733 drainage area; a post-construction stormwater management plan
- 734 that defines maintenance responsibilities, responsible parties,
- 735 shared costs, and schedule for maintenance; a draft maintenance
- 736 agreement for stormwater management facilities; and, where
- 737 applicable, draft documents creating a homeowners' association
- 738 referencing the maintenance responsibilities. Where applicable, the
- 739 maintenance agreement must be included in the document of
- 740 covenants, homeowners' documents and/or as riders to the
- 741 individual deed and recorded with the York County Registry of
- 742 Deeds. [Added 9-26-2011 by Ord. No. 11-15;7-25-2016 by Ord.
- 743 No. 16-06]
- 744 n. Phasing plan. Upon applicant's request, the Planning Board may
- 745 permit phasing of the plans, where it can be demonstrated to the
- 746 Planning Board's satisfaction that such phasing would result in a
- 747 safe and orderly development of the plan.
- 748 i. The applicant may file a section of the approved plan with
- 749 the municipal officials and the York County Registry of
- 750 Deeds if said section constitutes at least 25% of the total
- 751 number of lots, or for plans including buildings, 25% of the
- 752 gross area, contained in the approved plan. In all
- 753 circumstances, plan approval of the remaining sections of
- 754 the plan will remain in effect for three years unless the
- 755 applicant requests and the Planning Board grants

- 756 extensions of time equivalent to the requirements for
757 approved plans in § 16.8.11.D.
- 758 ii. Phasing is subject to any conditions deemed necessary to
759 assure a reasonable mixture of uses is completed within
760 each separate phase of the plan.
 - 761 iii. Where projects are to be constructed in phases, phasing of
762 stormwater management, water mains and streets are part
763 of the review process.
 - 764 iv. Portions of both the developed and undeveloped site
765 impacted by interim infrastructure conditions such as
766 unlooped water systems, stormwater runoff from
767 unfinished areas onto finished areas and vice versa, dead-
768 end streets, etc., must be clearly defined and shown on the
769 plans.
 - 770 v. The Planning Board may permit construction of phases out
771 of order only when the storm drainage plan and the water
772 plan, etc., have been reviewed by the Planning Department
773 or peer review engineer, and it has been demonstrated that
774 the impact on both the developed and undeveloped sections
775 is negligible.

776 (3). Written Submission Requirements

- 777 a. Open space land cession offers. Written offers of cession to the
778 municipality of all public open space shown on the plan, and
779 copies of agreements or other documents showing the manner in
780 which space(s), title to which is reserved by the subdivider, are to
781 be maintained.
- 782 b. Open space land cession offers acknowledgement by Town.
783 Written evidence that the municipal officers are satisfied with the
784 legal sufficiency of the documents referred to in § 16.8.9.D.3.a.
785 Such written evidence does not constitute an acceptance by the
786 municipality of any public open space referred to in § 16.8.9.D.3.a.
- 787 c. Performance guaranty and Town acceptance to secure completion
788 of all improvements required by the Planning Board, and written
789 evidence the Town Manager is satisfied with the sufficiency of
790 such guaranty.
 - 791 i. Where improvements for the common use of lessees or the
792 general public have been approved, the Planning Board
793 must require a performance guaranty of amount sufficient
794 to pay for said improvements as a part of the agreement.
 - 795 ii. Process. Prior to the issue of a building permit, the
796 applicant must, in an amount and form acceptable to the
797 Town Manager, file with the Municipal Treasurer an
798 instrument to cover the full cost of the required
799 improvements. A period of one year (or such other period

800 as the Planning Board may determine appropriate, not to
801 exceed three years) is the guaranty time within which
802 required improvements must be completed. The
803 performance guaranty must include an amount required for
804 recreation land or improvements, as specified.

805 d. Maintenance plan and agreement defining maintenance
806 responsibilities, responsible parties, shared costs and schedule.
807 Where applicable, a maintenance agreement must be included in
808 the document of covenants, homeowners' documents and/or as
809 riders to the individual deed.

810 (4). Findings of Fact.

811 a. After considering all submissions, evidence and testimony in
812 accordance with the requirements of all applicable state and the
813 Town Code, the Planning Board must make a finding of facts for
814 each and every proposed phase of development, including the
815 development master plan and each subsequent development plan,
816 and take formal action as required in this title.

817 b. Findings of fact. Action by the Planning Board must be based upon
818 findings of fact which certify or waive compliance with all the
819 required standards of this title and which certify the development
820 meets the following requirements:

821 i. Development conforms to local ordinances. The proposed
822 development conforms to a duly adopted Comprehensive
823 Plan as per adopted provisions in the Town Code, zoning
824 ordinance, subdivision regulation or ordinance,
825 development plan or land use plan, if any. In making this
826 determination, the municipal reviewing authority may
827 interpret these ordinances and plans.

828 ii. Freshwater wetlands identified. All freshwater wetlands
829 within the project area have been identified on any maps
830 submitted as part of the application, regardless of the size
831 of these wetlands.

832 iii. River, stream or brook identified. Any river, stream or
833 brook within or abutting the proposed project area has been
834 identified on any maps submitted as part of the application.
835 For purposes of this section, "river, stream or brook" has
836 the same meaning as in 38 M.R.S. § 480-B, subsection 9.

837 iv. Water supply sufficient. The proposed development has
838 sufficient water available for the needs of the development.

839 v. Municipal water supply available. The proposed
840 development will not cause an unreasonable burden on an
841 existing water supply, if one is to be used.

842 vi. Sewage disposal adequate. The proposed development will
843 provide for adequate sewage waste disposal and will not

- 844 cause an unreasonable burden on municipal services, if
845 they are utilized.
- 846 vii. Municipal solid waste disposal available. The proposed
847 development will not cause an unreasonable burden on the
848 municipality's ability to dispose of solid waste, if municipal
849 services are to be used.
- 850 viii. Water body quality and shoreline protected.
851 Whenever situated entirely or partially within 250 feet of
852 any wetland, the proposed development will not adversely
853 affect the quality of that body of water or unreasonably
854 affect the shoreline of that body of water.
- 855 ix. Groundwater protected. The proposed development will
856 not, alone or in conjunction with existing activities,
857 adversely affect the quality or quantity of groundwater.
- 858 x. Flood areas identified and development conditioned. All
859 flood-prone areas within the project area have been
860 identified on maps submitted as part of the application,
861 based on the Federal Emergency Management Agency's
862 Flood Boundary and Floodway Maps and Flood Insurance
863 Rate Maps and information presented by the applicant. If
864 the proposed development, or any part of it, is in such an
865 area, the applicant must determine the one-hundred-year
866 flood elevation and flood hazard boundaries within the
867 project area. The proposed plan must include a condition of
868 plan approval requiring that principal structures in the
869 development will be constructed with their lowest floor,
870 including the basement, at least one foot above the one-
871 hundred-year flood elevation.
- 872 xi. Stormwater managed. The proposed development will
873 provide for adequate stormwater management.
- 874 xii. Erosion controlled. The proposed development will not
875 cause unreasonable soil erosion or a reduction in the land's
876 capacity to hold water so that a dangerous or unhealthy
877 condition results.
- 878 xiii. Traffic managed. The proposed development will:
879 a. Not cause unreasonable highway or public road
880 congestion or unsafe conditions with respect to the
881 use of the highways or public roads existing or
882 proposed; and
883 b. Provide adequate traffic circulation, both on site and
884 off site.
- 885 i. Water and air pollution minimized. The proposed
886 development will not result in undue water or air pollution.
887 In making this determination, the following must be

- 888 considered:
- 889 a. Elevation of the land above sea level and its relation
- 890 to the floodplains;
- 891 b. Nature of soils and subsoils and their ability to
- 892 adequately support waste disposal;
- 893 c. Slope of the land and its effect on effluents;
- 894 d. Availability of streams for disposal of effluents;
- 895 e. Applicable state and local health and water resource
- 896 rules and regulations; and
- 897 f. Safe transportation, disposal and storage of
- 898 hazardous materials.
- 899 xiv. Aesthetic, cultural and natural values protected. The
- 900 proposed development will not have an undue adverse
- 901 effect on the scenic or natural beauty of the area, aesthetics,
- 902 historic sites, significant wildlife habitat identified by the
- 903 Department of Inland Fisheries and Wildlife or the
- 904 municipality, or rare and irreplaceable natural areas, or any
- 905 public rights for physical or visual access to the shoreline.
- 906 xv. Developer financially and technically capable. Developer is
- 907 financially and technically capable to meet the standards of
- 908 this section.
- 909 c. In Shoreland, Resource Protection or Commercial
- 910 Fisheries/Maritime Use Overlay Zones, the proposed use will:
- 911 i. Maintain safe and healthful conditions;
- 912 ii. Not result in water pollution, erosion or sedimentation to
- 913 surface waters;
- 914 iii. Adequately provide for the disposal of all wastewater;
- 915 iv. Not have an adverse impact on spawning grounds, fish,
- 916 aquatic life, bird or other wildlife habitat;
- 917 v. Conserve shore cover and visual, as well as actual, points
- 918 of access to inland and coastal waters;
- 919 vi. Protect archaeological and historic resources as designated
- 920 in the comprehensive plan;
- 921 vii. Not adversely affect existing commercial fishing or
- 922 maritime activities in a commercial fisheries/maritime
- 923 activities district;
- 924 viii. Avoid problems associated with floodplain
- 925 development and use; and
- 926 ix. Is in conformance with the provisions of this title.
- 927 d. For a right-of-way plan. The proposed right-of-way:
- 928 i. Does not create any nonconforming lots or buildings; and
- 929 ii. Could reasonably permit the right of passage for an

- 930 automobile.
- 931 e. For special exception use – special exception use permitted. If a
- 932 special exception use is requested, the special exception use will:
- 933 [Added 9-26-2011 by Ord. No. 11-15]
- 934 i. Not prevent the orderly and reasonable use of adjacent
- 935 properties or of properties in adjacent use zones;
- 936 ii. Not prevent the orderly and reasonable use of permitted or
- 937 legally established uses in the zone wherein the proposed
- 938 use is to be located, or of permitted or legally established
- 939 uses in adjacent use zones; and
- 940 iii. Not adversely affect the safety, the health, and the welfare
- 941 of the Town.
- 942 iv. Be in harmony with and promote the general purposes and
- 943 intent of this title.

944 (5). Final plan approval and recording.

- 945 a. Agreement form. An approval by the Planning Board must take the
- 946 form of an agreement between the Town and the applicant,
- 947 incorporating as elements the application, the Planning Board's
- 948 findings of fact, and such conditions as the Planning Board may
- 949 impose upon approval.
- 950 b. Agreement distribution. The Planning Board must send copies of
- 951 the agreement to the Town Manager and Code Enforcement
- 952 Officer. [Amended 9-26-2011 by Ord. No. 11-15]
- 953 c. Approved final plan signing. A plan has final approval only when
- 954 the Planning Board has indicated approval by formal action and the
- 955 plan has been properly signed by a majority of the Planning Board
- 956 members or by the Chair only, if so voted by the Planning Board.
- 957 d. Approved final plan recording. An approved plan involving the
- 958 division of land, easements, or property boundary modification
- 959 must be recorded by the York County Registry of Deeds. Two (2)
- 960 paper copies of the recorded plan must be returned to the Town
- 961 Planner. [Amended 9-26-2011 by Ord. No. 11-15]

962 16.8.10 Performance Standards and Approval Criteria

963 A. Monuments

- 964 (1). Stone monuments.
- 965 a. Stone monuments must be set at all street intersections and points
- 966 of curvature, but not more than 750 feet apart along street lines
- 967 without curves or intersections.
- 968 b. Stone monuments must be set at all corners and angle points of the
- 969 development boundaries where the interior angle of the boundaries
- 970 is less than 135° or greater than 225°.
- 971 c. Stone monuments must be a minimum of four inches square at the

972 top and four feet in length and set in the ground at final grade
973 level. Drilled holes, 1/2 inch deep, are to serve to locate the point
974 or points described above.

- 975 (2). Other monumentation.
976 All other development boundary corners and angle points, as well as all lot
977 boundary corners and angle points are to be marked by suitable
978 monumentation constructed of reasonably permanent material and solidly
979 embedded in the ground. All such monumentation must be capable of
980 being detected by commonly used magnetic or electronic equipment and
981 clearly show the registration number of the registered land surveyor
982 responsible for the survey.
- 983 (3). Impractical placement.
984 Where the placement of a required monument at its proper location is
985 impractical, it is permissible to set a reference monument close to that
986 point on an adjacent property line.

987 B. Basic Subdivision Layout

- 988 (1). Calculation of Density: See “Net Residential Acreage” in 16.5 General
989 Performance Standards.
- 990 (2). Wherever possible, side lot lines shall be perpendicular to the street.
- 991 (3). The subdivision of tracts into parcels with more than twice the required
992 minimum lot size shall be laid out in such a manner as either to provide
993 for or preclude future division. Deed restrictions or notes on the plan shall
994 either prohibit future divisions of the lots or specify that any future
995 division shall constitute a revision to the plan and shall require approval
996 from the Board, subject to the criteria of the subdivision statute, the
997 standards of these regulations and conditions placed on the original
998 approval.
- 999 (4). If a lot on one side of a public street fails to meet the minimum
1000 requirements for lot size, it may not be combined with a lot on the other
1001 side of the public street to meet the minimum lot size.
- 1002 (5). Lot Numbering. Even numbers shall be assigned to lots on one side of the
1003 street, and odd numbers on the opposite side. Where the proposed
1004 subdivision contains the extension of an existing street or street approved
1005 by the Board, but not yet constructed, the lot numbers shall correspond
1006 with the existing lot numbers. The lot numbering shall be reviewed by the
1007 E-911 Addressing Officer and the comments shall be considered by the
1008 Board.

