

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, for specific requirements related to septic waste disposal systems.
- 87 (2). Minimums and uniformity.
- 88 The regulations specified by this title for each class of district are minimum
- 89 requirements and apply uniformly to each class or kind of structure or land.
- 90 (3). Land within street lines.
- 91 Land within the lines of a street on which a lot abuts is not considered as part of
- 92 such lot for the purposes of meeting the area/frontage requirements of §16.4,
- 93 notwithstanding the fact that the fee to such land may be in the owner of such lot.
- 94 (4). Yard, parking or loading space.
- 95 No part of a yard or other space or off-street parking or loading space about or in
- 96 connection with any building and required for the purpose of complying with this
- 97 title may be included as part of a yard, open space or off-street parking or loading
- 98 space similarly required for any other building, except as authorized in § 16.7.11.F.
- 99 (5). Zone boundary line extension.

100 Where a zoning district boundary line divides a lot, the regulations applicable to
101 either zone of such lot may extend not more than 50 feet into the portion in the
102 other zone(s), except when a less restrictive portion abuts the Resource Protection
103 Zone.

- 104 a. Before granting any such extension, the Planning Board must determine
105 that the proposed use of the extended portion will:
- 106 i. Not prevent the orderly and reasonable use of properties in the
107 adjacent zone;
 - 108 ii. Be in harmony with the character of the adjacent zone;
 - 109 iii. Not adversely affect the property values of adjacent zone's
110 immediate neighborhoods;
 - 111 iv. Not create any traffic hazards or undue traffic congestion on streets
112 in the adjacent zone;
 - 113 v. Not give off obnoxious gases, odors, smoke or soot;
 - 114 vi. Not cause disturbing emission of electrical discharges, dust, light,
115 vibration or noise; and
 - 116 vii. Be adequately screened and buffered from the adjacent zone.
- 117 b. The Planning Board may require a study to be performed or commissioned
118 by the applicant to ensure compliance with the above requirements.

119 (6). Averaging building setbacks.

120 Building setback from the street line need not be greater than the average of the
121 setback distances of the buildings on the lots next thereto on either side.

122 C. Nonconformance

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

126 (1). Purpose.

127 The purpose of this title is to promote land use conformities and to regulate
128 nonconforming structures, uses, and lots, and to promote the following objectives.

129 (2). Prohibitions and allowances.

- 130 a. Except as otherwise provided in this article, a nonconforming condition
131 must not be permitted to become more nonconforming.
- 132 b. Nonconforming vacant lots of record may be developed, maintained or
133 repaired.
- 134 c. Nonconforming uses may continue, may be changed to an equal or more
135 appropriate nonconforming use, or be changed to a conforming use.

136 (3). General.

- 137 a. Transfer of ownership. Legally nonconforming structures, lots, and uses
138 may be transferred, and the new owner may continue the nonconforming
139 use or continue to use the nonconforming structure and/or lot, subject to the
140 provisions of this title.
- 141 b. Repair and maintenance. This title allows the normal upkeep and
142 maintenance of nonconforming uses and structures including repairs or
143 renovations that do not involve expansion of the nonconforming use or
144 structure that is not otherwise permitted by this title, and such other changes
145 in a nonconforming use or structure as federal, state, or local building and
146 safety codes may require.
- 147 c. Nonconforming parking or loading space. A structure and/or use which is
148 nonconforming as to the requirements for off-street loading and/or parking

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

152 (4). Nonconforming structures.

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

158 i. A nonconforming structure may be relocated within the boundaries
159 of the parcel on which the structure is located provided the site of
160 relocation conforms to all dimensional requirements, to the greatest
161 practical extent, as determined by the Planning Board or Board of
162 Appeals, and provided the applicant demonstrates the present
163 subsurface sewage disposal system meets the requirements of state
164 law and the State of Maine Subsurface Wastewater Disposal Rules,
165 or a new system can be installed in compliance with the law and
166 said rules. In no case may the relocation of a structure be permitted
167 that causes the structure to be more nonconforming. See Chapter
168 16.8, Article VII, for other specific requirements related to septic
169 waste disposal systems.

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

173 a. The size of the lot;

174 b. The slope of the land;

175 c. The potential for soil erosion;

176 d. The location of other structures on the property and on
177 adjacent properties;

178 e. The location of the septic system and other on-site soils
179 suitable for septic systems;

180 f. The type and amount of vegetation to be removed to
181 accomplish the relocation.

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

189 a. Prior to the commencement of on-site construction, areas to
190 remain undisturbed must be clearly marked with stakes and
191 caution tape. All stakes, caution tape, silt fences, and other
192 materials used during construction must remain until all on-
193 site work is completed. Prior to removal, written permission
194 to remove such materials must be given by the Code
195 Enforcement Officer.

196 b. Trees removed to relocate a structure must be replanted with
197 at least one native tree, six feet in height, for every tree
198 removed. If more than five trees are planted, no one species
199 of tree can be used to make up more than 50% of the number

- 200 of trees planted. Replaced trees must be planted no farther
201 from the water or wetland than the trees removed.
- 202 c. Other woody and herbaceous vegetation and ground cover
203 that is removed, or destroyed, to relocate a structure must be
204 reestablished. An area at least the same size as the area
205 where vegetation and/or ground cover was disturbed,
206 damaged, or removed must be reestablished within the
207 setback area. The vegetation and/or ground cover must
208 consist of native vegetation and/or ground cover similar to
209 that disturbed, destroyed or removed.
- 210 d. Where feasible, when a structure is relocated on a parcel, the
211 original location of the structure must be replanted with
212 vegetation consisting of grasses, shrubs, trees or a
213 combination thereof.
- 214 iv. If the total footprint of the original structure can be relocated beyond
215 the required setback area, no portion of the relocated structure may
216 be constructed at less than the setback requirement for a new
217 structure.
- 218 b. Nonconforming structure repair and/or expansion.
- 219 i. The Code Enforcement Officer may approve the repair and/or
220 expansion of a nonconforming structure provided the proposed
221 expansion is not located in the base zone setback of the Shoreland
222 Overlay Zone or at any location in the Resource Protection Overlay
223 Zone and meets either of the following criteria:
- 224 a. A vertical expansion that follows the existing building
225 footprint;
- 226 b. Will not result in setbacks less than those existing;
- 227 ii. Except where otherwise permitted in this title, repair and/or
228 expansion of a nonconforming structure must be approved by the
229 Board of Appeals. In cases where the structure is located in the base
230 zone setback of the Shoreland Overlay or Resource Protection
231 Overlay Zone, the repair and/or expansion must be approved by the
232 Planning Board.
- 233 iii. This subsection does not apply to any proposed vertical expansion
234 of a patio, deck or accessory structure permitted to be closer to a
235 water body or to a principal structure in accordance with standards
236 of §16.4.11.5.b - Minimum Setbacks from Wetlands and Water
237 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.iii 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 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 even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement. 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.
 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

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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. Roof slope must not be less than an 8:12 pitch.

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 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 in the base zone setback may not be made greater than 20 feet, or the height of the existing structure, whichever is greater. Roof slope must not be less than an 8:12 pitch.

[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 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

355 setback from a water body, tributary stream, or coastal or freshwater
356 wetland and which is removed, damaged or destroyed, by any cause,
357 by more than 50% of the market value of the structure before such
358 damage, destruction or removal, may be reconstructed or replaced
359 provided that a permit is obtained within 18 months of the date of
360 said damage, destruction, or removal, and provided that such
361 reconstruction or replacement is in compliance with the water body,
362 tributary stream or coastal or freshwater wetland setback
363 requirement to the greatest practical extent as determined by the
364 Planning Board. In determining whether the structure reconstruction
365 meets the setback to the greatest practical extent the Planning Board
366 must consider, in addition to the criteria in § 16.1.8.C(4)a.iii,
367 Nonconforming structure relocation, the physical condition and type
368 of foundation present, if any.

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

402 (5). Nonconforming uses.

- 403 a. Nonconforming use continuance. The use of land, or structure, lawful at the
404 time such use began, may continue although such use may not meet the
405 provisions of this title.
- 406 b. Discontinued resumption prohibited. A nonconforming use discontinued for

407 a period exceeding one year, or which is superseded by a conforming use,
408 loses its status as a permitted nonconforming use. The uses of the land or
409 structure must thereafter meet the provisions of this title. This provision
410 does not apply to the resumption of a use of a residential structure where it
411 can be demonstrated that the structure has been used or maintained for
412 residential occupancy during the preceding five-year period.

- 413 c. Nonconforming use expansion. Expansion of nonconforming uses is
414 prohibited, except nonconforming residential uses may be expanded within
415 existing residential structures. Where the expansion of a nonconforming
416 residential use involves the expansion of a structure, the structure must be
417 expanded in conformity with all requirements as outlined in § 16.1.8.C(4),
418 Nonconforming structures.
- 419 d. Nonconforming use change: review authority and evaluations. The
420 reviewing authority, per Subsections D(1), (2) and (3) below, may require
421 evaluations be prepared by a person certified and/or qualified to perform the
422 required evaluation. It is the burden and responsibility of the applicant to
423 bear the costs for such evaluations. In the event there are existing official
424 maps, data and/or reports for general use, the applicant is encouraged to
425 submit copies of these documents to the reviewing authority. In
426 determining that no greater adverse impact will occur, the applicant may be
427 required to submit an evaluation in writing regarding the probable effects
428 on public health and safety, erosion and sedimentation, water quality, fish
429 and wildlife habitat, vegetative cover, visual and actual points of public
430 access to waters, natural beauty, floodplain management, archaeological
431 and historic resources, and commercial fishing and maritime activities, and
432 other functionally water-dependent uses.
 - 433 i. The Town Planner and the Code Enforcement Officer may approve
434 the change of use of a nonconforming structure where it can be
435 deemed the proposed use is a conforming use and the proposed use
436 does not impact a water body, tributary stream, or wetland.
 - 437 ii. Outside the areas regulated by Shoreland Overlay Zone or Resource
438 Protection Overlay Zone, an existing nonconforming use may be
439 changed to another nonconforming use with approval of the Board
440 of Appeals.
 - 441 iii. Within areas regulated by Shoreland Overlay Zone or Resource
442 Protection Overlay Zone, an existing nonconforming use may be
443 changed to another nonconforming use with the approval of the
444 Planning Board.

445 (6). Nonconforming lots.

- 446 a. Nonconforming lots of record.
 - 447 i. Nonconforming lots. In any district, notwithstanding limitations
448 imposed by other sections of this title, single noncontiguous lots
449 legally created when recorded may be built upon consistent with the
450 uses in the particular zone. These provisions apply even though such
451 lots fail to meet the minimum requirements for area or width, or
452 both, which are applicable in the zone, provided that yard
453 dimensions and other requirements, not involving area or width, or
454 both, of the lot conform to the regulation for the zone in which such
455 lot is located. Relaxation of yard and other requirements not
456 involving area or width may be obtained only through
457 miscellaneous variation request to the Board of Appeals.
- 458 b. Contiguous nonconforming lots.

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i. Contiguous nonconforming lots. If two or more contiguous nonconforming lots or portions thereof are in single or joint ownership of record, and if all or part of the lots do not meet the dimensional requirements of this title, and if one or more of the lots are vacant or contain no principal structure, the lots must be combined to the extent necessary to meet the applicable dimensional 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 § 16.4.11.5 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

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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.
 - 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 16.7 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming 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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20 **16.2.1. Administration and Enforcement**

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

23 **16.2.2. Planning Board appointment and powers.**

24 A. Appointment and composition.

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

37 B. Powers and duties.

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

62 **16.2.3. Board of Appeals**

63 A. Appointment and composition.

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

65 and 30-A M.R.S. § 2691.

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

76 B. Powers and duties.

- 77 (1). The Board shall elect annually a chairperson and vice chairperson from its
78 membership and a secretary. It is the duty of the secretary to keep and maintain a
79 permanent record of all meetings of the Board and show the vote of each member
80 upon each question.
- 81 (2). A quorum consists of four or more members. All decisions must be made by a
82 minimum of four like votes, except on procedural matters.
- 83 (3). The Board shall adopt bylaws to govern routine proceedings and set agendas and
84 hold meetings to perform duties
- 85 (4). Any question of whether a particular issue involves a conflict of interest sufficient
86 to disqualify a member from voting thereon is decided by a majority vote of the
87 members present, except the member who is being challenged, who may not vote
88 on the issue.
- 89 (5). All records of the Board are public records, except as excluded under 1 M.R.S. §
90 402(3) and (3-A).
- 91 (6). The Board is to:
- 92 a. Perform duties as provided by law.
- 93 b. Administrative decision appeal. Hear and decide on an administrative
94 decision appeal where it is alleged by an aggrieved party that there is an
95 error in any order, requirement, decision or determination made by the
96 Code Enforcement Officer in review of an action on a permit application
97 under this title.
- 98 c. Variance request. Hear and decide on a variance request within the
99 limitations set forth in this title and 30-A M.R.S. § 4353(4).
- 100 d. Miscellaneous variation request. To hear and decide on a miscellaneous
101 variation request to permit variation in:
- 102 i. Nonconformance as prescribed in § 16.1.8;
- 103 ii. Standards contained in § 16.7.E, § 16.7.F, or § 16.5.21 Sign
104 violation and appeal; or
- 105 iii. Accessory dwelling unit standards per § 16.5.3.
- 106 e. Special exception use request. Hear and decide on a special exception use
107 request not requiring Planning Board review per development and site
108 review thresholds and using the development application and review
109 (§16.7) procedures and review criteria and other provisions in this title.

110 **16.2.4. Port Authority**

111 A. Appointment and composition.

- 112 (1). The Port Authority is established by Maine Private and Special Law 1961, Chapter
113 163, as amended, and Town Charter, Article IX.
- 114 (2). The Port Authority consists of seven members, who are Kittery residents, serving
115 staggered terms of office of five years.
- 116 (3). The Port Authority consists of seven members, who are Kittery residents, serving
117 staggered terms of office of five years.
- 118 (4). The Port Authority consists of seven members, who are Kittery residents, serving
119 staggered terms of office of five years.
- 120 (5). Members serve until their successors are appointed and qualified.
- 121 (6). No member shall serve more than two consecutive terms of five years. Any
122 member who has served two consecutive terms of five years is ineligible to serve
123 on the Board for a period of one year. Computation of term limits commences with
124 the first term of five years following the effective date of this provision.
125 Computation of term limits does not include service prior to the effective date of
126 this provision nor to terms of fewer than five years after the effective date.
- 127 (7). A member of the Port Authority may be dismissed for cause by the Town Council
128 before the expiration of such member's term after notice and hearing.
- 129 (8). Vacancies are filled by Town Council appointment for the unexpired term.

130 B. Powers and duties.

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

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

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

171 16.2.5. **Town Planner**

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

197 16.2.6. **Code Enforcement Officer (CEO)**

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

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

210 **16.2.7. Enforcement; general**

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

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

220 **16.2.8. Building/Regulated Activity Permits**

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

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

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

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

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

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

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

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

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

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

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

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

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

266 F. Application.

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

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

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

- 314 i. National Electrical Code® standards (NFPA 70), adopted pursuant
315 to 32 M.R.S. § 1153-A.
- 316 ii. Maine State Plumbing Codes standards, adopted pursuant to 32
317 M.R.S. § 3403-B.
- 318 iii. Standard for the Installation of Oil-Burning Equipment standards
319 (NFPA 31), adopted pursuant to 32 M.R.S. § 2353.
- 320 iv. Flammable and Combustible Liquids Code standards (NFPA 30),
321 adopted pursuant to 32 M.R.S. § 14804.
- 322 v. Boiler and pressure vessel standards, adopted pursuant to 32 M.R.S.
323 § 15104-A.
- 324 vi. Elevator standards, adopted pursuant to 32 M.R.S. § 15206.
- 325 vii. National Fire Protection Association (NFPA) firesafety codes and
326 standards, adopted pursuant to 25 M.R.S. § 2452 and § 2465, as
327 follows:
 - 328 a. NFPA 1 - Fire Code.
 - 329 b. NFPA 101 - Life Safety Code.
 - 330 c. NFPA 54 - Fuel Gas Code.
 - 331 d. NFPA 211 - Standard for Chimneys, Fireplaces, Vents, and
332 Solid-Fuel-Burning Appliances.

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

338 16.2.9. **Certificate of occupancy**

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

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

349 C. Temporary certificate.

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

354 and the public.

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

368 **16.2.10. Numbering of buildings**

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

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

393 **16.2.11. Plumbing and septic system permit fees**

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

- 395 A. Applicability. This section applies to fees charged by the Town for plumbing and
396 subsurface wastewater disposal system permits issued by the Town pursuant to 30-A
397 M.R.S. § 4201 et seq. and pursuant to rules promulgated by the Department of Health and
398 Human Services (DHHS) under the authority of 30-A M.R.S. § 4201 et seq. ("State
399 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

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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.F and § 16.7.11.G;
 - c. Sign violation and appeal standards contained in § 16.5.21.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.

540 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

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

- 554 i. The appeal or request must be made by the property owner, an
555 aggrieved party or their respective duly authorized agent.
- 556 ii. The appeal or request must include a concise written statement,
557 indicating what relief is requested and why the appeal or request
558 should be granted.
- 559 iii. Where the appeal or request is made from a decision by the Code
560 Enforcement Officer, the applicant must submit plans, maps and
561 related documentation to the code enforcement office for
562 distribution to the Board of Appeals members at least two weeks
563 prior to the meeting of the Board of Appeals. A minimum of 10 sets
564 of all submissions is required.
- 565 iv. The Board of Appeals must hold a public hearing on an appeal or
566 request within 35 days of its receipt of a complete written
567 application, unless this time period is extended by the applicant and
568 BOA.

- 569 b. At any time between the initial acceptance by the Code Enforcement
570 Officer of an appeal/request and final approval or denial of the
571 appeal/request by the Board of Appeals, the owner or applicant must allow
572 members of the Board of Appeals full access to the subject property, not
573 including building interiors, without obtaining prior permission, written or
574 oral.

575 (2). Hearing and notice.

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

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

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

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

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

650 Officer prior to the date of said approval expiration.

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

672 F. Basis for decision.

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

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

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

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

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

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

811 16.2.13. **Violations and Enforcement**

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

818 A. Owner or persons liable. Any person(s), firm, corporation or legal entity, being the owner
819 of or having control or use of any buildings or premises, who participates in, assists,
820 directs, creates or maintains any situation that is contrary to the requirements of this title, is
821 responsible for the violation and is subject to the penalties and the remedies herein
822 provided.

823 B. Applications for permits or approvals involving sites with a violation. An application for a
824 building/regulated activity permit (see § 16.2.8), certificate of occupancy permit, sign
825 permit, subdivision approval or development review approval will be denied for any
826 property where a violation exists until such violation has been corrected or resolved.

827 C. Purpose of enforcement provisions. The purpose of these title enforcement provisions is to
828 provide an alternative method in addition to § 16.2.7 for enforcing and securing
829 compliance with the provisions of this title in a just, speedy and cost-effective manner, and
830 thereby to protect, preserve and enhance the public health, safety and general welfare.

831 D. Notice of violation and order (notice).

832 (1). It is the duty of the CEO to serve written notice on the landowner or the
833 landowner's agent and any other person or entity responsible (hereafter termed
834 "violation") for such violation. The notice must describe the nature of the violation,
835 include a specific reference to the provision(s) of this title and/or state statute
836 violated, and direct the discontinuance of the illegal action or condition. The notice
837 must also contain an order setting forth the action necessary to correct the violation
838 specifying a time period for correction as provided in § 16.2.13.H and must set
839 forth a fine to be imposed as authorized by § 16.2.13.I and/or 30-A M.R.S. § 4452

840 (2). Notwithstanding any other provision of this chapter, when the notice involves a
841 violation of this title pertaining to shoreland or resource protection zoning or 30-A
842 M.R.S. § 4452(3), the notice must also set forth, in addition to the fine to be
843 imposed, an order of remediation or other corrective action(s) consistent with and
844 in compliance with 30-A M.R.S. § 4452 deemed necessary by the CEO to correct
845 or mitigate the violation to the affected area(s), unless the correction or mitigation
846 would result in a threat or hazard to public health or safety, substantial
847 environmental damage or a substantial injustice.

848 (3). All proposed plans for corrective action submitted by the violator must comply

849 with the standards set forth in this chapter where applicable and 30-A M.R.S.
850 § 4452(3). The acceptance by the CEO of a violator's proposed plan(s) of
851 correction or mitigation will not relieve the violator of the requirement to pay the
852 fine set forth in the notice.

- 853 (4). The notice must also advise the violator of any right to appeal to the Board of
854 Appeals with respect to the CEO's determination that a violation of this title and/or
855 30-A M.R.S. § 4452 exists for which the violator is responsible.
- 856 (5). Additionally, if there is a violation of § 16.5.18, Nonstormwater Discharge, the
857 enforcement authority will order compliance by written notice of violation to that
858 person, indicating the nature of the violation and ordering the action necessary to
859 correct it, including, without limitation: [Amended 5-30-2018 by Ord. No. 04-18]
- 860 a. The elimination of nonstormwater discharges to the storm drainage system,
861 including, but not limited to, disconnection of the premises from the MS-4;
 - 862 b. The cessation of discharge practices or operations in violation of this
863 section;
 - 864 c. At the person's expense, the abatement or remediation (in accordance with
865 best management practices in DEP rules and regulations) of nonstormwater
866 discharges to the storm drainage system and the restoration of any affected
867 property; and/or
 - 868 d. The payment of fines, of the municipality's remediation costs, and of the
869 municipality's reasonable administrative costs and attorneys' fees and costs.
870 If abatement of a violation and/or restoration of affected property is
871 required, the notice will set forth a deadline within which such abatement or
872 restoration must be completed.

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

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

887 F. Appeal of notice of violation and order.

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

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

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

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

920 H. Time limit for corrective action.

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

- 933 (2). If a violator in a timely fashion files a completed administrative appeal application
934 with the Town Clerk as provided in § 16.2.13.F, any period of time from date of
935 receipt of such an appeal to date of decision of the BOA, inclusive, is not counted
936 as part of the cumulative time period described in this section. If the BOA upholds
937 the CEO's determination, the timeline set forth in the notice of violation and order
938 resumes, beginning the day after the decision is rendered, unless it is extended by
939 the BOA.

940 I. Penalties.

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

- 949 b. When the violation set forth in the notice involves any cutting of tree(s) or
950 other vegetation in violation of § 16.8.10.O(2) or 30-A M.R.S. § 4452(3),
951 the penalty provided by this section will be imposed from the date of
952 notification of the violation in writing in addition to the required corrective
953 action set forth in the § 16.2.13.D.
- 954 (2). After the time specified to correct the violation in the notice of violation and order
955 passes, it is the responsibility of the violator to inform the Code Enforcement
956 Officer in writing when the violation has been corrected and seek an inspection to
957 verify the violation has been corrected. For the purposes of this section, the
958 violation will be assumed to have continued to exist uncorrected until the violator
959 has informed the Code Enforcement Officer in writing that the violation has been
960 corrected or the Code Enforcement Officer discovers through inspection of the
961 premises that the violation has been corrected, whichever comes earlier.
- 962 J. Consent agreements.
- 963 (1). In special cases, particularly minor, unintentional violations that are unduly
964 difficult to correct, the Town Manager, with advice of the Code Enforcement
965 Officer, is authorized to enter into a consent agreement with the violator to resolve
966 the violation without further enforcement action or appeal. Consent agreements are
967 not intended to allow a violator to substitute fines for corrective actions.
- 968 (2). Any such violation that is allowed to continue pursuant to a consent agreement is
969 not granted the status of a nonconforming use. Any further actions by the violator
970 with regard to the property must comply in all respects to the existing terms and
971 provisions of this title.
- 972 K. Payment of civil penalties. All civil penalties imposed pursuant to a notice of violation and
973 order as provided in § 16.2.13.D are payable to the Town and due within 30 days after the
974 notice of violation and order become final. All such civil penalties not paid when due
975 accrue interest on the unpaid penalties at the rate provided for judgments in 14 M.R.S.
976 § 1602-A. If the violator fails to pay this penalty, the penalty may be recovered by the
977 Town in a civil action in the nature of debt.
- 978 L. Fines. Any person, including but not limited to a property owner, an owner's agent or a
979 contractor, who violates any provision or requirement of this title will be penalized in
980 accordance with this title and 30-A M.R.S. § 4452.

981 **16.2.14. Enforcement and Penalties**

- 982 A. It is the duty of the Code Enforcement Officer to enforce the provisions of Chapter 16.9,
983 Article VIII, Floodplain Management, pursuant to 30-A M.R.S. §4452.
- 984 B. The penalties contained in 30-A M.R.S. §4452 apply to any violation of this chapter.
- 985 C. In addition to any other actions, the Code Enforcement Officer, upon determination that a
986 violation exists, is to submit a declaration to the Administrator of the Federal Insurance
987 Administration requesting a denial of flood insurance. The valid declaration is to consist
988 of:
- 989 (1). The name of the property owner and address or legal description of the property
990 sufficient to confirm its identity or location;
- 991 (2). A clear and unequivocal declaration that the property is in violation of a cited state
992 or local law, regulation or ordinance;
- 993 (3). A clear statement that the public body making the declaration has authority to do so
994 and a citation to that authority;
- 995 (4). Evidence that the property owner has been provided notice of the violation and the
996 prospective denial of insurance; and

997
998
999

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

1 **16.3 Definitions**

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9 **16.3.1. Purpose**

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

17 **16.3.2. Definitions**

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

19 **ABUTS**

20 That which is contiguous to, or shares, a common boundary line. The owner of a property that is
21 contiguous to or shares a common boundary line is an abutter. See § 16.5.2, § 16.7.10.C(2)c and §
22 16.8.9.C(3)c on abutter notification process when a new development or redevelopment is proposed.

23 **ACCESSORY BUILDING**

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

26 **ACCESSORY DWELLING UNIT (ADU)**

27 A secondary dwelling unit with facilities used or intended to be used for living, sleeping, cooking, eating,
28 and sanitary facilities for one or more persons, whether attached to the principal dwelling unit, detached
29 from it or contained within it.

30
31 **[Amended 10-28-2019 by Ord. No. 19-09].**

32 **ACCESSORY STRUCTURE**

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

34 **ACCESSORY USE**

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

37 **ADJACENT GRADE**

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

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

41 **ADULT ENTERTAINMENT ESTABLISHMENT**

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

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

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

53 (1). Human genitals in a state of sexual stimulation or arousal;

54 (2). Acts of human masturbation, sexual intercourse or sodomy, fondling or other erotic
55 touching of human genitals, pubic region, buttocks or female breasts.

56 **AGE-RESTRICTED HOUSING**

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

64 **AGGRIEVED PARTY**

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

69 **AGRICULTURE**

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

78 **AGRICULTURE, PIGGERY**

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

81
82 **AGRICULTURE, POULTRY FACILITY**

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

86
87 **ALTERNATIVE TOWER STRUCTURE**

88 Includes but is not limited to clock towers, bell steeples, utility/light poles, water towers, and similar
89 alternative-design mounting structures that camouflage or conceal the presence of antennas or
90 towers, referred to by the industry as "stealth" technology.

91 **ANTENNA**

92 Any apparatus designed for telephonic, radio, television or similar communications through the sending
93 and/or receiving of electromagnetic waves.

94 **AQUACULTURE**

95 The growing or propagation of harvestable freshwater, estuarine or marine plant or animal species.

96 **ART STUDIO OR GALLERY**

97 Enclosed place for the exhibition, production and sales of art.

- 98
- 99 **BANNER**
- 100 Any sign of lightweight fabric or similar material that is mounted for display at one or more edges.
- 101 **BASAL AREA**
- 102 The area of a tree stem derived by measuring the diameter of a standing tree measured 4.5 feet from
- 103 ground level and inclusive of bark.
- 104 **BASE FLOOD**
- 105 The flood having a one-percent chance of being equaled or exceeded in any given year, commonly
- 106 called the one-hundred-year flood.
- 107 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 108 **BASEMENT**
- 109 An area below the first floor having a floor-to-ceiling height of six feet or more and 50% of its
- 110 volume below the existing ground..
- 111 **BED-AND-BREAKFAST**
- 112 A home occupation in a single-family dwelling in which lodging or lodgings with meals served
- 113 before noon are offered to the general public for compensation, offering no more than six bedrooms
- 114 for lodging purposes.
- 115 **BEST MANAGEMENT PRACTICES ("BMP")**
- 116 Schedules of activities, prohibitions of practices, maintenance procedures, and other management
- 117 practices to prevent or reduce the pollution of water bodies. BMPs also include treatment
- 118 requirements, operating procedures, and practices to control plant site runoff, spillage or leaks,
- 119 sludge or waste disposal, or drainage from raw material storage.
- 120 **BILLBOARD**
- 121 The surface of any building or structure which is available for hire for advertising goods or services
- 122 not provided on the premises. Official business directional signs (OBDS) are not considered
- 123 billboards.
- 124 **BOARD OF APPEALS**
- 125 The Board of Appeals of the Town of Kittery; may be referred to as the BOA.
- 126 **BOAT LAUNCHING FACILITY**
- 127 A facility designed primarily for the launching and landing of watercraft, and which may include an
- 128 access ramp, docking area, and parking spaces for vehicles and trailers.
- 129 **BOAT YARD**
- 130 A business or gainful occupation where boats are hauled, stored, repaired and/or constructed.
- 131 **BOATHOUSE**
- 132 A building used exclusively for the keeping, repairing and maintenance of boats.
- 133 **BREAKAWAY WALL**
- 134 A wall that is not part of the structural support of the building and is intended, through its design and
- 135 construction, to collapse under specific lateral loading forces without causing damage to the elevated
- 136 portion of the building or supporting foundation system.
- 137 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

- 138 **BROOK**
139 A channel between defined banks, including the floodway, associated floodplain wetlands, where the
140 channel is created by the action of surface water and characterized by the lack of upland vegetation
141 or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing
142 waterborne deposits on exposed soil, parent material or bedrock.
- 143 **BUFFER**
144 A combination of physical space and vertical elements, such as plants, berms, fences or walls, the
145 purpose of which is to separate and screen incompatible land uses from each other.
- 146 **BUILDING**
147 Any structure having a roof supported by columns or walls and intended for the shelter, housing or
148 enclosure of persons, animals or property. Each portion of a building separated from other portions
149 by a fire wall is considered as a separate structure.
- 150 **BUILDING COVERAGE**
151 The aggregate or the maximum horizontal area of all buildings on the lot including accessory
152 buildings but excluding cornices, eaves or gutters projecting not more than 24 inches. Pet shelters,
153 playground equipment, tree houses, and structures that are not also "buildings" are not used in
154 calculating building coverage. Additionally, this is not to be construed to mean the aggregate of
155 floors in a multilevel building.
- 156 **[ADDED 5-22-2017 BY ORD. NO. 17-05]**
- 157 **BUILDING FRONTAGE**
158 Linear footage along the face of the building containing the main public entry, commonly labeled
159 "front elevation" on building plans.
- 160 **BUSINESS**
161 For the purposes of the sign regulations, any corporation, trust, partnership or other verifiable legal
162 entity with the object of gain, benefit or advantage.
- 163 **BUSINESS AND PROFESSIONAL OFFICES**
164 A building, or portion thereof, in which there are located the offices of a profession or business,
165 including, but not limited to, banks, insurance, realtors, attorneys, appraisers, engineers, architects,
166 landscape architects, accountants, dentists, optometrists and physicians.
- 167 **BUSINESS FACILITY**
168 For the purposes of the sign regulations, a workplace of a business other than an employee's or
169 employer's personal residence.
- 170 **BUSINESS SERVICES**
171 Establishments primarily engaged in providing services to business enterprises on a fee or contract
172 basis, including, but not limited to, advertising, credit agencies, photocopying, commercial graphics,
173 computer programming, cleaning and maintenance services, employment agencies, data processing,
174 consulting and public relations, security and business equipment rental.
- 175 **CAMPGROUND**
176 Any area or tract of land use to accommodate two or more visitors, including tents, trailers or other
177 camping outfits, not to be used as permanent residence.
- 178 **CANNABIS**
179 All parts of the plant of the genus Cannabis whether growing or not, the seeds thereof, the resin
180 extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or

181 preparation of the plant, its seeds or its resin including cannabis concentrate. This term does not
182 include industrial hemp, fiber produced from the stalks, oil, cake made from the seeds of the plant,
183 sterilized seed of the plant that is incapable of germination or any ingredient combined with cannabis
184 to prepare topical or oral administrations, food, drink or any other product. Cannabis also means
185 marijuana.

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

187 **CANOPY, TREE (TREE CANOPY)**

188 The more or less continuous cover formed by tree crowns in a wooded area.

189 **CEMETERY**

190 A private or public place set apart for the interment of the dead. In the absence of an apparent boundary,
191 i.e., fence, stone wall, survey markers, survey plan, or information from the Kittery Historical and Naval
192 Society or other reliable historic sources, the perimeter of the interment area is determined by starting
193 with a ten-foot distance from existing tombstones and expanded, where necessary, to form a final
194 rectilinear area.**[ADDED 9-28-2015 BY ORD. NO. 15-05]**

195 **CERTIFICATE OF COMPLIANCE**

196 A document signed by the Code Enforcement Officer stating that a structure is in compliance with
197 all of the provisions of § 16.5.10.I et seq.

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

199 **CERTIFICATE OF OCCUPANCY**

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

203 **CHARACTER**

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

205 **CLEAN WATER ACT**

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

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

209 **CLEAR-CUT**

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

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

219 **CLUSTER RESIDENTIAL DEVELOPMENT**

220 A form of land use improvements and/or change in which the dimensional requirements are reduced
221 below that normally required in the zoning district in which the land use improvements and/or
222 change is located in return for the provision to set aside a portion of the tract as of permanent open

223 space and other environmental enhancements owned and maintained jointly in common by
224 individual lot/unit owners, the Town, or a land conservation organization.

225 **CODE ENFORCEMENT OFFICER (CEO)**

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

228 **CO-LOCATION**

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

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

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

235 **COMMERCIAL GREENHOUSE**

236 A building or structure made primarily of transparent or translucent material used by a business or in
237 the production of income, which is designed and/or used for the indoor propagation and/or
238 cultivation of plants.

239 **COMMERCIAL KENNEL**

240 A commercial operation that: 1) provides food and shelter and care of eight or more animals for
241 purposes not primarily related to medical care; or 2) has at any one time eight or more animals for
242 the purpose of commercial breeding.

243 **COMMERCIAL MARINA USE STRUCTURE**

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

246 **COMMERCIAL OR HOME OCCUPATION VESSEL**

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

250 **COMMERCIAL SCHOOL**

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

255 **COMMERCIAL USE**

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

259 **COMMERCIAL/INDUSTRIAL AND/OR FISHERIES USE STRUCTURE**

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

264 **COMMUNITY**

265 The Town of Kittery and its people.

- 266 **COMPACT OR BUILT-UP SECTION**
267 The "compact or built up section" of the Town means a section of the highway where structures are
268 nearer than 200 feet apart for a distance of 1/4 mile.
- 269 **COMPREHENSIVE PLAN**
270 Any part or element of the plan or policy for the development of the Town, as defined in Title 30-A
271 M.R.S. § 4301, as issued in the Kittery Comprehensive Plan as approved by the Town Council, or
272 subsequent revisions or additions thereto.
- 273 **CONFERENCE CENTER**
274 A facility used for conferences, seminars and meetings, including accessory accommodations for
275 food preparation and eating, recreation, entertainment, resource facilities, and meeting rooms.
- 276 **CONSTRUCTION DRAWINGS**
277 Drawings showing the location, profile, grades, size and type of drains, sewers, water mains,
278 underground fire alarm ducts, pavements, of streets, miscellaneous structures, etc.
- 279 **CONSTRUCTION SERVICES**
280 The performance of work and/or the furnishing of supplies to members of the building trades, such
281 as, but not limited to, plumbing, painting, building, well drilling, carpentry, masonry or electrical
282 installation, which requires, or customarily includes, the storage of materials and/or the location of
283 commercial vehicles at the site.
- 284 **CONTIGUOUS LOTS**
285 Lots which adjoin at any line or point or are separated at any point by a body of water less than 15
286 feet wide.
- 287 **CONTRACTOR, EXCAVATION**
288 An individual or firm engaged in a business that causes the disturbance of soil, including grading,
289 filling and removal, or in a business in which the disturbance of soil results from an activity that the
290 individual or firm is retained to perform.
- 291 **[ADDED 10-26-2015 BY ORD. NO. 15-12]**
- 292 **CONVALESCENT CARE FACILITY**
293 A facility that is licensed by the State of Maine to provide nursing care to persons during periods of
294 recovery or rehabilitation. The facility provides nursing care and related rehabilitation services. The
295 facility does not provide hospital services except as incidental to the delivery of nursing care. A
296 convalescent care facility does not include any facility that is defined as an elder-care facility.
- 297 **CORNER LOT**
298 A lot or parcel of land abutting on two or more streets at their intersection or on two parts of the
299 same street forming an interior angle of less than 135 degrees.
- 300 In zones where yards are required:
- 301 A. Such corner lots, located at the intersection of two streets, are deemed to have a side rather
302 than a front yard between the principal building and the side street. Such side yard may not
303 be less than the front yard requirements of uses located on the side street.
- 304 B. Such corner lots, located at the intersection of two streets, are deemed to have a side rather
305 than a rear yard between the principal building and the abutting property on the side street.
306 Such side yard may not be less than the side yard requirements of uses located on the side
307 street.

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

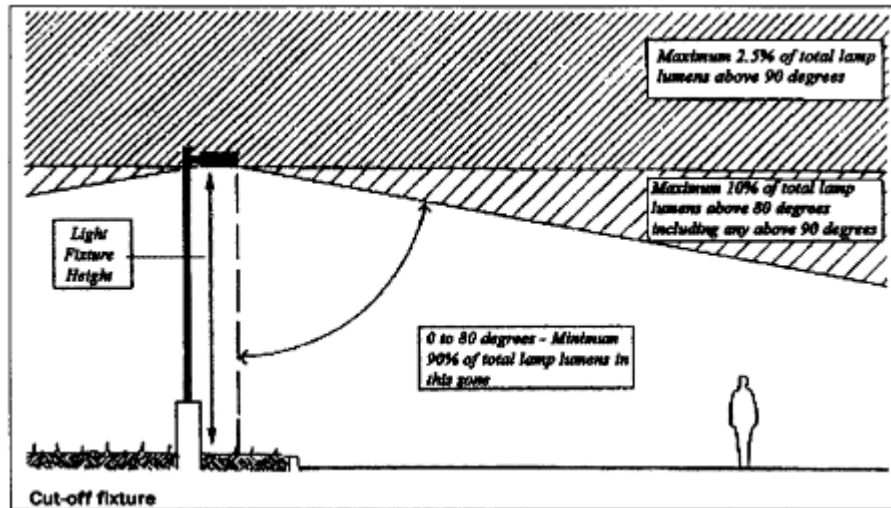
310 **COVERAGE (LOT, BUILDING)**

311 See definition for "building coverage."

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

313 **CUTOFF FIXTURE**

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



318 **DAY**

319 A calendar day unless otherwise indicated.

320 **DAY CARE FACILITY**

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

325 **DECK**

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

329 **DESIGNATED HISTORIC BUILDING**

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

333 **DESIGN HANDBOOK**

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

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

337 **DEVEGETATED AREA**

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

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

341 **DEVELOPER**

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

344 **DEVELOPMENT**

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

346 A. A change in land use involving alteration of the land, water or vegetation; or

347 B. The addition or alteration of structures or other construction not naturally occurring.

348 **DEVELOPMENT PLAN**

349 See "master site development plan."

350 **DIMENSIONAL REQUIREMENTS**

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

353 **DISABILITY**

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

360 **DISCHARGE**

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

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

368 **DISTURBED AREA**

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

374 **DOCK**

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

377 **DRAINAGE DITCH**

378 A man-made, regularly maintained channel, trench or swale for conducting water that has a direction

379 of flow to remove surface water or groundwater from land by means of gravity. For the purposes of
380 this title, any new activity that reroutes a streambed or dredges a wetland is not considered to be a
381 "drainage ditch." Where a drainage ditch widens out into a larger wetland, a route no more than 12
382 feet in width can be considered to be the drainage ditch. The remainder is considered wetlands unless
383 it is demonstrated that the originally developed drainage ditch was designed to be greater than 12
384 feet in width.

385 **DREDGE**

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

388 **DRIVEWAY**

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

390 **DRIVE-THROUGH FACILITY**

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

393 **DWELLING**

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

397 **DWELLING, ATTACHED SINGLE-FAMILY**

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

401 **DWELLING, MANUFACTURED HOUSING**

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

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

405 **DWELLING, MULTI-FAMILY**

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

409 **DWELLING, SINGLE-FAMILY**

410 A detached dwelling unit located on its own lot.

411 **DWELLING, TWO-FAMILY**

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

414 **DWELLING UNIT**

415 A room or group of rooms forming a habitable unit for one family, with facilities used or intended to
416 be used for living, sleeping, cooking, eating and sanitary facilities. It comprises at least 650 square
417 feet of habitable floor space, except for elderly housing or an accessory dwelling unit. The term does
418 not include a trailer.

419 **DWELLING UNIT (IN THE SHORELAND AND RESOURCE PROTECTION OVERLAY
420 ZONES)**

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

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

428 **EASEMENT**

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

431 **EAVE**

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

433 **ELDERLY DAY CARE FACILITY**

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

436 **ELEVATED BUILDING**

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

438 A. A nonbasement building:

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

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

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

447 **ELEVATION CERTIFICATE**

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

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

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

452 B. Is required for purchasing flood insurance.

453 **EMERGENCY OPERATIONS**

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

457 **ESSENTIAL SERVICES**

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

465 **EXEMPT PERSON OR DISCHARGE**

466 For the purposes of stormwater regulation, means any person who is subject to a multi-sector general
467 permit for industrial activities, a general permit for construction activity, a general permit for the
468 discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike
469 Authority, municipal separate storm sewer systems, or a general permit for the discharge of
470 stormwater from state or federally owned authority, municipal separate storm sewer system
471 facilities, and any nonstormwater discharge permitted under a National Pollutant Discharge
472 Elimination System permit, waiver, or waste discharge license or order issued to the discharger and
473 administered under the authority of the U.S. Environmental Protection Agency (EPA) or the Maine
474 Department of Environmental Protection (DEP).

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

476 **EXPANSION OF STRUCTURE**

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

479 **EXPANSION OF USE**

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

482 **FAA**

483 The Federal Aviation Administration.

484 **FAMILY**

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

486 **FARMERS MARKET**

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

494 **FCC**

495 The Federal Communications Commission.

496 **FILL**

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

498 **FILLING**

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

500 **FINAL SUBDIVISION PLAN**

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

504 **FINGER FLOAT**

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

- 507 **FLAG**
508 Any fabric containing distinctive colors, patterns or symbols, used as a symbol of a government or
509 recognized political subdivision.
- 510 **FLOAT**
511 A platform that floats and is anchored, moored or secured at or near the shore, used for landing or
512 other purposes.
- 513 **FLOOD, AREA OF A SHALLOW FLOODING**
514 A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM), with a one-
515 percent or greater annual chance of flooding to an average depth of one to three feet, where a clearly
516 defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow
517 may be evident. Such flooding is characterized by ponding or sheet flow.
- 518 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 519 **FLOOD, AREA OF SPECIAL FLOOD HAZARD**
520 The land in the floodplain having a one-percent or greater chance of flooding in any given year, as
521 specifically identified in the Flood Insurance Study cited in § 16.5.10.C, Establishment of areas.
- 522 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 523 **FLOOD ELEVATION STUDY**
524 An examination, evaluation and determination of flood hazards and, if appropriate, corresponding
525 water surface elevations.
- 526 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 527 **FLOOD HAZARD ZONE**
528 That portion of land which has one-percent chance of flooding in any given year, as designated on
529 Flood Insurance Rate Maps issued by the Federal Insurance Administration, if available, or on Flood
530 Hazard Boundary Maps issued by the Federal Insurance Administration.
- 531 **FLOOD INSURANCE RATE MAP (FIRM)**
532 An official map of a community on which the Administrator of the Federal Insurance Administration
533 has delineated both the special hazard areas and the risk premium zones applicable to the
534 community.
- 535 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 536 **FLOOD INSURANCE STUDY**
537 See "flood elevation study."
- 538 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 539 **FLOOD OR FLOODING**
540 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 541 A. A general and temporary condition of partial or complete inundation of normally dry land
542 areas from:
- 543 (1). The overflow of inland or tidal waters; or
544 (2). The unusual and rapid accumulation or runoff of surface waters from any source.

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

551 **FLOOD, ONE-HUNDRED-YEAR**

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

554 **FLOODPLAIN MANAGEMENT**

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

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

559 **FLOODPLAIN MANAGEMENT REGULATIONS**

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

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

566 **FLOODPLAIN OR FLOOD-PRONE AREA**

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

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

569 **FLOODPROOFING**

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

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

574 **FLOODWAY**

575 See "regulatory floodway."

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

577 **FLOODWAY ENCROACHMENT LINES**

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

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

580 **FLOOR AREA**

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

583 **FOREST MANAGEMENT ACTIVITIES**

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

588 **FOUNDATION**

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

591 **FREEBOARD**

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

596 **[ADDED 9-26-2011 BY ORD. NO. 11-15] FUNCTIONALLY WATER-DEPENDENT USES**

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

606 **GAMBLING OR GAMING**

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

609 **GAMBLING CASINO**

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

611 **GASOLINE SALES**

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

616 **GASOLINE SERVICE STATION**

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

620 **GRADE PLANE**

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

626 **GROSS FLOOR AREA**

627 The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls or a roof,
628 plus the horizontal area of portions of the site used for customer seating, display of merchandise, or
629 outdoor sales.

630 **GROUND COVER**

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

633 **HAZARDOUS WASTE**

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

636 **HEIGHT OF BUILDING**

637 The vertical measurement from the average grade between the highest and lowest elevation of the
638 original ground level to the highest point of the roof beams in flat roofs; to the highest point on the
639 deck of mansard roofs; to a level midway between the level of the eaves and highest point of pitched
640 roofs or hip roofs; or to a level 2/3 of the distance from the level of the eaves to the highest point of
641 gambrel roofs. For this purpose, the level of the eaves is taken to mean the highest level where the
642 plane of the roof intersects the plane of the outside wall on a side containing the eaves. This is not
643 intended to include weather-vanes or residential antennas that protrude from a roof, but does include
644 all towers, excepting those utilized for amateur radio communications, and other structures. Building
645 height restrictions do not apply to roadside utility poles approved by the Town Council of less than
646 45 feet in height above ground.

647 **HEIGHT OF STRUCTURE**

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

651 **HEIGHT OF WIRELESS COMMUNICATION SERVICES FACILITIES**

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

654 **HIGH INTENSITY SOIL SURVEY**

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

662 **HISTORIC STRUCTURE**

663 Any structure that is:

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

- 665 A. Listed individually on the National Register of Historic Places (a listing maintained by the
666 Department of the Interior) or preliminarily determined by the Secretary of the Interior as
667 meeting the requirements for individual listing on the National Register;
- 668 B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the
669 historical significance of a registered historic district or a district preliminarily determined
670 by the Secretary of the Interior to qualify as a registered historic district;
- 671 C. Individually listed on a state inventory of historic places in states with historic preservation
672 programs which have been approved by the Secretary of the Interior; or
- 673 D. Individually listed on a local inventory of historic places in communities with historic

674 preservation programs that have been certified either:

675 (1). By an approved state program as determined by the Secretary of the Interior; or

676 (2). Directly by the Secretary of the Interior in states without approved programs.

677 **HOME OCCUPATION**

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

680 **HOME OCCUPATION, MAJOR**

681 A type of home occupation that fails to meet all of the standards for a "minor home occupation"
682 established in § 16.5.11, but is found by the Board of Appeals to satisfy the standards established in
683 § 16.5.11 to ensure that a business results in no more than a minor intrusion in the quality of life of
684 residents in the surrounding neighborhood.

685 **HOME OCCUPATION, MINOR**

686 The least intensive type of home occupation that meets the standards established in § 16.5.11 to
687 ensure compatibility with the surrounding neighborhood.

688 **HOSPITAL**

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

693 **HOTEL**

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

699 **HYDRIC SOIL**

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

707 **HYDROPHYTIC VEGETATION**

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

713 **ILLCIT DISCHARGE**

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

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

718 **IMPROVEMENT PLANS**

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

721 **INDIVIDUAL PRIVATE CAMPSITE**

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

726 **INDUSTRIAL ACTIVITY**

727 The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the
728 extraction of minerals. For the purposes of stormwater regulation, means activity or activities subject
729 to National Pollutant Discharge Elimination System industrial permits as defined in 40 CFR
730 122.26(b)(14).

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

732 **INN**

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

736 **INTERMITTENT STREAM**

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

739 **INVASIVE NONNATIVE PLANT**

740 Grasses, forbs, shrubs or trees not native to the State of Maine and which proliferate in and dominate
741 vegetation to the exclusion or elimination of native plants.

742 **JULY 13, 1977**

743 That date upon which a complete revision of the first zoning ordinances was adopted by the Town
744 and upon which certain existing nonconforming conditions are considered to be protected
745 (grandfathered).

746 **JUNKYARD**

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

751 **LANDING**

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

753 **LANDSCAPE PLANTER STRIP**

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

757 **LARGE, HEALTHY TREE**

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

760 years.**LEGISLATIVE BODY**
761 Town Council.

762 **LIGHT FIXTURE HEIGHT**

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

765 **LINER BUILDING**

766 A building that lines the edge of a street or other public space. Liner Buildings are typically used to
767 shield public space, like a street or sidewalk, from something less desirable to view, such as a
768 parking garage. They can also be used to enclose a space such as protecting a courtyard from a busy
769 street. Where allowed, a Liner Building must be a minimum of eight feet deep and a maximum of 14
770 feet deep. [Added 11-26-2018 by Ord. No 10-18]

771 **LOCALLY ESTABLISHED DATUM**

772 For purposes of § 16.5.10 Floodplain Management, an elevation established for a specific site to
773 which all other elevations at the site are referenced. This elevation is generally not referenced to the
774 National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas
775 where mean sea level is too far from a specific site to be practically used.

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

777 **LOT**

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

780 **LOT AREA**

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

- 782 A. Land below the normal high-water line of a water body or upland edge of a coastal
783 wetland;
- 784 B. Areas beneath Planning Board-approved right-of-way; and
- 785 C. Land within public street rights-of-way.

786 **LOT WIDTH**

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

788 **LOWEST FLOOR**

789 The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant
790 enclosure, usable solely for parking of vehicles, building access or storage in an area other than a
791 basement area, is not considered a building's lowest floor, provided that such enclosure is not built so
792 as to render the structure in violation of the applicable nonelevation design requirements described in
793 § 16.5.10.H.

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

795 **LUMEN**

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

798 **MANUFACTURING PROCESSING & TREATMENT, HEAVY**

799 A facility and/or site used in the basic processing and manufacturing of materials or products
800 predominantly from extracted or raw materials, or a use engaged in storage of or manufacturing

801 processes using flammable or explosive materials, or storage or manufacturing processes that
802 potentially involve hazardous or commonly recognized offensive conditions.

803 **MANUFACTURING OPERATIONS, LIGHT**

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

809 **MARIJUANA**

810 Cannabis. See Cannabis definition.

811 **[Added 5-22-2017 by Ord. No. 17-08]**

812 **MARIJUANA MEDICAL USE**

813 The cultivation, manufacturing, or distribution of cannabis by a medical marijuana cultivation
814 facility, a medical marijuana dispensary, a medical marijuana testing facility, or a primary caregiver,
815 as defined in § 16.3 of this Code. This definition is not intended to restrict a caregiver that is a
816 licensed hospice provider, long-term nursing care facility or convalescent care facility from
817 distributing cannabis to their qualifying patients, per 22 M.R.S., Maine Medical Use of Marijuana
818 Act.

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

820 **MARIJUANA RETAIL USE**

821 The cultivation, manufacture, distribution or selling of cannabis by a retail marijuana establishment
822 or retail marijuana social club, as referenced in 7 M.R.S. § 2442.

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

824 **MARINA**

825 A facility for the storing, servicing, fueling, berthing, and securing of boats and which may include
826 eating, sleeping, and retail facilities for owners, crews, and guests.

827 **MARKET VALUE**

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

831 **MASS TRANSIT STATION**

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

835 **MASTER SITE DEVELOPMENT PLAN**

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

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

842 **MEAN SEA LEVEL**

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

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

847 **MECHANICAL SERVICE**

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

851 **MEDICAL MARIJUANA CULTIVATION FACILITY**

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

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

856 **MEDICAL MARIJUANA DISPENSARY**

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

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

862 **MEDICAL MARIJUANA QUALIFYING PATIENT OR PATIENT**

863 A person who has been diagnosed by a medical provider as having a debilitating medical condition
864 and who possesses a valid written certification regarding medical use of marijuana, as defined under
865 22 M.R.S. § 2422.

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

867 **MEDICAL MARIJUANA TESTING FACILITY**

868 A public or private laboratory that:

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

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

876 **MINERAL EXTRACTION**

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

880 **MINERAL/EARTH MATERIAL EXPLORATION**

881 Hand sampling, test boring or other methods of determining the nature or extent of mineral/earth
882 resources which create minimal disturbance to the land and which include reasonable measures to

883 restore the land to its original condition.

884 **MINI STORAGE**

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

888 **MINIMUM LAND AREA PER DWELLING UNIT**

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

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

893 A. All land located below the highest annual tide elevation as published in the Maine DEP
894 Highest Annual Tide (HAT) levels for the most-current year.

895 B. All wetlands as defined in the definition of "wetland," as well as vernal pools, ponds,
896 streams and other water bodies.

897 C. All land located on filled tidal lands, per the definition of "tidal land, filled."

898 D. All land located within existing rights-of-way and other existing easements wherein
899 dwelling units cannot be built.

900 **MIXED-USE BUILDING**

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

904 **MOBILE HOME PARK**

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

907 **MOTEL**

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

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

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

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

922 **MUNICIPALITY**

923 Town of Kittery, Maine.

924 **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**

925 **STORMWATER DISCHARGE PERMIT**

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

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

929 **NAVIGABLE WATERS**

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

932 **NET RESIDENTIAL ACREAGE**

933 The land area subject to subdivision that is identified for regulatory purposes as developable and is
934 the gross available acreage minus land area identified in § 16.5.17, Net Residential Acreage, unless
935 otherwise exempt in § 16.5.17.D, Exemptions to net residential acreage calculations.

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

937 **NET RESIDENTIAL DENSITY**

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

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

942 **NEW CONSTRUCTION**

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

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

947 **NEW MOTOR VEHICLE SALES**

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

956 **NONCONFORMING LOT OF RECORD**

957 A single lot of record which was created prior to July 13, 1977, or subsequently created by
958 legislative or judicial decision, which does not meet the area and/or frontage requirements of the
959 district in which it is located; or is the result of legally authorized development created between July
960 13, 1977 and April 26, 1990, and became nonconforming as a direct result of the implementation of
961 this title.

962 **NONCONFORMING STRUCTURE**

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

966 **NONCONFORMING USE**

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

971 **NONCONFORMING, LEGALLY**

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

973 **NONSTORMWATER DISCHARGE**

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

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

976 **NORMAL HIGH-WATER LINE**

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

980 **NURSERY SCHOOL**

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

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

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

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

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

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

996 Any sign erected and maintained in accordance with the Maine Traveler Information Services Act,
997 23 M.R.S. § 1901 et seq., and regulations adopted pursuant to it, and which complies with the
998 requirements of this title.

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

1000 **OFFICIAL MAP**

1001 The map adopted by the municipality showing the location of public property, ways used in common
1002 by more than two owners of abutting property, and approved subdivision or site plan, and any
1003 amendments thereto adopted by the municipality or additions thereto resulting from the approval of a
1004 subdivision or site plan by the Planning Board and the subsequent filing for record of such plan.

1005 **[AMENDED 9-26-2011 BY ORD. NO. 11-15]**

1006 **OFFICIAL SUBMITTAL DATE**

1007 The date upon which the Town Planner receives a complete application and issues a receipt so
1008 indicating.

1009 **ONE-HUNDRED-YEAR FLOOD**

1010 See "base flood."

1011 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1012 **OPEN SPACE**

1013 Includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural
1014 state. "Open space" does not include areas occupied by a building or a parking area, except where
1015 required by the management plan in place to govern the open space and as approved by the Planning
1016 Board. Vegetated surfaces of outdoor commercial uses may be used to satisfy up to 50% of the
1017 required open space on any parcel, except those parcels within a cluster residential development.

1018 **[ADDED 9-24-2012 BY ORD. NO. 12-10]**

1019 **OPEN SPACE, COMMON**

1020 Usable land within or related to a development, not individually owned, which is designed and
1021 intended for the common use or enjoyment of the residents of the development and may include such
1022 complementary structures, improvements and uses approved by the Planning Board. Such uses may
1023 include active or passive recreation or agriculture, where permitted.

1024 **[ADDED 9-24-2012 BY ORD. NO. 12-10]**

1025 **OPEN SPACE, PUBLIC**

1026 Land accessible or dedicated for public use.

1027 **[ADDED 9-24-2012 BY ORD. NO. 12-10]**

1028 **OPEN SPACE, RESERVED**

1029 Dedicated land that is permanently protected from further development and remains in a natural
1030 condition or is managed according to an approved management plan for natural resource functions,
1031 e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the
1032 Planning Board as part of cluster residential developments.

1033 **[ADDED 9-24-2012 BY ORD. NO. 12-10]**

1034 **OUTDOOR SERVICE AREAS**

1035 Areas located outside of a building or structure that are used for the delivery, handling, storage or
1036 processing of materials, goods or wastes, including areas used for the servicing, repairing, washing
1037 or fueling of motor vehicles and equipment.

1038 **OWNER**

1039 Any person, corporation or other legal entity having record title ownership to the property or the
1040 expressly authorized agent or designee thereof.

1041 **PARAPET**

1042 The extension of the wall(s) of a building above the roof eave and/or roofline.

1043 **PARCEL**

1044 See "tract or parcel of land."

- 1045 **PARKING AREA**
1046 Any public or private area, under, within or outside of a building or structure, designed and used for
1047 parking motor vehicles, including parking lots, garages, private driveways, and legally designated
1048 areas of public streets. .
- 1049 **PATIO**
1050 An unenclosed, unroofed, exterior floor-like surface, usually composed of brick, stone or concrete,
1051 situated no higher than 18 inches above ground level, accessory to a dwelling and serving as an area
1052 for outdoor living.
- 1053 **PERSON**
1054 Any individual, firm, corporation, municipality, quasi-municipal corporation, two or more
1055 individuals having a joint or common interest, state agency or federal agency or other legal entity.
- 1056 **PERSONAL SERVICES**
1057 Establishments primarily engaged in providing services generally involving the care of one's
1058 personal appearance or apparel, including, but not limited to, barbers and beauty shops, laundries,
1059 photographic studios, shoe repair, garment altering, and diaper services.
- 1060 **PIER**
1061 A structure built out into the water generally with piles for use as a landing place.
- 1062 **POLLUTANT**
1063 Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage
1064 sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or
1065 byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal,
1066 domestic, commercial or agricultural wastes of any kind.
- 1067 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**
- 1068 **POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN**
1069 An inspection and maintenance plan as required by rule for projects that require approval by the
1070 Maine Department of Environmental Protection (MDEP) under Chapter 500, Stormwater
1071 Management; or a plan to inspect and maintain best management practices (BMPs) and stormwater
1072 management facilities employed by a new development or redevelopment, not subject to MDEP
1073 Chapter 500 rules, to meet the stormwater standards of this Code.
- 1074 **[AMENDED 7-25-2016 BY ORD. NO. 16-06]**
- 1075 **PRACTICABLE**
1076 Available and feasible, considering cost, existing technology, and logistics, based on overall project
1077 purposes.
- 1078 **PREEXISTING ACCESSORY-USE TOWERS/ANTENNAS**
1079 Legally existing prior to December 21, 1997, wireless communication system facility (WCSF),
1080 towers/antennas and alternative tower structures. Enlargements of WCSF, accessory use
1081 towers/antennas legally existing prior to December 21, 1997 must conform to the requirements of
1082 this title.
- 1083 **PRELIMINARY SUBDIVISION PLAN**
1084 The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the
1085 Planning Board for its consideration.
- 1086 **PREMISES**

1087 For the purposes of stormwater regulation, means any building, lot, parcel of land, or portion of land,
1088 whether improved or unimproved, including adjacent sidewalks and parking strips, located within
1089 the municipality from which discharges into the storm drainage system are or may be created,
1090 initiated, originated or maintained.

1091 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1092 **PRIMARY CAREGIVER**

1093 A person or an employee of that person, a licensed hospice provider or licensed nursing facility that
1094 provides care for a qualifying patient and is registered under 22 M.R.S. § 2425 and receives Board of
1095 Appeals approval for a major home occupation.

1096 **[ADDED 5-22-2017 BY ORD. NO. 17-08]**

1097 **PRINCIPAL BUILDING**

1098 The primary building on a lot or a building that shelters or encloses the principal use on a lot.

1099 **PRINCIPAL STRUCTURE**

1100 The primary structure on a lot or a structure that supports, shelters or encloses the principal use on
1101 the lot.

1102 **PRINCIPAL USE**

1103 The primary or predominant use. An activity that is conducted in conjunction with the principal use
1104 and such activity that either constitutes only an incidental or insubstantial part of the total activity
1105 that takes place on a lot; or is commonly associated with the principal use and integrally related to it,
1106 is regarded as "accessory to the principal use." An accessory to the principal use is regarded as
1107 "incidental or insubstantial" if it is both incidental and insubstantial in and of itself, and in relation to
1108 the principal use. Quantitative measures for consideration in this determination include the
1109 percentage and total amount of square footage attributed to the accessory to the principal use and
1110 sales or income derived from the accessory to the principal use.

1111 **PRIVATE ASSEMBLY**

1112 A building which is owned and used as a meeting place for private or semi-private social
1113 organization and clubs such as grange halls, fraternal organizations, religious institutions, etc. in
1114 which the principle use is exclusively for members. Rental of the facilities to outside groups is
1115 clearly incidental to the principle use and shall not significantly increase the intensity of the use of
1116 the site, especially regarding parking.

1117 **PRIVATE MARINA USE STRUCTURE**

1118 A structure which is owned and/or used by a private group, club, association or other legal entity's
1119 organization, and is used by its members only, and has frontage on navigable water, and as its
1120 principal use provides offshore moorings and/or docking facilities for vessels for use by its members
1121 and/or guests. The private marina may also provide accessory boating services. These accessory
1122 boating services may be provided to the boating public, members or guests.

1123 **PRUDENT AVOIDANCE**

1124 In any case where aboveground electrical utilities are approved, the plan is to be designed to avoid
1125 human residences as distant as possible without prohibitive cost.

1126 **PUBLIC ASSEMBLY AREA**

1127 Any area where large numbers of individuals collect to participate or to observe programs of
1128 participation.

1129 **PUBLIC FACILITY**

- 1130 Any facility, including, but not limited to, buildings, property, recreation areas and roads which are
 1131 owned, leased or otherwise operated, or funded by a governmental body or public entity.**PUBLIC OR**
 1132 **PRIVATE SCHOOL**
 1133 A building or buildings and its associated grounds which is principally used to conduct educational
 1134 classes including public and private elementary schools and nursery schools, including post-
 1135 secondary schools, but not including commercial schools.
- 1136 **PUBLIC UTILITY**
 1137 As defined in Title 35-A M.R.S. § 102, as amended.
- 1138 **PUBLIC UTILITY FACILITY**
 1139 Buildings, structures, and facilities, including generating and switching stations, poles, lines, pipes,
 1140 pumping stations, repeaters, antennas, transmitters and receivers, valves, and all buildings and
 1141 structures relating to the furnishing of utility services, such as electric, gas, telephone, water and
 1142 sewer, to the public.
- 1143 **QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR**
 1144 A person who conducts post-construction stormwater management facilities inspections for
 1145 compensation and who has received the appropriate training for the same from the Maine
 1146 Department of Environmental Protection.
- 1147 **RECENT FLOODPLAIN SOILS**
 1148 The following soil series as described and identified by the National Cooperative Soil Survey:
 1149 Alluvial, Cornish, Charles, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk,
 1150 Rumney, Saco, Suncook, Sunday and Winooski.
- 1151 **RECREATION, COMMERCIAL INDOOR**
 1152 The use of a building for play, sports, games, fitness, and other similar diversions operated as a
 1153 business and open to the public for a fee.
- 1154 **RECREATION, COMMERCIAL OUTDOOR**
 1155 The use of a land outside of a fully enclosed building, as defined, for play, sports, games, and other
 1156 similar diversions operated as a business and open to the public for a fee.
- 1157 **RECREATION, PASSIVE**
 1158 Outdoor recreational activities which have a low impact on the environment and neighborhood and
 1159 require no motorized vehicles, significant earthmoving or substantial structures, such as hiking,
 1160 fishing, canoeing, hunting, cross-country skiing, and wildlife observation and study. Benches and
 1161 boardwalks, steps, railings and other structures necessary to provide safe accessibility for physically
 1162 handicapped persons are allowed.
- 1163 **RECREATION, PUBLIC FACILITY**
 1164 A not-for-profit recreational facility open to the general public at no charge or a subsidized charge.
- 1165 **RECREATION, PUBLIC OPEN SPACE**
 1166 Open Space owned by a public agency and maintained by it for the use and enjoyment of the general
 1167 public. **RECREATIONAL VEHICLE**
 1168 A vehicle or an attachment to a vehicle designed to be towed, hauled, or driven and is primarily
 1169 designed as temporary living accommodations for one or more persons. The vehicle must be
 1170 registered with the State Division of Motor Vehicles.
- 1171 **RECREATIONAL VEHICLE PARK**
 1172 Any lot or parcel of land upon which two or more sites are located, established, or maintained for

1173 occupancy by recreational vehicle for a fee as temporary living quarters for recreation or vacation
1174 purposes.