1014 C. Water Supply

- 1015 (1). The development shall be provided with a system of water supply that
1016 provides each use with an adequate supply of water.
- 1017 (2). If the project is to be served by a public water supply, the applicant shall
1018 secure and submit a written statement from the Kittery Water District that
1019 the proposed water supply system conforms with its design and
1020 construction standards, will not result in an undue burden on the source of

- 1021 distribution system, and will be installed in a manner adequate to provide
1022 needed domestic and fire protection flows.
- 1023 (3). Service required.
- 1024 a. A public water supply system with fire hydrants must be installed
1025 and approved in writing by the servicing water department.
- 1026 b. If in the opinion of the Board service to each lot by a public water
1027 system is not feasible, the Board may allow individual wells or a
1028 central water supply system approved in writing by a civil engineer
1029 registered in the State of Maine.
- 1030 c. If the developer proposes a central water supply system, it must
1031 also be approved in writing by the Maine Department of Human
1032 Services.
- 1033 d. Water supply system installations are at the expense of the
1034 developer.
- 1035 e. All required approvals of a water supply system must be secured
1036 before official submission of the final plan.
- 1037 (4). Quality and pressure.
1038 [Amended 9-26-2011 by Ord. No. 11-15]
1039 The developer must demonstrate by actual test or by a signed affidavit
1040 from an authorized representative of the servicing water company that
1041 water meeting the "Maine Rules Relating to Drinking Water (10-144
1042 C.M.R. 231)" can be supplied to the development at the rate of at least 350
1043 gallons per day per dwelling unit and at an adequate pressure for
1044 firefighting purposes.
- 1045 (5). Storage.
1046 Storage must be provided as necessary to meet peak domestic demands
1047 and fire protection needs.
- 1048 (6). Adequacy.
1049 The developer must demonstrate in the form of signed affidavits from the
1050 servicing water company or by engineering reports prepared by a civil
1051 engineer registered in the State of Maine that the proposed development
1052 will not result in an undue burden on the source, treatment facilities or
1053 distribution system involved or provide adequate assurance that such
1054 source, treatment facilities or distribution system will be modified to meet
1055 the expanded needs. The cost of such improvements is to be borne by the
1056 developer.
- 1057 (7). Water main size.
1058 The minimum water main size permitted is to be as required by the Kittery
1059 Water District, installed at the expense of the developer.
- 1060 (8). Design and installation.
1061 The water supply system must be designed and installed in accordance
1062 with requirements of the Maine Department of Human Services.
- 1063 (9). Dug wells.
1064 Because they are difficult to maintain in a sanitary condition, dug wells

1065 must be prohibited by deed restriction and a note on the plan, unless
1066 permitted by the Board only if it is not economically or technically
1067 feasible to develop other groundwater sources. Such dug wells permitted
1068 must be constructed so as to prevent infiltration of surface water into the
1069 well.

1070 (10). Central water supplies.

1071 If a central water supply system is provided by the developer, location and
1072 protection of the source, and design, construction and operation of the
1073 distribution system and appurtenances and treatment facilities must
1074 conform to the recommendations included in the "Manual for Evaluating
1075 Public Drinking Water Supplies, Public Health Service No. 1180 (1969)."

1076 (11). Hydrologic analysis.

1077 The Board may require the developer to provide a detailed hydrologic
1078 analysis in accordance with the requirements of § 16.8.10.M, Water
1079 Quality and Wastewater Pollution.

1080 D. Sewage Disposal

1081 [Amended 10-14-2015 by Ord. No. 15-10]

1082 (1). Sewers.

1083 a. As per Chapter 13.1, Sewer Service System, connection to public
1084 sewer is required, provided said sewer, located within an abutting
1085 public way, is within 100 feet of the property line as measured
1086 along the said public way. Individual dwellings and structures in
1087 approved and recorded developments where public sewer becomes
1088 available as described in this subsection must connect per the
1089 requirements of Title 13, Chapter 13.1.

1090 b. Notwithstanding the provision above and Chapter 13.1, connection
1091 to public sewer is required for a commercial or industrial
1092 development or a residential subdivision, where public sewer,
1093 within an abutting public way, is within 1,000 feet of the property
1094 line as measured along said public way. In such an event, the
1095 developer shall connect to public sewer per the Town's
1096 Superintendent of Sewer Services (SSS) specifications and in
1097 accordance with Title 13. The developer shall provide written
1098 certification to the Planning Board from the SSS that the proposed
1099 addition to public sewer is within the capacity of the collection and
1100 wastewater treatment system.

1101 c. Sewer mains, service lines and related improvements must be
1102 installed at the developer's expense. Service lines must extend to
1103 each lot's boundary line. Connections to public sewer must be
1104 installed in accordance with this article and Chapter 13.1, Sewer
1105 Service System, of the Kittery Town Code.

1106 d. Proposal and construction drawings must be approved in writing
1107 by the Town's SSS. All required approvals must be secured before
1108 the start of final plan review.

1109 e. When public sewer connection pursuant to Subsection B above is
1110 not feasible as determined by the Planning Board, the Board may
1111 allow individual or common subsurface wastewater disposal
1112 systems in accordance with § 16.8.10.D.(2), below. To determine
1113 feasibility, the developer shall submit information that considers
1114 the unique physical circumstances of the property and sewer
1115 connection alternatives to conventional construction/installation
1116 techniques, such as, but not limited to, horizontal/directional
1117 boring and low-pressure sewer. The developer's information must
1118 be accompanied by findings and recommendations of the Town
1119 Peer Review Engineer. In determining feasibility, the Board may
1120 not base its decision solely on additional costs associated with a
1121 sewer connection. The intent of this subsection is not to avoid the
1122 requirements of Chapter 13.1, Sewer Service System, of the
1123 Kittery Town Code.

1124 (2). Subsurface wastewater disposal systems.

1125 a. The developer shall submit plans for subsurface wastewater
1126 disposal designed by a Maine licensed site evaluator in full
1127 compliance with the requirements of the State of Maine Plumbing
1128 Code, Subsurface Wastewater Disposal Rules, and this title.
1129 Subsurface wastewater disposal systems (SWDS) must be
1130 constructed according to the approved plan.

1131 b. All first-time subsurface wastewater disposal systems must be
1132 installed in conformance with State of Maine Subsurface
1133 Wastewater Disposal Rules and this title. The following also apply:

- 1134 i. The minimum setback distance for a first-time subsurface
1135 disposal system may not be reduced by variance.
- 1136 ii. Clearing or removal of woody vegetation necessary to site
1137 a first-time system, and any associated fill extensions may
1138 not extend closer than is allowed in the table in § 16.5.30,
1139 Minimum Setbacks from Wetlands and Water Bodies, for
1140 subsurface sewage disposal.

1141 c. Replacement of subsurface wastewater disposal systems (SWDS)
1142 for existing legal uses:

- 1143 i. Where no expansion is proposed, the SWDS must comply
1144 with § 16.8.10.D.(2) and Table 16.5.30 to the extent
1145 practicable and otherwise are allowed per the Maine
1146 Subsurface Wastewater Disposal Rules; or
- 1147 ii. Where expansion is proposed, the SWDS must comply
1148 with § 16.8.10.D.(2) and Table 16.5.30 in addition to the
1149 Maine Subsurface Wastewater Disposal Rules.

1150 NOTE: For the purposes of this subsection, “expansion” is
1151 defined in Section 9 of the Maine Subsurface Wastewater
1152 Disposal Rules.

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- d. Subsurface wastewater disposal systems on unimproved lots created after April 26, 1990. Where public sewer connection is not feasible, the developer must submit evidence of soil suitability for subsurface wastewater disposal systems, i.e., test pit data and other information as required by the State of Maine Subsurface Wastewater Disposal Rules and this title. In addition:
 - i. On lots with a limiting factor identified as being within 24 inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement should the primary site fail. Such reserve area is to be shown on the plan; not be built upon; and, must comply with all the setback requirements of the Subsurface Wastewater Disposal Rules and this title.
 - ii. In no instance may a primary or reserve disposal area be permitted on soils or on a lot requiring a first-time system variance request per the State of Maine Subsurface Wastewater Disposal Rules.
 - iii. Test pits must be of sufficient numbers (a minimum of two) and so located at representative points within each disposal area (primary and reserve sites) to ensure that the proposed disposal system can be located on soils and slopes that meet the criteria of the State of Maine Subsurface Wastewater Disposal Rules and the State Plumbing Code. All passing and failing test pits must be shown on the plan.
 - e. The developer shall install advanced pretreatment to subsurface wastewater disposal systems that are located inside or within 100 feet of areas that include a sand and gravel aquifer as indicated on the Maine Department of Agriculture, Conservation and Forestry (DACF) Geological Survey Maps or determined by Maine DACF staff.
- (3). Holding tanks.
- a. Holding tanks are not allowed for a first-time residential use.
- (4). (Reserved)
- (5). Sanitary facilities/restrooms.
- a. Any development containing a retail use or a food service use, or a combination thereof, exceeding 10,000 square feet must provide public toilet facilities in accordance with Subsections b., c. and d. of this section.
 - b. Public toilet facilities are to consist of at least one separate toilet for each sex; be clearly marked; maintained in a sanitary condition and in good repair. Lavatory facilities must be located within or immediately adjacent to all toilet rooms or vestibules. There may be no charge for their use.
 - c. Where a retail development exceeds 60,000 square feet, each toilet

- 1197 facility must contain a minimum of two water closets.
- 1198 d. Requirements for handicapped accessibility to sanitary facilities
- 1199 are pursuant to applicable state standards.
- 1200 E. Stormwater and Surface Drainage
- 1201 (1). Adequate provision must be made for drainage of all stormwater generated
- 1202 with the development and any drained groundwater through a
- 1203 management system of natural and constructed features. Where possible,
- 1204 existing natural runoff control features, such as berms, swales, terraces
- 1205 and wooded areas must be retained to reduce runoff and encourage
- 1206 infiltration of storm waters. Otherwise drainage may be accomplished by a
- 1207 management system of constructed features such as swales, culverts,
- 1208 underdrains and storm drains.
- 1209 (2). To ensure proper functioning, stormwater runoff control systems must be
- 1210 maintained in good working order per § 16.8.10.F. Post-construction
- 1211 stormwater management.
- 1212 (3). Where a development is traversed by a stream, river or surface water
- 1213 drainageway, or where the Planning Board determines that surface runoff
- 1214 should be controlled, easements and or drainage rights-of-way must be
- 1215 provided which conform substantially to the lines of existing natural
- 1216 drainage paths. The minimum width of the drainage easements or rights-
- 1217 of-way is 30 feet.
- 1218 a. The minimum pipe size for any storm drainage pipe must be 12
- 1219 inches. Maximum trench width at the pipe crown must be the
- 1220 outside diameter of the pipe plus two feet. The pipe must be
- 1221 bedded in a fine granular material, containing no stones larger than
- 1222 three inches, lumps of clay, or organic matter, reaching a minimum
- 1223 of six inches below the bottom of the pipe extending to six inches
- 1224 above the top of the pipe.
- 1225 b. Except for normal thinning and landscaping, existing vegetation
- 1226 must be left intact to prevent soil erosion.
- 1227 (4). When proposed development does not require Maine Department of
- 1228 Environmental (MDEP) approval under MDEP Chapters 500 and 502, the
- 1229 following applies:
- 1230 a. All components of the stormwater management system must be
- 1231 designed to limit peak discharge to predevelopment levels for the
- 1232 two-year and twenty-five-year, twenty-four-hour duration,
- 1233 frequencies, based on the rainfall data for Portsmouth, NH. When
- 1234 the development discharges directly to a major water body, peak
- 1235 discharge may be increased from predevelopment levels, provided
- 1236 downstream drainage structures are suitably sized.
- 1237 b. The stormwater management system must be designed to
- 1238 accommodate upstream drainage, taking into account existing
- 1239 conditions and approved or planned developments not yet built and
- 1240 must include a surplus design capacity factor of 25% for potential

- 1241 increases in upstream runoff.
- 1242 c. Downstream drainage requirements must be studied to determine
- 1243 the effect of the proposed development. The storm drainage must
- 1244 not overload existing or future planned storm drainage systems
- 1245 downstream from the development. The developer is responsible
- 1246 for financing any improvements to existing drainage systems
- 1247 required to handle the increased storm flows.
- 1248 i. Wherever the storm drainage system is not within the right-
- 1249 of-way of a public street, perpetual easements must be
- 1250 provided to the Town allowing maintenance and
- 1251 improvement to the system.
- 1252 ii. All sediment and erosion control measures must be
- 1253 designed in accordance with MDEP's "Maine Erosion and
- 1254 Sediment Control BMPs," March 2003.
- 1255 iii. Catch basins in streets and roads must be installed where
- 1256 necessary and located at the curblineline. In parking lots and
- 1257 other areas, catch basins must be located where necessary
- 1258 to ensure proper drainage.
- 1259 iv. Where soils require a subsurface drainage system, the
- 1260 drains must be installed and maintained separately from the
- 1261 stormwater drainage system.
- 1262 v. Where the Board has required a stormwater management
- 1263 and erosion control plan and MDEP approval under
- 1264 Chapters 500 and 502 is not required, said plan must be
- 1265 endorsed by the York County Soil and Water Conservation
- 1266 District.
- 1267 vi. Drainage easements for existing or proposed drainageways
- 1268 located outside a public way must be maintained and/or
- 1269 improved in accordance with § 16.8.10.F, Post-construction
- 1270 stormwater management.

1271 F. Post-construction stormwater management.

- 1272 (1). Purposes. This section is enacted to provide for the health, safety and
- 1273 general welfare of the citizens of Kittery through monitoring and
- 1274 enforcement of compliance with post-construction stormwater
- 1275 management plans in order to comply with minimum control measures
- 1276 requirements of the federal Clean Water Act, of federal regulations and of
- 1277 Maine's Small Municipal Separate Storm Sewer Systems General Permit.
- 1278 This section seeks to ensure that post-construction stormwater
- 1279 management plan are followed and stormwater management facilities,
- 1280 including but not limited to any parking areas, catch basins, drainage
- 1281 swales, detention basins and ponds, pipes and related structures that are
- 1282 part of the storm drainage system, are properly maintained and pose no
- 1283 threat to public safety.
- 1284 (2). Authority. The Maine Department of Environmental Protection, through

1285 its dissemination of the General Permit for the Discharge of Stormwater
1286 from Small Municipal Separate Storm Sewer Systems, has listed the Town
1287 of Kittery, Maine, as having a regulated small municipal separate storm
1288 sewer system ("small MS4"); under this general permit, listing as a
1289 regulated small MS4 requires enactment of this section as part of the
1290 Town's stormwater management program in order to satisfy the minimum
1291 control measures required by Part IV D 5 ("Post-construction stormwater
1292 management in new development and redevelopment").

1293 (3). Applicability.

1294 a. In general. This section applies to all new development or
1295 redevelopment (any construction activity on premises already
1296 improved that alters stormwater drainage patterns) including one
1297 acre or more of disturbed area, or activity with less than one acre
1298 of total land area that is part of a subdivision, if the subdivision
1299 will ultimately disturb an area equal to or greater than one acre.
1300 [Amended 7-25-2016 by Ord. No. 16-06]

1301 b. Exception. This section does not apply to new development or
1302 redevelopment on a lot, tract or parcel where that lot, tract or
1303 parcel is part of a subdivision that has received approval of its
1304 post-construction stormwater management plan and stormwater
1305 management facilities under the Town's subdivision or other
1306 zoning, planning or other land use ordinances; said lot, tract or
1307 parcel will not require additional review under this section but
1308 must comply with the post-construction stormwater management
1309 plan for that approved subdivision.

1310 c. Post-construction stormwater management plan approval.

1311 i. General requirement. Notwithstanding any ordinance
1312 provision to the contrary, and except as provided in
1313 § 16.8.10.F.(3).b, Exception, no applicant for a building
1314 permit, subdivision approval, site plan approval or other
1315 zoning, planning or other land use approval for new
1316 development or redevelopment to which this section is
1317 applicable will receive such permit or approval for that new
1318 development or redevelopment unless the applicant also
1319 receives approval for its post-construction stormwater
1320 management plan and stormwater management facilities.

1321 ii. Notice of BMP discharge to Town's MS4. At the time of
1322 application for a building permit, subdivision approval, site
1323 plan approval or other zoning, planning or other land use
1324 approval for new development or redevelopment to which
1325 this section is applicable, the applicant must notify the
1326 Town Planner if its post-construction stormwater
1327 management plan includes any BMP(s) that will discharge
1328 to the Town's MS4 and must include in this notification a
1329 listing of which BMP(s) will so discharge.

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- iii. Engineering and administrative fees. At the time of application, the applicant must pay an amount to the Town estimated to be sufficient to pay the engineering review costs and administrative costs incurred by the Town in review of the post-construction stormwater management plan. The Town will deduct from this amount the engineering and administrative costs incurred by the Town based upon the hours of engineering review time and prevailing hourly rate for reimbursement of the Town's administrative costs. Any remaining engineering and administrative review costs owed by the applicant must be paid in full by the applicant prior to the issuance of any temporary or permanent certificate of occupancy, and any unused balance remaining at that time will be refunded to the applicant.
 - d. Post-construction stormwater management plan compliance.
 - i. General requirements. Any person owning, operating, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's subdivision, site plan or other zoning, planning or other land use ordinances must demonstrate compliance with that plan as follows:
 - a. That person or a qualified post-construction stormwater inspector hired by that person must, at least annually, inspect the stormwater management facilities in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan;
 - b. If the stormwater management facilities require maintenance to function as intended by the approved post-construction stormwater management plan, that person must take corrective action(s) to address the deficiency or deficiencies; and
 - c. That person or a qualified post-construction stormwater inspector hired by that person must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer in a form provided by the Town, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by the approved post-construction stormwater

1375 management plan or that they require maintenance
1376 or repair, describing any required maintenance and
1377 any deficiencies found during inspection of the
1378 stormwater management facilities, and if the
1379 stormwater management facilities require
1380 maintenance or repair of deficiencies in order to
1381 function as intended by the approved post-
1382 construction stormwater management plan, the
1383 person must provide a record of the required
1384 maintenance or deficiency and corrective action(s)
1385 taken.

1386 ii. Right of entry. In order to determine compliance with this
1387 section and with the post-construction stormwater
1388 management plan, the Code Enforcement Officer may enter
1389 upon property at reasonable hours with the consent of the
1390 owner, occupant or agent to inspect the stormwater
1391 management facilities.

1392 e. Annual report. Beginning July 1, 2009, and each year thereafter,
1393 the Town must include the following in its annual report to the
1394 Maine Department of Environmental Protection:

1395 i. Cumulative number of sites that have stormwater
1396 management facilities discharging into its MS4;

1397 ii. Summary of the number of sites that have stormwater
1398 management facilities discharging into its MS4 that were
1399 reported to the Town;

1400 iii. Number of sites with documented functioning stormwater
1401 management facilities; and

1402 iv. Number of sites that require routine maintenance in order
1403 to continue the original line and grade, the hydraulic
1404 capacity, and the original purpose of improvements; or
1405 remedial action to ensure that stormwater management
1406 facilities are functioning as intended.

1407 f. Enforcement. It is the duty of the Code Enforcement Officer to
1408 enforce the provisions of this section and take appropriate actions
1409 to seek the correction of violations. Enforcement of the post-
1410 construction stormwater management regulations are conducted in
1411 accordance with Chapter 16.2.

1412 (4). Storm drainage construction standards.

1413 a. Materials:

1414 i. Reinforced concrete pipe must meet the requirements of
1415 ASTM Designation C-76 (AASHTO M170). Pipe classes
1416 are required to meet the soil and traffic loads with a safety
1417 factor of 1.2 on the 0.01 inch crack strength with Class B
1418 bedding. Joints are to be of the rubber gasket type, meeting

1419 ASTM Designation C443-70, or of an approved performed
1420 plastic jointing material such as "Ramnek." Perforated
1421 concrete pipe must conform to the requirements of
1422 AASHTO M175 for the appropriate diameters.

1423 ii. Corrugated metal pipe must be bituminous-coated, meeting
1424 the requirements of AASHTO Designation M190 Type C
1425 for an iron or steel pipe or AASHTO Designation M196 for
1426 aluminum alloy pipe for sectional dimensions and type of
1427 bituminous coating. Pipe gauge is to be as required to meet
1428 the soil and traffic loads with a deflection of not more than
1429 5%.

1430 iii. SDR-35 plastic pipe installed in conformance with
1431 AASHTO bedding requirements.

1432 iv. Aluminized steel (AASHTO M274) and aluminum pipe
1433 (AASHTO M46).

1434 v. Catch basins are to be precast concrete truncated cone
1435 section construction, meeting the requirements of ASTM
1436 Designation C478, or precast concrete manhole block
1437 construction, meeting the requirements of ASTM C139,
1438 radial type. Castings are to be square cast iron sized for the
1439 particular inlet condition with the gratings perpendicular to
1440 the curbline. Bases may be cast-in-place 3,000 psi twenty-
1441 eight-day strength concrete or may be of precast concrete,
1442 placed on a compacted foundation of uniform density.
1443 Metal frames and traps must be set in a full mortar bed with
1444 tops and are to conform to the requirements of AASHTO
1445 M103 for carbon steel casings, AASHTO M105, Class 30
1446 for gray iron castings or AASHTO M183 (ASTM A283,
1447 Grade B or better) for structure steel.

1448 b. Drain inlet alignment is to be straight in both vertical and
1449 horizontal alignment unless specific approval for curvilinear drain
1450 is obtained in writing from the Commissioner of Public Works.

1451 c. Manholes are to be provided at all changes in vertical or horizontal
1452 alignment and at all junctions. On straight runs, manholes are to be
1453 placed at a maximum of three-hundred-foot intervals.

1454 d. Upon completion, each catch basin or manhole must be cleared of
1455 all accumulation of silt, debris or other foreign matter and kept
1456 clean until final acceptance.

1457 G. Vehicular Traffic

1458 (1). Adequacy of Road System. Vehicular access to the site shall be on roads
1459 which have adequate capacity to accommodate the additional traffic
1460 generated by the development. Intersections on arterial streets within a
1461 half (0.5) mile of any entrance road which are functioning at a Level of
1462 Service of D or better prior to the development shall function at a
1463 minimum at Level of Service D after development. If any such

- 1464 intersection is functioning at a Level of Service E or lower prior to the
1465 development, the project shall not reduce the current level of service. This
1466 requirement may be waived by the Planning Board if the project is located
1467 within a growth area designated in the Town's adopted Comprehensive
1468 Plan and the Board determines that the project will not have an
1469 unnecessary adverse impact on traffic flow or safety.
- 1470 a. A development not meeting this requirement may be approved if
1471 the applicant demonstrates that:
 - 1472 i. A public agency has committed funds to construct the
1473 improvements necessary to bring the level of access to this
1474 standard, or
 - 1475 ii. The applicant will assume financial responsibility for the
1476 improvements necessary to bring the level of service to this
1477 standard and will assure the completion of the
1478 improvements with a financial guarantee acceptable to the
1479 municipality.
- 1480 (2). Traffic Impact Study. When required by the Planning Board or Staff
1481 Review Committee, a Traffic Impact Study will include the following
1482 elements related to the project and surrounding street network.
- 1483 a. An executive summary outlining the study findings and
1484 recommendations.
 - 1485 b. A physical description of the project site and study area
1486 encompassed by the report with a diagram of the site and its
1487 relationship to existing and proposed development sites within the
1488 study area.
 - 1489 c. A complete description of the proposed uses for the project site (in
1490 cases where specific uses have not been identified, the highest
1491 traffic generators within the category best fitting the proposed
1492 development must be used to estimate traffic generators).
 - 1493 d. Existing land uses and zone(s) in the vicinity of the site must be
1494 described. Any proposals for the development of vacant parcels or
1495 redevelopment of parcels within the study area of which the
1496 municipality makes the applicant aware, must be included in the
1497 description.
 - 1498 e. Street geometry and existing traffic control devices on all major
1499 streets and intersections affected by the anticipated traffic
1500 generated.
 - 1501 f. Trip generation must be calculated for the proposed project and
1502 other proposed new projects and redevelopment projects within the
1503 study area using the most recent data available from the Institute of
1504 Transportation Engineers' (ITE) Trip Generation Guide, and/or
1505 actual field data collected from a comparable trip generator (i.e.,
1506 comparable in size, location and setting). This data will be
1507 presented in a summary table such that assumptions on trip

- 1508 generation and rates arrived at by the engineer are fully
1509 understandable to the Planning Board.
- 1510 g. The anticipated trip distribution of vehicles entering and exiting
1511 the proposed site during the appropriate peak hour(s) must be
1512 described and diagrammed.
 - 1513 h. Trip assignment, the anticipated utilization of study area streets by
1514 traffic generated by the proposed project, must be described and
1515 diagrammed.
 - 1516 i. Existing traffic conditions in the study area will be identified and
1517 analyzed based upon actual field counts and/or recent available
1518 machine counts.
 - 1519 j. Existing traffic conditions in the study area will be described and
1520 diagrammed, specifically AADT, appropriate peak design hour(s),
1521 traffic volumes, street and intersection capacities, and levels of
1522 service.
 - 1523 k. Existing safety conditions must be evaluated based upon the traffic
1524 accident data available for the most current three years and
1525 described including link and node critical rate factors (CRF).
 - 1526 l. Future traffic conditions on the street system will be estimated
1527 based on existing volumes, projected traffic growth in the general
1528 study area, projected traffic from approved development, and
1529 traffic generated by the proposed project, specifically AADT
1530 traffic, appropriate peak hour(s) traffic volumes, street and
1531 intersection capacity, street and intersection levels of service will
1532 be analyzed. When other projects are being proposed within the
1533 impact area of the project, the Planning Board may require these
1534 projects to be incorporated into the analysis.
 - 1535 m. When the analysis of the proposed project's impact on traffic
1536 indicates unsatisfactory CRF, levels of service or operating
1537 capacity on study area streets and intersections, a description of
1538 proposed improvements to remedy identified deficiencies must be
1539 included.
 - 1540 n. The base data collected and analyzed during the course of the
1541 traffic impact study.
 - 1542 o. If a development that requires a traffic impact study is within 500
1543 feet of York or Eliot, Maine, or if the study identifies impacts on
1544 segments of Route 1 or Route 236 or on their intersections located
1545 in York or Eliot, Maine, the applicant must provide evidence that a
1546 copy of the impact study has been given to the impacted
1547 municipality's chief administrative officer;
- 1548 (3). Access to the Site. Vehicular access to and from the development shall be
1549 safe and convenient.
- 1550 a. Any driveway or proposed street shall be designed so as to provide
1551 the minimum sight distance according to the Maine Department of