1175 **REGULATED SMALL MS4**

1176 Any small municipal separate storm sewer system (MS4) regulated by the State of Maine "General
1177 Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems"
1178 dated July 2013 ("general permit"), including all those located partially or entirely within an
1179 urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance
1180 of the general permit have been designated by the DEP as regulated small MS4s. The Town of
1181 Kittery is a regulated small MS4.

1182 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1183 **REGULATORY FLOODWAY**

1184 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

- 1185 A. The channel of a river or other watercourse and the adjacent land areas that must be
1186 reserved in order to discharge the base flood without cumulatively increasing the water
1187 surface elevation more than one foot; and
- 1188 B. In riverine areas, is considered to be the channel of a river or other watercourse and the
1189 adjacent land areas to a distance of 1/2 the width of the floodplain, as measured from the
1190 normal high-water mark to the upland limit of the floodplain.

1191 **RELIGIOUS USE**

1192 A structure of place in which worship, ceremonies, rituals, and education pertaining to a particular
1193 system of beliefs are held.

1194 **REPAIR GARAGE**

1195 An establishment providing for the repair or servicing of motor vehicles. A repair garage does not
1196 include activities that are defined as mechanical service or a junkyard.

1197 **REPAIR SERVICE**

1198 A business providing for the repair of personal or small business property, such as radios and
1199 televisions, household or office electrical or electronic equipment, watches, clocks and jewelry,
1200 furniture and upholstery, sporting equipment, and similar items, but not including items included
1201 under mechanical services or automotive services and repair.

1202 **REPLACEMENT SYSTEM**

1203 A system intended to replace:

- 1204 A. An existing system which is either malfunctioning or being upgraded with no significant
1205 change of design flow or use of the structure; or
- 1206 B. Any existing overboard wastewater discharge.

1207 **RESEARCH AND DEVELOPMENT**

1208 A building or group of buildings in which are located facilities for technical or scientific research,
1209 investigation, testing or experimentation, but not facilities for the manufacture or sale of products,
1210 except as incidental to the main purpose of the facility.

1211 **RESIDENTIAL CARE FACILITY**

1212 A house or other place that, for consideration, is maintained wholly or partly for the purpose of
1213 providing residents with assisted living services. Residential Care Facilities provide housing and
1214 services to residents in private or semi-private bedrooms in buildings with common living areas and
1215 dining areas. "Residential Care Facility" does not include a licensed nursing home or supportive

1216 living arrangement certified by the state.

1217 **RESIDENTIAL CARE UNIT**

1218 A type of residential accommodation in a Residential Care Facility that has private sleeping and
1219 bathroom facilities but does not have permanent complete cooking facilities within the unit. The
1220 occupant of a residential care unit typically eats all or most of meals in a shared dining room.
1221 Residential care units may have a portable or removable kitchen or partial kitchen facilities such as a
1222 refrigerator and microwave oven. A residential care unit may be a unit with a separate bedroom, a
1223 suite or a room. A residential care unit is distinct from a dwelling unit that is defined separately.

1224 **RESIDENTIAL DEVELOPMENT USE PIER, RAMP AND FLOAT SYSTEM**

1225 A pier and/or ramp and float system which is used in common by lot owners or residents of a
1226 subdivision or residential planned development. The purpose is to provide waterfront access to the
1227 owners of lots in a residential development that has the potential for more than one waterfront lot.
1228 The object is to minimize the number of piers, ramps and floats resulting from new development.

1229 **RESIDENTIAL HOME OCCUPATION USE PIER, RAMP AND FLOAT SYSTEM**

1230 A pier and/or ramp and float system which is used for the residential home occupation workers in an
1231 approved functionally water-dependent home occupation (minor or major) in addition to its
1232 customary residential accessory use.

1233 **RESIDENTIAL JOINT/SHARED-USE PIER, RAMP AND FLOAT SYSTEM**

1234 A pier and/or ramp and float system which is used by the owners of not more than four residential
1235 shorefront lots, at least one boundary of whose building lot lies within 1,000 feet of the lot on which
1236 the joint/shared-use pier is constructed.

1237 **RESIDENTIAL SINGLE-USE PIER, RAMP AND FLOAT SYSTEM**

1238 A pier and/or ramp and float system which is used by the owner(s) of a single residential shorefront
1239 lot.

1240 **RESIDUAL BASAL AREA**

1241 The sum of the basal area of trees remaining on a harvested site.

1242 **RESIDUAL STAND**

1243 A stand of trees remaining in the forest following timber harvesting.

1244 **RESTAURANT**

1245 An establishment where food or food and drink are prepared and sold for consumption on the
1246 premises by the public and includes cafes, coffee shops and similar establishments that serve food.

1247 **RESUBDIVISION**

1248 The division of an existing subdivision or any change of lot size therein or the relocation of any
1249 street or lot in a subdivision, or any changes thereto.

1250 **RETAIL SALES**

1251 Any business engaged primarily in the sale of goods for personal or household consumption and/or
1252 use, and not for resale. The term "retail use" does not include specific types of retail uses that are
1253 individually listed in § 16.4.

1254 **RETAIL SALES, BUILDING MATERIALS AND GARDEN SUPPLY**

1255 A retail establishment primarily engaged in selling lumber and other building materials; paint, glass,
1256 floor covering and wallpaper; hardware, drapery and upholstery; flowers and/or nursery stock, lawn
1257 and garden supplies; modular homes and mobile homes.

- 1258 **RETAIL SALES, CONVENIENCE STORE**
1259 A retail store containing less than 2,000 square feet of gross floor area that is designed and stocked
1260 to sell primarily food, beverages and other household supplies to customers who purchase only a
1261 relatively few items (in contrast to a grocery store). It is designed to attract and depends upon a large
1262 volume of stop-and-go traffic. Supplementing these uses with accessory gasoline sales requires
1263 additional parking and traffic considerations.
- 1264 **RIGHT-OF-WAY, PRIVATE**
1265 A platted and dedicated access route normally to back lot(s); and as approved by the Planning Board
1266 and recorded in the York County Registry of Deeds.
- 1267 **RIPRAP**
1268 Rocks, irregularly shaped, and at least six inches in diameter, used for erosion control and soil
1269 stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.
- 1270 **RIVER**
1271 A free-flowing body of water, including its associated floodplain wetlands, from that point at which
1272 it provides drainage for a watershed of 25 square miles to its mouth.
- 1273 **RIVERINE**
1274 Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- 1275 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**
- 1276 **ROAD**
1277 A route or track consisting of a bed of exposed mineral soil, gravel, asphalt or other surfacing
1278 material constructed for or created by the repeated passage of motorized vehicles.
- 1279 **ROOMING HOUSE**
1280 A residential use in which the owner or manager of the facility resides on the premises and in which
1281 more than three persons who are not part of the owner's/manager's family are housed in rooms for
1282 compensation with or without meals. This includes fraternities and sororities.
- 1283 **SALT MARSH**
1284 Areas along coastal waters (most often along coastal bays) which support salt-tolerant species, and
1285 where, at average high tide during the growing season, the soil is regularly inundated by tidal waters.
1286 The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often
1287 support widgeon grass, eelgrass and Sago pondweed.
- 1288 **SALT MEADOW**
1289 Areas which support salt-tolerant plant species bordering the landward side of salt marshes or open
1290 coastal water, where the soil is saturated during the growing season, but which is rarely inundated by
1291 tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black
1292 rush; common three-square occurs in fresher areas.
- 1293 **SAWMILL, PERMANENT**
1294 A facility where logs are cut into boards or timbers; a mill or machine for sawing logs or producing
1295 firewood that is in operation on a permanent basis. Sawmill operations may be subject to State
1296 regulations.
- 1297 **SAWMILL, TEMPORARY**
1298 A facility where logs are cut into boards or timbers, a mill or machine for sawing logs or producing
1299 firewood that is in operation for a cumulative duration of two (2) months or fewer in any twelve (12)

1300 month period. Sawmill operations may be subject to State regulations. This definition does not
1301 include the use of handheld chainsaws.

1302 **SCREEN**

1303 A method of significantly reducing the impact of noise and unsightly visual intrusions with less
1304 offensive or more harmonious elements, such as plants, berms, fences, walls, or any appropriate
1305 combination thereof.

1306 **SCREENING**

1307 Either: 1) a strip of at least 10 feet wide, densely planted (or having equivalent natural growth) shrubs or
1308 trees at least four feet high at the time of planting, of an evergreen type that will grow to a year-round
1309 dense screen at least six feet high in three years; or 2) an opaque wall or barrier of uniformly colored
1310 fence at least six feet in height. Screening of either type must be maintained in good condition at all
1311 times.**SEPTIC SYSTEM**

1312 See "subsurface wastewater disposal system."

1313 **[ADDED 10-14-2015 BY ORD. NO. 15-10]**

1314 **SERVICE DROP**

1315 Any utility line extension which does not cross or run beneath any portion of a water body, provided
1316 that:

1317 A. In the case of electric service:

1318 (1). The placement of wires and/or the installation of utility poles is located entirely
1319 upon the premises of the customer requesting service or upon a roadway at the
1320 right-of-way; and

1321 (2). The total length of the extension is less than 1,000 feet.

1322 B. In the case of telecommunications service:

1323 (1). The extension, regardless of length, will be made by the installation of telephone
1324 wires to existing utility poles; or

1325 (2). The extension requiring the installation of new utility poles or placement
1326 underground is less than 1,000 feet in length.

1327 **SETBACK**

1328 The minimum horizontal distance from an identified object, line, boundary or feature to the nearest
1329 part of a regulated object, use or feature. (Note: See § 16.1, for setbacks from water bodies and
1330 wetlands. See § 16.7.8 for applying setbacks in special situations.)

1331 **SETBACK FROM STREAMS, WATER BODIES AND WETLANDS**

1332 The minimum horizontal distance allowed from the upland edge of a wetland and/or from the normal
1333 high-water line to the nearest part of a structure (excluding cornices, eaves or gutters projecting not
1334 more than 24 inches), roads, parking areas, or other regulated activities. See Table 16.5.28.

1335 Minimum Setbacks from Wetlands and Water Bodies, for required horizontal distances, and § 16.7.8
1336 and § 16.8.7 for applying setbacks in special situations. Adjacent to tidal waters, setbacks are
1337 measured from the upland edge of the coastal wetland.

1338 **SHOP IN PURSUIT OF TRADES**

1339 An establishment occupied by a business or craftsperson in a skilled trade, including, by way of
1340 example only, plumbing, carpentry or electrical work. Not more than 10 people may be employed at
1341 and/or work from the shop. The shop may include work space, storage space and/or office space. A
1342 shop in pursuit of trades does not include "construction services," which is separately defined.

1343

- 1344 **SHORE FRONTAGE**
1345 The width of a lot as it fronts the shore as measured in a straight line between the point of
1346 intersection of the side lot lines with the shoreline at normal high-water elevation.
- 1347 **SHOREFRONT DEVELOPMENT PLAN**
1348 A plan for any development extending into or within 100 feet of the upland edge of a coastal
1349 wetland, or into or within 100 feet of the upland edge of a fresh water wetland shown on the Zoning
1350 Map, including but not limited to public and private access paths; piers, ramps and floats; storage of
1351 boats and/or floats; clearing of vegetation, visual impact and controls to assure continuing
1352 conformance to the plan.
- 1353 **SHORELINE**
1354 The normal high-water line or upland edge of a wetland.
- 1355 **SIGN**
1356 Any structure or part of the structure attached thereto or painted or represented thereon, which
1357 displays or includes any letter, word, model, banner, flag, pennant, insignia, trade name, trademark,
1358 logo, device or representation used as, or which is in the nature of, any announcement of the purpose
1359 of a business, entity or person, direction or advertisement. The term "sign" does not include a flag.
- 1360 **SIGN AREA**
1361 The enclosed space within a geometric figure which contains the advertising message, illustration,
1362 insignia or display, together with any frame, color or other material which comprises the display and
1363 is used to differentiate or draw attention to the sign and away from the background. Each face of a
1364 sign is considered a separate sign for area computations, but supporting brackets and posts are not
1365 included.
- 1366 **SIGN, CHANGEABLE MESSAGE**
1367 Any sign or portion thereof designed to allow characters, letters and numbers on the face of the sign
1368 to be changed or rearranged.
- 1369 **SIGN, FREESTANDING**
1370 Any sign supported by a structure or supports that are permanently anchored in the ground and that
1371 is independent from any building.
- 1372 **SIGN, REAL ESTATE**
1373 Any sign advertising real estate for sale, lease or rent.
- 1374 **SIGN, TEMPORARY**
1375 A sign that is intended to remain where it is erected or placed for a period of time not to exceed 21
1376 days in any calendar quarter.
- 1377 **SIGN, TRAILER**
1378 A portable sign mounted on a chassis and wheels or supported by legs.
- 1379 **SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM, OR SMALL MS4**
1380 Any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally
1381 owned or operated storm sewer systems, state or federally owned systems, such as colleges,
1382 universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road
1383 systems and facilities, and military bases and facilities. The Town of Kittery is a small MS4.
- 1384 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**
- 1385 **SOILS**

1386 A soil's drainage class must be determined by a Maine certified soil scientist and based on the most-
1387 recent Natural Resources Conservation Service Supplemental Key for the Identification of Soil
1388 Drainage Class that reflects the Maine Association of Professional Soil Scientists, Key to Drainage
1389 Classes. The Key includes, among other terms, the following:

1390 **[AMENDED 9-28-2015 BY ORD. NO. 15-05]**

- 1391 A. **VERY POORLY DRAINED** Water is removed from the soil so slowly that the water table
1392 remains at or above the surface most of the year. A seasonal high water table is at or above
1393 the surface from at least October through July and sometimes throughout the year. In
1394 August and September, the water table may recede below 12 inches. The high water table
1395 severely limits the use of these soils for most agricultural, forestry, and urban activities.
1396 These soils are hydric and typically support a wetland plant community.
- 1397 B. **POORLY DRAINED** Water is removed from the soil so slowly that the soil remains wet
1398 most of the year. A seasonal high water table is at or near the surface from October
1399 through June. In July, August and September, it may recede below 16 inches. The seasonal
1400 high water table limits the use of these soils for most agricultural, forestry, and urban
1401 activities. These soils are hydric and typically support a wetland plant community.
- 1402 C. **SOMEWHAT POORLY DRAINED** Water is removed from the soil slowly enough to
1403 keep it wet for significant periods of time but not the entire year. A seasonal high water
1404 table is at seven inches to 16 inches in depth from October through May and sometimes
1405 June. From July to October, it may recede below 30 inches in depth. A seasonal water
1406 table limits the use of these soils for some agricultural, forestry and urban activities. These
1407 soils are not hydric in Maine and are commonly found in the transitional landscape
1408 positions between wetland and upland soils.

1409 **SPECIAL EXCEPTION**

1410 A use that would not be appropriate generally or without restriction throughout the zoning district,
1411 but which, if controlled as to number, area, location or relation to the neighborhood, would promote
1412 the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or
1413 general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific
1414 provision for such special exceptions is made in § 16.4.

1415 **SPECIAL FLOOD HAZARD AREA**

1416 See "Flood, area of special flood hazard."

1417 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1418 **SPECIALTY FOOD AND/OR BEVERAGE FACILITY**

1419 A facility wherein food and/or beverage is produced, sold on a wholesale and/or retail basis,
1420 distributed, and/or consumed on the premises. This may include, but not be limited to, a brew pub,
1421 microbrewery, coffee roaster and/or other facilities producing crafted alcoholic or nonalcoholic
1422 beverages and/or artisan food.

1423 **[ADDED 6-10-2013 BY ORD. NO. 13-02]**

1424 **START OF CONSTRUCTION**

1425 The date the building/regulation activity permit was issued, provided the actual start of construction,
1426 repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other
1427 improvement was within 180 days of the permit date. The "actual start" means either the first
1428 placement of permanent construction of a structure on a site, such as the pouring of slab or footings,
1429 the installation of piles, the construction of columns, or any work beyond the stage of excavation; or
1430 the placement of a manufactured home on a foundation. Permanent construction does not include

1431 land preparation, such as clearing, grading and filling; nor does it include the installation of streets
1432 and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the
1433 erection of temporary forms; nor does it include the installation on the property of accessory
1434 buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
1435 For a substantial improvement, the "actual start of construction" means the first alteration of any
1436 wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the
1437 external dimensions of the building.

1438 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1439 **STORM DRAINAGE SYSTEM**

1440 The entire Town's storm drainage system.

1441 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1442 **STORMWATER**

1443 Any stormwater runoff, snowmelt runoff, and surface runoff and drainage.

1444 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1445 **STORY**

1446 That portion of a building included between the upper surface of a floor and the upper surface of the
1447 floor or roof next above. For any building that contains no floors in the vertical plane, every 10 feet
1448 or portion thereof counts as a floor.

1449 **[AMENDED 9-24-2012 BY ORD. NO. 12-11]**

1450 **STORY ABOVE GRADE**

1451 Any story having its finished floor surface entirely above grade, except that a basement is considered
1452 as a story above grade where the finished surface of the floor above the basement is:

1453 A. More than six feet (1,829 mm) above the grade plane;

1454 B. More than six feet (1,829 mm) above the finished ground level for more than 50% of the
1455 total building perimeter; or

1456 C. More than 12 feet (3,658 mm) above the finished ground level at any point.

1457 **STREAM OR BROOK**

1458 A channel between defined banks, including the floodway and associated floodplain wetlands, where
1459 the channel is created by the action of surface water and characterized by the lack of upland
1460 vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil
1461 containing waterborne deposits on exposed soil, parent material or bedrock.

1462 **STREET**

1463 A way established or maintained under public authority, or a minimum forty-foot-wide private way
1464 constructed to Town standards as contained in § 16.5 and § 16.8, approved by the Planning Board
1465 and plotted, dedicated and recorded, or a way shown on a plan of a subdivision duly approved by the
1466 Planning Board. Also included are such ways as alleys, avenues, boulevards, highways, roads, streets
1467 and other rights-of-way.

1468 **STREET FRONTAGE**

1469 A continuous portion of a boundary of a lot which abuts a street, ordinarily regarded as the front of
1470 the lot. When a lot is bounded by more than one street, any one of them, but only one, may be
1471 designated as the frontage street by the owner, provided that the lot meets the frontage requirement

1472 on that street, front, side and rear yard setbacks, and that the principal building is numbered on that
1473 street.

1474 **STREET LINE**

1475 The exterior line of a street right-of-way which separates it from abutting lots.

1476 **STRUCTURALLY ALTERED**

1477 Any work which requires or contemplates any changes to the structural capabilities of a building.

1478 **STRUCTURE**

1479 Anything built for the support, shelter or enclosure of persons, animals, goods or property of any
1480 kind, or anything constructed or erected with a fixed location on or in the ground, or attached to
1481 something having a fixed location on or in the ground. The term includes decks. The term does not
1482 include fences less than eight feet in height, nor any required by the Planning Board or Town
1483 Planner to be taller; flagpoles no higher than 50 feet in height; signs located in conformance with §
1484 16.5.21; and electricity generators and propane and oil tanks for residential use only and the pads on
1485 which they are located, provided the pad is less than 20 square feet in size.

1486 **SUBDIVIDER**

1487 Any person, firm, corporation or other legal entity making application for the subdivision of land or
1488 buildings within the Town.

1489 **SUBDIVISION**

1490 The division of a tract or parcel of land into three or more lots within any five-year period that
1491 begins on or after September 23, 1971. This definition applies whether the division is accomplished
1492 by sale, lease, development, building or otherwise. The term "subdivision" also includes the division
1493 of a new structure of structures on a tract or parcel of land into three or more dwelling units within a
1494 five-year period, the construction or placement of three or more dwelling units on a single tract or
1495 parcel of land and the division of an existing structure or structures previously used for commercial
1496 or industrial use into three or more dwelling units within a five-year period, as set forth in 30-A
1497 M.R.S. § 4401, as amended.

1498 **SUBDIVISION, MAJOR**

1499 Any subdivision containing more than four lots or any subdivision requiring any new public street
1500 extension or the extension of public or municipal facilities.

1501 **SUBDIVISION, MINOR**

1502 A subdivision containing not more than four lots.

1503 **SUBSTANTIAL DAMAGE**

1504 Damage of any origin sustained by a structure whereby the cost of restoring the structure to its
1505 before-damage condition would equal or exceed 50% of the market value of the structure before the
1506 damage occurred.

1507 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1508 **SUBSTANTIAL IMPROVEMENT**

1509 Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which
1510 equals or exceeds 50% of the market value of the structure before the start of construction of the
1511 improvement. This term includes structures which have incurred substantial damage, regardless of
1512 the actual repair work performed. The term does not, however, include either:

1513 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

- 1514 A. Any project for improvement of a structure to correct existing violations of state or local
1515 health, sanitary or safety code specifications which have been identified by the local code
1516 enforcement official and which are the minimum necessary to assure safe living
1517 conditions; or
- 1518 B. Any alteration of an historic structure, provided that the alteration will not preclude the
1519 structure's continued designation as an historic structure.

1520 **SUBSURFACE WASTEWATER DISPOSAL SYSTEM (SWDS)**

1521 Any system designed to dispose of waste or wastewater on or beneath the surface of the earth. These
1522 include, but are not limited to, septic tanks, disposal fields, holding tanks, pretreatment filters,
1523 piping, or any other fixture, mechanism or apparatus used for such purposes. This definition does not
1524 include any discharge system licensed under 38 M.R.S. § 414, any surface wastewater disposal
1525 system or any municipal or quasi-municipal sewer or wastewater treatment system. (See also
1526 "wastewater" and "domestic wastewater.")

1527 **[ADDED 10-14-2015 BY ORD. NO. 15-10]**

1528 **SUSTAINED SLOPE**

1529 A change in elevation where the referenced percent grade is substantially maintained or exceeded
1530 throughout the measured area.

1531 **TEMPORARY STRUCTURE**

1532 A structure which by type and materials of its construction is erected for not more than 30 days with
1533 a permit from the CEO. Such structures include tents, portable bandstands, bleachers, reviewing
1534 stands, a mobile home, tractor trailers or structures of a similar character. Temporary structures
1535 erected in conjunction with licensed circuses are not construed to be temporary structures under this
1536 title.

1537 **THEATER**

1538 A building or portion of a building for the showing of motion pictures or the presentation of
1539 dramatic, musical or other live performances.

1540 **THEATER, DRIVE-IN**

1541 An open lot devoted primarily to the showing of motion pictures and theatrical productions on a paid
1542 admission basis to patrons seated in automobiles.

1543 **TIDAL LAND, FILLED**

1544 Portions of the submerged and intertidal lands that have been rendered by human activity to be no
1545 longer subject to tidal action or below the natural low-water mark after October 1, 1975.

1546 **[ADDED 9-28-2015 BY ORD. NO. 15-05]**

1547 **TIDAL WATERS**

1548 All waters where the high-water line is affected by the ebb and flow of tidal action.

1549 **TIMBER HARVESTING**

- 1550 A. **TIMBER HARVESTING** Selective cutting or removal of 10 or more cords, or the
1551 equivalent thereof, but no more than 40% of the total volume of trees four inches or more
1552 in diameter measured at 4 1/2 feet above ground level on any lot in any ten-year period for
1553 the purpose of selling or processing forest products. Clearing of land necessary for
1554 approved construction is not considered as timber harvesting.
- 1555 B. For the purposes of this title, timber harvesting activities taking place outside the shoreland
1556 overlay zone on land classified by the Town Assessor as enrolled in the state tree growth

1557 program (36 M.R.S. §§ 571 to 584-A), which is conducted in compliance with a forest
1558 management and harvest plan prepared by a licensed professional forester, is not
1559 considered timber harvesting.

1560 **TOWER**

1561 Any structure, whether freestanding or in association with a building or other permanent structure,
1562 that is designed and constructed primarily for the purposes of supporting one or more antennas,
1563 including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio
1564 and television transmission towers, microwave towers, common-carrier towers, cellular telephone
1565 towers, alternative tower structures, and similar structures.

1566 **TRACT OR PARCEL OF LAND**

1567 All contiguous land in the same ownership, except that lands located on opposite sides of a public or
1568 private street are considered separate tracts or parcels of land unless the street was established by the
1569 owner of land on both sides of the street after September 22, 1971.

1570 **TRANSPORTATION TERMINAL**

1571 Land and buildings used as a relay station for the transfer of a load from one vehicle to another. The
1572 terminal facility may include storage areas for trucks and buildings or areas for the repair of trucks
1573 associated with the terminal.

1574 **TRAVELED WAY**

1575 That portion of a road or driveway designed for vehicle travel. Where a road or driveway surface is
1576 paved, the traveled way is that portion of the road surface between the edges of the paved width.

1577 **TRIBUTARY STREAM**

1578 A channel between defined banks created by the action of surface water, whether intermittent or
1579 perennial, and which is characterized by the lack of upland vegetation or presence of aquatic
1580 vegetation and by the presence of a bed devoid of topsoil, containing waterborne deposits on
1581 exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined.
1582 This definition does not include the term "stream" as defined elsewhere in this title and only applies
1583 to that portion of the tributary stream located within the shoreland or resource protection overlay
1584 zones of the receiving water body or wetland.

1585 **UPLAND EDGE**

1586 The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the
1587 line formed by the landward limits of the salt-tolerant vegetation and/or the elevation being six feet
1588 above mean sea level based on the North American Vertical Datum of 1988 (NAVD 88), including
1589 all area affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed
1590 where the soils are not saturated for a time period sufficient to support wetland vegetation or where
1591 the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems
1592 that are 20 feet tall or taller; whichever is more restrictive.

1593 **URBANIZED AREA (UA)**

1594 The areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the
1595 Census.

1596 **[ADDED 5-22-2017 BY ORD. NO. 17-06]**

1597 **USED CAR LOT**

1598 A lot exposed to the elements which is used for the sale of secondhand automobiles or trucks which
1599 can pass the state inspection tests in their existing conditions.

1600 **VARIANCE**

1601 A. A relaxation of the terms of this title where such relaxation will not be contrary to the
1602 public interest and where, owing to conditions peculiar to the property and not the result of
1603 the actions of the applicant or prior owner, a literal enforcement of the title will result in
1604 unnecessary or undue hardship.

1605 B. As used in this title, a variance is authorized only for dimensional requirements related to
1606 height, area and size of structure, or size of yards and open spaces. Establishment or
1607 expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be
1608 granted because of the presence of nonconforming uses in the particular zone or adjoining
1609 zone.

1610 **VEGETATION**

1611 All live trees, shrubs, ground cover and other plants.

1612 **VETERINARY HOSPITAL**

1613 A commercial establishment, operated by a licensed veterinarian, for the medical and surgical care
1614 of sick or injured animals.

1615 **VIOLATION**

1616 The failure of a structure or development to comply with a community's floodplain management
1617 regulations.

1618 **[ADDED 9-26-2011 BY ORD. NO. 11-15]**

1619 **VOLUME OF A STRUCTURE**

1620 The volume of all portions of a structure enclosed by roof and fixed exterior walls, as measured from
1621 the exterior faces of these walls and roof.

1622 **WAREHOUSING AND STORAGE**

1623 Premises where goods or materials are stored in an enclosed structure or in specific outdoor areas.

1624 **WASTE**

1625 Any unwanted or discarded substance or material, whether or not such substance or material has any
1626 future use, and includes any substance or material that is spilled, leaked, pumped, poured, emitted,
1627 disposed of, emptied, or dumped onto the land or into the water.

1628 **WASTEWATER**

1629 Any domestic wastewater, or other wastewater from commercial, industrial or residential sources
1630 that has attributes similar to those of domestic wastewater. This term specifically excludes hazardous
1631 or toxic wastes and materials. (Applicable only to Title 16. If there is a conflict with the definition of
1632 "wastewater" in Title 13, the Title 13 definition takes precedence.)

1633 **[ADDED 10-14-2015 BY ORD. NO. 15-10]**

1634 **WASTEWATER, DOMESTIC**

1635 Any wastewater produced by ordinary living uses, including liquid waste containing animal or
1636 vegetable matter in suspension or solution, or the water-carried waste from the discharge of water
1637 closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes
1638 of human origin.

1639 **[ADDED 10-14-2015 BY ORD. NO. 15-10]**

1640 **WATER BODY**

1641 Any pond, river, brook, stream, intermittent stream or coastal wetland.

1642 **WATER CROSSING**

1643 Any project extending from one bank to the opposite bank of a water body, whether under, through
1644 or over the watercourse. Such projects include but may not be limited to roads, fords, bridges,
1645 culverts, waterlines, sewer lines and cables, as well as maintenance work on these crossings.

1646 **WATER-DEPENDENT USE**

1647 See "functionally water-dependent use."

1648 **WETLAND**

1649 Areas that under normal circumstances have hydrophytic vegetation, hydric soils and wetland
1650 hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual — Waterways
1651 Experiment Station Technical Report Y-87-1, January 1987" (1987 manual). This definition of
1652 wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.

1653 **WETLAND ALTERATION**

1654 Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the
1655 hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the
1656 Planning Board, the term "alteration" may exclude:

1657 A. An activity of installing a fence post or planting shrubs by hand;

1658 B. Alteration of an existing structure such as a bench or handrail; and

1659 The construction, repair or alteration of a structure with minimal impact such as a nesting box,
1660 pasture fence or staff gauge.

1661 **WETLAND, COASTAL**

1662 All tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands
1663 with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine
1664 habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal
1665 action during the maximum spring tide level as identified in tide tables published by the National
1666 Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

1667 **WETLAND CREATION**

1668 Conversion of a nonwetland area into a wetland, where a wetland never existed.

1669 **WETLAND ENHANCEMENT**

1670 An activity increasing the value of one or more functions in an existing wetland. Activities may also
1671 include improvements to upland buffers where timber harvesting or other activities have degraded
1672 the value for wildlife.

1673 **WETLAND, FORESTED**

1674 A fresh water wetland dominated by woody vegetation that is 20 feet tall or taller.

1675 **WETLAND, FRESHWATER**

1676 Noncoastal types of wetlands, including, but not limited to, freshwater swamps, marshes, bogs and
1677 similar areas.

1678 **WETLAND, FRESHWATER (IN THE SHORELAND AND RESOURCE PROTECTION**
1679 **OVERLAY ZONES)**

1680 A. Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which
1681 are: **[Added 5-22-2017 by Ord. No. 17-04]**

1682 (1). Of 10 or more contiguous acres; or of less than 10 contiguous acres and adjacent to
1683 a surface water body, excluding any river, stream or brook, such that in a natural
1684 state, the combined surface area is in excess of 10 acres; and

- 1685 (2). Inundated or saturated by surface- or groundwater at a frequency and for a duration
1686 sufficient to support, and which under normal circumstances do support, a
1687 prevalence of wetland vegetation typically adapted for life in saturated soils.
- 1688 B. Freshwater wetlands may contain small stream channels or inclusions of land that do not
1689 conform to the criteria in this definition.

1690

1691 **WETLAND FUNCTIONS**

1692 The roles wetlands serve which are of value to society or the environment, including, but not limited
1693 to, floodwater storage, floodwater conveyance, groundwater recharge and discharge, erosion control,
1694 wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries,
1695 wetland plant habitat, aquatic habitat and wildlife habitat.

1696 **WETLAND HYDROLOGY**

1697 In general terms, a condition where permanent or periodic inundation or prolonged soil saturation is
1698 sufficient to create anaerobic conditions in the soil. According to the 1989 Manual, inundation or
1699 saturation for one week or more during the growing season and a water table within at least 18
1700 inches of soil surface is required to meet the wetland hydrology criterion.

1701 **WETLAND PRESERVATION**

1702 The maintenance of an area of wetlands or adjacent upland so that it remains in a natural or
1703 undeveloped condition. Preservation measures include, but are not limited to, conservation
1704 easements and land trusts.

1705 **WETLAND RESTORATION**

1706 An activity returning a wetland from a disturbed or altered condition with lesser acreage or fewer
1707 functions to a previous condition with greater wetland acreage or function.

1708 **WETLAND VALUE**

1709 The importance of a wetland with respect to the individual or collective functions it provides.

1710 **WETLAND VEGETATION**

1711 Those plants classified as Obligate, Facultative Wetland or Facultative in the U.S. Fish and Wildlife
1712 Service publication, Wetland Plants of the State of Maine, 1986, as amended or superseded.

1713 **WETLANDS ASSOCIATED WITH RIVERS**

1714 Wetlands contiguous with or adjacent to a river, and which during normal high water are connected
1715 by surface water to the river. Also included are wetlands which are separated from the river by a
1716 berm, causeway or similar feature less than 100 feet in width, and which have a surface elevation at
1717 or below the normal high-water line of the river. Wetlands associated with rivers are considered to
1718 be part of that great pond or river.

1719 **WETLANDS IMPACT**

1720 Any disturbance, including but not limited to filling, dredging, draining, bridging and cutting or
1721 clearing of vegetation in the wetland and buffer areas.

1722 **WHARF**

1723 A structure on the shore, parallel to the shoreline of navigable waters, alongside of which vessels can
1724 be brought for loading or unloading.

1725 **WHOLESALE BUSINESS**

1726 The sale of goods not produced on the premises primarily to customers engaged in the business of
1727 reselling the goods.

1728 **WIRELESS COMMUNICATION SERVICES FACILITIES (WCSF)**
1729 Any structure, antenna, tower or other device which provides radio/television transmission,
1730 commercial mobile wireless services, unlicensed wireless services, cellular phone services,
1731 specialized mobile radio communications (SMR), common carrier wireless exchange access
1732 services, and personal communications service (PCS) or pager services, and associated development.
1733 Telecommunications facilities are considered a principal use.

1734 **WORK**
1735 Activity related to physical change for improvements and not the engineering, production or
1736 correction of construction drawings, or real estate marketing.

1737 **YARD, ACCESSORY BUILDING SIDE AND REAR**
1738 In the R-RL, R-U, R-S and B-L Zones, accessory building side and rear yard setbacks that are at
1739 least 10 feet, except no building may be closer than 30 feet to a principal building on an adjoining
1740 lot.

1741 **YARD, FRONT**
1742 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more
1743 than 24 inches, on the same lot with the building between the front line of the building and the front
1744 line of the lot and extending the full width of the lot as it abuts along a public or private street.

1745 **YARD, REAR**
1746 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more
1747 than 24 inches, on the same lot with the building between the rear line of the building and the rear
1748 line of the lot and extending the full width of the lot.

1749 **YARD, SIDE**
1750 An open area unoccupied by any structure, excluding cornices, eaves or gutters projecting not more
1751 than 24 inches, on the same lot with the building situated between the building and the side line of
1752 the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line
1753 will be deemed a side line.

1754

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 appropriately licensed or certified Maine state
95 professional.

96 **16.4.7 Overlay zone**

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

100 **16.4.8 Zoning Map amendments to Resource Protection and Shoreland Overlay** 101 **Zones**

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

106 **16.4.9 Prohibited uses**

107 Uses in all zones are defined in § 16.3 of this ordinance by zone as permitted or special
108 exception uses. Any use not listed as a permitted or a special exception use is prohibited in
109 the zone.

110

111 **16.4.10 Residential – Rural (R-RL)**

112 A. Purpose

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

116 B. Permitted uses

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

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

138 C. Special exception uses

- 139 (1). The following uses are permitted as special exception uses in the R-RL Zone:
- 140 (2). Mobile Home Park, subject to § 16.5.16.D
- 141 (3). Home Occupation, Major
- 142 (4). Campgrounds
- 143 (5). Recreational Vehicle Park
- 144 (6). Rooming House
- 145 (7). Public Utility Facility
- 146 (8). Recreation, Commercial Indoor
- 147 (9). Recreation, Commercial Outdoor
- 148 (10). Agriculture, Piggery
- 149 (11). Commercial Kennel
- 150 (12). Sawmill, Permanent
- 151 (13). Sawmill, Temporary
- 152 (14). Veterinary Hospital
- 153 (15). Cemetery

- 154 (16). Shops in Pursuit of Trade
- 155 (17). Junkyard
- 156 (18). Mineral extraction, subject to § 16.5.15
- 157 (19). Major or Minor Subdivision [Added 9-24-2012 by Ord. No. 12-10]

158 D. Standards

159 The following standards must be met unless modified per § 16.8.H, Cluster
160 Residential Development: [Amended 9-24-2012 by Ord. No. 12-10]

- 161 (1). Design and performance standards in § 16.7 and 16.8
- 162 (2). Dimensional standards:
 - 163 a. Minimum land area per dwelling unit: 40,000 square feet.*
164 *As per §16.3 definition of "minimum land area per dwelling unit,"
165 except to exempt properties which are unable to meet the square feet
166 required for a single-family dwelling unit, provided the lot was
167 conforming prior to October 25, 2012. [Amended 9-28-2015 by
168 Ord. No. 15-05]
 - 169 b. Minimum lot size: 40,000 square feet.
 - 170 c. Minimum street frontage: 150 feet.
 - 171 d. Minimum front yard: 40 feet.
 - 172 e. Maximum building coverage: 15%.
 - 173 f. Minimum rear and side yards: 20 feet
174 (NOTE: Buildings higher than 40 actual feet are to have side and rear yards
175 not less than 50% of building height.)
 - 176 g. Maximum building height: 35 feet
177 (NOTE: Minimum distance between principal buildings on the same lot is
178 the height equivalent to the taller building.)
 - 179 h. Minimum setback from water body and wetland water-dependent uses: zero
180 feet
 - 181 i. Minimum setback from streams, water bodies and wetlands: in accordance
182 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.
- 183 (3). Subdivision types and standards
184 Subject to net residential acreage and net residential density per § 16.3.
185 [Amended 9-28-2015 by Ord. No. 15-05]
 - 186 a. Cluster residential development
187 In a cluster residential development, the above standards may be modified
188 in accordance with special provisions of § 16.8.H, including that there is no
189 minimum lot size, and with the conditions that:
 - 190 i. Minimum principal building separation as required by the Fire
191 Chief, but not less than 20 feet.
 - 192 b. Subdivision development [per special exception uses, § 16.4.10.A(3)].
193 In a subdivision development, standards in § 16.4.10.A(5) and (6) apply
194 and include:
 - 195 i. Minimum percentage of common open space: 15%
- 196 (4). Junkyards
197 In the case of junkyards, the following special standards apply, which are in
198 addition to the standards and provisions prescribed in Maine State Statutes,
199 30-A M.R.S. §§ 3751 to 3760, and any changes thereto:
 - 200 a. Minimum land area: 400,000 square feet.

- 201 b. Minimum street frontage: 600 feet.
- 202 c. Minimum distance from street or highway to junk concentration area: 200
- 203 feet.
- 204 d. Other standards as prescribed in § 16.5.12.
- 205 (5). Mobile Home Parks
- 206 In the case of Mobile Home Parks, sites must be at least 10 acres, subject to
- 207 the special provisions of § 16.5.16.

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

- 209 (1). Permitted uses
- 210 a. Accessory Use & Building
- 211 b. Agriculture
- 212 c. Dwellings if located farther than 100 feet from the normal high-water line
- 213 of any water bodies, or the upland edge of a wetland
- 214 d. Individual Private Campsite
- 215 e. Recreation, Public Open Space
- 216 (2). Special exception uses
- 217 a. Day Care Facility
- 218 b. Home occupation, Major
- 219 c. Home Occupation, Minor
- 220 d. Mineral extraction subject to § 16.5.15;
- 221 e. Public Utility Facility
- 222 f. Recreation, Commercial Indoor
- 223 g. Recreation, Commercial Outdoor
- 224 h. Commercial School
- 225 i. Public or Private School
- 226 j. Hospital
- 227 k. Nursing Care Facility, Long-Term
- 228 l. Convalescent Care Facility
- 229 m. Public Facility
- 230 n. Religious Use
- 231 o. Private Assembly
- 232 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

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

- 234 (1). Permitted uses
- 235 a. Individual Private Campsite
- 236 b. Recreation, Public Open Space
- 237 (2). Special exception uses
- 238 a. Accessory Use & Building
- 239 b. Agriculture
- 240 c. Dwelling, Single-Family
- 241 d. Home Occupation, Major
- 242 e. Home Occupation, Minor
- 243 f. Commercial School, less than 6,000 square feet
- 244 g. Public or Private School, less than 6,000 square feet

- 245 h. Religious Use, less than 6,000 square feet
246 i. Private Assembly, less than 6,000 square feet
247 j. Public Utility Facility
248 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
249 OZ-RP
250

251 **16.4.11 Residential – Suburban (R-S)**

252 A. Purpose

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

256 B. Permitted uses

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

284 C. Special exception uses

- 285 The following uses are permitted as special exception uses in the R-S Zone:
286 (1). Dwelling, Multi-Family (five to twelve (5-12) units per building)
287 (2). Home Occupations, Major
288 (3). Rooming House
289 (4). Public Utility Facility
290 (5). Cemetery
291 (6). Retail Sales, Convenience (excluding the sale of gasoline)
292 (7). Any use listed in Subsection B(12-20) (permitted uses) of this section that occupies
293 more than 5,000 square feet of floor area

- 294 (8). Mineral Extraction, subject to § 16.5.15
295 (9). Major or Minor Subdivision [Added 9-24-2012 by Ord. No. 12-10]

296 D. Standards

297 The following standards must be met unless modified per § 16.8.H, Cluster
298 Residential Development: [Amended 9-24-2012 by Ord. No. 12-10]

299 (1). Design and performance standards.

300 The design and performance standards of § 16.7 and 16.8 must be met. The
301 Design Handbook provides examples of appropriate design for nonresidential
302 and multiunit residential projects.

303 (2). Dimensional standards.

304 a. Minimum land area per dwelling unit:*

- 305 i. Without public sewage disposal: 40,000 square feet.
306 ii. With public sewage disposal: 30,000 square feet unless reduced in
307 accordance with Note A.
308 *As per § 16.3 definition of "minimum land area per dwelling unit,"
309 except to exempt properties which are unable to meet the square feet
310 required for a single-family dwelling unit, provided the lot was
311 conforming prior to October 25, 2012. [Amended 9-28-2015 by
312 Ord. No. 15-05]

313 b. Minimum lot size:

- 314 i. Without public sewage disposal: 40,000 square feet.
315 ii. With public sewage disposal: 30,000 square feet unless reduced in
316 accordance with Note A.

317 c. Minimum street frontage: 150 feet unless reduced in accordance with Note
318 A.

319 d. Minimum front yard: 40 feet.

320 e. Maximum building coverage: 20%.

321 f. Minimum rear and side yards: 15 feet

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

324 g. Maximum building height: 35 feet

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

327 h. Minimum setback from water body and wetland water-dependent uses: zero
328 feet.

329 i. Minimum setback from streams, water bodies and wetlands: in accordance
330 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.

331 **Note A:**

- 332 • The required minimum land area per dwelling unit and/or
333 minimum lot size for residential uses that are served by
334 public sewage disposal and that are located outside of areas
335 subject to shoreland zoning may be less than 30,000 square
336 feet per lot/unit if the established average density of
337 development in the immediate area of the use as determined
338 below is less than 30,000 square feet.
339 • If the average of the lot sizes and/or land area per dwelling
340 unit of the developed residential lots that are located on the
341 same street and within 500 feet of the parcel is less than
342 30,000 square feet, the required minimum lot size or required

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

352 (3). Subdivision types and standards

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

355 a. Cluster residential development

356 In a cluster residential development, the above standards may be
357 modified in accordance with special provisions of § 16.8.H, including
358 that there is no minimum lot size, and with the conditions that:

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

361 b. Subdivision development [per special exception uses, § 16.4.10.A(3)].

362 In a subdivision development, standards in § 16.4.10.A(5) and (6) apply
363 and include:

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

365 (4). Mobile Homes

366 Mobile Homes must meet the standards of § 16.5.16.

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

368 (1). Permitted uses

369 a. Day Care Facility

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

372 c. Elderly Day Care Facility

373 d. Recreation, Public Open Space

374 (2). Special exception uses

375 a. Home Occupation, Major

376 b. Home Occupation, Minor

377 c. Mineral Extraction subject to § 16.5.15

378 d. Public Utility Facility

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

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

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

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

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

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

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

- 390 1. Private Assembly (must not occupy more than 5,000 square feet of floor
391 area)
- 392 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 393 F. Resource Protection Overlay Zone OZ-RP – Residential Suburban Zone (R-S)
- 394 (1). Permitted Uses
- 395 a. Recreation, Public Open Space
- 396 (2). Special Exception Uses
- 397 a. Accessory Use & Building
- 398 b. Agriculture
- 399 c. Dwelling, Single-Family
- 400 d. Home Occupation, Major
- 401 e. Home Occupation, Minor
- 402 f. Public Utility Facility
- 403 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
404 OZ-RP
- 405

406 **16.4.12 Residential – Kittery Point Village (R-KPV)**

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

408 A. Purpose

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

414 B. Permitted uses

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

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

434 C. Special exception uses

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

- 436 (1). Rooming House
- 437 (2). Any use listed in Subsection B(11-15) of this section (permitted uses) that occupies
438 more than 5,000 square feet of floor area
- 439 (3). Public Utility Facility
- 440 (4). Cemetery
- 441 (5). Retail Sales, Convenience (excluding sale of gasoline)
- 442 (6). Home Occupation, Major
- 443 (7). The reuse of a designated historic building, in nonresidential use as of the effective
444 date of this provision, as an art studio/gallery, museum, or business and
445 professional office subject to standards for a minor home occupation as set forth in
446 § 16.5.11.
- 447 (8). Major or Minor Subdivision [Added 9-24-2012 by Ord. No. 12-10]

448 D. Standards

449 The following standards must be met unless modified per § 16.8.H , Cluster
450 Residential Development: [Amended 9-24-2012 by Ord. No. 12-10]

451 (1). Design and performance standards in §16.7 and 16.8.

452 The Design Handbook provides examples of appropriate design for
453 nonresidential and multiunit residential projects.

454 (2). Dimensional standards.

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

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

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

462 c. Minimum street frontage: 150 feet unless reduced in accordance with Note
463 A.

464 **Note A:**

- 465 • The required minimum street frontage for a new lot may be
466 less than 150 feet if the established pattern of street frontage
467 in the immediate area of the lot as determined below is less
468 than 150 feet per lot.
- 469 • The required minimum street frontage in this case is the
470 average of the street frontage of existing developed
471 residential lots that are located on the same street and within
472 500 feet of the parcel, but in no case less than 100 feet.

473 d. Minimum front yard: 40 feet

474 e. Maximum building coverage: 20%.

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

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

481 h. Minimum setback from water body and wetland water-dependent uses: zero
482 feet.

483 i. Minimum setback from streams, water bodies and wetlands: in accordance
484 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.

485 (3). Subdivision types and standards

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

488 a. Cluster residential development

489 In a cluster residential development, the above standards may be
490 modified in accordance with special provisions of § 16.8.H, including
491 that there is no minimum lot size, and with the conditions that:

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

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

495 (1). Permitted uses.

496 a. Agriculture

- 497 b. Accessory Use & Building
498 c. Day Care Facility
499 d. Dwellings if located farther than 100 feet from the normal high-water line
500 of any water bodies, or the upland edge of a wetland
501 (2). Special exception uses.
502 a. Home Occupation, Major
503 b. Home Occupation, Minor
504 c. Public Utility Facility
505 d. Commercial School (must not occupy more than 5,000 square feet of floor
506 area)
507 e. Public or Private School (must not occupy more than 5,000 square feet of
508 floor area)
509 f. Nursery School (must not occupy more than 5,000 square feet of floor area)
510 g. Public Facility (must not occupy more than 5,000 square feet of floor area)
511 h. Religious Use (must not occupy more than 5,000 square feet of floor area)
512 i. Private Assembly (must not occupy more than 5,000 square feet of floor
513 area)
514 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
515 F. Resource Protection Overlay Zone OZ-RP – Residential – Kittery Point Village Zone (R-
516 KPV)
517 (1). Permitted Uses
518 a. Recreation, Public Open Space
519 (2). Special Exception Uses
520 a. Accessory Use & Building
521 b. Agriculture
522 c. Dwelling, Single-Family
523 d. Home Occupations, Major
524 e. Home Occupations, Minor
525 f. Public Utility Facility
526 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
527 OZ-RP
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529 **16.4.13 Residential – Urban (R-U)**

530 A. Purpose

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

535 B. Permitted uses

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

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

558 C. Special exception uses

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

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

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D. Standards

The following standards must be met unless modified per § 16.8.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 § 16.7 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 setback from water body and wetland water-dependent uses: zero feet.
 - i. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.28, § 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.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, § 16.4.10.A(3)].
In a subdivision development, standards in § 16.4.10.A(5) and (6) 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 § 16.5.14 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 which increases the total number of dwelling units greater than that

620 specified under the applicable zoning ordinance.

621 d. A single bedroom unit may not be less than 550 square feet and a two-
622 bedroom unit not less than 650 square feet.

623 (5). Manufactured Housing

624 Manufactured Housing must meet standards of § 16.5.14

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

626 (1). Permitted uses.

627 a. Accessory Use & Building

628 b. Day Care Facility

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

631 d. Recreation, Public Open Space

632 (2). Special exception uses.

633 a. Home Occupation, Major

634 b. Home Occupation, Minor

635 c. Inn

636 d. Public Utility Facility

637 e. Recreation, Commercial Indoor

638 f. Recreation, Commercial Outdoor

639 g. Commercial School

640 h. Public or Private School

641 i. Nursery School

642 j. Hospital

643 k. Nursing Care Facility, Long-term

644 l. Convalescent Care Facility

645 m. Public Facility

646 n. Religious Use

647 e. Private Assembly

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

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

650 (1). Permitted Uses

651 a. Recreation, Public Open Space

652 (2). Special Exception Uses

653 a. Accessory Use & Building

654 b. Dwelling, Single-Family

655 c. Home Occupation, Major

656 d. Home Occupation, Minor

657 e. Public Utility Facility

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

660

661 **16.4.14 Residential – Village (R-V)**

662 A. Purpose

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

671 B. Permitted uses

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

- 673 (1). Accessory Dwelling Unit
- 674 (2). Dwelling, Attached Single-Family
- 675 (3). Dwelling, Manufactured Housing
- 676 (4). Dwelling, Single-Family
- 677 (5). Dwelling, Two-Family
- 678 (6). Accessory Use & Building
- 679 (7). Home Occupation, Minor
- 680 (8). Day Care Facility (limited to twelve (12) or fewer persons in care, in conformance
681 with the standards for a Home Occupation, Minor. See § 16.5.11)
- 682 (9). Nursery School (limited to twelve (12) or fewer persons in care, in conformance
683 with the standards for a Home Occupation, Minor See § 16.5.11)
- 684 (10). Public Facility
- 685 (11). Recreation, Public Facility
- 686 (12). Recreation, Public Open Space

687 C. Special exception uses

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

- 689 (1). Public Utility Facility
- 690 (2). Home Occupations, Major
- 691 (3). Day Care Facility (for thirteen (13) or more persons in care, in conformance with
692 the standards for a Home Occupation, Major. See § 16.5.11)
- 693 (4). Nursery School (for thirteen (13) or more persons in care, in conformance with the
694 standards for a Home Occupation, Major. See § 16.5.11)

695 D. Standards.

696 All development and the use of land in the R-V Zone must meet the following
697 standards. In addition, the design and performance standards of Chapters 16.7 and
698 16.8 must be met. The Design Handbook provides examples of appropriate design
699 for nonresidential and multiunit residential projects.

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

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

702 *As per Chapter 16.3 definition of "minimum land area per dwelling
703 unit," except to exempt properties which are unable to meet the
704 square feet required for a single-family dwelling unit, provided the
705 lot was conforming prior to October 25, 2012. [Amended 9-24-2012

by Ord. No. 12-10; 9-28-2015 by Ord. No. 15-05]

- b. Minimum lot size: 6,000 square feet.
- c. Minimum street frontage: 50 feet.
- d. Minimum front yard: 15 feet.
- e. Minimum rear yard, dwellings/structures: 15 feet.
- f. Minimum side yard, dwellings/structures: 10 feet.
- g. Minimum rear and side yards for accessory buildings/structures that are accessory to a residential use and located at least four feet behind the predominant rear line of the principal building: three feet.
- h. Maximum structure coverage: 40%.
- i. Maximum height of principal dwellings/structures: 35 feet.
- j. Maximum height of accessory buildings/structures located closer than 10 feet to a lot line: 15 feet.
- k. Maximum building coverage: 20%.
- l. Minimum setback from water body and wetland water-dependent uses: zero feet.
- m. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.

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

(1). Permitted uses

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

(2). Special exception uses

- a. Day Care Facility (for thirteen (13) or more persons in care, in conformance with the standards for a major home occupation see § 16.5.11);
- b. Nursery School (for thirteen (13) or more persons in care, in conformance with the standards for a major home occupation (see § 16.5.11);
- c. Home occupation, Major
- d. Home Occupation, Minor
- e. Public Utility Facility

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

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

(1). Permitted Uses: none

(2). Special Exception Uses

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

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

752 **16.4.15 Residential – Rural Conservation (R-RC)**

753 A. Purpose

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

757 B. Permitted use.

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

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

770 C. Special exception uses

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

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

784 D. Standards

785 The following standards must be met unless as may be modified per § 16.8.H,
786 Cluster Residential Development: [Amended 9-24-2012 by Ord. No. 12-10]

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

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

- 795 b. Minimum lot size: 80,000 square feet.
- 796 c. Minimum street frontage: 200 feet.
- 797 d. Minimum front yard: 40 feet.
- 798 e. Maximum building coverage: 6%.
- 799 f. Minimum rear and side yards: 20 feet.
- 800 (NOTE: Buildings higher than 40 actual feet must have side and rear yards
- 801 not less than 50% of building height.)
- 802 g. Maximum building height: 35 feet.
- 803 (NOTE: Minimum distance between principal buildings on the same lot is
- 804 the height equivalent to the taller building.)
- 805 h. Minimum setback from water body and wetland water-dependent uses: zero
- 806 feet.
- 807 i. Minimum setback from streams, water bodies and wetlands: in accordance
- 808 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.

809 (3). Subdivision types and standards.

810 Subject to net residential acreage and net residential density per § 16.2.2.
 811 [Amended 9-28-2015 by Ord. No. 15-05]

- 812 a. Cluster residential development.
- 813 In a cluster residential development, the above standards may be
- 814 modified in accordance with special provisions of § 16.8.H, including
- 815 that there is no minimum lot size, and with the conditions that:
- 816 i. Minimum principal building separation as required by the Fire
- 817 Chief, but not less than 20 feet.
- 818 b. Subdivision development [special exception uses, § 16.4.10.A(3)].
- 819 In a subdivision development, standards in § 16.4.10.A(5) and (6) apply
- 820 and include:
- 821 i. Minimum percentage of common open space: 15%.

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

823 (1). Permitted uses

- 824 a. Accessory Use & Building
- 825 b. Agriculture
- 826 c. Dwellings if located farther than 100 feet from the normal high-water line
- 827 of any water bodies, or the upland edge of a wetland.
- 828 d. Recreation, Public Facility
- 829 e. Recreation, Public Open Space
- 830 f. Timber Harvesting

831 (2). Special exception uses

- 832 a. Day Care Facility
- 833 b. Home occupation, Major
- 834 c. Home Occupation, Minor
- 835 d. Recreation, Selected Commercial
- 836 e. Public Utility Facility
- 837 f. Commercial School
- 838 g. Public or Private School
- 839 h. Public Facility
- 840 i. Religious Use

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

861 **16.4.16 Conservation (CON)**

862 A. Purpose

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

871 B. Permitted uses

872 The following uses are permitted in the CON Zone:

- 873 (1). Accessory Use & Building
- 874 (2). Open Space, Reserved
- 875 (3). Recreation, Public Facility
- 876 (4). Recreation, Public Open Space
- 877 (5). Existing Land Conservation Uses

878 C. Special exception uses

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

- 880 (1). Public Facility

881 D. Standards.

- 882 (1). The design and performance standards of Chapters 16.7 and 16.8 must be met.
- 883 (2). Dimensional standards:
 - 884 a. Minimum land area per dwelling unit: not applicable.
 - 885 b. Minimum lot size: none.
 - 886 c. Minimum street frontage: none.
 - 887 d. Minimum front yard: 40 feet.
 - 888 e. Maximum building coverage: 6%.
 - 889 f. Minimum rear and side yards: 20 feet. (NOTE: If by variance or existing
 - 890 conditions a building is higher than 40 actual feet, it must have side and rear
 - 891 yards not less than 50% of building height.)
 - 892 g. Maximum building height: 35 feet. (NOTE: Minimum distance between
 - 893 principal buildings on the same lot is the height equivalent to the taller
 - 894 building.)
 - 895 h. Minimum setback from water body and wetland water-dependent uses: zero
 - 896 feet.
 - 897 i. Minimum setback from streams, water bodies and wetlands: in accordance
 - 898 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.

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

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

- 901 (1). Permitted uses.
 - 902 a. Open Space, Reserved
 - 903 b. Recreation, Public Facility
 - 904 c. Recreation, Public Open Space

- 905 d. Accessory Use & Building
906 e. Existing Land Conservation Uses
907 (2). Special exception uses.
908 Public facility
909 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
910 F. Resource Protection Overlay Zone OZ-RP – Conservation (CON)
911 (1). Permitted Uses.
912 a. Accessory Use & Building
913 b. Existing Land Conservation Uses
914 c. Recreation, Public Facility
915 d. Recreation, Public Open Space
916 (2). Special Exception Uses
917 a. Public Facility
918 (3). See 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
919 OZ-RP
920

921 **16.4.17 Business – Local Zone (B-L)**

922 A. Purpose

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

925 B. Permitted uses

926 (1). The following uses are permitted in the B-L Zone:

927 (2). Accessory Dwelling Unit

928 (3). Dwelling, Attached Single-Family

929 (4). Dwelling, Manufactured Housing

930 (5). Dwelling, Multi-Family

931 (6). Dwelling, Single-Family

932 (7). Dwellings Two-Family

933 (8). Convalescent Care Facility

934 (9). Nursing Care Facility, Long-term

935 (10). Residential Care Facility

936 (11). Accessory Use & Building

937 (12). Home Occupation, Major

938 (13). Home Occupation, Minor

939 (14). Day Care Facility

940 (15). Hospital

941 (16). Nursery School

942 (17). Private Assembly

943 (18). Public Facility

944 (19). Public or Private School

945 (20). Religious Use

946 (21). Recreation, Public Open Space

947 (22). Aquaculture

948 (23). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
949 cooking of seafood occur at the site)

950 (24). Commercial School

951 (25). Art Studio or Gallery

952 (26). Business & Professional Offices

953 (27). Business Service

954 (28). Conference Center

955 (29). Personal Service

956 (30). Restaurant

957 (31). Retail Sales (excluding those of which the principle activity entails outdoor sales
958 and/or storage and excluding those specifically mentioned under Subsection C of
959 this section)

960 (32). Retail Sales, Building Materials & Garden Supply (excluding those of which the
961 principle activity entails outdoor sales and/or storage)

962 (33). Retail Sales, Convenience

963 (34). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]

964 (35). Mass Transit Station

965 (36). Parking Area

966 C. Special exception uses

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

968 (1). Motel

969 (2). Hotel

970 (3). Inn

971 (4). Rooming House

972 (5). Funeral Home

973 (6). Gasoline Service Station

974 (7). Public Assembly Area

975 (8). Theater

976 (9). Public Utility Facility

977 (10). Mechanical Service

978 (11). Residential Dwelling Units, as part of a mixed-use building

979 D. Standards.

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

984 (1). Parking. One row of parking spaces and a related access drive may be located
985 between the front property line and the front wall of the building extending the full
986 width of the lot. All other parking must be located to the side and/or rear of the
987 building. All new or revised parking must be visually screened through the use of
988 landscaping, earthen berms and/or fencing from adjacent public streets or
989 residential properties. (See the Design Handbook for appropriate examples.)

990 (2). Building design standards. Kittery's characteristic buildings reflect its historic
991 seacoast past. The primary architectural styles are New England Colonial (such as
992 Cape Cod and saltbox), Georgian, Federal and Classical Revival. New buildings
993 must be compatible with Kittery's characteristic styles in form, scale, material and
994 color. In general, buildings should be oriented with the front of the building facing
995 the street on which the building is located. The front or street facade must be
996 designed as the front of the building. The front elevation must contain one or more
997 of the following elements: 1) a "front door," although other provisions for access to
998 the building may be provided; 2) windows; or 3) display cases. (See Design
999 Handbook for examples of acceptable materials and designs.) Strict imitation is not
1000 required. Design techniques can be used to maintain compatibility with
1001 characteristic styles and still leave enough flexibility for architectural variety. To
1002 achieve this purpose, the following design standards apply to new and modified
1003 existing building projects:

1004 a. Exterior building materials and details. Building materials and details
1005 strongly define a project's architectural style and overall character. (See
1006 Design Handbook for examples of acceptable materials, building scale and
1007 designs.) "One-sided" schemes are prohibited; similar materials and details
1008 must be used on all sides of a building to achieve continuity and
1009 completeness of design. Predominant exterior building materials must be of
1010 good quality and characteristic of Kittery, such as horizontal wood board
1011 siding, vertical wood boards, wood shakes, brick, stone or simulated stone,
1012 glass and vinyl, or metal clapboard.

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- 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 colors must be muted. (See Design Handbook for examples.) 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.)
 - c. 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.
- (3). Landscaping standards. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapters 16.7 and 16.8 the following landscaping requirements apply to new and modified existing developments:
- a. 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. The Planning Board may reduce the required depth of the landscape planter strip if a sidewalk is provided in front of the parcel and the area between the front property line and the front wall of the building will be designed and used as a pedestrian space. The landscape planter strip must include the following landscape elements:
 - b. Ground cover. The entire landscape planter must be vegetated except for approved driveways, walkways, bikeways and screened utility equipment.
 - c. Street-side trees. A minimum of one 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 must be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement. [Amended 9-26-2011 by Ord. No. 11-15]
 - d. 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 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 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

- 1065 required trees may be clustered and/or relocated away from the road
1066 as is necessary to be practicable. The preservation of existing large
1067 trees is encouraged; therefore, the Planning Board may permit the
1068 preservation of existing healthy, large, mature trees within the
1069 landscape planter strip or other developed areas of the site to be
1070 substituted for the planting of new trees.
- 1071 e. Outdoor service and storage areas. Service and storage areas must be
1072 located to the side or rear of the building. Facilities for waste storage such
1073 as dumpsters must be located within an enclosure and be visually buffered
1074 by fencing, landscaping and/or other treatments. (See Design Handbook for
1075 examples of appropriate buffering.)
- 1076 (4). Traffic and circulation standards. Sidewalks and roadways must be provided within
1077 the site to internally join abutting properties that are determined by the Planning
1078 Board to be compatible. In addition, safe pedestrian route(s) must be provided to
1079 allow pedestrians to move within the site and between the principal customer
1080 entrance and the front lot line where a sidewalk exists or will be provided or where
1081 the Planning Board determines that such a route is needed for adequate pedestrian
1082 safety and movement. (See Design Handbook for appropriate examples.)
- 1083 (5). Open space standards. Open space must be provided as a percentage of the total
1084 area of the lot, including freshwater wetlands, water bodies, streams and setbacks.
1085 Fifteen percent of each lot must be designated as open space. Required open space
1086 must be shown on the plan with a note dedicating it as "open space." The open
1087 space must be located to create an attractive environment on the site, minimize
1088 environmental impacts, protect significant natural features or resources on the site
1089 and maintain wildlife habitat. Individual large, healthy trees and areas with mature
1090 tree cover should be included in the open space. Where possible, the open space
1091 must be located to allow the creation of continuous open space networks in
1092 conjunction with existing or potential open space on adjacent properties. The
1093 required amount of designated open space is reduced to 10% of each lot that is less
1094 than 40,000 square feet in size.
- 1095 (6). The following space standards apply:
- 1096 a. Minimum land area per dwelling unit when all floors are residential: 20,000
1097 square feet if served by on-site sewage disposal; 8,000 square feet if served
1098 by the public sewerage system.
- 1099 (NOTE: Except as otherwise required by the buffer provisions of this title,
1100 and except where the side and/or rear yards abut a residential district or use;
1101 in which case a minimum of 15 feet or 50% of the building height is
1102 required.)
- 1103 b. Minimum land area per dwelling unit when the entire first floor is used for
1104 nonresidential uses: 20,000 square feet if served by on-site sewage disposal;
1105 4,000 square feet if served by the public sewerage system.
- 1106 c. Minimum lot size: none.
- 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 d. Minimum street frontage: none.
- 1112 (NOTE: Except as otherwise required by the buffer provisions of this title,
1113 and except where the side and/or rear yards abut a residential district or use;
1114 in which case a minimum of 15 feet or 50% of the building height is
1115 required.)