- 1552 Transportation standards.
- 1553 b. Points of access and egress shall be located to avoid hazardous
- 1554 conflicts with existing turning movements and traffic flows.
- 1555 c. The grade of any proposed drive shall be not more than $\pm 3\%$ for a
- 1556 minimum of fifty (50) feet, from the intersection.
- 1557 d. The intersection of any access/egress drive or proposed street shall
- 1558 function: (a) at a Level of Service of D following development if
- 1559 the project will generate one thousand (1,000) or more vehicle trips
- 1560 per twenty-four (24) hour period.
- 1561 e. Where a lot has frontage on two (2) or more streets, the primary
- 1562 access to and egress from the lot shall be provided from the street
- 1563 where there is less potential for traffic congestion and for traffic
- 1564 and pedestrians hazards. Access from other streets may be allowed
- 1565 if it is safe and does not promote shortcutting through the site.
- 1566 f. Where it is necessary to safeguard against hazards to traffic and
- 1567 pedestrians and/or to avoid traffic congestion, the applicant shall
- 1568 be responsible for providing turning lanes, traffic directional
- 1569 islands, and traffic controls within public streets.
- 1570 g. Accessways shall be designed and have sufficient capacity to avoid
- 1571 queuing of entering vehicles on any public street.
- 1572 h. The following criteria shall be used to limit the number of
- 1573 driveways serving a proposed project:
- 1574 i. No use which generates less than one hundred (100)
- 1575 vehicle trips per day shall have more than one (1) two-way
- 1576 driveway onto a single roadway. Such driveway shall be no
- 1577 greater than forty (40) feet wide.
- 1578 ii. No use which generates one hundred (100) or more vehicle
- 1579 trips per day shall have more than two (2) points of entry
- 1580 from and two (2) points of egress to a single roadway. The
- 1581 combined width of all accessways shall not exceed sixty
- 1582 (60) feet.
- 1583 iii. The Planning Board or Technical Review Committee may
- 1584 limit a development to one (1) point of ingress/egress onto
- 1585 US Route 1, Route 236, and US Route 1 Bypass.
- 1586 (4). Accessway Location and Spacing. Accessways shall meet the following
- 1587 standards:
- 1588 a. Private entrances/exits shall be located at least fifty (50) feet from
- 1589 the closest unsignalized intersection and one hundred fifty (150)
- 1590 feet from the closest signalized intersection, as measured from the
- 1591 point of tangency for the corner to the point of tangency for the
- 1592 accessway. This requirement may be reduced if the shape of the
- 1593 site does not allow conformance with this standard.
- 1594 b. Private accessways in or out of a development shall be separated
- 1595 by a minimum of seventy-five (75) feet where possible.

- 1596 c. Accessways shall be aligned with accessways on the opposite side
1597 of a public street to the greatest extent possible.
- 1598 (5). Internal Vehicular Circulation. The layout of the site shall provide for the
1599 safe movement of passenger, service, and emergency vehicles through the
1600 site.
- 1601 a. Nonresidential projects that will be served by delivery vehicles
1602 shall provide a clear route for such vehicles with appropriate
1603 geometric design to allow turning and backing for a minimum of
1604 SU-30 vehicles.
- 1605 i. If the project is to be served by “tractor-trailer” delivery
1606 vehicles, a clear route for such vehicles with appropriate
1607 geometric design shall allow for turning and backing for a
1608 minimum of WB-50 vehicles.
- 1609 b. Clear routes of access shall be provided and maintained for
1610 emergency vehicles to and around buildings and shall be posted
1611 with appropriate signage (fire lane - no parking).
- 1612 c. The layout and design of parking areas shall provide for safe and
1613 convenient circulation of vehicles throughout the lot.
- 1614 d. All roadways shall be designed as follows:
- 1615 i. To harmonize with the topographic and natural features of
1616 the site insofar as practical by minimizing filling, grading,
1617 excavation, or other similar activities which result in
1618 unstable soil conditions and soil erosion,
- 1619 ii. By fitting the development to the natural contour of the
1620 land and avoiding substantial areas of excessive grade and
1621 tree removal, and by retaining existing vegetation during
1622 construction,
- 1623 iii. The road network shall provide for vehicular, pedestrian,
1624 and cyclist safety, all season emergency access, snow
1625 storage, and delivery and collection services.
- 1626 e. Nonresidential projects that include drive-through services shall be
1627 designed and have sufficient stacking capacity to avoid the
1628 queuing of vehicles on any public street.

1633 H. Cluster Residential Development

1634 [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-09]

1635 (1). Purpose.

1636 To implement adopted Comprehensive Plan policies regarding the Town's
1637 natural, scenic, marine, cultural and historic resources, land use patterns
1638 and recreation and open space, this article is intended to encourage and
1639 allow new concepts and innovative approaches to housing/commercial
1640 development and environmental design so development will be a
1641 permanent and long-term asset to the Town, while in harmony with the
1642 natural features of the land, water and surrounding development.

- 1643 Objectives include:
- 1644 a. Efficient use of the land and water, with small networks of utilities
- 1645 and streets;
- 1646 a. Preservation of open space and creation of recreation areas;
- 1647 b. Maintenance of rural character, preserving farmland, forests and
- 1648 rural viewscales;
- 1649 c. Preservation of areas with the highest ecological value;
- 1650 d. Location of buildings and structures on those portions of the site
- 1651 most appropriate for development;
- 1652 e. Creation of a network of contiguous open spaces or "greenways"
- 1653 by linking the common open spaces within the site and to open
- 1654 space on adjoining lands wherever possible;
- 1655 f. Reduction of impacts on water resources by minimizing land
- 1656 disturbance and the creation of impervious surfaces and
- 1657 stormwater runoff;
- 1658 g. Preservation of historic, archaeological, and cultural features; and
- 1659 h. Minimization of residential development impact on the
- 1660 municipality, neighboring properties and the natural environment.
- 1661 (2). Permitted zones.
- 1662 a. Cluster residential development is permitted in various zones as
- 1663 indicated in Chapter 16.4, Land Use Zone Regulations.
- 1664 (3). Dimension standards modifications.
- 1665 Notwithstanding other provisions of this title relating to dimensional
- 1666 standards, the Planning Board, in reviewing and approving proposed
- 1667 residential development under this article, may modify said dimensional
- 1668 standards to permit flexibility in approaches to site design in accordance
- 1669 with the standards of this title. The Board may allow subdivision or site
- 1670 development with modified dimensional standards where the Board
- 1671 determines the benefit of a cluster development is consistent with this title.
- 1672 Such modifications may not be construed as granting variances to relieve
- 1673 hardship.
- 1674 (4). Property ownership.
- 1675 Tracts or parcels of land involved in a development proposed under this
- 1676 article must be in single ownership; or must be the subject of an
- 1677 application filed jointly by the owners of all properties included; or must
- 1678 have an applicant with vested interest in all property included. Pursuant to
- 1679 the requirements of this article, mobile home parks or mobile homes on
- 1680 individual lots are not eligible for cluster residential development.
- 1681 (5). Application procedure.
- 1682 All development reviewed under this article is subject to the application
- 1683 procedures in §16.8, Subdivision Review, and the following:
- 1684 a. In addition to the requirements of § 16.8, Subdivision Review, the
- 1685 following are required at submittal of the sketch plan:

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- i. Calculations and maps to illustrate:
 - a. Proposed dimensional modifications and the dimensional standards required in the zone in which the development will be located;
 - b. All land area identified in § 16.5.18, Net Residential Acreage; [Amended 9-28-2015 by Ord. No. 15-05]
 - c. Net residential density; and [Amended 9-28-2015 by Ord. No. 15-05]
 - d. Open space as defined in § 16.8.10.H.(6).e, of this article.
 - ii. A map showing constraints to development, such as, but not limited to, wetlands, resource protection zones, shoreland zones, deer wintering areas, side slopes in excess of 33%, easements, rights-of-way, existing roads, driveway entrances and intersections, existing structures, and existing utilities.
 - iii. A written statement describing the ways the proposed development furthers the purpose and objectives of this article, including natural features which will be preserved or enhanced. Natural features include, but are not limited to, moderate-to-high-value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high-yield aquifers and important natural or historic sites worthy of preservation.
 - iv. The location of each of the proposed building envelopes. Only developments having a total subdivision or site plan with building envelopes will be considered.
- b. An applicant with a project that includes proposed public open space must obtain Town Council acceptance for the public land or easement following preliminary plan approval. Town Council acceptance is contingent upon receipt of final plan approval by the Planning Board.
- (6). Standards.
- a. The purpose and intent of this title must be upheld for any reviews conducted under this article.
 - b. A cluster residential development must meet all requirements for a subdivision (and site plan where applicable) and all other applicable federal, state and local ordinances, except as modified by action of the Planning Board, where authorized.
 - c. Public or privately shared sewer and water must be provided unless it is demonstrated to the Planning Board's satisfaction that alternative methods used result in a development that is compatible with this section 16.8.10.H.
 - d. Unless a public or shared sewer collection and treatment system is

1730 provided, no lot may be smaller than 20,000 square feet per single-
1731 family residence and 8,000 square feet per bedroom per
1732 multifamily residence as outlined in the Maine Minimum Lot Size
1733 Law, 12 M.R.S. § 4807-A.

- 1734 e. Open space requirements.
- 1735 i. Open space must contain at least 50% of the total area of
1736 the property and no less than 30% of the total net
1737 residential acreage, as defined.
 - 1738 ii. Total calculated open space must be designated as follows
1739 (see open space definitions in Chapter 16.3):
 - 1740 a. Open space, reserved;
 - 1741 b. Open space, common; and/or
 - 1742 c. Open space, public.
 - 1743 iii. The use of any open space may be further limited or
1744 controlled by the Planning Board at the time of final
1745 approval, where necessary, to protect adjacent properties or
1746 uses.
 - 1747 iv. Open space must be deeded in perpetuity for the
1748 recreational amenity and environmental enhancement of the
1749 development and be recorded as such. Such deed
1750 provisions may include deed/plan restrictions, private
1751 covenants, or arrangements to preserve the integrity of
1752 open spaces and their use as approved by the Planning
1753 Board.
 - 1754 v. Open space must also be for preserving large trees, tree
1755 groves, woods, ponds, streams, glens, rock outcrops, native
1756 plant life, and wildlife cover as identified in the applicant's
1757 written statement. In the **Mixed-Use Neighborhood (MU-
1758 N) Zone, open** space may be both man-made and natural.
1759 Man-made open space must be for the development of
1760 recreational areas, pedestrianways and aesthetics that serve
1761 to interconnect and unify the built and natural
1762 environments.
 - 1763 vi. Open space should be in a contiguous form of
1764 unfragmented land to protect natural resources, including
1765 plant and wildlife habitats.
 - 1766 vii. A portion of the open space should be in close proximity to
1767 other open spaces used for recreation (e.g., a common
1768 green, multipurpose athletic field, gardens, and
1769 playgrounds).
- 1770 f. **In the Mixed-Use Neighborhood (MU-N) Zone, the** maximum
1771 building height is 40 feet. If the Planning Board finds that
1772 provisions for firesafety are adequate to allow buildings of greater
1773 height, then the Board may allow a building height of up to 60 feet

- 1774 as a part of the development plan review and approval process.
- 1775 g. In cluster residential developments, no individual lot or dwelling
- 1776 unit may have direct vehicular access onto a public road existing at
- 1777 the time of development.
- 1778 h. Where cluster residential development abuts a body of water,
- 1779 stream, or a significant wetland, then a usable portion of the
- 1780 shoreline, as well as reasonable access to such body, stream or
- 1781 wetland, must be a part of the commonly held land.
- 1782 i. The developer must take into consideration the following points,
- 1783 and illustrate the treatment of buildings, structures, spaces, paths,
- 1784 roads, service and parking areas, recreational facilities, and any
- 1785 other features determined by the Planning Board to be a part of the
- 1786 proposed development.
- 1787 i. Orientation. Buildings, view corridors and other
- 1788 improvements are to be designed so scenic vistas and
- 1789 natural features are integrated into the development.
- 1790 Buildings should be sited to consider natural light and
- 1791 ventilation.
- 1792 ii. Utility installation. All utilities are to be installed
- 1793 underground, wherever possible. The Planning Board must
- 1794 require the developer to adopt a prudent avoidance
- 1795 approach when permitting aboveground electrical service
- 1796 installations. Transformer boxes, pumping stations and
- 1797 meters must be located so as not to be unsightly or
- 1798 hazardous to the public.
- 1799 iii. Recreation. Facilities must be provided consistent with the
- 1800 development proposal. Active recreation requiring
- 1801 permanent equipment and/or modification of the site may
- 1802 not be located within the wetland setback areas or
- 1803 contiguous reserved open space areas.
- 1804 iv. Buffering. Planting, landscaping, form and siting of
- 1805 buildings and other improvements, or fencing and
- 1806 screening must be used to integrate the proposed
- 1807 development with the landscape and the character of any
- 1808 surrounding development.
- 1809 v. Development setbacks. Setbacks from wetlands and water
- 1810 bodies must demonstrate compliance to Table 16.5.30.
- 1811 These setbacks must be permanently maintained as "no cut,
- 1812 no disturb" buffer areas. If the setback areas are not of
- 1813 substantial vegetation to provide a sufficient buffer, the
- 1814 Planning Board may require additional plantings.
- 1815 j. The location of subsurface wastewater disposal systems and a
- 1816 reserve area, if required, must be shown on the plan. The reserve
- 1817 areas must be restricted so as not to be built upon. The report of a
- 1818 site evaluator, licensed by the State of Maine, must accompany the

1819 plan. If the subsurface disposal system is an engineered system,
1820 approval from the Maine Department of Human Services, Division
1821 of Health Engineering, and the Municipal Plumbing Inspector must
1822 be obtained prior to Planning Board approval.

1823 (7). Open space dedication and maintenance.