- 1116 e. Minimum front yard: 15 feet.
 1117 (NOTE: Except as otherwise required by the buffer provisions of this title,
 1118 and except where the side and/or rear yards abut a residential district or use;
 1119 in which case a minimum of 15 feet or 50% of the building height is
 1120 required.)
 1121 f. Maximum front setback of the principal building: 60 feet.
 1122 g. Minimum rear and side yards: 10 feet.
 1123 (NOTE: Except as otherwise required by the buffer provisions of this title,
 1124 and except where the side and/or rear yards abut a residential district or use;
 1125 in which case a minimum of 15 feet or 50% of the building height is
 1126 required.)
 1127 h. Maximum building height: 40 feet.
 1128 (NOTE: Except that space standards for single- and two-family residential
 1129 uses are the same as for those of the Urban Residential District.)
 1130 i. Maximum building and outdoor stored material coverage: none, except that
 1131 side, rear and front yards must be maintained
 1132 j. Minimum setback from water body and wetland water-dependent uses: zero
 1133 feet.
 1134 k. Minimum setback from streams, water bodies and wetlands: in accordance
 1135 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.
 1136 (7). Gasoline Sales
 1137 a. Gasoline Sales must a) not be located within 1,000 feet of an existing
 1138 station; (b) not be located within 1,000 feet of any private residence; and (c)
 1139 not be located within 150 feet of any existing structure.
- 1140 E. Shoreland Overlay Zone OZ-SL – Business – Local Zone (B-L)
- 1141 (1). Permitted uses.
- 1142 a. Accessory Use & Building
 1143 b. Dwellings if located farther than 100 feet from the normal high-water line of
 1144 any water bodies, or the upland edge of a wetland
 1145 c. Recreation, Public Open Space
- 1146 (2). Special exception uses.
- 1147 a. Art Studio or Gallery
 1148 b. Retail Sales, Building Materials & Garden Supply (excluding those of
 1149 which the principal activity entails outdoor sales and/or storage)
 1150 c. Business Services
 1151 d. Business & Professional Offices
 1152 e. Commercial Fisheries/Maritime Activities (provided only incidental
 1153 cleaning and cooking of seafood occur at the site)
 1154 f. Parking Area
 1155 g. Conference Center
 1156 h. Retail Sales, Convenience
 1157 i. Home Occupation, Major
 1158 j. Home Occupation, Minor
 1159 k. Mass Transit Station
 1160 l. Motel
 1161 m. Hotel
 1162 n. Inn

- 1163 o. Rooming House
- 1164 p. Personal Services
- 1165 q. Public Assembly Area
- 1166 r. Theater
- 1167 s. Public Utility Facility
- 1168 t. Restaurant
- 1169 u. Retail Sales, but (excluding those of which the principal activity entails
- 1170 outdoor sales and/or storage)
- 1171 v. Commercial School
- 1172 w. Public or Private School
- 1173 x. Nursery School
- 1174 y. Day Care Facility
- 1175 z. Elder Care Facility
- 1176 aa. Hospital
- 1177 bb. Nursing Care Facility, Long-term
- 1178 cc. Convalescent Care Facility
- 1179 dd. Public Facility
- 1180 ee. Religious Use
- 1181 ff. Private Assembly
- 1182 gg. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 1183 02]
- 1184 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 1185 F. Resource Protection Overlay Zone OZ-RP – Business – Local (B-L). [Amended 9-26-2011
- 1186 by Ord. No. 11-15]
- 1187 (1). Permitted Uses.
- 1188 a. Recreation, Public Open Space
- 1189 (2). Special Exception Uses.
- 1190 a. Accessory Uses & Buildings
- 1191 b. Aquaculture
- 1192 c. Dwelling, Single-Family
- 1193 d. Home Occupations, Major
- 1194 e. Home Occupations, Minor
- 1195 f. Public Utility Facilities,
- 1196 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 1197 RP-SL
- 1198

1199 **16.4.18 Business – Local 1 (B-L1)**

1200 A. Purpose

1201 The purpose of the Business – Local 1 B-L1 Zone is to encourage a smart
1202 growth/urban design pattern that will serve as a focal point for the provision of
1203 local sales, urban residences, services and business space. The goal of this section
1204 is to create an attractive, functional and vibrant pedestrian-scaled neighborhood
1205 supporting a mix of commercial and residential uses. This type of development
1206 reflects a traditional New England pattern of building, where commercial uses are
1207 located on the first floor and housing on the upper floors.

1208 B. Permitted uses

- 1209 (1). The following uses are permitted in the B-L1 Zone:
1210 (2). Accessory Dwelling Unit
1211 (3). Dwelling, Attached Single-Family
1212 (4). Dwelling, Manufactured Housing
1213 (5). Dwelling, Multi-Family
1214 (6). Dwelling, Single-Family
1215 (7). Dwelling, Two-Family
1216 (8). Convalescent Care Facility
1217 (9). Nursing Care Facility, Long-term
1218 (10). Residential Care Facility
1219 (11). Accessory Use & Building
1220 (12). Home Occupation, Major
1221 (13). Home Occupation, Minor
1222 (14). Inn
1223 (15). Day Care Facility
1224 (16). Hospital
1225 (17). Nursery School
1226 (18). Private Assembly
1227 (19). Public Facility
1228 (20). Public or Private School
1229 (21). Religious Use
1230 (22). Recreation, Public Open Space
1231 (23). Commercial School
1232 (24). Art Studio or Gallery
1233 (25). Business & Professional Offices
1234 (26). Business Services
1235 (27). Conference Center
1236 (28). Personal Services
1237 (29). Restaurant
1238 (30). Retail Sales (excluding those of which the principal activity entails outdoor sales
1239 and/or storage and excluding those specifically mentioned under Subsection C of
1240 this section)
1241 (31). Retail Sales, Building Materials & Garden Supply (excluding those of which the
1242 principal activity entails outdoor sales and/or storage)

- 1243 (32). Retail Sales, Convenience
- 1244 (33). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 1245 (34). Mass Transit Station
- 1246 (35). Parking Area

1247 C. Special exception uses

1248 The following uses are permitted as special exception uses in the B-L1 Zone:

- 1249 (1). Motel
- 1250 (2). Hotel
- 1251 (3). Rooming House
- 1252 (4). Funeral Home
- 1253 (5). Gasoline Service Station
- 1254 (6). Public Assembly Area
- 1255 (7). Theater
- 1256 (8). Public Utility Facility
- 1257 (9). Farmers Market
- 1258 (10). Mechanical service

1259 D. Standards

1260 All development and the use of land in the B-L1 Zone must meet the following
1261 standards. Kittery's Design Handbook illustrates how these standards can be met.
1262 In addition, the design and performance standards of § 16.7 and 16.8 must be met.

- 1263 (1). The following space standards apply
 - 1264 a. Minimum land area per dwelling unit:
 - 1265 i. When all floors are residential: 8,000 square feet
 - 1266 ii. When the entire first floor is in nonresidential use: 3,500 square feet.
 - 1267 b. Minimum parking spaces per dwelling unit: 1.5.
 - 1268 c. Minimum lot size: 20,000 square feet.
 - 1269 d. Minimum street frontage per building: 50 feet.
 - 1270 e. Maximum front yard: 30 feet.

1271 (NOTE: This area must be designed to promote a pedestrian public space,
1272 which includes, but is not limited to, landscaping, sidewalks and sitting
1273 areas. Parking and outdoor storage are prohibited anywhere in the front
1274 yard of the structure, except for seasonal sales items.)
 - 1275 f. Minimum rear and side yards: 10 feet.

1276 (NOTE: Except as otherwise required by the buffer provisions of this title,
1277 and except where the side and/or rear yards abut a residential zone or use;
1278 in which case a minimum of 15 feet or 50% of the building height,
1279 whichever is greater, is required.) [Amended 9-26-2011 by Ord. No. 11-15]
 - 1280 g. Maximum building height: 40 feet.
 - 1281 h. Maximum building and outdoor stored material coverage: 50%.
 - 1282 i. Minimum area dedicated to landscaped area: 15%.
 - 1283 j. Hours of operation must be noted on the final site plan and are determined
1284 by the Planning Board on a case-by-case basis. All lighting other than
1285 designated security lighting must be extinguished outside of noted hours of
1286 operation.
 - 1287 k. Minimum setback from water body and wetland water-dependent uses: zero
1288 feet.

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- l. Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.5.28, § 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

- 1341 colors must be muted. (See Design Handbook for examples.) The roof
1342 design must screen or camouflage rooftop protrusions to minimize the
1343 visual impact of air-conditioning units, air handler units, exhaust vents,
1344 transformer boxes and the like. (See Design Handbook for examples of
1345 appropriate treatments.)
- 1346 c. Loading docks and overhead doors. Loading docks and overhead doors
1347 must be located on the side or rear of the building and must be screened
1348 from view from adjacent properties in residential use.
- 1349 (4). Landscaping/site improvements.
- 1350 To achieve attractive and environmentally sound site design and appropriate
1351 screening of parking areas, in addition to the landscaping standards contained
1352 in § 16.7 and § 16.8, the following landscaping requirements apply to new and
1353 modified existing developments:
- 1354 a. Fifteen percent of site area must be landscaped;
- 1355 b. Outdoor spaces must be created to reinforce commercial activities and
1356 pedestrian-friendly access. Outdoor spaces are encouraged throughout the
1357 site with special attention along the sidewalk and street. Architectural
1358 features such as decorative pavers, planters and benches are encouraged in
1359 the creation of these spaces;
- 1360 c. The space between the roadway and any buildings must be attractively
1361 landscaped using trees, flowers, shrubs, fencing or stone walls to reinforce
1362 the site's unique character and building design;
- 1363 d. A buffer between commercial and residential zones must be established and
1364 be landscaped with a visually pleasing mixed planting type;
- 1365 e. Solid fencing, berms and/or stone walls must be used to prevent headlights
1366 from shining on abutting residential property. Incorporating flowering vines
1367 and other plantings on fences and blank exterior walls is encouraged;
- 1368 f. Provide street trees in a pattern reflecting the existing streetscape. For new
1369 buildings, a minimum of one street tree must be planted for each 25 feet of
1370 street frontage. The trees may be spaced along the frontage or grouped or
1371 clustered to enhance the visual quality of the site. (See Design Handbook
1372 for examples.) The trees must be a minimum two-and-one-half-inch caliper
1373 and be at least 12 feet high at the time of planting. The species must be
1374 selected from the list of approved street trees in the Design Handbook.
1375 Existing large healthy trees must be preserved if practical and will count
1376 toward this requirement.
- 1377 g. For additions to existing buildings and changes of residential structures to a
1378 nonresidential use, one street-side tree (see list of street trees in Design
1379 Handbook) is required to be planted for every 1,000 square feet of
1380 additional gross floor area added or converted to nonresidential use. In
1381 instances where parking, display area, storage, building or necessary
1382 vehicle circulation exists at the time of enactment of this section, the
1383 required trees may be clustered and/or relocated away from the road as is
1384 necessary to be practicable. The preservation of existing large trees is
1385 encouraged; therefore, the Planning Board may permit the preservation of
1386 existing healthy, large, mature trees within developed areas of the site to be
1387 substituted for the planting of new trees; [Amended 9-26-2011 by Ord. No.
1388 11-15]
- 1389 h. Service and storage areas must be located to the rear of the building and be
1390 shielded using plantings and/or fencing. Facilities for waste storage such as
1391 dumpsters must be located within an enclosure and be visually buffered by

- 1392 fencing, landscaping and/or other treatments (see Design Handbook for
1393 examples of appropriate buffering);
- 1394 i. No storage may be in front of buildings except seasonal sales items;
- 1395 j. Lighting and landscape plans must be provided and approved as a part of
1396 final plan; and
- 1397 k. Lighting along the street must be of a pedestrian scale using an architectural
1398 fixture appropriate to the neighborhood.
- 1399 (5). Traffic and circulation standards.
- 1400 Sidewalks and roadways must be provided within the site to internally join
1401 abutting properties that are determined by the Planning Board to be compatible.
1402 In addition, safe pedestrian route(s) must be provided to allow pedestrians to
1403 move within the site and between the principal customer entrance and the front
1404 lot line where a sidewalk exists or will be provided or where the Planning
1405 Board determines that such a route is needed for adequate pedestrian safety and
1406 movement. (See Design Handbook for appropriate examples.)
- 1407 E. Shoreland Overlay Zone OZ-SL – Business Local Zone (B-L1)
- 1408 (1). Permitted uses
- 1409 a. Accessory Uses & Building
- 1410 b. Aquaculture
- 1411 c. Dwellings if located farther than 100 feet from the normal high-water line of
1412 any water bodies, or the upland edge of a wetland
- 1413 d. Recreation, Public Open Space
- 1414 (2). Special exception uses
- 1415 a. Art Studio or Gallery
- 1416 b. Business & Professional Offices
- 1417 c. Business Services
- 1418 d. Retail Sales, Building Materials & Garden Supply (excluding those of
1419 which the principal activity entails outdoor sales and/or storage)
- 1420 e. Conference Center
- 1421 f. Retail Sales, Convenience
- 1422 g. Commercial Fisheries/Maritime Activities (provided only incidental
1423 cleaning and cooking of seafood occur at the site)
- 1424 h. Parking Area
- 1425 i. Farmers market
- 1426 j. Funeral Home
- 1427 k. Home Occupation, Major
- 1428 l. Home Occupation, Minor
- 1429 m. Inn
- 1430 n. Mass Transit Station
- 1431 o. Motel
- 1432 p. Hotel
- 1433 q. Inn
- 1434 r. Rooming House
- 1435 s. Personal Service
- 1436 t. Public Assembly Area
- 1437 u. Theater

- 1438 v. Public Utility Facility
- 1439 w. Restaurant
- 1440 x. Retail Sales (excluding those of which the principal activity entails outdoor
- 1441 sales and/or storage)
- 1442 y. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 1443 02]
- 1444 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 1445 F. Resource Protection Overlay Zone OZ-RP – Business – Local Zone (B-L1)
- 1446 (1). Permitted Uses
- 1447 a. Recreation, Public Open Space
- 1448 (2). Special Exception Uses
- 1449 a. Accessory Uses & Buildings
- 1450 b. Dwelling, Single-Family
- 1451 c. Home Occupations, Major
- 1452 d. Home Occupations, Minor
- 1453 e. Public Utility Facility
- 1454 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 1455 OZ-RP
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1457 **16.4.19 Commercial 1, Route 1 Commercial Zone (C-1)**

1458 A. Purpose.

1459 The purpose of the Commercial (C-1, C-2, C-3) Zone is to provide general retail
1460 sales, services and business space within the Town in locations capable of
1461 conveniently serving community-wide and/or regional trade areas and oriented
1462 primarily to automobile access. To reflect the differing character of various parts of
1463 the commercial areas, it is divided into three zones that are shown on the Zoning
1464 Map:

1465 C-1 Route 1 Commercial Zone

1466 C-2 Route 236 Commercial Zone

1467 C-3 Bypass/Old Post Road Commercial Zone

1468 Where the standards or requirements for the zones vary, the provisions for the zone
1469 in which the parcel is located apply.

1470 B. Permitted uses

1471 The following uses are permitted in the C-1 Zone:

- 1472 (1). Accessory Dwelling Unit
- 1473 (2). Convalescent Care Facility
- 1474 (3). Nursing Care Facility, Long-term
- 1475 (4). Accessory Use & Building
- 1476 (5). Home Occupation, Major
- 1477 (6). Home Occupation, Minor
- 1478 (7). Hotel
- 1479 (8). Inn
- 1480 (9). Motel
- 1481 (10). Rooming House
- 1482 (11). Day Care Facility
- 1483 (12). Hospital
- 1484 (13). Nursery School
- 1485 (14). Private Assembly
- 1486 (15). Public Facility
- 1487 (16). Public or Private School
- 1488 (17). Public Utility Facility
- 1489 (18). Religious Use
- 1490 (19). Recreation, Commercial Indoor
- 1491 (20). Recreation, Commercial Outdoor
- 1492 (21). Recreation, Public Open Space
- 1493 (22). Recreation, Public Facility
- 1494 (23). Commercial School
- 1495 (24). Veterinary Hospital
- 1496 (25). Art Studio or Gallery
- 1497 (26). Business & Professional Offices
- 1498 (27). Business Services
- 1499 (28). Conference Center
- 1500 (29). Personal Services

- 1501 (30). Repair Services
- 1502 (31). Restaurant
- 1503 (32). Retail Sales
- 1504 (33). Retail Sales, Building Materials & Garden Supply
- 1505 (34). Retail Sales, Convenience
- 1506 (35). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 1507 (36). Mass Transit Station
- 1508 (37). Parking Area
- 1509 (38). Wholesale Businesses

1510 C. Special exception uses

- 1511 (1). The following uses are permitted as special exception uses in the C-1 Zone:
- 1512 (2). Aquaculture
- 1513 (3). Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 1514 16.8. Buildings and structures higher than 40 actual feet from the lowest point of
- 1515 grade to the highest point of the building or structure must have side, rear and front
- 1516 yards of sufficient depth to adequately protect the health, safety and welfare of
- 1517 abutting properties and which may not be less than current standards or 50% of
- 1518 actual height, whichever is greater;
- 1519 (4). Funeral Home
- 1520 (5). Gasoline Service Station
- 1521 (6). Manufacturing Operations, Light
- 1522 (7). Mechanical Services
- 1523 (8). Mini Storage
- 1524 (9). New Motor Vehicle Sales
- 1525 (10). Public Assembly Area
- 1526 (11). Theater
- 1527 (12). Repair Garage
- 1528 (13). Research & Development
- 1529 (14). Transportation Terminal
- 1530 (15). Used Car Lot
- 1531 (16). Warehousing & Storage

1532 D. Standards.

1533 C Zone standards. All development and the use of land in the C Zone must meet
1534 the following standards. Kittery's Design Handbook illustrates how these standards
1535 can be met. In addition, the design and performance standards of § 16.7 and 16.8
1536 must be met.

- 1537 (1). The following space standards apply in the C-1 Zone:
 - 1538 a. Lot size: 40,000 square feet.
 - 1539 b. Minimum street frontage: 150 feet.
 - 1540 c. Minimum front yard: 50 feet.
 - 1541 d. Minimum rear and side yards: 30 feet. (NOTE: Except as may be required
 - 1542 by the buffer provisions of this title, and where the side and/or rear yards of
 - 1543 the proposed nonresidential use abut a residential zone or use; in which case
 - 1544 a minimum of 40 feet is required.)
 - 1545 e. Maximum building height: 40 feet.
 - 1546 f. Maximum building and outdoor stored material coverage: 40%.

- 1547 g. Minimum setback from water body and wetland water-dependent uses: zero
1548 feet.
1549 h. Minimum setback from streams, water bodies and wetlands: in accordance
1550 with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.
1551 i. Gasoline Sales i) not located within 1,000 feet of an existing station or
1552 private residence; and ii) not located within 150 feet of an existing
1553 structure.
1554 j. Repair Garages must not be located within 150 feet of a private dwelling or
1555 existing structure.

1556 (2). Parking.

- 1557 a. All new or revised parking must be visually screened by landscaping,
1558 earthen berms and/or fencing from adjacent public streets or residential
1559 properties. (See the Design Handbook for appropriate examples.)
1560 [Amended 9-26-2011 by Ord. No. 11-15
1561 Each parking space is to contain a rectangular area at least 19 feet long and
1562 nine feet wide. Lines demarcating parking spaces may be drawn at various
1563 angles in relation to curbs or aisles, so long as the parking spaces so created
1564 contain within them the rectangular area required by this section. This is
1565 exclusive of drives or aisles giving access thereto, accessible from streets or
1566 aisles leading to streets, and usable for the storage or parking of passenger
1567 vehicles. Parking spaces or access thereto must be constructed as to be
1568 usable year round.

1569 (3). Building design standards.

1570 Kittery's characteristic buildings reflect its historic seacoast past. The primary
1571 architectural styles are New England Colonial (such as Cape Cod and saltbox),
1572 Georgian, Federal and Classical Revival. New buildings must be compatible
1573 with Kittery's characteristic styles in form, scale, material and color. In general,
1574 buildings should be oriented to the street with the front of the building facing
1575 the street. The front or street facade must be designed as the front of the
1576 building. The front elevation must contain one or more of the following
1577 elements: 1) a "front door," although other provisions for access to the building
1578 may be provided; 2) windows; or 3) display cases. (See Design Handbook for
1579 examples of acceptable materials and designs.) Strict imitation is not required.
1580 Design techniques can be used to maintain compatibility with characteristic
1581 styles and still leave enough flexibility for architectural variety. To achieve this
1582 purpose, the following design standards apply to new and modified existing
1583 building projects:

- 1584 a. Exterior building materials and details. Building materials and details
1585 strongly define a project's architectural style and overall character. (See
1586 Design Handbook for examples of acceptable materials, building scale, and
1587 designs.) "One-sided" schemes are prohibited; similar materials and details
1588 must be used on all sides of a building to achieve continuity and
1589 completeness of design. Predominant exterior building materials must be of
1590 good quality and characteristic of Kittery, such as horizontal wood board
1591 siding, vertical wood boards, wood shakes, brick, stone or simulated stone,
1592 glass and vinyl, or metal clapboard. [Amended 9-26-2011 by Ord. No. 11-
1593 15]
1594 b. Roofs. A building's prominent roofs must be pitched a minimum of 4:12
1595 unless demonstrated to the Planning Board's satisfaction that this is not
1596 practicable. Acceptable roof styles are gabled, gambrel and hipped roofs.
1597 Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are
1598 not acceptable as prominent roof forms except as provided above. The roof

1599 design must screen or camouflage rooftop protrusions to minimize the
1600 visual impact of air-conditioning units, air handler units, exhaust vents,
1601 transformer boxes, and the like. (See Design Handbook for examples of
1602 appropriate treatments.)

1603 c. Loading docks and overhead doors. Loading docks and overhead doors
1604 must be located on the side or rear of the building and screened from view
1605 from adjacent properties in residential use.

1606 (4). Landscaping site improvements

1607 To achieve attractive and environmentally sound site design and appropriate
1608 screening of parking areas, in addition to the landscaping standards contained
1609 in Chapter 16.8 the following landscaping requirements apply to new and
1610 modified existing developments: [Amended 9-26-2011 by Ord. No. 11-15]

1611 a. Landscape planter strip. A vegetated landscape planter strip must be
1612 provided a minimum of 30 feet in depth adjacent to the right-of-way of all
1613 public roads and include the following landscape elements:

1614 i. Ground cover. The entire landscape planter strip must be vegetated
1615 except for approved driveways, walkways, bikeways and screened
1616 utility equipment.

1617 ii. Street-side trees. A minimum of one street tree must be planted for
1618 each 25 feet of street frontage. The trees may be spaced along the
1619 frontage or grouped or clustered to enhance the visual quality of the
1620 site. (See Design Handbook for examples.) The trees must be a
1621 minimum two-and-one-half-inch caliper and be at least 12 feet high
1622 at the time of planting. The species should be selected from the list
1623 of recommended street trees in the Design Handbook. Existing large
1624 healthy trees must be preserved if practical and will count toward
1625 this requirement.

1626 iii. Planter strip. Shrubs and flowering perennials must be planted at a
1627 minimum of 10 plants per 40 linear feet of street frontage unless
1628 existing woodlands are being retained or such planting is
1629 inconsistent with the retention of rural landscape features. The plant
1630 material should be selected from the list of recommended materials
1631 in the Design Handbook. The plants must be placed within the
1632 planter strip to enhance the visual character of the site and augment
1633 natural features and vegetation. (See Design Handbook for examples
1634 of appropriate treatments.)

1635 iv. Special situations.

1636 1. Expansions of less than 2,000 square feet to existing uses
1637 are exempt from the landscaping standard of this subsection.

1638 2. Depth of landscape planter strip. In instances where the
1639 required minimum depth of the landscape planter strip is
1640 legally utilized, in accordance with previous permits or
1641 approvals, for parking, display, storage, building or
1642 necessary vehicle circulation, the depth may be narrowed by
1643 the Planning Board to the minimum extent necessary to
1644 achieve the objective of the proposed project, provided the
1645 required shrubs and perennials are planted along the street
1646 frontage to soften the appearance of the development from
1647 the public street. If providing the required landscape planter
1648 strip together with other required landscaping and required
1649 vegetated areas in and around wetlands would cause the
1650 project to exceed the required open space standards, the

1651 depth of the landscape planter strip and the front yard may
1652 be reduced by the Planning Board so the open space
1653 standards are not exceeded, but in no case to less than 20 feet
1654 for this reason.

1655 3. Additions and changes in use. For additions to existing
1656 buildings and changes of residential structures to a
1657 nonresidential use, one street-side tree (see list of
1658 recommended street trees in Design Handbook) is required
1659 to be planted for every 1,000 square feet of additional gross
1660 floor area added or converted to nonresidential use. In
1661 instances where parking, display area, storage, building or
1662 necessary vehicle circulation exists at the time of enactment
1663 of this section, the required trees may be clustered and/or
1664 relocated away from the road as is necessary to be
1665 practicable. The preservation of existing large trees is
1666 encouraged; therefore, the Planning Board may permit the
1667 preservation of existing healthy, large, mature trees within
1668 the landscape planter strip or other developed areas of the
1669 site to be substituted for the planting of new trees.

1670 4. Residences. Residential additions to existing single- and
1671 two-family dwellings and proposed single- and duplex-
1672 family dwellings are exempt from the landscaping standards
1673 of this subsection.

1674 v. Outdoor service and storage areas. Service and storage areas must
1675 be located to the side or rear of the building. Facilities for waste
1676 storage such as dumpsters must be located within an enclosure and
1677 be visually buffered by fencing, landscaping and/or other
1678 treatments. (See Design Handbook for examples of appropriate
1679 buffering.)

1680 (5). Traffic and circulation standards

1681 Sidewalks and roadways must be provided within the site to internally join
1682 abutting properties that are determined by the Planning Board to be compatible.
1683 In addition, safe pedestrian route(s) must be provided to allow pedestrians to
1684 move within the site and between the principal customer entrance and the front
1685 lot line where a sidewalk exists or will be provided or where the Planning
1686 Board determines that such a route is needed for adequate pedestrian safety and
1687 movement. (See Design Handbook for appropriate examples.)

1688 (6). Open space standards

1689 Open space must be provided as a percentage of the total area of the lot,
1690 including freshwater wetlands, water bodies, streams and setbacks. Twenty-five
1691 percent of each lot must be designated as open space. Required open space
1692 must be shown on the plan with a note dedicating it as "open space." The open
1693 space must be located to create an attractive environment on the site, minimize
1694 environmental impacts, protect significant natural features or resources on the
1695 site, and maintain wildlife habitat. Individual large, healthy trees and areas with
1696 mature tree cover should be included in the open space. Where possible, the
1697 open space must be located to allow the creation of continuous open space
1698 networks in conjunction with existing or potential open space on adjacent
1699 properties. The required amount of designated open space is reduced to 15% of
1700 each lot that is less than 100,000 square feet in size.

1701 a. Minimum land area per unit for elder-care facilities that are connected to
1702 the public sewerage system:

- 1703 i. Dwelling unit with two or more bedrooms: 3,000 square feet.
- 1704 ii. Dwelling unit with less than two bedrooms: 2,000 square feet.
- 1705 iii. Residential care unit: 1,500 square feet.
- 1706 iv. Minimum land area per bed for nursing care and convalescent care
- 1707 facilities that are connected to the public sewerage system: 1,200
- 1708 square feet.

1709 E. Shoreland Overlay Zone OZ-SL – Commercial – 1 Zone (C-1)

1710 (1). Permitted uses

- 1711 a. Accessory Use & Building
- 1712 b. Home Occupation, Major
- 1713 c. Home Occupation, Minor
- 1714 d. Recreation, Public Facility
- 1715 e. Recreation, Public Open Space
- 1716 f. Recreation, Selected Commercial
- 1717 g. Public Utility Facility
- 1718 h. Commercial School
- 1719 i. Public or Private School
- 1720 j. Nursery School
- 1721 k. Hospital
- 1722 l. Nursing Care Facility, Long-term
- 1723 m. Convalescent Care Facility
- 1724 n. Public Facility
- 1725 o. Religious Use
- 1726 p. Private Assembly

1727 (2). Special exception uses

- 1728 a. Aquaculture
- 1729 b. Art Studio or Gallery
- 1730 c. Retail Sales, Building Materials& Garden Supply;
- 1731 d. Business & Professional Offices
- 1732 e. Business Services
- 1733 f. Parking Area
- 1734 g. Conference Center
- 1735 h. Day Care Facility
- 1736 i. Retail Sales
- 1737 j. Retail Sales, Convenience
- 1738 k. Mass Transit Station
- 1739 l. Mini Storage
- 1740 m. Motel
- 1741 n. Hotel
- 1742 o. Rooming House
- 1743 p. Inn
- 1744 q. Personal Services
- 1745 r. Repair Services
- 1746 s. Public Assembly Area

- 1747 t. Theater
- 1748 u. Research & Development
- 1749 v. Restaurant
- 1750 w. Retail Sales
- 1751 x. Wholesale Businesses
- 1752 y. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 1753 02]
- 1754 z. Transportation Terminal
- 1755 aa. Veterinary Hospital
- 1756 bb. Warehousing & Storage
- 1757 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 1758 F. Resource Protection Overlay Zone OZ-RP – Commercial – 1 Zone (C-1).
- 1759 (1). Permitted uses.
- 1760 a. Recreation, Public Open Space
- 1761 (2). Special exception uses.
- 1762 a. Accessory Uses & Buildings
- 1763 b. Aquaculture
- 1764 c. Home Occupations, Major
- 1765 d. Home Occupations, Minor
- 1766 e. Public Utility Facilities
- 1767 f. Research & Development
- 1768 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 1769 OZ-RP
- 1770

1771 **16.4.20 Commercial 2, Route 236 Commercial Zone (C-2)**

1772 A. Purpose

1773 The purpose of the Commercial (C-1, C-2, C-3) Zone is to provide general retail
1774 sales, services and business space within the Town in locations capable of
1775 conveniently serving community-wide and/or regional trade areas and oriented
1776 primarily to automobile access. To reflect the differing character of various parts of
1777 the commercial areas, it is divided into three zones that are shown on the Zoning
1778 Map:

1779 C-1 Route 1 Commercial Zone

1780 C-2 Route 236 Commercial Zone

1781 C-3 Bypass/Old Post Road Commercial Zone

1782 Where the standards or requirements for the zones vary, the provisions for the zone
1783 in which the parcel is located apply.

1784 B. Permitted uses

1785 (1). The following uses are permitted in the C-2 Zone:

1786 (2). Accessory Dwelling Unit

1787 (3). Convalescent Care Facility

1788 (4). Nursing Care Facility, Long-term

1789 (5). Accessory Use & Building

1790 (6). Home Occupation, Major

1791 (7). Home Occupation, Minor

1792 (8). Hotel

1793 (9). Inn

1794 (10). Motel

1795 (11). Rooming House

1796 (12). Day Care Facility

1797 (13). Hospital

1798 (14). Nursery School

1799 (15). Private Assembly

1800 (16). Public Facility

1801 (17). Public or Private School

1802 (18). Public Utility Facility

1803 (19). Religious Use

1804 (20). Recreation, Commercial Indoor

1805 (21). Recreation, Commercial Outdoor

1806 (22). Recreation, Public Open Space

1807 (23). Recreation, Public Facility

1808 (24). Aquaculture

1809 (25). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
1810 cooking of seafood occur at the site)

1811 (26). Commercial School

1812 (27). Veterinary Hospital

1813 (28). Art Studio or Gallery

1814 (29). Business & Professional Offices

- 1815 (30). Business Service
- 1816 (31). Conference Center
- 1817 (32). Personal Service
- 1818 (33). Repair Service
- 1819 (34). Restaurant
- 1820 (35). Retail Sales
- 1821 (36). Retail Sales, Building Materials & Garden Supply
- 1822 (37). Retail Sales, Convenience
- 1823 (38). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 1824 (39). Boatyard
- 1825 (40). Mass Transit Station
- 1826 (41). Mechanical Services
- 1827 (42). New Motor Vehicle Sales
- 1828 (43). Parking Area
- 1829 (44). Wholesale Business
- 1830 C. Special Exceptions
- 1831 The following land uses are permitted as special exception uses in the C-2 Zone:
- 1832 (1). Adult Entertainment Establishment
- 1833 (2). Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 1834 16.8. Buildings and structures higher than 40 actual feet from the lowest point of
- 1835 grade to the highest point of the building or structure must have side, rear and front
- 1836 yards of sufficient depth to adequately protect the health, safety and welfare of
- 1837 abutting properties, and which may not be less than current standards or 50% of
- 1838 actual height, whichever is greater;
- 1839 (3). Commercial Greenhouse
- 1840 (4). Construction Services
- 1841 (5). Funeral Home
- 1842 (6). Gasoline Service Station
- 1843 (7). Manufacturing Operations, Light
- 1844 (8). Mini Storage
- 1845 (9). Repair Garage
- 1846 (10). Public Assembly Area
- 1847 (11). Theater
- 1848 (12). Research & Development
- 1849 (13). Shops in Pursuit of Trade
- 1850 (14). Transportation Terminal
- 1851 (15). Used Car Lot
- 1852 (16). Warehousing & Storage
- 1853 D. Standards
- 1854 C Zone standards. All development and the use of land in the C Zone must meet
- 1855 the following standards. Kittery's Design Handbook illustrates how these standards
- 1856 can be met. In addition, the design and performance standards of § 16.7 and 16.8
- 1857 must be met.
- 1858 (1). The following space standards apply in the C-2 Zones:
- 1859 a. Lot size: 40,000 square feet.

- 1860 b. Minimum street frontage: 150 feet.
1861 c. Minimum front yard: 50 feet.
1862 d. Minimum rear and side yards: 30 feet. (NOTE: Except as may be required
1863 by the buffer provisions of this title, and where the side and/or rear yards of
1864 the proposed nonresidential use abut a residential zone or use; in which case
1865 a minimum of 40 feet is required.)
1866 e. Maximum building height: 40 feet.
1867 f. Maximum building and outdoor stored material coverage: 40%.
1868 g. Minimum setback from water body and wetland water-dependent uses: zero
1869 feet.
1870 h. Minimum setback from streams, water bodies and wetlands: in accordance
1871 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.
1872 i. Gasoline Sales: i) not located within 1,000 feet of an existing station or
1873 private residence; and ii) not located within 150 feet of an existing
1874 structure.
1875 j. Adult Entertainment Establishment not located within 1,000 feet of an
1876 existing private residence, school or place of worship.
1877 k. Repair Garages not located within 150 feet of a private dwelling or existing
1878 structure.

1879 (2). Parking

- 1880 a. All new or revised parking must be visually screened through the use of
1881 landscaping, earthen berms and/or fencing from adjacent public streets or
1882 residential properties. (See the Design Handbook for appropriate examples.)
1883 b. Each parking space is to contain a rectangular area at least 19 feet long and
1884 nine feet wide. Lines demarcating parking spaces may be drawn at various
1885 angles in relation to curbs or aisles, so long as the parking spaces so created
1886 contain within them the rectangular area required by this section. This is
1887 exclusive of drives or aisles giving access thereto, accessible from streets or
1888 aisles leading to streets, and usable for the storage or parking of passenger
1889 vehicles. Parking spaces or access thereto must be constructed as to be
1890 usable year round.

1891 (3). Building design standards

- 1892 a. New buildings should meet the general design principles set forth in the
1893 Design Handbook. In general, buildings should be oriented to the street
1894 with the front of the building facing the street. The front or street facade
1895 must be designed as the front of the building. The front elevation must
1896 contain one or more of the following elements:
1897 i. A "front door," although other provisions for access to the building
1898 may be provided;
1899 ii. Windows; or
1900 iii. Display cases.
1901 b. A building's prominent roofs must be pitched a minimum of 4:12 unless
1902 demonstrated to the Planning Board's satisfaction that this is not
1903 practicable. Acceptable roof styles are gabled, gambrel and hipped roofs.
1904 Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are
1905 not acceptable as prominent roof forms except as provided above. (See
1906 Design Handbook for examples of acceptable designs.)

1907 (4). Landscaping site improvements. To achieve attractive and environmentally sound
1908 site design and appropriate screening of parking areas, in addition to the
1909 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]

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- a. 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.
 - iii. Special situations
 - 1. Expansions of less than 2,000 square feet to existing uses are exempt from the landscaping standard of this subsection.
 - 2. 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.
 - 3. 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.
 - 4. 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.
- b. 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

1962 between the front property line and the front facade of the building. Display
1963 areas may not be located within the required landscape planter strip.
1964 Facilities for waste storage such as dumpsters must be located within an
1965 enclosure and be visually buffered by fencing, landscaping and/or other
1966 treatments. (See Design Handbook for examples of appropriate buffering.)

1967 (5). Traffic and circulation standards

1968 Vehicular and pedestrian circulation must meet the general provisions of the
1969 Design Handbook.

1970 E. Shoreland Overlay Zone OZ-SL – Commercial – 2 Zone (C-2)

1971 (1). Permitted uses

- 1972 a. Accessory Use & Building
- 1973 b. Home Occupation, Major
- 1974 c. Home Occupation, Minor
- 1975 d. Aquaculture
- 1976 e. Recreation, Public Facility
- 1977 f. Recreation, Public Open Space
- 1978 g. Recreation, Selected Commercial
- 1979 h. Public Utility Facility
- 1980 i. Commercial School
- 1981 j. Public or Private School
- 1982 k. Nursery School
- 1983 l. Hospital
- 1984 m. Nursing Care Facility, Long-term
- 1985 n. Convalescent Care Facility
- 1986 o. Public Facility
- 1987 p. Religious Institution
- 1988 q. Private Assembly

1989 (2). Special exception uses

- 1990 a. Adult Entertainment Establishment, not located within 1,000 feet of an
1991 existing private residence, school or place of worship
- 1992 b. Art Studio or Gallery
- 1993 c. Boatyard
- 1994 d. Business & Professional Offices
- 1995 e. Business Services
- 1996 f. Commercial Fisheries/Maritime Activities (provided only incidental
1997 cleaning and cooking of seafood occur at the site)
- 1998 g. Parking Area
- 1999 h. Conference Center
- 2000 i. Construction Services
- 2001 j. Day Care Facility
- 2002 k. Retail Sales, Convenience
- 2003 l. Retail Sales
- 2004 m. Mass Transit Station
- 2005 n. Mini Storage
- 2006 o. Motel

- 2007 p. Hotel
- 2008 q. Rooming House
- 2009 r. Inn
- 2010 s. Personal Service
- 2011 t. Public Assembly Area
- 2012 u. Theater
- 2013 v. Research & Development
- 2014 w. Restaurant
- 2015 x. Wholesale Business
- 2016 y. Repair Services
- 2017 z. Shops in Pursuit of Trade
- 2018 aa. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 2019 02]
- 2020 bb. Transportation Terminal
- 2021 cc. Veterinary Hospital
- 2022 dd. Warehousing & Storage
- 2023 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 2024 F. Resource Protection Overlay Zone OZ-RP – Commercial – 2 Zone (C-2).
- 2025 (1). Permitted Uses.
- 2026 a. Recreation, Public Open Space
- 2027 (2). Special Exception Uses.
- 2028 a. Accessory Uses & Buildings
- 2029 b. Aquaculture
- 2030 c. Home Occupations, Major
- 2031 d. Home Occupations, Minor
- 2032 e. Public Utility Facility
- 2033 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 2034 OZ-RP
- 2035

2036 **16.4.21 Commercial 3, Bypass/Old Post Road Commercial Zone (C-3)**

2037 A. Purpose.

2038 The purpose of the Commercial (C-1, C-2, C-3) Zone is to provide general retail
2039 sales, services and business space within the Town in locations capable of
2040 conveniently serving community-wide and/or regional trade areas and oriented
2041 primarily to automobile access. To reflect the differing character of various parts of
2042 the commercial areas, it is divided into three zones that are shown on the Zoning
2043 Map:

2044 C-1 Route 1 Commercial Zone

2045 C-2 Route 236 Commercial Zone

2046 C-3 Bypass/Old Post Road Commercial Zone

2047 Where the standards or requirements for the zones vary, the provisions for the zone
2048 in which the parcel is located apply.

2049 B. Permitted uses

2050 (1). The following uses are permitted in the C-3 Zone:

2051 (2). Accessory Dwelling Unit

2052 (3). Convalescent Care Facility

2053 (4). Nursing Care Facility, Long-term

2054 (5). Residential Care Facility

2055 (6). Accessory Use & Building

2056 (7). Home Occupation, Major

2057 (8). Home Occupation, Minor

2058 (9). Hotel

2059 (10). Inn

2060 (11). Motel

2061 (12). Rooming House

2062 (13). Day Care Facility

2063 (14). Hospital

2064 (15). Nursery School

2065 (16). Private Assembly

2066 (17). Public Facility

2067 (18). Public or Private School

2068 (19). Public Utility Facility

2069 (20). Religious Use

2070 (21). Recreation, Commercial Indoor

2071 (22). Recreation, Commercial Outdoor

2072 (23). Recreation, Public Open Space

2073 (24). Recreation, Public Facility

2074 (25). Aquaculture

2075 (26). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
2076 cooking of seafood occur at the site)

2077 (27). Commercial School

2078 (28). Veterinary Hospital

2079 (29). Art Studio or Gallery

- 2080 (30). Business & Professional Offices
- 2081 (31). Business Services
- 2082 (32). Conference Center
- 2083 (33). Personal Services
- 2084 (34). Repair Service
- 2085 (35). Restaurant
- 2086 (36). Retail Sales
- 2087 (37). Retail Sales, Building Materials & Garden Supply
- 2088 (38). Retail Sales, Convenience
- 2089 (39). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 2090 (40). Boatyard
- 2091 (41). Mass Transit Station
- 2092 (42). Mechanical Services
- 2093 (43). New Motor Vehicle Sales
- 2094 (44). Parking Area
- 2095 (45). Wholesale Business

2096 C. Special exception uses

The following uses are permitted by special exception uses in the C-3 Zone:

- 2097 (1). Adult Entertainment Establishment not located within 1,000 feet of an existing
- 2098 private residence, school or place of worship;
- 2099 (2). Buildings and structures over 40 feet that conform to the provisions of § 16.7 and
- 2100 16.8. Buildings and structures higher than 40 actual feet from the lowest point of
- 2101 grade to the highest point of the building or structure must have side, rear and front
- 2102 yards of sufficient depth to adequately protect the health, safety and welfare of
- 2103 abutting properties, and which may not be less than current standards or 50% of
- 2104 actual height, whichever is greater;
- 2105 (3). Commercial Greenhouses
- 2106 (4). Construction Services
- 2107 (5). Funeral Home
- 2108 (6). Gasoline Service Station
- 2109 (7). Manufacturing Operations, Light
- 2110 (8). Mini Storage
- 2111 (9). Public Assembly Area
- 2112 (10). Theater
- 2113 (11). Repair Garage
- 2114 (12). Research & Development
- 2115 (13). Shops in Pursuit of Trade
- 2116 (14). Transportation Terminal (excluding truck stops)
- 2117 (15). Used Car Lot
- 2118 (16). Warehousing & Storage
- 2119

2120 D. Standards.

2121 C Zone standards. All development and the use of land in the C Zone must meet

2122 the following standards. Kittery's Design Handbook illustrates how these standards

2123 can be met. In addition, the design and performance standards of Chapters 16.7 and

2124 16.8 must be met.

- 2125 (1). The following space standards apply in the C-3 Zone:
- 2126 a. Lot size: 40,000 square feet.
- 2127 b. Minimum street frontage: 150 feet.
- 2128 c. Minimum front yard: 50 feet.
- 2129 d. Minimum rear and side yards: 30 feet.
- 2130 (NOTE: Except as may be required by the buffer provisions of this title, and
- 2131 where the side and/or rear yards of the proposed nonresidential use abut a
- 2132 residential zone or use; in which case a minimum of 40 feet is required.)
- 2133 e. Maximum building height: 40 feet.
- 2134 f. Maximum building and outdoor stored material coverage: 40%.
- 2135 g. Minimum setback from water body and wetland water-dependent uses: zero
- 2136 feet.
- 2137 h. Minimum setback from streams, water bodies and wetlands: in accordance
- 2138 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.
- 2139 i. Adult entertainment establishment not located within 1,000 feet of an
- 2140 existing private residence, school or place of worship.
- 2141 (2). Gasoline Sales
- 2142 Gasoline Sales: i) not located within 1,000 feet of an existing station or private
- 2143 residence; and ii) not located within 150 feet of an existing structure.
- 2144 (3). Repair Garages
- 2145 Repair Garages must not located within 150 feet of a private dwelling or
- 2146 existing structure.
- 2147 (4). Parking.
- 2148 a. All new or revised parking must be visually screened through the use of
- 2149 landscaping, earthen berms and/or fencing from adjacent public streets or
- 2150 residential properties. (See the Design Handbook for appropriate examples.)
- 2151 b. Each parking space is to contain a rectangular area at least 19 feet long and
- 2152 nine feet wide. Lines demarcating parking spaces may be drawn at various
- 2153 angles in relation to curbs or aisles, so long as the parking spaces so created
- 2154 contain within them the rectangular area required by this section. This is
- 2155 exclusive of drives or aisles giving access thereto, accessible from streets or
- 2156 aisles leading to streets, and usable for the storage or parking of passenger
- 2157 vehicles. Parking spaces or access thereto must be constructed as to be
- 2158 usable year round.
- 2159 (5). Building design
- 2160 Kittery's characteristic buildings reflect its historical seacoast past. The primary
- 2161 architectural styles are New England Colonial (such as Cape Cod and saltbox),
- 2162 Georgian, Federal and Classical Revival. New buildings must be compatible
- 2163 with Kittery's characteristic styles in form, scale, material and color. In general,
- 2164 buildings should be oriented to the street with the front of the building facing
- 2165 the street. The front or street facade must be designed as the front of the
- 2166 building. The front elevation must contain one or more of the following
- 2167 elements: 1) a "front door," although other provisions for access to the building
- 2168 may be provided; 2) windows; or 3) display cases. (See Design Handbook for
- 2169 examples of acceptable materials and designs.) Strict imitation is not required.
- 2170 Design techniques can be used to maintain compatibility with characteristic
- 2171 styles and still leave enough flexibility for architectural variety. To achieve this
- 2172 purpose, the following design standards apply to new and remodeled building
- 2173 projects: [Amended 9-26-2011 by Ord. No. 11-15]
- 2174 a. Exterior building materials and details. Building materials and details

2175 strongly define a project's architectural style and overall character. (See
2176 Design Handbook for examples of acceptable materials, building scale and
2177 designs.) "One-sided" schemes are prohibited; similar materials and details
2178 must be used on all sides of a building to achieve continuity and
2179 completeness of design. Predominant exterior building materials must be of
2180 good quality and characteristic of Kittery, such as horizontal wood board
2181 siding, vertical wood boards, wood shakes, brick, stone or simulated stone,
2182 glass and vinyl, or metal clapboard.

2183 b. Roofs. A building's prominent roofs must be pitched a minimum of 4:12
2184 unless demonstrated to the Planning Board's satisfaction that this is not
2185 practicable. Acceptable roof styles are gabled, gambrel and hipped roofs.
2186 Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are
2187 not acceptable as prominent roof forms except as provided above. The roof
2188 design must screen or camouflage rooftop protrusions to minimize the
2189 visual impact of air-conditioning units, air handler units, exhaust vents,
2190 transformer boxes and the like. (See Design Handbook for examples of
2191 appropriate treatments.)

2192 c. Loading docks and overhead doors. Loading docks and overhead doors
2193 must be located on the side or rear of the building and screened from view
2194 from adjacent properties in residential use.

2195 (6). Landscaping site improvements

2196 To achieve attractive and environmentally sound site design and appropriate
2197 screening of parking areas, in addition to the landscaping standards contained
2198 in § 16.7 the following landscaping requirements apply to new and modified
2199 existing developments: [Amended 9-26-2011 by Ord. No. 11-15]

2200 a. Landscape planter strip. A vegetated landscape planter strip must be
2201 provided a minimum of 15 feet in depth adjacent to the right-of-way of all
2202 public roads and include the following landscape elements:

2203 i. Ground cover. The entire landscape planter strip must be vegetated
2204 except for approved driveways, walkways, bikeways and screened
2205 utility equipment.

2206 ii. Street-side trees. A minimum of one tree must be planted for each
2207 50 feet of street frontage. The trees may be spaced along the
2208 frontage or grouped or clustered to enhance the visual quality of the
2209 site. (See Design Handbook for examples.) The trees must be a
2210 minimum two-and-one-half-inch caliper and be at least 12 feet high
2211 at the time of planting. The species should be selected from the list
2212 of recommended street trees in the Town Design Handbook.
2213 Existing large healthy trees must be preserved if practical and will
2214 count toward this requirement.

2215 iii. Special situations.

2216 1. Expansions of less than 1,000 square feet to existing uses are
2217 exempt from the landscaping standard of this subsection.

2218 2. Depth of landscape planter strip. In instances where the
2219 required minimum depth of the landscape planter strip is
2220 legally utilized, in accordance with previous permits or
2221 approvals, for parking, display, storage, building or
2222 necessary vehicle circulation, the depth may be narrowed by
2223 the Planning Board to the minimum extent necessary to
2224 achieve the objective of the proposed project, provided that
2225 the required shrubs and perennials are planted along the
2226 street frontage to soften the appearance of the development

- 2227 from the public street.
- 2228 3. Additions and changes in use. For additions to existing
- 2229 buildings and changes of residential structures to a
- 2230 nonresidential use, one tree (see list of recommended street
- 2231 trees in Design Handbook) is required to be planted for
- 2232 every 1,000 square feet of additional gross floor area added
- 2233 or converted to nonresidential use. In instances where
- 2234 parking, display area, storage, building or necessary vehicle
- 2235 circulation exists at the time of enactment of this section, the
- 2236 required trees may be clustered and/or relocated away from
- 2237 the road as is necessary to be practicable. The preservation
- 2238 of existing large trees is encouraged; therefore, the Planning
- 2239 Board may permit the preservation of existing healthy, large,
- 2240 mature trees within the landscape planter strip or other
- 2241 developed areas of the site to be substituted for the planting
- 2242 of new trees.
- 2243 b. Outdoor service and storage areas. Service and storage areas must be
- 2244 located to the side or rear of the building. Facilities for waste storage such
- 2245 as dumpsters must be located within an enclosure and be visually buffered
- 2246 by fencing, landscaping and/or other treatments. (See Design Handbook for
- 2247 examples of appropriate buffering.)
- 2248 (7). Traffic and circulation standards
- 2249 Sidewalks and roadways must be provided within the site to internally join
- 2250 abutting properties that are determined by the Planning Board to be compatible.
- 2251 In addition, safe pedestrian route(s) must be provided to allow pedestrians to
- 2252 move within the site and between the principal customer entrance and the front
- 2253 lot line where a sidewalk exists or will be provided or where the Planning
- 2254 Board determines that such a route is needed for adequate pedestrian safety and
- 2255 movement. (See Design Handbook for appropriate examples.)
- 2256 (8). Open space standards
- 2257 Open space must be provided as a percentage of the total area of the lot,
- 2258 including freshwater wetlands, water bodies, streams and setbacks. Twenty
- 2259 percent of each lot must be designated as open space. Required open space
- 2260 must be shown on the plan with a note dedicating it as "open space." The open
- 2261 space must be located to create an attractive environment on the site, minimize
- 2262 environmental impacts, protect significant natural features or resources on the
- 2263 site, and maintain wildlife habitat. Individual large, healthy trees and areas with
- 2264 mature tree cover should be included in the open space. Where possible, the
- 2265 open space must be located to allow the creation of continuous open space
- 2266 networks in conjunction with existing or potential open space on adjacent
- 2267 properties. The required amount of designated open space is reduced to 10% of
- 2268 each lot that is less than 40,000 square feet in size.
- 2269 E. Shoreland Overlay Zone OZ-SL – Commercial – 3 Zone (C-3)
- 2270 (1). Permitted uses
- 2271 a. Accessory Use & Building
- 2272 b. Home Occupation, Major
- 2273 c. Home Occupation, Minor
- 2274 d. Aquaculture
- 2275 e. Recreation, Public Facility
- 2276 f. Recreation, Public Open Space

- 2277 g. Recreation, Selected Commercial
- 2278 h. Public Utility Facility
- 2279 i. Commercial School
- 2280 j. Public or Private School
- 2281 k. Nursery School
- 2282 l. Hospital
- 2283 m. Elder Care Facility
- 2284 n. Nursing Care Facility, Long-term
- 2285 o. Convalescent Care Facility
- 2286 p. Public Facility
- 2287 q. Religious Use
- 2288 r. Private Assembly
- 2289 (2). Special exception uses
- 2290 a. Adult Entertainment Establishment, not located within 1,000 feet of an
- 2291 existing private residence, school or place of worship
- 2292 b. Art Studio or Gallery
- 2293 c. Boatyard
- 2294 d. Business & Professional Offices
- 2295 e. Business Services
- 2296 f. Commercial Fisheries/Maritime Activities, provided only incidental
- 2297 cleaning and cooking of seafood occur at the site
- 2298 g. Parking Area
- 2299 h. Conference Center
- 2300 i. Construction Services
- 2301 j. Day Care Facility
- 2302 k. Funeral Home
- 2303 l. Retail Sales, Convenience
- 2304 m. Mass Transit Station
- 2305 n. Motel
- 2306 o. Hotel
- 2307 p. Rooming House
- 2308 q. Inn
- 2309 r. Mini Storage
- 2310 s. Personal Service
- 2311 t. Public Assembly Area
- 2312 u. Theater
- 2313 v. Research & Development
- 2314 w. Restaurant
- 2315 x. Retail Sales
- 2316 y. Wholesale Business
- 2317 z. Shops in Pursuit of Trade
- 2318 aa. Transportation Terminal (excluding truck stops)
- 2319 bb. Veterinary Hospital
- 2320 cc. Warehousing & Storage
- 2321 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

- 2322 F. Resource Protection Overlay Zone OZ-RP – Commercial – 3 Zone (C-3)
- 2323 (1). Permitted Uses
- 2324 a. Recreation, Public Open Space
- 2325 (2). Special Exception Uses
- 2326 a. Accessory Uses & Buildings
- 2327 b. Aquaculture
- 2328 c. Home Occupations, Major
- 2329 d. Home Occupations, Minor
- 2330 e. Public Utility Facility
- 2331 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 2332 OZ-RP
- 2333

2334 **16.4.22 Industrial (IND)**

2335 A. Purpose

2336 The purpose of the Industrial IND Zone is to provide areas within the Town for
2337 manufacturing, processing, treatment and research, to which end all the
2338 performance standards set forth in this title apply.

2339 B. Permitted uses

2340 The following uses are permitted in the IND Zone:

- 2341 (1). Accessory Use & Building
- 2342 (2). Home Occupation, Major
- 2343 (3). Home Occupation, Minor
- 2344 (4). Research & Development
- 2345 (5). Manufacturing Processing and Treatment, Heavy

2346 C. Special exception uses

2347 The following uses are permitted as special exception uses in the IND Zone:

- 2348 (1). Public Facility
- 2349 (2). Public Utility Facility

2350 D. Standards

2351 (1). The design and performance standards of § 16.7 and 16.8 must be met.

2352 (2). The following space standards apply:

- 2353 a. Minimum area of lot: none.
- 2354 b. Minimum street frontage: none.
- 2355 c. Minimum front yard: none.
- 2356 d. Minimum rear and side yards: 30 feet.

2357 (NOTE: Except as may be required by the buffer provisions of this title, and
2358 except where the side and/or rear yards abut a residential zone or use; in
2359 which case a minimum of 50 feet or 50% of the building or outdoor stored
2360 material height, whichever is greater, is required.)

- 2361 e. Maximum building height: none.
- 2362 f. Maximum building coverage: none.
- 2363 g. Minimum setback from water body and wetland water-dependent uses: zero
2364 feet.
- 2365 h. Minimum setback from streams, water bodies and wetlands: in accordance
2366 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.

2367 E. Shoreland Overlay Zone OZ-SL – Industrial Zone (IND)

2368 (1). Permitted uses

- 2369 a. Accessory Use & Building
- 2370 b. Home Occupation, Major
- 2371 c. Home Occupation, Minor
- 2372 d. Research & Development

2373 (2). Special exception uses

- 2374 a. Manufacturing Processing & Treatment, Heavy
- 2375 b. Public Facility
- 2376 c. Public Utility Facility

2377 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

2378 F. Resource Protection Overlay Zone OZ-RP – Industrial Zone (IND)

2379 (1). Permitted Uses

2380 a. Research & Development

2381 (2). Special Exception Uses

2382 a. Accessory Uses & Buildings

2383 b. Home Occupations, Major

2384 c. Home Occupations, Minor

2385 d. Public Facility

2386 e. Public Utility Facility

2387 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
2388 OZ-RP

2389 NOTE: It is recognized that federal ownership of this zone at the time of
2390 enactment of the ordinance codified in this title precludes enforcement of any
2391 local regulations.

2392

2393 **16.4.23 Mixed-Use (MU)**

2394 A. Purpose

2395 To provide opportunities for a mix of office, service, and limited residential and
2396 retail uses, to alter the pattern of commercial activity on Route 1, to serve Kittery's
2397 needs, and to minimize traffic congestion. A mix of uses on a site is desired and, in
2398 some cases, required; a continuation of strip development is not encouraged in this
2399 zone. The Mixed-Use Zone is intended to accommodate growth.

2400 The purpose of large lot sizes, open space standards, and frontage requirements is
2401 to limit the number of access points along U.S. Route 1, to encourage the
2402 development of service roads which may serve several developments, and to create
2403 development that will retain the predominant rural character of the zone. Other
2404 objectives are to encourage an orderly and safe traffic flow along U.S. Route 1,
2405 pedestrian safety, and an attractive site design enhanced by landscaping, open
2406 space, and restrictions on the locations of parking. These development goals are
2407 supported by the principles and objectives identified in the Town's Design
2408 Handbook, Kittery Maine.

2409 B. Permitted uses

- 2410 (1). Accessory Dwelling Units
- 2411 (2). Dwelling, Single-Family (limited to lots of record as of April 1, 2004)
- 2412 (3). Dwelling, Multi-Family (limited to the upper floors of mixed-use building that is
2413 served by public sewerage)
- 2414 (4). Convalescent Care Facility
- 2415 (5). Nursing Care Facility, Long-term
- 2416 (6). Residential Care Facility
- 2417 (7). Accessory Use & Building
- 2418 (8). Home Occupations, Major
- 2419 (9). Home Occupations, Minor
- 2420 (10). Inn
- 2421 (11). Day Care Facility
- 2422 (12). Hospital
- 2423 (13). Private Assembly (which is not used for residential or overnight occupancy)
- 2424 (14). Public Facility
- 2425 (15). Public or Private School (which is not used for residential or overnight occupancy)
- 2426 (16). Recreation, Commercial Indoor
- 2427 (17). Recreation, Commercial Outdoor
- 2428 (18). Recreation, Public Open Space
- 2429 (19). Agriculture
- 2430 (20). Commercial School (which is not used for residential or overnight occupancy)
- 2431 (21). Timber Harvesting
- 2432 (22). Veterinary Hospital
- 2433 (23). Art Studio or Gallery
- 2434 (24). Business & Professional Offices
- 2435 (25). Funeral Home
- 2436 (26). Personal Services
- 2437 (27). Repair Service

- 2438 (28). Research & Development
- 2439 (29). Restaurant
- 2440 (30). Retail Sales (a single use not to exceed 50,000 square feet in gross floor area)
- 2441 (31). Retail Sales, Building Materials & Garden Supply
- 2442 (32). Retail Sales, Convenience
- 2443 (33). Specialty Food and/or Beverage Facility
- 2444 (34). Theater
- 2445 (35). Boat Yard
- 2446 (36). Mass Transit Station
- 2447 (37). Parking Area
- 2448 (38). Manufacturing Operations, Light (less than or equal to 20,000 square feet in gross
- 2449 floor area)

2450 C. Special exception uses

- 2451 (1). Campground
- 2452 (2). Recreational Vehicle Park
- 2453 (3). Construction Services
- 2454 (4). Commercial Kennel
- 2455 (5). Commercial Greenhouses
- 2456 (6). Theater, Drive-in
- 2457 (7). Gas Service Station
- 2458 (8). Elderly Housing
- 2459 (9). Manufacturing Operations, Light (greater than 20,000 square feet in gross floor
- 2460 area)
- 2461 (10). Mechanical Services
- 2462 (11). Motel
- 2463 (12). Hotel
- 2464 (13). New Motor Vehicle Sales
- 2465 (14). Public Utility Facilities
- 2466 (15). Repair Garage
- 2467 (16). Retail Sales (a single use greater than 50,000 square feet in gross floor area and
- 2468 less than 150,000 square feet in gross floor area)
- 2469 (17). Shop in Pursuit of Trade
- 2470 (18). Transportation Terminal
- 2471 (19). Warehousing & Storage
- 2472 (20). Wholesale Business

2473 D. Standards

- 2474 (1). All development and the use of land in the MU Zone must meet the following
- 2475 standards. Kittery's Design Handbook illustrates how these standards can be met.
- 2476 In addition, the design and performance standards of § 16.7 and § 16.8 must be
- 2477 met.
- 2478 (2). Minimum dimensional standards. The following apply:
- 2479 a. Minimum lot size:
- 2480 i. Lots with frontage on Route 1: 200,000 square feet.
- 2481 ii. Lots without frontage on Route 1: 80,000 square feet.
- 2482 b. Minimum street frontage on road with access along U.S. Route 1, Haley

- 2483 Road, Lewis Road, or Cutts Road: 250 feet.
- 2484 i. Other streets or approved ways: 150 feet.
- 2485 c. Minimum front yard: 30 feet.
- 2486 d. Minimum rear and side yards: 30 feet.
- 2487 e. Maximum building height: 40 feet.
- 2488 f. Maximum height above grade of building-mounted signs: 40 feet.
- 2489 g. Minimum setback from water body and wetland water dependent uses: zero
- 2490 feet.
- 2491 h. Minimum setback from streams, water bodies and wetlands: in accordance
- 2492 with Table 16.5.28, § 16.4.28 and Appendix A, Fee Schedules.
- 2493 i. Minimum land area per unit for eldercare facilities that are connected to the
- 2494 public sewerage system:
- 2495 i. Dwelling unit with two or more bedrooms: 5,000 square feet.
- 2496 ii. Dwelling unit with less than two bedrooms: 4,000 square feet.
- 2497 iii. Residential care unit: 2,500 square feet.
- 2498 j. Minimum land area per bed for nursing care and convalescent care facilities
- 2499 that are connected to the public sewerage system: 2,000 square feet.
- 2500 k. Buffer to I-95 right-of-way: 40 feet.
- 2501 l. Buffer to neighboring lot with an existing residence within 100 feet of the
- 2502 lot line: 40 feet.
- 2503 m. Vegetated buffer to be maintained between the MU and R-RL Zones: 40
- 2504 feet.