1824 a. Prior to approval of the final plan by the Planning Board,
1825 documents for open space must be submitted to the Town for
1826 review by legal counsel. Subsequent to approval, there may be no
1827 further division of the open space; however, tracts or easements
1828 dedicated for public utilities, public access or structures accessory
1829 to noncommercial recreation, agriculture or conservation may be
1830 permitted within the open space.

1831 b. The open space(s) must be shown on the development plan with
1832 appropriate notation on the face thereof to indicate that:

1833 i. The open space must not be used for future building lots;
1834 and

1835 ii. A part or all of the open space may be dedicated for
1836 acceptance by the Town.

1837 c. If any, or all, of the open space is to be reserved for ownership by
1838 the residents and/or by commercial entities, the bylaws of the
1839 proposed homeowners' or similar governing association for
1840 commercial owners (in the Mixed-Use Neighborhood Zone) and/or
1841 the recorded covenants must specify maintenance responsibilities
1842 and be submitted to the Planning Board prior to approval. See
1843 Subsection A above.

1844 d. Association responsibilities.

1845 i. Maintenance. The homeowners' association or similar
1846 association for commercial owners is responsible for the
1847 maintenance of open space(s) and other common facilities
1848 unless and until accepted by the Town. The stormwater
1849 management system must be maintained in accordance
1850 with § 16.8.10.F, Post-construction stormwater
1851 management. Associations must maintain adequate funds to
1852 defray these expenses. The Planning Board shall require an
1853 initial capital fund for associations to be paid by the
1854 developer to cover these expenses.

1855 ii. Inspection. Annually, by June 30, the developer or
1856 association must complete and submit to the Code
1857 Enforcement Officer a maintenance compliance report, on a
1858 form prepared by the Code Enforcement Officer, certifying
1859 compliance with any open space use and protection
1860 requirements. Said report must be completed by a Maine
1861 licensed civil engineer or certified soil scientist.

1862 e. Transition of responsibility. The developer must maintain control

1863 of such open space(s) and be responsible for maintenance until
1864 development, sufficient to support any and all associations,
1865 residential or commercial, has taken place. Responsibility and
1866 authority must be clearly defined and described in the recorded
1867 covenants, and such information must be distributed to any and all
1868 associations in a timely manner so the transition of responsibilities
1869 is seamless.

1870 (8). Predevelopment requirements.
1871 Prior to the beginning of site work, the applicant must file with the Town
1872 Planning Department all required performance guarantees and inspection
1873 escrows in forms acceptable to the Town Manager in accordance with
1874 § 16.8.11.F.

1875 I. Utilities

1876 (1). Approval.
1877 The size, type and location of public utilities, such as streetlights,
1878 electricity, telephone, cable television, natural gas lines, fire hydrants,
1879 water and sewer lines, etc., must be approved by the Board and installed in
1880 accordance with accepted engineering practice.

1881 (2). Underground installation.
1882 Utilities, where feasible, are to be installed underground. The Board must
1883 require the developer to adopt a prudent avoidance approach when
1884 aboveground electrical installations are approved.

1885 J. Subdivision Noise Pollution Buffer

1886 (1). Green strip.
1887 Subdivision design must minimize the possibility of noise pollution either
1888 from within or without the development (from highway or industrial
1889 sources) by providing and maintaining a green strip at least 20 feet wide
1890 between the abutting properties that are so endangered.

1891 K. Prevention of erosion

1892 [Amended 9-26-2011 by Ord. No. 11-15; 10-26-2015 by Ord. No. 15-12]

1893 (1). No person may perform any act or use the land in a manner which would
1894 cause substantial or avoidable erosion, create a nuisance, or alter existing
1895 patterns of natural water flow in the Town. This does not affect any
1896 extractive operations complying with the standards of performance
1897 specified elsewhere in this title.

1898 a. When an excavation contractor, as defined in § 16.3, performs an
1899 activity that requires or results in more than one cubic yard of soil
1900 disturbance within the Shoreland or Resource Protection Overlay
1901 Zones, there must be a person responsible for management of
1902 erosion and sedimentation control practices on site, and that person
1903 must be certified in erosion control practices by the Maine
1904 Department of Environmental Protection. This person must be
1905 present at the site each day earthmoving activity occurs for a
1906 duration that is sufficient to ensure that proper erosion and

1907 sedimentation control practices are followed. This is required until
1908 erosion and sedimentation control measures have been installed,
1909 which will either stay in place permanently or stay in place until
1910 the area is sufficiently covered with vegetation necessary to
1911 prevent soil erosion. The name and certification number of the
1912 person who will oversee the activity causing or resulting in soil
1913 disturbance must be included on the permit application. Excavation
1914 contractors will have one year from the date of the adoption of this
1915 subsection to comply with certification requirements.

1916 a. The above requirement of § 16.8.10.K.(1).a does not apply to a
1917 property owner performing work themselves, or a person or firm
1918 engaged in agriculture or timber harvesting when best management
1919 practices for erosion and sedimentation control are used.

1920 b. The above requirement of § 16.8.10.K.(1).a only applies to
1921 regulated activities requiring local, state or federal permits and/or
1922 Planning Board approval.

1923 (2). All development must generally comply with the provisions of the
1924 "Environmental Quality Handbook, Erosion and Sediment Control,"
1925 published by the Maine Soil and Water Conservation Commission.

1926 a. The developer must:

1927 i. Select a site with the right soil properties, including natural
1928 drainage and topography, for the intended use;

1929 ii. Utilize for open space uses those areas with soil unsuitable
1930 for construction;

1931 iii. Preserve trees and other vegetation wherever possible;

1932 iv. Hold lot grading to a minimum by fitting the development
1933 to the natural contour of the land; avoid substantial areas of
1934 excessive grade;

1935 v. Spread jute matting, straw or other suitable material during
1936 construction in critical areas subject to erosion;

1937 vi. Construct sediment basins to trap sediment from runoff
1938 waters during development; expose as small an area of
1939 subsoil as possible at any one time during development and
1940 for as short a period as possible;

1941 vii. Provide for disposing of increased runoff caused by
1942 changed land formation, paving and construction, and for
1943 avoiding sedimentation of runoff channels on or off the
1944 site;

1945 viii. Plant permanent and, where applicable, indigenous,
1946 vegetation and install structures as soon as possible for the
1947 purpose of soil stabilization and revegetation;

1948 b. All logging or woodlot roads must be located, constructed and
1949 maintained in conformance with the erosion prevention provisions
1950 of "Permanent Logging Roads for Better Woodlot Management,"

- 1951 published by the United States Department of Agriculture.
- 1952 (3). Where the Board has required a stormwater management and erosion
- 1953 control plan, said plan must be endorsed by the York County Soil and
- 1954 Water Conservation District or found satisfactory by the Town's
- 1955 Engineering Peer Reviewer.
- 1956 (4). All activities which involve filling, grading, excavation or other similar
- 1957 activities that potentially may result in unstable soil conditions, and which
- 1958 require a permit, must be made known in a written soil erosion and
- 1959 sedimentation control plan in accordance with the "Maine Erosion and
- 1960 Sediment Control Practices Field Guide for Contractors," 2015, and as
- 1961 amended. The plan must be submitted to the permitting authority for
- 1962 approval and must include, where applicable, provisions for:
- 1963 a. Mulching and revegetation of disturbed soil;
- 1964 b. Temporary runoff control features, such as straw bales, silt
- 1965 fencing, filter socks or diversion ditches;
- 1966 c. Permanent stabilization structures, such as retaining walls or
- 1967 riprap.
- 1968 (5). To create the least potential for erosion, development must be designed to
- 1969 fit with the topography and soil of the site. Areas of steep slopes where
- 1970 high cuts and fills may be required are to be avoided wherever possible,
- 1971 and natural contours must be followed as closely as possible.
- 1972 (6). Erosion and sedimentation control measures apply to all aspects of the
- 1973 proposed project involving land disturbance and must be in operation
- 1974 during all stages of the activity. The amount of exposed soil at every phase
- 1975 of construction must be minimized to reduce the potential for erosion.
- 1976 (7). Any exposed ground area must be temporarily or permanently stabilized in
- 1977 accordance with the ""Maine Erosion and Sediment Control Practices
- 1978 Field Guide for Contractors," 2015, and as amended. All erosion control
- 1979 measures that are no longer necessary as determined by the CEO or
- 1980 Shoreland Resource Officer must be removed at the owner's expense.
- 1981 (8). Natural and man-made drainageways and drainage outlets must be
- 1982 protected from erosion from water flowing through them. Drainageways
- 1983 must be designed and constructed in order to carry water from a twenty-
- 1984 five-year storm or greater and be stabilized with vegetation or lined with
- 1985 riprap.

1986 L. Soil suitability

1987 [Amended 9-28-2015 by Ord. No. 15-07]

- 1988 (1). The requirements and standards of the State of Maine Department of
- 1989 Environmental Protection, Department of Health and Welfare, the latest
- 1990 edition of the State Plumbing Code and this title must be met.
- 1991 (2). All land uses must be located on soils upon which the proposed uses or
- 1992 structures can be established or maintained without causing adverse
- 1993 environmental effects, including, but not limited to, severe erosion, mass

- 1994 soil movement, improper drainage, and water pollution to surface water
 1995 and groundwater, whether during or after construction.
- 1996 (3). Any proposed development requires a soil report based on information
 1997 from the Maine Natural Resources Conservation Service (NRCS). Where
 1998 subsurface wastewater disposal is required and the Soil Survey for York
 1999 County or information from the Maine NRCS shows soils with severe
 2000 restrictions for development, a Class A (high-intensity) soil survey must
 2001 be provided by a soil scientist certified in the State of Maine. The survey
 2002 must be based on the Maine Association of Professional Soil Scientists
 2003 Standards for Soil Survey, revised 3/2009, or subsequent revision. In
 2004 addition to evaluating soil properties, the soil scientist shall analyze and
 2005 document characteristics of surrounding land and water areas, maximum
 2006 groundwater elevation, presence of ledge, drainage conditions and any
 2007 other data deemed appropriate by the soil scientist or required by the
 2008 Planning Board. The soil scientist shall include recommendations for the
 2009 proposed use to counteract soil limitations where any exist. A Class A soil
 2010 survey must include a written soil narrative report accompanied by a soil
 2011 map that depicts soil delineations and symbols identified in the report. The
 2012 soil map must be prepared at the same scale as that of the development
 2013 plan, with wetlands and floodplain depicted on both.
- 2014 (4). Cluster residential, or mixed-use development and similar intensive land
 2015 uses require a Class A (high-intensity) soil survey by a Maine-certified
 2016 soil scientist.
- 2017 (5). Where non-clustered development is limited in scale and intensity, the
 2018 developer may request the Class A (high-intensity) soil survey required by
 2019 § 16.8.10.L.(3) above be waived by the Planning Board. The Board may
 2020 grant said waiver only after consideration by the Town's Peer Review
 2021 Engineer of the developer's explanation as to why a Class A soil survey is
 2022 not warranted. In the event a Class A soil survey is not required, the site's
 2023 soil suitability must be sufficiently assessed for compliance with this title.

2024 M. Water quality and wastewater pollution.

- 2025 (1). No activity is allowed to deposit on or into the ground or discharge to any
 2026 river, stream or brook, pond, or wetland any pollutant that, by itself or in
 2027 combination with other activities or substances, will impair designated
 2028 uses or the water classification of the water body.
- 2029 (2). Wastewater to be discharged into Kittery Sewer Department sewers,
 2030 should they be available, must be in such quantities and/or of such quality
 2031 as to be compatible with standards established by the municipality or the
 2032 Sewer Department.
- 2033 (3). To meet those standards, the municipality or Sewer Department may
 2034 require that such wastes undergo pretreatment or full treatment at the site
 2035 in order to render them acceptable for the treatment processes.
- 2036 (4). The disposal of wastewater by means other than a public system must
 2037 comply with the laws of the State of Maine and the Town concerning
 2038 water pollution. Where a public sanitary sewer system is located within

2039 200 feet of the property line as measured along a public way, the Town
2040 requires individual entrance into said sewer.
2041 (5). Discharge of sanitary wastes to any water body is subject to the issuance
2042 of Maine State Department of Environmental Protection licenses, but no
2043 such off-site discharge will be allowed unless same is buried or not visible
2044 to a point below normal low water and is secured against damage and
2045 uncovering by the tides, erosion or other foreseeable action.

2046 N. Floodplain areas.

2047 [Amended 9-26-2011 by Ord. No. 11-15]

2048 (1). Land along rivers, streams and ponds which is subject to flooding through
2049 storm or seasonal action, called floodplain areas, may be used for
2050 woodland, grassland, agricultural or outdoor recreational use. The Code
2051 Enforcement Officer shall maintain a map showing the latest updated
2052 federal and state information of the known floodplain areas, and no
2053 building shall be constructed therein when there are undue flooding
2054 hazards, unless it can meet all requirements of § 16.5.11, Floodplain
2055 Management, relating to flood hazard permit and review procedure, of this
2056 title. Floodplain areas shall be considered as those areas within the one-
2057 hundred-year frequency floodplain, as identified by an authorized federal
2058 or state agency, or where such identification is not available, are located
2059 on floodplain soils identified as described in the York County Soil Survey
2060 to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl;
2061 Rumney fsl; Saco sl.

2063 O. Retention of Open Spaces and Natural or Historic Features

2064 (1). Tree clearing.
2065 Proposed development plans must, by notes on the final plan and deed
2066 restrictions, limit the clearing of trees to those areas designated on the
2067 plans.
2068 (2). Clearing or removal of vegetation for uses other than timber harvesting in
2069 Resource Protection or Shoreland Overlay Zone.
2070 a. In a Resource Protection or Shoreland Overlay Zone, cutting of
2071 vegetation is prohibited within the strip of land extending 100 feet,
2072 horizontal distance, inland from the normal high-water line, except
2073 to remove safety hazards. Elsewhere in a Resource Protection or
2074 Shoreland Overlay Zone, the cutting or removal of vegetation is
2075 limited to that which is necessary for uses expressly authorized in
2076 the Resource Protection or Shoreland Overlay Zone.
2077 b. Except in areas as described in § 16.8.10.O.(1) and
2078 § 16.8.10.O.(2).a, above and 100 feet, horizontal distance, from
2079 any other water body, tributary stream or the upland edge of a
2080 wetland, a buffer strip of vegetation must be preserved as follows:
2081 i. Clearance of an opening greater than 250 square feet in the
2082 forest canopy, or other existing woody vegetation if a
2083 forested canopy is not present, as measured from the outer

limits of the tree or shrub crown, is prohibited. However, a footpath not to exceed six feet in width as measured between tree trunks and/or shrub stems is allowed, provided that a cleared line of sight to the water through the buffer strip is not created.

- ii. Selective cutting of trees within the buffer strip is allowed, provided a well-distributed stand of trees and other natural vegetation is maintained. Adjacent to water bodies, tributary streams and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per twenty-five-foot-by-fifty-foot rectangular area.

Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
2 to < 4	1
4 to < 8	2
8 to < 12	4
12 or greater	8

a. The following governs in applying this point system:

1. The twenty-five-foot-by-fifty-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
2. Each successive plot must be adjacent to, but not overlap a previous plot;
3. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this title;
4. Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this title; and
5. Where conditions permit, no more than 50% of the points on any twenty-five-foot-by-fifty-foot rectangular area may consist of trees greater than 12 inches in diameter.

- iii. For the purposes of § 16.8.10.O.(2).b.ii, "other natural vegetation" is defined as retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at 4 1/2 feet above ground level for each twenty-five-foot-by-fifty-foot rectangle area. If five saplings do not exist, no woody

2121 stems less than two inches in diameter may be removed
2122 until five saplings have been recruited into the plot.

2123 iv. Notwithstanding the above provisions, no more than 40%
2124 of the total volume of trees four inches or more in diameter,
2125 measured at 4 1/2 feet above ground level, may be removed
2126 in any ten-year period.

2127 a. To protect water quality and wildlife habitat,
2128 existing vegetation under three feet in height and
2129 other ground cover, including leaf litter and the
2130 forest duff layer, must remain uncut, uncovered or
2131 undisturbed, except to provide for a footpath or
2132 other permitted uses as described in
2133 § 16.8.10.O.(2).ii above.

2134 a. Pruning of tree branches on the bottom 1/3 of the
2135 tree is allowed.

2136 b. To maintain a buffer strip of vegetation, when the
2137 removal of storm-damaged, diseased, unsafe or
2138 dead trees results in the creation of cleared
2139 openings, these openings must be replanted with
2140 tree species that are suitable to Kittery's growing
2141 conditions unless existing new tree growth is
2142 present. See Design Handbook Kittery Maine,
2143 approved by the Kittery Planning Board, August 11,
2144 2005, pages 13 and 14, for the listing of approved
2145 plant materials.

2146 c. Article II of this chapter does not apply to those
2147 portions of public recreational facilities adjacent to
2148 public swimming areas as long as cleared areas are
2149 limited to the minimum area necessary.

2150 c. At distances greater than 100 feet, horizontal distance, from the
2151 normal high-water line of any other water body, tributary stream,
2152 or the upland edge of a coastal wetland, and 100 feet, horizontal
2153 distance, from the normal high-water line of any other water body,
2154 tributary stream, or the upland edge of a wetland, there will be
2155 allowed on any lot, in any ten-year period, selective cutting of not
2156 more than 40% of the volume of trees four inches or more in
2157 diameter, measured 4 1/2 feet above ground level. Tree removal in
2158 conjunction with the development of permitted uses must be
2159 included in the forty-percent calculation. For the purposes of these
2160 standards, volume may be considered to be equivalent to basal
2161 area.

2162 d. It is not permissible to clear openings for any purpose, including
2163 but not limited to principal and accessory structures, driveways,
2164 lawns and sewage disposal areas, exceeding in the aggregate 25%
2165 of the lot area within the Resource Protection or Shoreland Overlay

- 2166 Zone or 10,000 square feet, whichever is greater, including land
2167 previously cleared. This provision does not apply to the
2168 Commercial Fisheries/Maritime Activities Zones.
- 2169 e. Legally existing nonconforming cleared openings may be
2170 maintained, but must not be enlarged, except as allowed by this
2171 title.
- 2172 f. Fields and other cleared openings which have reverted to primarily
2173 shrubs, trees or other woody vegetation will be regulated under the
2174 provisions of this chapter.
- 2175 (3). Land dedication.
2176 Reserved land acceptable to the Planning Board and applicant may be
2177 gifted to the municipality as a condition of approval, only when Council
2178 has agreed to the gifting.
- 2179 (4). Landscape plan for preservation of natural and historic features.
2180 a. The applicant is required to submit a proposed development design
2181 plan(s) that includes a landscape plan showing:
2182 i. Preservation of existing trees 10 inches or more caliper at
2183 breast height;
2184 ii. Replacement of trees and vegetation;
2185 iii. Graded contours;
2186 iv. Streams, wetlands and water bodies; and
2187 v. Preservation of scenic, historic or environmentally
2188 significant areas.
- 2189 b. Cutting of trees on the northerly borders of lots should be avoided
2190 as far as possible to provide a natural wind buffer.
- 2191 c. Unless the applicant can demonstrate it is impracticable, street and
2192 lot layout must be adapted to the topography. Extensive grading
2193 and filling must be avoided as much as possible.
- 2194 (5). Archaeological or historic sites.
2195 a. When the proposed development contains any identified
2196 archaeological or historic sites or any areas identified by the Maine
2197 Critical Areas Program as rare and irreplaceable natural areas,
2198 these areas must be included in a development plan's open space,
2199 and suitably protected by appropriate covenants and management
2200 plans.
- 2201 a. Any proposed land use activity involving structural development
2202 or soil disturbance on or adjacent to sites listed on or eligible to be
2203 listed on the National Register of Historic Places must be
2204 submitted by the applicant to the Maine Historic Preservation
2205 Commission for review and comment at least 20 days prior to
2206 action being taken by the Town Planner and/or the Planning Board.
2207 The development Review Authority will consider comments
2208 received from the Commission prior to rendering a decision on the

2209 application.
2210 b. In Shoreland, Resource Protection or Commercial
2211 Fisheries/Maritime Uses Overlay Zones, a permit is not required
2212 for an archaeological excavation, provided the excavation is
2213 conducted by an archaeologist listed on the State Historic
2214 Preservation Officer's Level 1 or Level 2 approved list, and
2215 unreasonable erosion and sedimentation is prevented by means of
2216 adequate and timely temporary and permanent stabilization
2217 measures.

2218 P. Technical and Financial Capacity

2219 (1). Financial Capacity.

2220 a. The applicant shall have adequate financial resources to construct
2221 the proposed improvements and meet the criteria of the standards
2222 of these regulations. In making its determination the Planning
2223 Board shall consider all documentation submitted by the developer
2224 relative to their financial capacity to construct, operate, and
2225 maintain all aspects of the development. The Board shall also
2226 consider the proposed time frame for construction and the effects
2227 of inflation.

2228 (2). Technical Ability

2229 a. The applicant shall retain qualified contractors and consultants to
2230 supervise, construct and inspect the required improvements in the
2231 proposed subdivision.

2232 a. In determining the applicant's technical ability the Board shall
2233 consider the applicant's previous experience, the experience and
2234 training of the applicant's consultants and contractors, and the
2235 existence of violations of previous approvals granted to the
2236 applicant.

2237 16.8.11 Post-Approval

2238 A. Approved final plan.

2239 (1). No subdivision plan shall be released for recording at the Registry of
2240 Deeds until the required performance guarantee has been posted. If an
2241 approved plan is not recorded in the Registry of Deeds within one (1) year
2242 of the original approval, it shall become null and void. The Planning
2243 Board may grant an extension as particular circumstances dictate, which
2244 may not exceed an additional ninety day period. Where applicable, the
2245 stormwater and erosion control maintenance agreement that must be
2246 included in the document of covenants, homeowners' documents and/or as
2247 riders to the individual deed must be recorded with the York County
2248 Registry of Deeds.

2249 B. Subdivision plan filing, recording. Prior to recording a subdivision plan in the
2250 York County Registry of Deeds, a subdivider must have acquired Planning Board

2251 approval in accordance with this title.

2252 C. Subdivision land conveyance.

2253 (1). No person, firm, corporation, or other legal entity may convey, offer, or
2254 agree to convey any land in a subdivision which has not been approved by
2255 the Planning Board, recorded in the York County Registry of Deeds and
2256 shown on the final plan as a separate lot.

2257 (2). Subdivision frontage street completion. No lot in a subdivision may be
2258 sold, leased or otherwise conveyed before the street upon which such lot
2259 has frontage is completed to rough grade standard up to and including the
2260 entire frontage of the lot. Prior to the issuance of certificates of occupancy
2261 by the CEO, the street from which the unit is accessed must be completed
2262 in accordance with § 16.5.27, Streets and Pedestrianways/Sidewalks Site
2263 Design Standards.

2264 D. Approved plan expiration. [Amended 1-28-2015 by Ord. No. 15-01]

2265 (1). A subdivision plan's approval will expire if work has not commenced
2266 within one year from the Planning Board date of approval. Where work
2267 has commenced within one year of such approval, the approval will expire
2268 unless work is complete within three years of the original date of Planning
2269 Board approval.

2270 (2). Prior to expiration, the Planning Board may, on a case-by-case basis, grant
2271 extensions to an approved plan expiration date upon written request by the
2272 developer for an inclusive period from the original approval date, not to
2273 exceed five years for a subdivision plan and three years for all other
2274 development plans.

2275 (3). When a plan's approval expires, the applicant may reapply subject to the
2276 Town Code current at the time of reapplication.

2277 E. Approval not acceptance of property. The approval by the Planning Board of a
2278 plan, a master site development plan or any other subsequent development plan
2279 does not constitute, nor is it evidence of, any acceptance by the municipality of
2280 any street, easement or other open space shown on the plan. When a park,
2281 playground or other recreation area is shown on the plan, approval of the plan
2282 does not constitute an acceptance by the municipality of such areas. The Planning
2283 Board must require the plan to be endorsed with appropriate notes to this effect.
2284 The Planning Board may also require the filing of a written agreement between
2285 the applicant and the municipal officials covering future deed and title, dedication
2286 and provision for the cost of grading, development, equipment and maintenance
2287 of any such recreation area.

2288 F. Performance Guarantees

2289 (1). Types of Guarantees. The applicant shall provide one of the following
2290 performance guarantees for an amount adequate to cover 100% of the total
2291 construction costs of all required improvements, plus an additional 10% as
2292 contingency. A performance guarantee shall not expire between October
2293 31 and Aril 15 the following year.

- 2294 a. Certified check payable to the municipality or a savings account or
2295 certificate of deposit naming the municipality as owner, for the
2296 establishment of an escrow account;
- 2297 i. For any account opened by the applicant, the Town of
2298 Kittery shall be named as owner or co-owner, and the
2299 consent of the Town shall be required for a withdrawal.
- 2300 b. An irrevocable letter of credit, from a financial institution
2301 approved by the Town Manager, establishing funding for the
2302 construction of the subdivision, from which the municipality may
2303 draw if construction is inadequate.
- 2304 i. The letter of credit shall use the template established by the
2305 Town of Kittery.
- 2306 (2). Contents of guarantee. The performance guarantee shall contain the
2307 following:
- 2308 a. Construction schedule;
- 2309 b. Itemized construction cost estimates for roadways, curbing,
2310 esplanades, sidewalks, sanitary sewerage systems, storm drainage
2311 systems, utilities, street lighting, tree planting, erosion and
2312 sedimentation control measures, and other public improvements
2313 for each major phase of construction, taking into account inflation;
- 2314 c. Provisions for inspections of each phase of construction;
- 2315 d. Provisions for the release of part or all of the performance
2316 guarantee to the developer; and
- 2317 e. A date after which the applicant will be in default and the
2318 municipality shall have access to the funds to finish construction.
- 2319 (3). Release of Guarantee. Prior to the release of any part of the performance
2320 guarantee, the Town Manager shall determine to his/her satisfaction, in
2321 part based upon the report of the Town's Engineer or other qualified
2322 individual retained by the municipality and any other agencies and
2323 departments who may be involved, that the proposed improvements meet
2324 or exceed the design and construction requirements for that portion of
2325 phase of the subdivision for which the release is requested.
- 2326 a. Performance guarantees may be reduced periodically, but in no
2327 event more than one (1) time per month. In no case shall the
2328 performance guarantee be reduced by less than ten thousand
2329 dollars (\$10,000) at one time or in any line item where
2330 improvements remain to be completed.
- 2331 b. No performance guarantee shall be reduced to less than the ten
2332 (10) percent contingency until all work is complete.
- 2333 c. The Town shall retain the 10% performance guarantee contingency
2334 for a period of one (1) year from the date of final paving for any
2335 street to be offered for public acceptance. The guarantee shall
2336 ensure the workmanship and the durability of all materials used in
2337 the construction of public improvements within the right-of-way

2338 that may become defective within that one (1) year period, as
2339 determined by the Director of Public Works.