2505 NOTE 1: For single-family dwellings, one dwelling unit is allowed for each

2506 200,000 square feet of land area. A lot of record having a land area of more

2507 than 200,000 square feet that was improved with a single-family dwelling

2508 as of April 1, 2004, may be divided into two lots with a single-family

2509 dwelling on each lot provided that each of the lots contains at least 40,000

2510 square feet of land area and meets the other dimensional standards of the

2511 zone. § 16.4.10.A(4) through (6) as set forth in the Residential - Rural Zone

2512 apply and no further subdivision is allowed.

2513 NOTE 2: For dwelling units that are part of a mixed-use building and are

2514 connected to the public sewerage system, one dwelling unit is allowed for

2515 each 10,000 square feet of buildable land area. Within the Resource

2516 Protection and Shoreland Overlay Zones, one dwelling unit is allowed for

2517 each 40,000 square feet of land area within these zones. If the parking for

2518 the residential units is encompassed within the building, the minimum

2519 required buildable land area per dwelling unit is reduced to 7,500 square

2520 feet, except in the Resource Protection and Shoreland Overlay Zones where

2521 the area per dwelling unit remains 40,000 square feet.

2522 NOTE 3: For elderly housing dwelling units that are connected to the public

2523 sewerage system, one dwelling unit is allowed for each 15,000 square feet

2524 of buildable land area. Within the Resource Protection and Shoreland

2525 Overlay Zones, one dwelling unit is allowed for each 40,000 square feet of

2526 land within these zones. If the parking for the elderly units is encompassed

2527 within the building, the minimum required buildable land area per dwelling

2528 unit is reduced to 10,000 square feet, except in the Resource Protection and

2529 Shoreland Overlay Zones where the area per dwelling unit remains 40,000

2530 square feet.

- 2531 (3). Retail use limitation
- 2532 Retail use, including parking areas and other supporting unvegetated areas for

- 2533 retail use, is limited to not more than 30% of the developable area of any lot or
2534 portion of a lot within the Mixed-Use Zone.
- 2535 (4). Mixed-use requirement
- 2536 The Mixed-Use Zone is intended for the creation of an area in the Town that
2537 has a mix of uses and in which no single type of use predominates. To this end,
2538 larger scale projects must incorporate a mix of principal uses into the
2539 development. Any new development that creates more than 20,000 square feet
2540 of gross floor area must include at least two principal uses as set forth in the list
2541 of permitted uses and special exceptions. To fulfill this requirement, the smaller
2542 use or combination of smaller uses must contain at least 10% of the gross floor
2543 area. The combination of retail uses that are permitted uses and one larger retail
2544 use allowed as a special exception does not fulfill this requirement. This
2545 provision does not apply to the development of a single lot of record as of April
2546 1, 2004, that has a lot area of less than 200,000 square feet.
- 2547 (5). Location and screening of parking areas
- 2548 All new parking areas must be located at the side of, and/or to the rear of,
2549 principal buildings. Where unique circumstances exist and it is demonstrated to
2550 the Planning Board that prohibition of parking in front of the principal building
2551 is not practicable, with the Board's approval, 10 or fewer parking spaces may
2552 be located closer to the front lot line than a principal building. All new or
2553 altered parking must be visually screened from U.S. Route 1, Lewis Road,
2554 Cutts Road, and Haley Road by extensive landscaping, earthen berms, and/or
2555 fencing (see Design Handbook for examples of acceptable screening).
- 2556 (6). Building design standards
- 2557 Kittery's characteristic buildings reflect its historic seacoast past. The primary
2558 architectural styles are New England Colonial (such as Cape Cod and saltbox),
2559 Georgian, Federal, and Classical Revival. New buildings should be compatible
2560 with Kittery's characteristic styles in form, scale, material, and color. In
2561 general, buildings should be oriented to the street with the front of the building
2562 facing the street. The front or street facade must be designed as the front of the
2563 building. The front elevation must contain one or more of the following
2564 elements: (1) a front door although other provisions for access to the building
2565 may be provided, (2) windows, or (3) display cases (see Design Handbook for
2566 examples of acceptable materials and designs). Though strict imitation is not
2567 required, design techniques can be used to maintain compatibility with
2568 characteristic styles and still leave enough flexibility for architectural variety.
2569 To achieve this purpose, the following design standards apply to new and
2570 remodeled building projects:
- 2571 a. Exterior building materials and details. Building materials and details
2572 strongly define a project's architectural style and overall character (see
2573 Design Handbook for examples of acceptable materials, building scale, and
2574 designs). "One-sided" schemes are prohibited; similar materials and details
2575 must be used on all sides of a building to achieve continuity and
2576 completeness of design.
- 2577 i. Predominant exterior building materials. Predominant exterior
2578 building materials must be of good quality and characteristic of
2579 Kittery, such as horizontal wood board siding, vertical wood boards,
2580 wood shakes, brick, stone or simulated stone, glass and vinyl, or
2581 metal clapboard. Stucco, adobe, sheet metal, standard concrete
2582 block, tilt-up concrete panels, plywood or particle board are
2583 prohibited as the primary materials.
- 2584 ii. Blank walls. A wall may not extend for a length of more than 50

- 2585 linear feet without an architectural feature such as a dormer, pilaster,
2586 cornice, corner, window, porch, or visually compatible door to break
2587 up the large mass of a featureless wall (see Design Handbook for
2588 examples of the appropriate treatment of walls). As an exception,
2589 walls with a clapboard facade may extend for a length of up to 100
2590 feet without such an architectural feature.
- 2591 iii. Light industrial and boatyard uses. Such uses must comply with the
2592 above standards only along the front face and extending back 100
2593 feet along the side walls.
- 2594 b. Roofs. Roofs must meet the following standards:
- 2595 i. Form. A building's prominent roofs must be pitched a minimum of
2596 4:12 unless demonstrated to the Planning Board's satisfaction that
2597 this is not practicable. Acceptable roof styles are gabled, gambrel,
2598 and hipped roofs. Flat roofs, shed roofs, and roof facades (such as
2599 "stuck on" mansards) are not acceptable as primary roof forms.
- 2600 ii. Color. Roof colors must be muted (see Design Handbook for
2601 examples).
- 2602 iii. Rooftop mechanical and electrical equipment. Rooftops must be free
2603 of clutter. The roof design must screen or camouflage rooftop
2604 protrusions to minimize the visual impact of air conditioning units,
2605 air handler units, exhaust vents, transformer boxes, and the like (see
2606 Design Handbook for examples of appropriate treatments). Interior-
2607 mounted equipment is encouraged. Whenever possible, utility
2608 equipment areas must be placed in an obscure location and screened
2609 from view.
- 2610 iv. Loading docks and overhead doors. Loading docks and overhead
2611 doors must be located on the side or rear of the building and be
2612 screened from view from public streets.

2613 (7). Landscaping standards

2614 To achieve attractive and environmentally sound site design, and appropriate
2615 screening of parking areas, in addition to the landscaping standards contained
2616 in § 16.7 and 16.8, the following landscaping requirements apply to new and
2617 modified existing developments:

- 2618 a. Landscape planter strip. A vegetated landscape planter strip 30 feet in depth
2619 (as measured from the edge of the property line) must be provided along the
2620 length of all developed portions of a parcel that are adjacent to a street
2621 right-of-way. The planter strip must include the following landscape
2622 elements:
- 2623 i. Ground cover. The entire landscape planter strip must be vegetated
2624 except for approved driveways, walkways, bikeways, and screened
2625 utility equipment.
- 2626 ii. Streetside trees. A minimum of one street tree must be planted for
2627 each 25 feet of street frontage. The trees may be spaced along the
2628 frontage or grouped or clustered to enhance the visual quality of the
2629 site (see Design Handbook for examples). The trees must be a
2630 minimum 2.5 inch caliper, and be at least 12 feet high at the time of
2631 planting. The species should be selected from the list of approved
2632 street trees in the Design Handbook. Existing large healthy trees
2633 must be preserved if practical and will count toward this
2634 requirement.
- 2635 iii. Planter strip. Shrubs and flowering perennials must be planted at a

2636 minimum of 10 plants per 40 linear feet of street frontage unless
2637 existing woodlands are being retained or such planting is
2638 inconsistent with the retention of rural landscape features. The plant
2639 material should be selected from the list of approved materials in the
2640 Design Handbook. The plants must be placed within the planter
2641 strip to enhance the visual character of the site and augment natural
2642 features and vegetation (see Design Handbook for examples of
2643 appropriate treatments).

2644 iv. Special situations.

- 2645 1. Expansions of less than 500 square feet to existing uses are
2646 exempt from the landscaping standard of this subsection.
- 2647 2. Depth of landscape planter strip. In instances where the
2648 required average depth of the landscape planter strip is
2649 legally utilized, in accordance with previous permits or
2650 approval, for parking, display, storage, building, or
2651 necessary vehicle circulation, the depth may be narrowed by
2652 the Planning Board to the minimum extent necessary to
2653 achieve the objective of the proposed project, provided that
2654 the required shrubs and perennials are planted along the
2655 street frontage to soften the appearance of the development
2656 from the public street. If providing the required landscape
2657 planter strip along with other required landscaping and
2658 required vegetated areas in and around wetlands would cause
2659 the project to exceed the required open space standards, the
2660 depth of the landscape planter strip and the front yard may
2661 be reduced by the Planning Board so that the open space
2662 standards are not exceeded, but in no case to less than 20 feet
2663 for this reason.
- 2664 3. Additions and changes in use. For additions to existing
2665 buildings and changes of residential structures to a
2666 nonresidential use, one streetside tree (see list of
2667 recommended street trees in Design Handbook) is required
2668 for every 500 square feet of additional gross floor area added
2669 or converted to nonresidential use. In instances where
2670 parking, display area, storage, building or necessary vehicle
2671 circulation exists at the time of enactment of this section, the
2672 required trees may be clustered and/or relocated away from
2673 the road as is necessary to be practicable. The preservation
2674 of existing large trees is encouraged; therefore, the Planning
2675 Board may permit the preservation of existing healthy, large,
2676 mature trees within the landscape planter strip or other
2677 developed areas of the site to be substituted for the planting
2678 of new trees.
- 2679 4. Residences. Residential additions to existing single- and
2680 two-family dwellings and proposed single- and duplex-
2681 family dwellings are exempt from the landscaping standards
2682 of this subsection.

- 2683 b. Buffer area. Where buffering is required, it must provide a year-round
2684 visual screen to minimize adverse impacts and screen new development
2685 (see Design Guidelines for examples of appropriate buffers for various
2686 situations), and may consist of fencing, evergreens, retention of existing
2687 vegetation, berms, rocks, boulders, mounds or combinations thereof. Within
2688 three growing seasons, the buffer must provide a year-round screen at least

- 2689 eight feet in height or such lower height as determined by the Planning
2690 Board to be appropriate for the situation. Buffer areas must be maintained
2691 and kept free of all outdoor storage, debris, and rubbish. The width of the
2692 buffer area may be reduced by the Planning Board if the function of the
2693 buffer is still fulfilled.
- 2694 c. Rural landscape features. Rural landscape features such as stonewalls,
2695 berms, and other agricultural structures, and tree lines or fields must be
2696 retained to the maximum extent practicable.
- 2697 d. Lighting. Outdoor lighting must provide the minimum illumination needed
2698 for the safe use of the site while enhancing the nighttime visual character of
2699 the site. Lighting must conform to the standards for outdoor lighting in §
2700 16.7.
- 2701 e. Outdoor service and storage areas. Service and storage areas must be
2702 located to the side or rear of the building. Facilities for waste storage such
2703 as dumpsters must be located within an enclosure and be visually buffered
2704 by fencing, landscaping, and/or other treatments (see Design Handbook for
2705 examples of appropriate buffering).
- 2706 (8). Traffic and circulation standards
- 2707 Sidewalks and roadways must be provided within the site to internally join
2708 abutting properties that are determined by the Planning Board to be compatible.
2709 In addition, safe pedestrian route(s) must be provided to allow pedestrians to
2710 move within the site and between the principal customer entrance and the front
2711 lot line where a sidewalk exists or will be provided or where the Planning
2712 Board determines that such a route is needed for adequate pedestrian safety and
2713 movement.
- 2714 (9). Open space standards
- 2715 Open space must be provided as a percentage of the total area of the lot,
2716 including freshwater wetlands, water bodies, streams, and setbacks. Thirty-five
2717 percent of each lot must be designated as open space. Required open space
2718 must be shown on the plan with a note dedicating it as "open space."
- 2719 a. An objective of the open space standard is to encourage the integration of
2720 open space throughout the entire development and with the open space on
2721 adjoining properties in order to alter the pattern of commercial activity
2722 along Route 1. To this end, a minimum of 25% of the required open space
2723 must be located in the front 50% of the lot area closest to U.S. Route 1, or if
2724 not fronting Route 1, closest to the public street used to enter the lot. The
2725 Planning Board may modify this requirement when it is demonstrated to the
2726 Board's satisfaction that the objective is met to the greatest practicable
2727 extent.
- 2728 b. The open space must be located to create an attractive environment on the
2729 site, minimize environmental impacts, protect significant natural features or
2730 resources on the site, and maintain wildlife habitat. Where possible, the
2731 open space must be located to allow the creation of continuous open space
2732 networks in conjunction with existing or potential open space on adjacent
2733 properties.
- 2734 c. Special situations.
- 2735 i. Cases where integrating open space would require exceeding the
2736 open space standards. In cases where the topography, wetlands, and
2737 existing development on the lot dictates that more than 75% of the
2738 required open space be located outside the front portion of the lot, a
2739 percentage of the open space normally required in the front portion

- 2740 of the lot may be shifted to the rear portion of the lot in order to
2741 achieve the required amount of vegetated open space and not reduce
2742 the allowable developable area on the lot, provided minimum
2743 landscaping standards are satisfied.
- 2744 ii. Small lots. The required amount of designated open space is reduced
2745 to 20% of each lot that is less than 100,000 square feet in size.
- 2746 (10). Conditions for approving special exception uses in the Mixed-Use Zone.
- 2747 a. All special exception uses in the Mixed-Use Zone must be visually
2748 harmonious with the neighborhood and natural landscape by the use of
2749 adequate screening and/or architectural design as follows:
- 2750 i. Screening. Must be screened and buffered through landscaping,
2751 fencing, planted berms, existing vegetation, and separations of
2752 spaces to shield neighbors from any adverse external effects of the
2753 facility and to integrate the facility into the landscape. Plantings
2754 must be of sufficient maturity to achieve the desired screening effect
2755 within three years.
- 2756 ii. Architectural compatibility. Must be in architectural harmony with
2757 the area in which it is located to the maximum extent practicable
2758 through the appropriate use of facade materials, roof style, scale,
2759 bulk, and architectural style and details.
- 2760 iii. Location. Facilities located above ground must be sited so as to
2761 eliminate adverse impacts associated with the facility to the
2762 maximum extent practicable while still fulfilling the basic purpose
2763 of the facility.
- 2764 b. Retail Sales, a single retail use greater than 50,000 square feet in gross floor
2765 area and less than 150,000 square feet in gross floor area:
- 2766 i. Timing. No more than one retail use with a gross floor area greater
2767 than 50,000 square feet and less than 150,000 square feet may be
2768 approved in any three-year period.
- 2769 ii. Size. A single retail use with a gross floor area greater than 150,000
2770 square feet is not permitted.
- 2771 c. Gasoline Service Stations.
- 2772 i. Visual screening. A year-round buffer area must be provided
2773 between the gasoline service station and neighboring uses in
2774 accordance with the landscaping standards of the mixed-use zone
2775 regulations.
- 2776 ii. Separation distance. A gasoline service station may not be located
2777 within 2,000 feet of another service station.
- 2778 iii. Minimum distance, pump to existing structures. A fuel pump may
2779 not be located closer than 150 feet to an existing occupied structure
2780 located off the site of the gasoline service station.
- 2781 d. Theater, Drive-in.
- 2782 i. To protect the tranquility and quality of life of existing residential
2783 uses in the vicinity of the proposed drive-in theater, the hours of
2784 operation must be limited to the degree necessary and/or adequate
2785 visual and sound buffers must be established.
- 2786 e. Campground/Recreational Vehicle Park.
- 2787 i. The standards in § 16.5.16 must be satisfied.
- 2788 ii. Occupation of any site by single user for a period exceeding 96
2789 hours is prohibited.

- 2790 iii. Quiet hours must be enforced between 10:00 p.m. and 7:00 a.m.
- 2791 f. Motel or Hotel.
- 2792 i. Multiple-story structures are encouraged.
- 2793 ii. Wherever practicable, building orientation should not be parallel to
- 2794 U.S. Route 1, but must take maximum advantage of the depth of the
- 2795 mixed-use zone.
- 2796 iii. More than three separate motels and/or hotels may not be permitted
- 2797 in the mixed-use zone.
- 2798 g. Public Utility Facility.
- 2799 i. Public health and safety. Must not endanger the public health or
- 2800 safety.
- 2801 ii. Protect property values. Must not unreasonably reduce the value of
- 2802 abutting property without just compensation.
- 2803 iii. Prevent nuisances. Must prevent the emission of nuisances, such as
- 2804 but not limited to noise, odors, dust, gas, fumes, smoke, light,
- 2805 vibrations, and electrical interference, beyond the boundaries of the
- 2806 site to the maximum extent practicable.
- 2807 h. Age-Restricted Housing.
- 2808 i. Location suitability. The location of the site must allow it to be
- 2809 developed so that the residents of the project will be able to function
- 2810 as part of the community and have pedestrian access to services and
- 2811 facilities within the area.
- 2812 ii. Mixed use. If an elderly housing component is proposed as part of
- 2813 the project, it must be an essential element of the mixed-use project
- 2814 and be designed to be an integrated part of the overall development.
- 2815 i. Commercial Greenhouses
- 2816 i. The greenhouses and any related outdoor storage or service areas or
- 2817 structures must be visually buffered from Route 1 and adjacent
- 2818 properties.
- 2819 ii. If the greenhouses will be internally lit between 9:00 p.m. and 6:00
- 2820 a.m., the internal lighting may not be visible from adjacent
- 2821 properties including public streets.
- 2822 iii. The noise resulting from the operation of the facility as measured at
- 2823 the property line must be comparable with other uses in the MU
- 2824 Zone during the period between 9:00 p.m. and 6:00 a.m.
- 2825 iv. The greenhouses and related storage and service areas may not be
- 2826 located within 200 feet of any legally existing residential use, inn,
- 2827 motel or hotel, hospital, or nursing home/convalescent center on
- 2828 another lot.
- 2829 j. Manufacturing Operations, Light (greater than 20,000 square feet in gross
- 2830 floor area), Transportation Terminal, Warehousing & Storage, or Wholesale
- 2831 Business.
- 2832 i. The building and any related outdoor storage or service areas or
- 2833 structures must be visually buffered from Route 1 and adjacent
- 2834 properties by other uses allowed in the zone and/or by a landscaped
- 2835 buffer strip.
- 2836 ii. If the area between this use and Route 1 is not developed for another
- 2837 permitted use or special exception, it must be maintained as a
- 2838 naturally vegetated buffer in addition to the provision of a landscape
- 2839 planter strip.

- 2840 iii. The noise resulting from the operation of the facility as measured at
2841 the property line must be comparable with other uses in the MU
2842 Zone during the period between 9:00 p.m. and 6:00 a.m.
2843 iv. The use and related storage and service areas may not be located
2844 within 200 feet for any legally existing residential use, inn, motel or
2845 hotel, hospital, or nursing home/convalescent center on another lot.

2846 E. Shoreland Overlay Zone OZ-SL – Mixed-Use Zone (MU)

2847 [Amended 9-26-2011 by Ord. No. 11-15]

2848 (1). Permitted uses

- 2849 a. Agriculture
2850 b. Art Studio or Gallery
2851 c. Dwellings, limited to the following:
2852 i. Dwellings on lots of record as of April 1, 2004 if located farther than
2853 100 feet from the normal high-water line of any water bodies, or the
2854 upland edge of a wetland.
2855 ii. Dwellings units on the upper floors of a mixed-use building that is
2856 served on the upper floors of a mixed-use building that is served by
2857 public sewerage if located farther than 100 feet from the normal
2858 high-water lines of any water bodies, or upland edge of a wetland.
2859 d. Home Occupation, Major
2860 e. Home Occupation, Minor
2861 f. Private Assembly (which is not used for residential or overnight occupancy)
2862 g. Public Facility
2863 h. Recreation, Public Open Space
2864 i. Religious Use
2865 j. Research & Development
2866 k. Timber Harvesting

2867 (2). Special exception uses

- 2868 a. Accessory Use & Building
2869 b. Boatyard
2870 c. Business & Professional Offices
2871 d. Commercial Kennel
2872 e. Parking Area
2873 f. Construction Services
2874 g. Convalescent Care Facility
2875 h. Nursing Care Facility, long-term
2876 i. Day Care Facility
2877 j. Residential Care Facility
2878 k. Funeral Home
2879 l. Retail Sales, Convenience
2880 m. Retail Sales (a single use not to exceed 50,000 square feet in gross floor
2881 area)
2882 n. Hospital
2883 o. Inn
2884 p. Commercial School (which is not used for residential or overnight
2885 occupancy)

- 2886 q. Public or Private School (which is not used for residential or overnight
2887 occupancy)
- 2888 r. Mass Transit Station
- 2889 s. Motel
- 2890 t. Hotel
- 2891 u. Personal Services
- 2892 v. Public Utility Facility
- 2893 w. Repair Services
- 2894 x. Research & Development
- 2895 y. Restaurant
- 2896 z. Recreation, Selected Commercial
- 2897 aa. Shop in Pursuit of Trade
- 2898 bb. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
2899 02]
- 2900 cc. Theater
- 2901 dd. Transportation Terminal
- 2902 ee. Veterinary Hospital
- 2903 ff. Warehousing & Storage
- 2904 gg. Wholesale Business
- 2905 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 2906 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use Zone (MU).
- 2907 (1). Permitted Uses
- 2908 a. Recreation, Public Open Space
- 2909 b. Timber Harvesting
- 2910 (2). Special Exception Uses
- 2911 a. Accessory Uses & Buildings
- 2912 b. Agriculture
- 2913 c. Home Occupations, Major
- 2914 d. Home Occupations, Minor
- 2915 e. Public Utility Facility
- 2916 f. Dwelling, Single-Family (on lots of record as of April 1, 2004)
- 2917 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
2918 OZ-RP
- 2919

2920 **16.4.24 Mixed-Use – Badger Island (MU-BI)**

2921 A. Purpose

2922 The purpose of the Mixed-Use – Badgers Island MU-BI Zone is to provide
2923 opportunities for a wide variety of uses, including marine-related activities, offices,
2924 restaurants, shops, residences and services, to take advantage of a unique island
2925 setting located within walking distance to both downtown Portsmouth and
2926 downtown Kittery, in which water and sewer services are available to support
2927 development.

2928 This zone is further intended to develop standards appropriate for existing small lot
2929 sizes and street frontages to encourage investment in buildings that will contribute
2930 to the revitalization of the greater Kittery Foreside area while balancing business
2931 and residential interests to keep property values up and maintain an urban
2932 residential quality of life in the zone.

2933 B. Permitted uses.

2934 The following uses are permitted in the MU-BI Zone:

- 2935 (1). Accessory Dwelling Units
- 2936 (2). Dwellings, Attached Single-Family
- 2937 (3). Dwellings, Manufactured Housing
- 2938 (4). Dwelling, Multi-Family
- 2939 (5). Dwellings, Single-Family
- 2940 (6). Accessory Use & Building
- 2941 (7). Home Occupations, Major
- 2942 (8). Home Occupations, Minor
- 2943 (9). Inn
- 2944 (10). Day Care Facility
- 2945 (11). Private Assembly
- 2946 (12). Public Facility
- 2947 (13). Public or Private School
- 2948 (14). Religious Use
- 2949 (15). Recreation, Public Open Space
- 2950 (16). Aquaculture
- 2951 (17). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
2952 cooking of seafood occur at the site)
- 2953 (18). Commercial School
- 2954 (19). Art Studio or Gallery
- 2955 (20). Business & Professional Offices
- 2956 (21). Conference Center
- 2957 (22). Personal Service
- 2958 (23). Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m., but
2959 excluding restaurants where ordering and/or pickup of food may take place from a
2960 motorized vehicle)
- 2961 (24). Retail Sales (excluding those with any outdoor sales and/or storage)
- 2962 (25). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]
- 2963 (26). Boat Yard
- 2964 (27). Marina

2965 (28). Mass Transit Station

2966 (29). Mechanical Services

2967 C. Special exception uses.

2968 The following uses are permitted as special exception uses in the MU-BI Zone:

2969 (1). Recreation, Commercial Indoor

2970 (2). Recreation, Commercial Outdoor

2971 (3). Public Assembly Area

2972 (4). Theater

2973 (5). Public Utility Facility

2974 D. Standards

2975 (1). The following space standards apply

2976 a. Minimum land area per dwelling unit: 3,000 square feet.

2977 i. For each of the first two dwelling units and thereafter: 6,000 square
2978 feet.

2979 b. Minimum lot size: 6,000 square feet.

2980 c. Minimum street frontage: 50 feet.

2981 d. Minimum front yard: five feet.

2982 e. Minimum rear and side yards: 10 feet.

2983 f. Maximum building height: 40 feet.

2984 g. Minimum setback from:

2985 i. Water body and wetland water-dependent uses: zero feet.

2986 ii. All other uses (including buildings and parking): 75 feet unless
2987 modified, according to the terms of Subsection E of this section.

2988 h. Minimum open space on the site: 40%. (NOTE: The Planning Board may
2989 reduce the required open space to 30% where it is clearly demonstrated that
2990 no practicable alternative exists to accommodate a water-dependent use.)

2991 (2). The design and performance standards of § 16.7 and 16.8 must be met, except
2992 where specifically altered in this subsection.

2993 (3). Appropriate waterfront activity incentives

2994 To encourage objectives of the Comprehensive Plan to: 1) provide public
2995 access to the waterfront; 2) retain and expand commercial water-dependent
2996 uses; and 3) take extraordinary steps to preserve the environmental quality of
2997 the shoreline and tidal waters, the required setback from water bodies and
2998 wetlands may be reduced to 25 feet where the Planning Board finds a
2999 development plan significantly contributes to accomplishment of the above
3000 objectives by satisfactorily achieving one or more of the following:

3001 (4). Public access

3002 Grants an easement to the Town, or other acceptable party, providing public
3003 access to the waterfront at no charge to the general public via a developed
3004 accessible pedestrian route with appropriate signage or includes an outdoor
3005 deck or patio for customer seating at a restaurant open to the general public; or

3006 (5). Retain/expand commercial water-dependent uses

3007 Provides for inclusion of commercial water-dependent use(s) on the property
3008 for the duration of the portion of the project that encroaches closer than the
3009 normal minimum setback from water bodies and wetlands. Provision of fewer
3010 than six boat slips for leisure/recreational boating do not constitute a
3011 commercial water-dependent use for the purposes of this section; or

- 3012 (6). Preserve the environmental quality of coastal resources. Protect existing wildlife
3013 habitat, conserve shore cover and ensure the quality of stormwater runoff by
3014 satisfying all of the following standards:
- 3015 a. Retain and protect existing significant wildlife habitat that provides food,
3016 cover and/or nesting for migratory song birds and wading birds;
 - 3017 b. In order to conserve shore cover, contiguous areas of shrubberies of varying
3018 height, such as dwarf species of barberry, serviceberry, holly, crabapple,
3019 dogwood, cotoneaster, euonymus, firethorn and/or rosa rugosa, as well as
3020 erosion-resistant ground cover plantings must be retained and planted, and
3021 existing trees retained, wherever practicable in the setback;
 - 3022 c. Implementation of a stormwater management plan endorsed by the York
3023 County Soil and Water Conservation District (SCS), or the Town's
3024 engineering peer review consultant, that treats stormwater with appropriate
3025 BMPs and removes pollutants in accordance with the most-current edition
3026 of the Maine Department of Environmental Protection BMP Manual,
3027 Stormwater Management for Maine. Pollutants sought to be removed
3028 include suspended solids, nitrates, hydrocarbons and heavy metals. Such
3029 special treatment of the first flush of runoff may include detention,
3030 infiltration, filtering and trapping of pollutants. [Amended 9-26-2011 by
3031 Ord. No. 11-15]
- 3032 (7). Special parking standards
- 3033 a. Revised off-street parking standards
3034 Off-street parking must be provided in accordance with § 16.7.11.G(3)
3035 unless modified below for the following uses:
 - 3036 i. Dwellings: 1 1/2 parking space for each dwelling unit;
 - 3037 ii. Retail stores: one parking space for each 400 square feet of gross
3038 floor area;
 - 3039 iii. Drive-in restaurants, snack bars and fast-food outlets, but excluding
3040 restaurants where ordering and/or pickup of food may take place
3041 from a motorized vehicle: one parking space for every three seats,
3042 but in no case less than four spaces;
 - 3043 iv. Conference centers: one parking space for every 60 square feet in
3044 the largest assembly or meeting room.
 - 3045 b. Joint-use parking
3046 Required off-street parking may be satisfied by the joint use of parking
3047 spaces by two or more uses if the applicant can show that parking demand
3048 is nonconflicting and will reasonably provide adequate parking for multiple
3049 uses without parking overflowing into undesignated areas. Nonconflicting
3050 periods may consist of daytime as opposed to evening hours of operation or
3051 weekday as opposed to weekend hours of operation or seasonal variation in
3052 parking demand. In making this determination under development plan
3053 review, the Planning Board must consider the following factors:
 - 3054 i. Such joint parking areas must be held under ownership or under
3055 terms of a contractual agreement that ensures such parking remains
3056 available to all users of the shared parking spaces;
 - 3057 ii. Analysis is based on a most frequent basis not a "worst case"
3058 scenario;
 - 3059 iii. Joint-use parking areas must be located within reasonable distance
3060 to the uses served, but do not need to be located on the same parcel
3061 as the uses served;

- 3062 iv. Ease and safety of pedestrian access to shared parking by the users
3063 served, including any improvements or shuttle service necessary;
3064 and
3065 v. Such joint parking areas may not be located in residential zoning
3066 districts.
- 3067 c. Off-site parking
3068 Required off-street parking for employee use may be satisfied at off-site
3069 locations located within 1,000 feet measured along lines of public access
3070 from the lot to be served, provided such parking area is on other property
3071 owned by the applicant or under terms of a contractual agreement that will
3072 ensure such parking remains available to the use served.
- 3073 d. Employee parking
3074 Required off-street parking for employee use may be satisfied at off-site
3075 locations greater than 1,000 feet from the lot served upon a finding by the
3076 Planning Board that such parking is practicable and will reasonably prevent
3077 overflow parking from occurring on Badgers Island in undesignated
3078 locations. In making this determination under development review, the
3079 Planning Board must consider the following factors:
- 3080 i. Such parking must be located within a reasonable distance to the
3081 users.
3082 ii. Such parking area must be on other property of the applicant or
3083 under terms of a contractual agreement that will ensure such parking
3084 remains available to the use served.
3085 iii. Safe and convenient means of transporting users to and from the off-
3086 site parking must be demonstrated by the applicant.
3087 iv. Such off-site parking area must not be located in residential zones of
3088 the Town. Off-site parking for use by employees may deviate from
3089 the dimensional standards contained in § 16.7.11.G, Table 2,
3090 Parking Space Design, if the applicant can demonstrate that the
3091 proposal practicably accommodates the number of parking spaces
3092 proposed.
- 3093 e. Parking demand management (PDM) strategies
3094 i. Parking demand strategies are measures geared toward affecting the
3095 demand side of the parking equation rather than the supply side.
3096 They attempt to change people's behavior away from traveling to
3097 work as a single occupant in an automobile to be parked near the
3098 work site. To be successful, they must rely on incentives or
3099 disincentives to make these shifts in behavior attractive to the
3100 traveler.
3101 ii. A portion of required off-street parking may be satisfied by an
3102 owner incorporating PDM strategies to effectively reduce demand
3103 for parking stalls as determined by the Planning Board. In making
3104 this determination the Planning Board, under development plan
3105 review, must consider the following factors:
- 3106 1.The written commitment of the employer to maintain and
3107 enforce parking policies to reduce demand for parking stalls;
3108 2.The likelihood that specific incentives and policies adopted
3109 by the applicant will reduce parking demand on a regular
3110 basis throughout the year;
3111 3.Written commitments by employees to participate in PDM
3112 strategies; and

- 3113 4.The results of any studies demonstrating the effectiveness of
 3114 strategies adopted by the applicant to reduce parking
 3115 demand.
- 3116 f. PDM strategies include, but are not limited to, the following:
- 3117 i. Increase the number of persons per parked vehicle. Potential
 3118 incentives:
- 3119 1.Preferential parking locations for car pools and van pools;
 3120 2.Guaranteed ride home programs/taxi subsidies;
 3121 3.Employer provision of vans for van pools; and
 3122 4.Financial incentives to participants in car pools and van
 3123 pools.
- 3124 ii. Increase the number of persons using an alternative mode of travel
 3125 to the automobile, such as walking, bicycling, motorcycle, moped,
 3126 bus and shuttle service. Potential incentives:
- 3127 1.Preferential parking locations for alternative modes of travel;
 3128 2.Provision of changing rooms, lockers and showers;
 3129 3.Early work release for employees using alternative modes of
 3130 travel;
 3131 4.Financial subsidies toward the purchase of alternative modes
 3132 of travel to be used for commuting;
 3133 5.Guaranteed ride home programs in inclement weather;
 3134 6.Preferential work station locations; and
 3135 7.Free use of a business vehicle for errands, lunch and off-site
 3136 appointments.
- 3137 iii. Influencing the time of, or need to, travel to work. Potential
 3138 incentives:
- 3139 1.Reward employees who telecommute from their home or
 3140 other remote location;
 3141 2.Offer an optional four-day, forty-hour workweek as an
 3142 alternative to a five-day workweek;
 3143 3.Allow nonoverlapping early and late work shifts; and
 3144 4.Flextime.