2340 (4). Default. If upon investigation, the town's consulting engineer or other
2341 qualified individual retained by the Town finds that any of the required
2342 improvements have not been constructed in general conformance with the
2343 plans and specifications filed as part of the application, he or she shall so
2344 report in writing to the Code Enforcement Officer, the Town Manager, the
2345 Planner and the applicant or builder. The Town Manager, or his or her
2346 designee, shall take any steps necessary to preserve the municipalities
2347 rights.

2348 G. Inspection of required improvements. [Amended 9-28-2015 by Ord. No. 15-08]

2349 (1). Prior to the commencement of any work associated with development
2350 approved in accordance with this title, the developer or duly authorized
2351 representative must provide a schedule of expected construction activities
2352 by phase to the inspecting official, which may be the Code Enforcement
2353 Officer (CEO) or their representative or, when applicable, the Town's Peer
2354 Review Engineer, and coordinate a preconstruction meeting. Attendance at
2355 said meeting must at a minimum include authorized representation from
2356 the Town, the developer and their general contractor. Meeting minutes
2357 must be prepared by the Town's representative and distributed to all
2358 attendees and the Town Planner.

2359 (2). The developer or general contractor shall coordinate inspections with the
2360 inspecting official and provide written notice at least seven days prior to
2361 commencing each major phase of construction as outlined in the
2362 construction schedule. When all phases of work are complete, the general
2363 contractor shall request a final inspection from the inspecting official, who
2364 shall prepare a punch list of any outstanding items to be completed, within
2365 seven days of the final inspection. Once all outstanding items have been
2366 completed, the developer or the general contractor shall coordinate a final
2367 walk-through where the inspecting official determines if the construction
2368 has been completed in accordance with the approved plans. The inspecting
2369 official shall provide, in writing, to the developer or the general contractor
2370 within seven days of the final walk-through what, if any, construction is
2371 not complete or confirm that the development is complete and has been
2372 constructed according to the approved plans.

2373 (3). If the inspecting official finds, upon inspection of the required
2374 improvements, that any of the required improvements have not been
2375 constructed in accordance with the approved plans and specifications, the
2376 inspecting official must report, in writing, to the Town Planner, the
2377 developer or duly authorized representative of the developer, and, when
2378 applicable, the CEO. The Town Planner shall inform the Planning Board
2379 of any issues identified by the inspections. The Town shall take any steps
2380 necessary to preserve the municipality's rights.

2381 (4). Where applicable and in advance of any construction, the developer must
2382 deposit sufficient funds for said inspections in an applicant's service

2383 account per Chapter 3.3. The amount is based on a scope of services and
2384 fee prepared by the Town's Peer Review Engineer after review of the
2385 developer's construction estimate prepared by a professional engineer or a
2386 qualified contractor.

2387 (5). Stormwater and erosion control inspection.

2388 a. During October to November of each year in which construction
2389 for grading, paving and landscaping occurs on a development site,
2390 the Town will, at the expense of the developer, cause the site to be
2391 inspected by a qualified individual. By December 1, the inspector
2392 must submit a site report to the Town Planner that describes the
2393 inspection findings and indicates whether stormwater and erosion
2394 control measures (both temporary and permanent) are in place and
2395 properly installed. The report must include a discussion and
2396 recommendation on any and all problem areas encountered.

2397 b. After major construction activities have been completed on a
2398 development site, the developer must, on or by July 1 of each year,
2399 provide a completed and signed certification to the Code
2400 Enforcement Officer per § 16.8.10.F, Post-construction stormwater
2401 management.

2402 c. Erosion control debris. The owner or occupant of any land in any
2403 zone must not allow erosion control materials, such as plastic
2404 erosion control fences and related stakes or other materials, to
2405 remain on the site but must remove the same within six months of
2406 the date such erosion control materials were installed, or the date
2407 when no longer required, whichever is later. When a violation is
2408 discovered, the Code Enforcement Officer will order compliance
2409 by written notice of violation to the owner of any land in any zone
2410 requesting removal of such violation within 30 days of the date of
2411 written notice. An extension of time to correct may be made by the
2412 Code Enforcement Officer for good and sufficient reason.

2413 H. Plan revisions after approval. No changes, erasures, modifications or revisions
2414 may be made to any Planning Board approved final plan, unless in accordance
2415 with the Planner's and CEO's powers and duties as found in Chapter 16.2, or
2416 unless the plan has been resubmitted and the Planning Board specifically
2417 approves such modifications. In the event a final plan is recorded without
2418 complying with this requirement, the same is null and void, and the Planning
2419 Board must institute proceedings to have the plan stricken from Town records and
2420 the York County Registry of Deeds. [Amended 9-26-2011 by Ord. No. 11-15]

2421 (1). Field changes. [Amended 9-24-2012 by Ord. No. 12-11]

2422 a. If at any time before or during the construction of the required
2423 improvements it appears to be necessary or desirable to modify the
2424 required improvements, the Code Enforcement Officer and Town
2425 Planner are authorized to approve minor plan amendments due to
2426 unforeseen field circumstances, such as encountering hidden
2427 outcrops of bedrock, natural springs, etc. The Code Enforcement

2428 Officer and Town Planner must issue any approval under this
2429 subsection in writing and transmit a copy of the approval to the
2430 Planning Board. Revised plans must be filed with the Town and
2431 recorded, where appropriate. The developer must provide the
2432 revised plan to the Town Planner, and it shall be recorded in the
2433 York County Register of Deeds when applicable.

2434 (2). Modifications to approved plan.

2435 a. Minor modifications. Modifications to a Planning Board approved
2436 plan that do not require Planning Board review per § 16.8.11.H
2437 may be approved by the Code Enforcement Officer and Town
2438 Planner. Such approvals must be issued in writing to the developer
2439 with a copy to the Planning Board. The developer must provide the
2440 revised plan to the Town Planner, and it shall be recorded in the
2441 York County Register of Deeds, when applicable. [Amended 9-24-
2442 2012 by Ord. No. 12-11]

2443 b. Major modifications. Major modifications (e.g., relocations of
2444 principal structures, rights-of-way or property boundaries; changes
2445 of grade by more than 1%) require Planning Board approval.

2446 I. Maintenance of improvements. The developer, or owner, is required to maintain
2447 all improvements and provide for snow removal on streets and
2448 pedestrianways/sidewalks unless and until the improvement has been accepted by
2449 the Town Council.

2450 J. Acceptance of Streets and Ways

2451 (1). Conditions. A street or way constructed on private lands by the owner(s)
2452 thereof and not dedicated for public travel prior to the enactment of this
2453 title must be laid out and accepted as a public street or way by the Town
2454 Council only upon the following conditions:

2455 a. The owners must give the Town a deed to the property within the
2456 boundaries of the street at the time of acceptance by the Town.

2457 b. A plan of said street or way must be recorded in the York County
2458 Registry of Deeds at the time of its acceptance.

2459 c. A petition for laying out and acceptance of said street or way must
2460 be submitted to the Town Council upon a form prescribed by the
2461 Commissioner of Public Works. Said petition must be
2462 accompanied by a plan, profile and cross section of said street as
2463 follows:

2464 i. A plan drawn, when practical, to a scale of 40 feet to one
2465 inch and to be on one or more sheets of paper not
2466 exceeding 24 inches by 36 inches in size. Said plan must
2467 show the North point; the location and ownership of all
2468 adjoining lots of land; rights-of-way and easements;
2469 streetlights and electric lines; boundary monuments;
2470 waterways, topography and natural drainage courses with
2471 contour at not greater than two-foot intervals; all angles,

- 2472 bearings and radii necessary for the plotting of said street
2473 and lots and their reproduction on the ground; the distance
2474 to the nearest established street or way, together with the
2475 stations of their side lines;
- 2476 ii. A profile of said street or way drawn to a horizontal scale
2477 of 40 feet to one inch and a vertical scale of four feet to one
2478 inch. Said profile must show the profile of the side lines
2479 and center line of said street or way and the proposed
2480 grades thereof. Any buildings abutting the street or way
2481 must be shown on said profile;
- 2482 iii. A cross section of said street or way drawn to a horizontal
2483 scale of five feet to one inch and a vertical scale of one foot
2484 to one inch; and
- 2485 iv. The location and size of water and sewer mains and surface
2486 water drainage systems, as installed.
- 2487 (2). Such street or way must have been previously constructed in accordance
2488 with the standards and criteria established in § 16.5, General Performance
2489 Standards and § 16.8, Subdivision Review.
- 2490 (3). Acceptance of streets and ways required in public interest.
- 2491 a. Notwithstanding the provisions of any other section hereof, the
2492 Town may at any time lay out and accept any street or way in the
2493 Town as a public street or way of said Town whenever the general
2494 public interest so requires. The cost of said street or way may be
2495 borne by the Town.
- 2496 (4). Easements.
- 2497 a. The Board may require easements for sewerage, other utilities,
2498 drainage and stream protection. In general, easements may not be
2499 less than 20 feet in width. Wider easements may be required.
- 2500 (5). No street or way to be accepted until after report.
- 2501 a. Street acceptance as Town way. Upon completion of construction
2502 of any street/road intended for proposal for acceptance as a Town
2503 way, a written certification that such way meets or exceeds the
2504 design and construction standards of this title, signed by a
2505 professional engineer registered by the State of Maine, prepared at
2506 the developer's expense, must be submitted to the Board. If
2507 underground utilities are laid in such way, the developer must also
2508 provide written certification from the servicing utility(ies), that
2509 such installation was in a manner acceptable to the utility. The
2510 Board is to review the proposal and forward a recommendation to
2511 the Town Council regarding acceptance.
- 2512 b. No street or way may be laid out and accepted by the Town
2513 Council until the Planning Board and the Public Works
2514 Commissioner have made a careful investigation thereof and
2515 reported to the Town Council their recommendations in writing

2516 with respect thereto.

2517 K. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code
2518 Enforcement Officer is to keep a complete record of all essential transactions of
2519 development in the Shoreland and Resource Protection Overlay Zones, including
2520 applications submitted, permits granted or denied, variances granted or denied,
2521 revocation actions, revocation of permits, appeals, court actions, violations
2522 investigated, violations found, and fees collected. On a biennial basis, a summary
2523 of this record must be submitted to the Director of the Bureau of Land and Water
2524 Quality within the Department of Environmental Protection.

2525 L. Subdivision lot monumentation prior to sale. Prior to the sale of any approved
2526 subdivision lot, the subdivider must provide the Planner with a letter from a
2527 registered land surveyor, stating all monumentation shown on the plan has been
2528 installed.

2529 M. Utility service. Prior to the installation of any public utility to a site, the developer
2530 must have obtained all necessary approvals from the appropriate local, state or
2531 federal authority.

2532 N. Grading/construction final plan required. Grading or construction of roads,
2533 grading of land or lots, or construction of buildings which require a final plan as
2534 provided in this title, until such time as the final plan has been duly prepared,
2535 submitted, reviewed, approved and endorsed as provided in this title, is prohibited
2536 until the original copy of the final plan so approved and endorsed has been duly
2537 recorded in the York County Registry of Deeds.

2538 O. Nonstormwater discharge. No person, except where exempted in § 16.5.19,
2539 Nonstormwater Discharge may create, initiate, originate, or maintain a
2540 nonstormwater discharge to the storm drainage system. Such nonstormwater
2541 discharges are prohibited notwithstanding the fact that the municipality may have
2542 approved the connections, drains or conveyances by which a person discharges
2543 unallowable nonstormwater discharges to the storm drainage system. [Amended
2544 5-22-2017 by Ord. No. 17-06; 5-30-2018 by Ord. No. 04-18]

2545 P. Nuisances. Any violation of this title is deemed to be a nuisance.

2546 Q. Erosion control debris. The owner or occupant of any land in any zone must not
2547 allow erosion control materials, such as plastic erosion control fences and related
2548 stakes or other materials, to remain on the site but must remove the same within
2549 six months of the date such erosion control materials were installed, or the date
2550 when no longer required, whichever is later. When a violation is discovered, the
2551 Code Enforcement Officer will order compliance by written notice of violation to
2552 the owner of any land in any zone requesting removal of such violation within 30
2553 days of the date of written notice. An extension of time to correct may be made by
2554 the Code Enforcement Officer for good and sufficient reason.

1 **16.9 Other Plan Development Review**

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9 **16.9.1 Maritime and Shoreland Related Development**

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

14 B. Applicability

15 (1). Kittery Port Authority. The Kittery Port Authority’s (“Port Authority”)
16 jurisdiction extends to applications proposing any development from the
17 navigable tidal waters to the **highest annual tide** ~~mean high-water line~~ or
18 upland edge of a coastal wetland. The Port Authority, through its
19 established Rules and Regulations, reviews and approves applications for
20 piers, wharves, landings, floats, bridges, other water-dependent structures
21 or uses.

22 (2). Planning Board. The Planning Board’s jurisdiction for review and
23 approval extends to applications proposing any upland development from
24 the highest annual tide of any water bodies or upland edge of a costal or
25 freshwater wetland or any development located within the Shoreland,
26 Resource Protection, and Commercial Fisheries/Maritime Uses Overlay
27 Zones or all other structures not requiring Port Authority approval, except
28 for applications as provided under 16.9.1.B.1.

29 C. General review Process and Notification

30 (1). Process.

31 a. Prior to the submission of a shoreland development application
32 with the Port Authority or the Planning Board, a preliminary
33 application meeting between the Town Planner, Code Enforcement
34 Officer, or designee, and the applicant or agent, shall occur to
35 review the proposed project, performance standards and procedural
36 requirements thereof.

37 b. If Port Authority or Planning Board review is not required, the

- 38 **Code Enforcement Officer and Town Planner** shall review the
39 application for compliance with this title.
- 40 c. If the Planning Board must review and approve a development
41 plan **application** involving a pier, ramp, flotation system or
42 principal marine structure, -prior to **the submission of the**
43 **development plan application requiring Planning Board**
44 **review**, the Port Authority must **review and approve** any
45 proposed pier, ramp and float system or principal marine structure
46 **application**.
- 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 **Code Enforcement Officer** shall send a written record of their
58 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 **16.9.2 Port Authority Shoreland Development Review**

- 68 A. Review for completeness. The **Code Enforcement Officer and Town Planner**
69 shall review Port Authority applications for completeness prior to the Port
70 Authority's 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:

- 80 a. Construction plans for piers, ramps and floats;
81 b. Areas of vegetation clearing;
82 c. Location of required parking space(s); and
83 d. Location of boat and/or float storage.
- 84 (2). Rights granted for access to the pier, ramp and float system or to any
85 water-dependent structure; public and private access paths.
- 86 (3). Documentation addressing visual impact and controls to assure continuing
87 conformance to the shorefront development plan and this title.
- 88 (4). All necessary applications for permits, leases, approvals, and any
89 supporting documentation as may be required have been filed, including
90 the following:
- 91 a. Department of Environmental Protection permit application
92 pursuant to the Natural Resources Protection Act, 38 M.R.S.
93 § 480C;
- 94 b. Army Corps of Engineers permit application;
- 95 c. Maine State Department of Conservation, Bureau of Parks and
96 Lands, Submerged Land Coordinator application; and
97 d. Building permit application
- 98 (5). Any other details requested by the Port Authority, including, but not
99 limited to, information as enumerated in the Port Authority's Rules and
100 Regulations.
- 101 D. Performance standards. Development involving piers, wharves, marinas and
102 other uses projecting into water bodies must conform to the following standards:
- 103 (1). In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning,
104 all dimensional and other standards (excluding setbacks from water
105 bodies) of this title apply to structures and uses projecting into a water
106 body beyond the highest annual tide.
- 107 (2). Boathouses, while convenient to locate near the water, are not considered
108 functionally water-dependent uses and must meet the same setback
109 requirement as principal structures. The State of Maine no longer issues
110 permits for construction of boathouses below the highest annual tide due
111 to the adverse environmental impact; therefore, new boathouses must be
112 located on uplands.
- 113 (3). Only functionally water-dependent uses are allowed on, over or abutting a
114 pier, wharf or other structure beyond the highest annual tide.
- 115 (4). Access from shore must be developed on soils appropriate for such use
116 and constructed so as to control erosion.
- 117 (5). The location must not interfere with existing developed recreational and
118 maritime commerce or natural beach areas.
- 119 (6). The facility must be located so as to minimize adverse effects on fisheries.
- 120 (7). The facility must be a water-dependent use and no larger in dimension
121 than necessary to carry on the activity and must be consistent with existing

- 122 conditions, use and character of the area.
- 123 (8). No new structure may be built on, over or abutting a pier, wharf, dock or
124 other structure extending beyond the highest annual tide of a water body
125 or within a wetland unless the structure requires direct access to the water
126 as an operational necessity.
- 127 (9). No existing structures built on, over or abutting a pier, dock, wharf or
128 other structure extending beyond the highest annual tide of a water body
129 or within a wetland may be converted to residential dwelling units in any
130 district.
- 131 (10). Except in the Commercial Fisheries/Maritime Uses Overlay Zone,
132 structures built on, over or abutting a pier, wharf, dock or other structure
133 extending beyond the highest annual tide of a water body or within a
134 wetland must not exceed 20 feet in height above the pier, wharf, dock or
135 other structure.
- 136 (11). Applicants proposing any construction or fill activities in a waterway or
137 wetland requiring approval by the U.S. Army Corps of Engineers pursuant
138 to Section 404 of the Clean Water Act, Section 9 or 10 of the Rivers and
139 Harbors Act, or Section 103 of the Marine Protection, Research and
140 Sanctuaries Act, must submit proof of a valid permit issued.
- 141 (12). Proposals for any principal marine structure use, any residential joint-
142 and/or shared-use pier, or any residential-development-use pier require
143 Planning Board approval.
- 144 (13). A residential development containing five or more lots in a zone
145 permitting a residential-development-use pier may construct only one
146 residential development use pier.
- 147 (14). Commercial development of the shorefront must provide for access by the
148 general public as part of a shorefront development plan.
- 149 (15). Only one pier, ramp and float structure is permitted on any noncommercial
150 or nonindustrial lot.
- 151 (16). Marine-related permanent structures located below the mean low-water
152 line require the following permits, leases and approvals:
- 153 a. Port Authority approval;
- 154 b. Department of Environmental Protection permit pursuant to the
155 Natural Resources Protection Act, 38 M.R.S. § 480-C;
- 156 c. Army Corps of Engineers permit;
- 157 d. Maine State Department of Conservation, Bureau of Parks and
158 Lands, Submerged Land Coordinator approval; and
- 159 e. Building permit.
- 160 (17). Any other performance standards as enumerated in the Port Authority's
161 Rules and Regulations.
- 162 E. Findings of fact. An application shall be approved or approved with conditions if
163 the Port Authority makes a positive finding based on the information presented.
164 The application must be demonstrated that the proposed use will shall:

- 165 (1). Maintain safe and healthful conditions;
166 (2). Not result in water pollution, erosion or sedimentation to surface waters;
167 (3). Adequately provide for the disposal of all wastewater;
168 (4). Not have an adverse impact on spawning grounds, fish, aquatic life, bird
169 or other wildlife habitat;
170 (5). Conserve shore cover and visual, as well as actual, points of access to
171 inland and coastal waters;
172 (6). Protect archaeological and historic resources;
173 (7). Not adversely affect existing commercial fishing or maritime activities in
174 a commercial fisheries/maritime activities district;
175 (8). Avoid problems associated with floodplain development and use
176 (9). Is in conformance with the provisions of this title; and
177 F. The approved plan must be recorded with the York County Registry of Deeds.
178 G. Appeal of Port Authority decision. Appeal of a Port Authority shoreland
179 development plan decision by the Planning Board may be made per §16.2.12.B.

180 **16.9.3 Planning Board Shoreland Development Review**

181 A. Review process

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

195 B. Waivers

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

199 C. Submission requirements

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

- 204 (2). All applications shall be dated, and the Town Planner or designee shall
205 note upon each application the date and time of its receipt.
- 206 (3). Whenever the nature of the proposed structure requires the installation of a
207 subsurface sewage disposal system, a complete application for a
208 subsurface wastewater disposal permit shall be submitted. The application
209 shall include a site evaluation approved by the Plumbing Inspector.

210 D. Exempt and non-exempt uses.

- 211 (1). Exempt uses and development not requiring shoreland development
212 review by the Planning Board
- 213 a. Proposed development of principal and accessory structures in
214 compliance with §16.4.28.D, when not subject to Planning Board
215 review as explicitly required elsewhere in this title, shall be
216 reviewed and approved by the Code Enforcement Officer (CEO)
217 prior to issuing a building permit, subject to, but not limited to the
218 following requirement:
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- 220 i. The total devegetated area of the lot (that portion within the
221 Shoreland Overlay Zone) shall be calculated by the
222 applicant and verified by the CEO and recorded in the
223 Town's property records.
- 224
- 225 (2). Clearing of vegetation for activities other than timber harvesting. These
226 are subject to review and approval by the Shoreland Resource Officer or
227 Code Enforcement Officer.
- 228 (3). Division of a conforming parcel that is not subject to subdivision as
229 defined in §16.3.
- 230 (4). A permit is not required for the replacement of an existing road culvert,
231 provided the replacement culvert is not:
232
- 233 a. More than one standard culvert size larger in diameter than the
234 culvert being replaced;
- 235 b. More than 25% longer than the culvert being replaced; and
- 236 c. Longer than 75 feet.
- 237 (5). When replacing an existing culvert, the watercourse must be protected so
238 that the crossing does not block fish passage, and adequate erosion control
239 measures must be taken to prevent sedimentation of the water in the
240 watercourse.
- 241 (6). A permit is not required for an archaeological excavation, provided the
242 excavation is conducted by an archaeologist listed on the State Historic
243 Preservation Officer's Level 1 or Level 2 approved list and unreasonable
244 erosion and sedimentation is prevented by means of adequate and timely
245 temporary and permanent stabilization measure

246 E. Non-exempt uses requiring shoreland development review

- 247 (1). After the effective date of this title, no person may, without first obtaining
248 a permit, engage in any activity or use of land or structure requiring a
249 permit in the Shoreland or Resource Protection Overlay Zones in which
250 such activity or use would occur, or expand, change or replace an existing
251 use or structure, or renew a discontinued nonconforming use.
- 252 (2). Any development proposed in the Resource Protection (OZ-RP) and
253 Shoreland - Stream Protection Area (OZ-SL-75) Overlay Zones must be
254 approved by the Planning Board.
- 255 (3). Any permit required by this section is in addition to any other permit
256 required by other law or ordinance.

257 F. Findings of fact.

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

279 G. Final plan approval and recording.

- 280 (1). An approval by the Planning Board must take the form of an agreement
281 between the Town and the applicant, incorporating as elements the
282 application, the Planning Board's findings of fact, and such conditions as
283 the Planning Board may impose upon approval.
- 284 (2). The Planning Board must send copies of the agreement to Code
285 Enforcement Officer.
- 286 (3). A plan has final approval only when the Planning Board has indicated
287 approval by formal action and the plan has been properly signed by a

288 majority of the Planning Board members or by the Chair only, if so voted
289 by the Planning Board.

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

294 H. Modification to an approved plan. Any modification to an approved shoreland
295 development may be considered for approval under §16.7.12.C or §16.8.11.H.

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

304 J. Appeal of shoreland development plan decision. Appeal of a Planning Board
305 shoreland development plan decision may be made pursuant to §16.2.12.B.
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307 **16.11.1.6 Other References to Shoreland Development Review Within Title 16.**

308 1. Below are other pertinent sections within Title 16 referencing shoreland development
309 provisions:
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311 A. §16.4.28— Shoreland Overlay Zone OZ-SL Development and Performance
312 Standards

313 B. §16.4.30— Commercial Fisheries / Maritime Activities Overlay Zones OZ-CFMU

314 C. §16.4.29— Resource Protection Overlay Zone OP-RP

315 D. §16.2.13.D(2)—Notice of violation within the shoreland or resource protection
316 overlay zones

317 E. §16.5.23.K—Signs in Shoreland Overlay and Resource Protection Overlay Zone

318 F. §16.5.24—Dwellings in Resource Protection and Shoreland Overlay Zones

319 G. §16.5.27.N—Road and driveway standards in Shoreland and Resource Protection
320 Overlay Zones.

321 H. §16.5.29.A(1)—Timber Harvesting in the Shoreland Overlay Zone

322 I. §16.7.3.A—Shoreland development review during site plan review

323 J. §16.8.4.A—Shoreland development review during subdivision review

324 K. §16.8.9.C.(3)(a)(ii)—Scheduling public hearings for shoreland development
325 applications

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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.
 - iii. While not required, a plan prepared by a surveyor is

- 369 recommended.
- 370 c. Planning Board review and decisions, including site walk
- 371 i. The Planning Board must determine whether the Right-of-
- 372 Way sketch plan proposal complies with municipal land
- 373 use regulations regarding both submission content and
- 374 design and must, when necessary, make specific
- 375 suggestions to be incorporated by the applicant in
- 376 subsequent submissions.
- 377 ii. If the sketch plan is accepted and approved, with or without
- 378 conditions, the next application step will be a Final Plan.
- 379 iii. A site walk may be scheduled at the Planning Board's
- 380 discretion.
- 381 (3). Final Plan
- 382 a. Failure to submit final plan application. If a Right-of-Way final
- 383 plan is not submitted to the Planning Board within six months after
- 384 the approval of the sketch plan, the Planning Board may, at its
- 385 discretion, refuse to act on the final plan and require resubmission
- 386 of the sketch plan. Any plan resubmitted must comply with all
- 387 application requirements, including payment of application fees.
- 388 b. Process, including optional public hearing
- 389 i. The applicant must submit a final Right-of-Way plan for
- 390 review and consideration by the Planning Board. Any
- 391 conditions imposed by sketch plan approval must be
- 392 addressed in the submission.
- 393 ii. The Planning Board may, at its discretion, choose to hold a
- 394 public hearing. If a public hearing will be held, the
- 395 proceedings must conform to public hearings as described
- 396 by 16.8.9.C.(3).
- 397 iii. The Planning Board may, at its discretion, request a review
- 398 of the plans by the Town's peer review engineer. The cost
- 399 of this peer review will be borne by the applicant.
- 400 iv. The Technical Review Committee (TRC) must review the
- 401 final plan and submit comments prior to final plan
- 402 approval.
- 403 v. The Board must accept the application as complete and
- 404 after consideration and review, which may span more than
- 405 one regularly scheduled meeting, vote to approve with or
- 406 without conditions or deny the plan.
- 407 c. Plan requirements
- 408 i. A complete final plan application must fulfill all the
- 409 requirements as indicated on the application checklist and
- 410 described by §16.8.9.D.(10) unless the Planning Board, by
- 411 formal action, upon the applicant's written request, waives

412 or defers any requirement(s) for submission. The Board
413 may request any additional information pertinent to
414 complete understanding of the application.

415 d. Findings of Fact

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

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

422 a. Does not create any nonconforming lots or
423 buildings; and

424 b. Can reasonably permit vehicular passage.

425 e. Street naming

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

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

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

433 f. Final Plan approval and recording

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

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

446 g. Performance guaranty

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

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