3145 E. Shoreland Overlay Zone OZ-SL Mixed-Use – Badger’s Island Zone (MU-BI)

- 3146 (1). Permitted uses
- 3147 a. Aquaculture
 3148 b. Dwellings if located 75 feet or farther from the normal high-water line of
 3149 any water bodies, or the upland edge of a wetland
 3150 c. Mass Transit Station
 3151 d. Recreation, Public Open Space
 3152 e. Research & Development
- 3153 (2). Special exception uses
- 3154 a. Accessory Use & Building
 3155 b. Art Studio or Gallery
 3156 c. Boatyard
 3157 d. Business & Professional Offices
 3158 e. Commercial Fisheries/Maritime Activities (provided only incidental

- 3159 cleaning and cooking of seafood occur at the site)
- 3160 f. Recreation, Commercial Indoor
- 3161 g. Recreation, Commercial Outdoor
- 3162 h. Day Care Facility
- 3163 i. Retail Sales (excluding those with any outdoor sales and/or storage)
- 3164 j. Home occupation, Major
- 3165 k. Home Occupation, Minor
- 3166 l. Inn
- 3167 m. Marina
- 3168 n. Personal Services
- 3169 o. Business Services
- 3170 p. Public Assembly Area
- 3171 q. Public Utility Facility
- 3172 r. Restaurant (with the hours of operation limited to 5:00 a.m. to 11:00 p.m.,
- 3173 but excluding restaurants where ordering and/or pickup of food may take
- 3174 place from a motorized vehicle)
- 3175 s. Commercial School
- 3176 t. Public or Private School
- 3177 u. Public Facility
- 3178 v. Religious Use
- 3179 w. Private Assembly
- 3180 x. Specialty Food and/or Beverage Facility; [Added 6-10-2013 by Ord. No.
- 3181 13-02]
- 3182 y. Theater
- 3183 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL
- 3184 F. Resource Protection Overlay Zone OZ-RP – Mixed-Use – Badger’s Island Zone (MU-BI)
- 3185 (1). Permitted Uses
- 3186 a. Aquaculture
- 3187 b. Recreation, Public Open Space
- 3188 (2). Special Exception Uses
- 3189 a. Accessory Uses & Buildings
- 3190 b. Dwelling, Single-Family
- 3191 c. Home Occupations, Major
- 3192 d. Home Occupations, Minor
- 3193 e. Public Utility Facility
- 3194 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 3195 OZ-RP
- 3196

3197 **16.4.25 Mixed-Use – Kittery Foreside (MU-KF)**

3198 A. Purpose

3199 The purpose of the Mixed-Use – Kittery Foreside MU-KF Zone is to provide
3200 business, service and community functions within the Mixed-Use – Kittery
3201 Foreside Zone and to provide a mix of housing opportunities in the historic
3202 urbanized center of the community and to allow for use patterns which recognize
3203 the densely built-up character of the zone and the limitations for providing off-
3204 street parking. Design standards are used to facilitate the revitalization of
3205 downtown Kittery Foreside as a neighborhood center, while promoting economic
3206 development of service businesses and walk-in shopping as well as respecting the
3207 zone's historic and residential character. [Amended 7-25-2016 by Ord. No. 16-04]

3208 B. Permitted uses

3209 The following uses are permitted in the MU-KF Zone:

- 3210 (1). Accessory Dwelling Units
- 3211 (2). Dwelling, Attached Single-Family
- 3212 (3). Dwellings, Single-family
- 3213 (4). Dwellings, Two-Family
- 3214 (5). Dwellings, Multi-Family (up to 12 units per lot)
- 3215 (6). Convalescent Care Facility
- 3216 (7). Nursing Care Facility, Long-term
- 3217 (8). Residential Care Facility
- 3218 (9). Accessory Use & Building
- 3219 (10). Home Occupation, Major
- 3220 (11). Home Occupation, Minor
- 3221 (12). Inn
- 3222 (13). Hospital
- 3223 (14). Nursery School
- 3224 (15). Private Assembly
- 3225 (16). Public Facility
- 3226 (17). Public or Private School
- 3227 (18). Religious Use
- 3228 (19). Recreation, Public Open Space
- 3229 (20). Commercial Fisheries/Maritime Activities, provided only incidental cleaning and
3230 cooking of seafood occur at the site
- 3231 (21). Commercial School
- 3232 (22). Art Studio or Gallery
- 3233 (23). Business & Professional Offices
- 3234 (24). Business Service
- 3235 (25). Personal Service
- 3236 (26). Public Assembly Area
- 3237 (27). Restaurant
- 3238 (28). Retail Sales (excluding those where the principle activity entails outdoor sales
3239 and/or storage)
- 3240 (29). Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-02]

- 3241 (30). Theater
3242 (31). Marinas
3243 (32). Mass Transit Station
3244 (33). Parking Area

3245 C. Special exception uses

3246 The following uses are permitted as special exception uses in the MU-KF Zone:

- 3247 (1). Public Utility Facility
3248 (2). Research & Development

3249 D. Standards.

3250 [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-11; 7-25-
3251 2016 by Ord. No. 16-04]

3252 (1). The design and performance standards of § 16.7 and 16.8 must be met, except
3253 where specifically altered in this subsection.

3254 (2). Dimensional standards. The following space standards apply:

- 3255 a. Minimum land area per dwelling unit: 5,000 square feet.
3256 b. Minimum lot size: 5,000 square feet.
3257 c. Minimum street frontage: zero feet.
3258 d. Minimum front yard along:
3259 i. Government Street east of Jones Avenue including Lot 107 at the
3260 corner of Government and Walker Streets: zero feet.
3261 ii. Wallingford Square: zero feet.
3262 iii. Other streets: 10 feet.
3263 e. Minimum rear and side yards: 10 feet.
3264 f. Minimum separation distance between principal buildings on the same lot:
3265 10 feet.
3266 g. Maximum building height: 40 feet. (NOTE: Except that for buildings
3267 located on lots that abut tidal waters, the highest point on the primary
3268 structure of the building including the roof, but excluding chimneys,
3269 towers, cupolas and similar appurtenances that have no floor area, may be
3270 not more than 35 feet above the average grade between the highest and
3271 lowest elevations of the original ground level adjacent to the building.)
3272 h. Minimum setback from:
3273 i. Water body and wetland water-dependent uses: zero feet.
3274 ii. All other uses (including buildings and parking): 75 feet unless
3275 modified, according to the terms of Subsection **E** of this section.
3276 i. Maximum building coverage: 60%.
3277 j. Minimum open space on the site: 40%.
3278 k. Minimum land area per unit for elder-care facilities that are connected to
3279 the public sewerage system:
3280 i. Dwelling unit with two or more bedrooms: 3,000 square feet.
3281 ii. Dwelling unit with less than two bedrooms: 2,500 square feet.
3282 iii. Residential care unit: 2,000 square feet.
3283 1. Minimum land area per bed for nursing care and
3284 convalescent care facilities that are connected to the public
3285 sewerage system: 1,500 square feet.

3286 (3). Maximum building footprint. The maximum area of the building footprint of any

3287 new building is 1,500 square feet unless the building is replacing a larger building
3288 that existed on the lot as of April 1, 2005.

- 3289 a. If the footprint of the preexisting building was larger than 1,500 square feet,
3290 the maximum size of the footprint of the new building may be no larger
3291 than the footprint of the preexisting building.
3292 b. If the footprint of the new building is larger than 1,500 square feet, the
3293 width of the new building as measured parallel to the front lot line may not
3294 be greater than the width of the preexisting building.

3295 (4). Design standards.

3296 Any new building or additions or modifications to an existing building that
3297 cumulatively increases the building footprint or building volume by more than
3298 30% after April 1, 2005, or is subject to shoreland overlay zoning as set forth in
3299 § 16.4.28 must conform to the following standards:

3300 NOTE: This requirement does not apply to the replacement of a building
3301 destroyed by accidental or natural causes after April 1, 2005 that is rebuilt
3302 within the preexisting building footprint and that does not increase the
3303 preexisting building volume by more than 30%.

- 3304 a. Placement and orientation of buildings within a lot.
- 3305 i. The placement of buildings on the lot must acknowledge the
3306 uniqueness of the site, the neighboring buildings, and the natural
3307 setting. Existing views and vistas must be preserved in the design of
3308 the site and buildings, and buildings must be placed to frame, rather
3309 than block, vistas.
 - 3310 ii. Buildings and the front elevation must be oriented facing the street
3311 on which the building is located. The siting of buildings on corner
3312 lots must consider the placement of buildings on both streets.
- 3313 b. Overall massing of buildings. The overall massing objective is to simulate a
3314 concentrated use of space in the Foreside Zone while avoiding the use of
3315 large, multiunit buildings. In the interest of this objective, building
3316 footprints must not exceed the maximums set forth within this subsection.
3317 Larger parcels may be developed but will require the use of multiple
3318 buildings with smaller footprints. The smaller scale of the buildings will
3319 allow new projects to fit in with the existing architectural styles of the
3320 Foreside Zone.
- 3321 c. Grouping of smaller buildings. When smaller buildings that are part of one
3322 project are placed adjacent to one another on the same lot or adjacent lots,
3323 each building must have its own structure and elevation treatment that is
3324 different from its neighbor. Small decorative wings may be attached to
3325 larger structures if well integrated into the overall arrangement of shapes.
- 3326 d. Building details. Buildings must include architectural details that reflect the
3327 historic style of the Foreside Zone. Molding and trim must be used to
3328 decorate or finish the surface of buildings and doors. Eaves and overhangs
3329 should be incorporated into the design.
- 3330 e. Roof slopes and shapes.
- 3331 i. Allowable roof shapes include a simple gable, gambrel, saltbox and
3332 hip. The minimum roof pitch must be 8:12 (rise over run), except in
3333 the case of a hip roof, where a lesser pitch is acceptable.
 - 3334 ii. The roof pitch of elements that link buildings or portions of
3335 buildings must be the same or greater than the pitch of the roofs on
3336 the buildings that are being linked.
 - 3337 iii. Flat or nearly flat shed roofs are not allowed except for porches,

- 3338 dormers or attachments distinct from the primary structure or where
3339 systems are concealed by standard roof forms.
- 3340 iv. The roof pitch of additions or wings must be similar to the pitch of
3341 the primary roof. Clusters of buildings must apply the same roof
3342 plan principles to pitch and link roofs.
- 3343 f. Fencing and walls.
- 3344 i. Fencing may be used to separate public and private spaces, mark
3345 property lines, and protect plantings.
- 3346 ii. Fences must harmonize with nearby structures and not unduly
3347 interfere with existing scenic views or vistas.
- 3348 iii. Picket and other medium height fences and low stone walls are
3349 permitted.
- 3350 iv. Modern concrete walls and similar structures are prohibited.
- 3351 v. Chain-link and stockade fences are not appropriate in front yards
3352 and may be used in side and rear yards only if compatible with the
3353 overall design of the site.
- 3354 vi. Waste receptacles, dumpsters, exterior systems, service entrances
3355 and similar areas must be screened with board fences, board and
3356 lattice fences, and/or landscaping.
- 3357 g. Utilities. All utilities serving a new building, including electricity,
3358 telephone, cable, Internet and alarm systems must be placed underground
3359 from the access pole.
- 3360 h. Preservation of trees. Existing large, healthy trees must be preserved if
3361 practical.
- 3362 (5). Signage. Display of signboard and/or products for sale may be placed on a Town
3363 sidewalk only if:
- 3364 a. Products for sale displayed outside the building are limited to an area
3365 extending no greater than two feet from the front facade of the building;
- 3366 b. Signboards and/or products for sale must be removed from the sidewalk at
3367 the close of each business day;
- 3368 c. An annual permit must be obtained from the Code Enforcement Officer.
3369 Permits are issued for a calendar year or portion thereof, to expire
3370 December 31 of each year. Sign permit application fee, reference Appendix
3371 A.
- 3372 (6). Special parking standards.
- 3373 The Kittery Foreside Zone is already largely built up and many buildings either
3374 completely or almost completely cover the lot on which they are located.
3375 Therefore, it is not possible to comply with parking standards which would
3376 otherwise be required for open land. To encourage the reuse of existing
3377 structures as far as practical, the Town establishes special parking standards
3378 and conditions within the zone.
- 3379 (7). Revised off-street parking standards.
- 3380 Insofar as practical, parking requirements are to be met on site unless an
3381 existing building covers so much of the lot as to make the provision of parking
3382 impractical in whole or in part. If meeting the parking requirements is not
3383 practical, then the parking demand may be satisfied off site or through joint-use
3384 agreements as specified herein. Notwithstanding the off-street parking
3385 requirements in § 16.7.11.G(3), minimum parking requirements for the uses
3386 below are modified as specified herein:
- 3387 a. Dwelling units in buildings that existed as of April 1, 2005, including the

- 3388 replacement of units destroyed by accidental or natural causes regardless of
3389 how configured: one parking space per dwelling unit;
- 3390 b. Dwelling units in new buildings, including the replacement of existing
3391 buildings other than the replacement of units destroyed by accidental or
3392 natural causes: 1 1/2 parking spaces per dwelling unit;
- 3393 c. Retail, business office or bank facilities: one parking space for each 400
3394 square feet of gross floor area;
- 3395 d. Professional office: one parking space for each 300 square feet of gross
3396 floor area;
- 3397 e. Inn: one parking space for each guest room;
- 3398 f. Church: none required, if primary use occurs on weekends;
- 3399 g. Restaurants: one parking space for each 100 square feet of gross floor area
3400 used by the public.

3401 NOTE: For each use in the zone, the total parking demand is calculated
3402 using the standards above or in § 16.7.11.G(3), if not modified above. Then
3403 each nonresidential use is exempt from providing off-street parking for the
3404 first three required spaces. For uses requiring a demand of greater than
3405 three, then the off-street parking is to be provided on site and/or in
3406 accordance with Subsection (12) and (13) of this section.

3407 (8). Maximum parking on new impervious surface

3408 Not more than 1 1/2 parking spaces per dwelling unit may be created on new
3409 impervious surface in conjunction with the construction of a new or
3410 replacement building. This restriction does not apply to parking spaces located
3411 within the same building with the dwelling units, to spaces located on
3412 preexisting impervious surface, or to spaces located on a pervious surface such
3413 as parking pavers designed to allow infiltration of precipitation.

3414 (9). Off-site parking

3415 Required off-street parking may be satisfied at off-site locations, provided such
3416 parking is on other property owned by the applicant or is under the terms of a
3417 contractual agreement that will ensure such parking remains available for the
3418 uses served. Applicant must present evidence of a parking location and a
3419 contractual agreement to the Town Board or officer with jurisdiction to review
3420 and approve.

3421 (10). Joint-use parking

3422 Required off-street parking may also be satisfied by the joint use of parking
3423 space by two or more uses if the applicant can show that parking demand is
3424 nonconflicting and will reasonably provide adequate parking for the multiple
3425 uses without parking overflowing into undesignated areas. Nonconflicting
3426 periods may consist of daytime as opposed to evening hours of operation or
3427 weekday as opposed to weekends or seasonal variation in parking demand. In
3428 making this determination under development plan review, the Planning Board
3429 is to consider the following factors:

- 3430 a. Such joint parking areas must be held under ownership of the applicant or
3431 under terms of a contractual agreement that ensures such parking remains
3432 available to all users of the shared parking spaces;
- 3433 b. Analysis is to be based on a most frequent basis not a "worst case" scenario;
- 3434 c. Joint use parking areas must be located within reasonable distance to the
3435 use served, but do not need to be located on the same lot as the uses served;
- 3436 d. Ease and safety of pedestrian access to shared parking by the users served,
3437 including any improvements or shuttle service necessary;

- 3438 e. Such joint parking areas must not be located in residential zones of the
- 3439 Town. The Planning Board must make a final determination of the joint-use
- 3440 and/or off-site parking spaces that constitute an acceptable combination of
- 3441 spaces to meet the required parking demand

3442 E. Shoreland Overlay Zone OZ-SL – Mixed-Use – Kittery Foreside Zone (MU-KF)

- 3443 (1). Permitted uses
- 3444 a. Recreation, Public Open Space
- 3445 b. Dwellings if located 75 feet or farther from the normal high-water line of
- 3446 any water bodies, or the upland edge of a wetland.
- 3447 (2). Special exception uses
- 3448 a. Art Studio or Gallery
- 3449 b. Business & Professional Offices
- 3450 c. Commercial Fisheries/Maritime Activities, provided only incidental
- 3451 cleaning and cooking of seafood occur at the site
- 3452 d. Parking Area
- 3453 e. Home Occupation, Major
- 3454 f. Home Occupation, Minor
- 3455 g. Inn
- 3456 h. Marinas
- 3457 i. Personal Services
- 3458 j. Business Services
- 3459 k. Public Assembly Area
- 3460 l. Public Utility Facility
- 3461 m. Research & Development;
- 3462 n. Restaurant, coffee shop, bakery, cafes and similar food service operations,
- 3463 but excluding drive-in facilities;
- 3464 o. Retail Sales, excluding those where the principal activity entails outdoor
- 3465 sales and/or storage
- 3466 p. Mass Transit Station
- 3467 q. Specialty Food and/or Beverage Facility [Added 6-10-2013 by Ord. No. 13-
- 3468 02]
- 3469 r. Theater
- 3470 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

3471 F. Resource Protection Overlay Zone OZ-RP – Mized Use – Kittery Foreside Zone (MU-KF)

3472 [Amended 9-26-2011 by Ord. No. 11-15]

- 3473 (1). Permitted Uses
- 3474 a. Recreation, Public Open Space
- 3475 (2). Special Exception Uses
- 3476 a. Accessory Use & Buildings
- 3477 b. Dwelling, Single-Family
- 3478 c. Home Occupation, Major
- 3479 d. Home Occupation, Minor
- 3480 e. Public Utility Facility
- 3481 (3). See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone
- 3482 OZ-RP

3483 **16.4.26 Mixed-Use-Neighborhood MU-N**

3484 [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-10; 6-10-
3485 2013 by Ord. No. 13-02; 9-28-2015 by Ord. No. 15-05; 11-26-2018 by Ord.
3486 No. 10-18]

3487 A. Purpose

3488 To encourage higher density, mixed-use development that provides increased
3489 housing opportunities and a desirable setting for business while balancing such
3490 increased development with environmentally conscious and ecologically sensitive
3491 use of land.

3492 B. Permitted Uses

- 3493 (1). Dwelling, Attached Single-Family
3494 (2). Dwelling, Multi-Family
3495 (3). Dwelling, Multi-Family (units on the upper floors of a mixed-use building that is
3496 served by public sewer)
3497 (4). Convalescent Care Facility
3498 (5). Nursing Care Facility, Long-term
3499 (6). Residential Care Facility (attached dwelling units only)
3500 (7). Accessory Use & Building
3501 (8). Home Occupation, Major
3502 (9). Home Occupation, Minor
3503 (10). Hotel
3504 (11). Inn
3505 (12). Day Care Facility
3506 (13). Elderly Day Care Facility
3507 (14). Hospital
3508 (15). Public Utility Facility
3509 (16). Recreation, Passive
3510 (17). Recreation, Public Open Space
3511 (18). Recreation, Commercial Indoor (except shooting and archery ranges)
3512 (19). Recreation, Commercial Outdoor (except shooting and archery ranges)
3513 (20). Veterinary Hospital
3514 (21). Art Studio or Gallery
3515 (22). Business & Professional Offices
3516 (23). Business Services
3517 (24). Conference Center
3518 (25). Personal Services
3519 (26). Repair Service
3520 (27). Research & Development
3521 (28). Restaurant
3522 (29). Retail Sales (not to exceed 30,000 square feet in gross floor area unless part of a
3523 mixed-use building)
3524 (30). Retail Sales, Convenience (excluding the sale of gasoline)
3525 (31). Shops in Pursuit of Trade
3526 (32). Specialty Food and/or Beverage Facility

- 3527 (33). Theater
3528 (34). Manufacturing Operations, Light (less than or equal to 20,000 square feet in gross
3529 floor area)
3530 (35). Liner Buildings (as part of a mixed-use building)

3531 C. Special exception uses

- 3532 (1). Commercial Kennel
3533 (2). Parking Area
3534 (3). Construction Services
3535 (4). Equipment sales and rentals (only on lots with frontage on Route 236)
3536 (5). Gas service station (only on lots with frontage on Route 236)
3537 (6). Manufacturing Operations, Light (greater than 20,000 square feet in gross floor
3538 area)
3539 (7). Mass Transit Station
3540 (8). Mechanical Services
3541 (9). New Motor Vehicle Sales (only on lots with frontage on Route 236)
3542 (10). Used Car Lot (only on lots with frontage on Route 236)
3543 (11). Repair Garage (only on lots with frontage on Route 236)
3544 (12). Retail Sales (greater than 30,000 square feet in gross floor area and less than
3545 50,000 square feet in gross floor area)
3546 (13). Undefined use; additional commercial/business uses not defined by § 16.3.
3547 a. Undefined uses: will be considered by the Planning Board based on the
3548 following criteria:
3549 i. If the use is consistent with the Comprehensive Plan and zoning
3550 district purposes; and
3551 ii. If the use meets special exception criteria found in § 16.2.12.D.(2)d
3552 b. In addition, the undefined use must meet one or both of the following
3553 criteria:
3554 i. If the proposed use has substantially similar impacts as a listed use.
3555 ii. If the proposed use is compatible with existing uses within the
3556 zoning district for which it is proposed.

3557 D. Standards.

3558 All development and the use of land in the MU-N Zone must meet the following
3559 standards. Kittery's Design Handbook illustrates how these standards can be met.
3560 In addition, the design and performance standards of § 16.7 and 16.8 must be met
3561 unless noted otherwise below.

- 3562 (1). All submissions must include a lighting plan. Hours of operation and number of
3563 employees for businesses must also be provided.
3564 (2). The following space standards apply:
3565 a. Minimum land area per dwelling unit - mixed-use building: 4,000 square
3566 feet for first residential unit plus 3,000 square feet for each additional unit,
3567 no minimum land area for business or commercial uses when combined in a
3568 building with residential uses except that the total lot size must be at least
3569 20,000 square feet.
3570 [1] NOTE: ADA-compliant units may be located on the first floor through a
3571 special exception permit by the Planning Board but only 50% of the first
3572 floor may be such ADA-compliant residential units.
3573 b. Minimum land area per dwelling unit - multiunit residential: 4,000 square

- 3574 feet for first unit, plus 2,500 square feet for each additional unit up to 16
 3575 units per acre of lot size. Total lot size must be a minimum of 20,000 square
 3576 feet.
- 3577 c. Mixed-use or multiunit residential buildings which encompass at least 50%
 3578 of required parking within the building: Two additional residential units
 3579 may be added to each story above the parking with no additional land area
 3580 required.
 - 3581 d. Mixed-use buildings which encompass at least 50% of required parking
 3582 within the building and include a liner building for nonresidential uses
 3583 buffering parking from the street: One additional residential unit may be
 3584 added to each story with no additional land area required.
 - 3585 e. Minimum land area per bed for long-term nursing care and convalescent
 3586 care facilities that are connected to public sewer: 2,000 square feet.
 - 3587 f. Minimum land area per residential unit for eldercare facilities that are
 3588 connected to public sewer: 3,000 square feet.
 - 3589 g. Minimum lot size: 20,000 square feet.
 - 3590 h. Minimum street frontage: 75 feet.
 - 3591 i. Minimum front setback on Route 236: 30 feet.
 - 3592 j. Minimum front setback on Dennett Road: 50 feet.
 - 3593 k. Minimum front setback on Martin Road: 100 feet.
 - 3594 l. Maximum front setback all other roads: 20 feet.
 - 3595 m. Spacing between buildings: 15 feet.*
 - 3596 n. Maximum rear and side setbacks: 20 feet.**

3597 [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)

- 3598 o. Maximum building height: 50 feet (exclusive of solar apparatus).
 - 3599 p. Maximum impervious and outdoor stored material coverage: 70%.
- 3600 [1] NOTE: With Best Management Practices (BMPs) and Low Impact
 3601 Development Practices (LIDs) as defined in § 16.3 and based on Maine DEP's
 3602 Maine Stormwater Best Management Practices Manual, Volumes I - III, as
 3603 amended from time to time, incorporated in site design, otherwise 60%.
 3604 Maximum on-site stormwater infiltration is the desired and measurable
 3605 outcome.
- 3606 q. Minimum setback from streams, water bodies and wetlands in accordance
 3607 with Table 16.5.28.

3608 [1] NOTES:

- 3609 i. With Best Management Practices (BMPs) and Low Impact
 3610 Development Practices (LIDs) as defined in § 16.3 and based on
 3611 Maine DEP's Maine Stormwater Best Management Practices
 3612 Manual, Volumes I - III, as amended from time to time,
 3613 incorporated in site design, then wetland setbacks pursuant only to
 3614 Maine Department of Environmental Protection (MDEP) Rules
 3615 Chapters 305 and 310.
- 3616 ii. Without Best Management Practices (BMPs) and Low Impact
 3617 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 16.5.28.

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 § 16.7.11G(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.

- 3669 ii. One and one-half parking spaces for two-bedroom dwelling units
3670 plus one guest parking space per every four dwelling units.
3671 iii. Parking spaces for more-than-two-bedroom dwelling units.
3672 (4). Loading docks, overhead doors, service areas and outdoor storage areas.
3673 a. Loading docks and overhead doors must be located on the rear or side of
3674 the building. Loading docks must be screened from view by adjacent
3675 residential uses. This screening must consist of the following:
3676 i. A fence, constructed of a material similar to surrounding buildings,
3677 of sufficient height as determined by the Planning Board to
3678 accomplish the screening. No fence may be less than six feet tall.
3679 b. All service areas for dumpsters, compressors, generators and similar items
3680 as well as any outdoor storage areas must be screened by a fence at least six
3681 feet tall, constructed of a material similar to surrounding buildings, and
3682 must surround the service or storage area except for the necessary
3683 ingress/egress.
3684 (5). Site design
3685 Site design and building placement must be attentive to the surrounding
3686 environment including sun, wind and shade patterns related to proposed and
3687 existing buildings. A sun/shade analysis may be required by the Planning
3688 Board.
3689 (6). Energy and sustainability
3690 Energy efficiency is allowed and encouraged through the use of solar power,
3691 geothermal, and other alternative and sustainable power sources.
3692 (7). Building design standards.
3693 a. New buildings must meet the general design principles set forth in the
3694 Design Handbook except as noted below. In general, buildings should be
3695 oriented to the street from which they derive frontage, with the front of the
3696 building facing the street. The front facade must contain the following:
3697 i. A front door for pedestrian access.
3698 ii. Windows.
3699 b. Flat roofs, proposed to locate heating, cooling, or other such mechanical or
3700 electrical apparatus off the ground, are acceptable provided that such
3701 apparatus are screened from view and the screening is designed as an
3702 integral part of the building to aid both aesthetics and noise attenuation. Flat
3703 roofs proposed for the purpose of solar array installations are also
3704 acceptable.
3705 (8). Landscaping, screening and buffers.
3706 a. A landscape plan prepared by a registered landscape architect is a
3707 submission requirement. However, a landscape plan done by other design
3708 professionals may be allowed at the Planning Board's discretion.
3709 b. Native trees, shrubs and herbaceous plantings are preferred and must be
3710 drought and salt tolerant when used along streets. A diversity of tree species
3711 (three to five species per every 12 trees) is required to provide greater
3712 resiliency to threats from introduced insect pests and diseases.
3713 c. Any required plantings approved by the Planning Board that do not survive
3714 must be replaced within one year.
3715 d. Landscaping along the street frontage of each building must consist of one
3716 of the following:
3717 i. Street trees. A minimum of one street tree must be planted for each
3718 20 feet of street frontage. Trees may be planted in groups or spaced

- 3719 along the frontage. However, trees must be planted to ensure
3720 survival, using silva cells, bioretention cells or tree wells. Trees are
3721 to be a minimum of 2.5-inch caliper and 12 feet high at the time of
3722 planting. Existing large healthy trees must be preserved if practical
3723 and will count towards this requirement.
- 3724 ii. Pocket park. The park must be at least 200 square feet. A minimum
3725 of three trees and a bench for sitting are required. Park must be
3726 vegetated with ground cover except for walkways.
- 3727 e. Surface parking areas that abut a street must provide screening in one of the
3728 following ways:
- 3729 i. One tree per 25 feet of street frontage backed by a fence constructed
3730 of a material similar to surrounding buildings which must screen the
3731 parking area from the street except for necessary vehicular and
3732 pedestrian access. Trees must be at least 2.5-inch caliper and 12 feet
3733 high at the time of planting.
- 3734 ii. A combination of trees and shrubs including at least 50% evergreen
3735 species, all at least six feet high at time of planting, in a planting bed
3736 at least eight feet wide. Plantings must be sufficient, as determined
3737 by the Planning Board, to screen the parking area from the street
3738 except for necessary vehicular and pedestrian access. Planting beds
3739 may be mulched but no orange- or red-dyed mulching material may
3740 be used.
- 3741 1. A minimum of 10% of any surface parking area consisting
3742 of 10 or more parking spaces must be landscaped with trees
3743 and vegetated islands. This requirement is in addition to the
3744 screening requirements in Subsection WW(12)(c)[2] if the
3745 parking area abuts a street. Bioretention cells and rain
3746 gardens may be utilized to meet the landscaping
3747 requirements and perform stormwater management.
- 3748 2. Buffers required between residential uses and mixed use or
3749 nonresidential uses, and between adjacent residential zones
3750 and this zone must be 50 feet wide and consist of one of the
3751 following as determined by the Planning Board:
- 3752 iii. Existing natural woodland and vegetation.
- 3753 iv. Existing natural woodland augmented by the planting of additional
3754 trees consisting of a variety of species at least 2.5-inch caliper and
3755 12 feet high.
- 3756 v. A fence at least six feet high, constructed of material similar to
3757 surrounding buildings, with plantings of trees and shrubs at least six
3758 feet tall on either side of the fence.
- 3759 (9). Open space
- 3760 Open space must be provided as a percentage of the total parcel area including
3761 freshwater wetlands, water bodies, streams and setbacks. Required open space
3762 must be shown on the site plan with a note dedicating it as open space. The
3763 open space must be situated to protect significant natural features and
3764 resources, minimize environmental impacts and promote an aesthetically
3765 pleasing site.
- 3766 a. Wherever possible, large healthy trees and areas with mature tree cover
3767 must be included in the open space.
- 3768 b. Location of open space must promote the continuity of open-space
3769 networks across adjacent parcels.

- 3770 c. Where possible, open space and open-space networks must include public
3771 trails and low-intensity recreational opportunities.
- 3772 (10). Special situations
- 3773 Expansions or modifications of 1,000 square feet or less to existing uses are
3774 exempt from landscaping, screening and buffer requirements.
- 3775 (11). Conditions for approving special exception uses in the Neighborhood Mixed-Use
3776 Zone.
- 3777 All applications must include a narrative describing why the use proposed will
3778 promote the general welfare (specifics may be found in § 6.3 Definitions for
3779 special exception) of the Town of Kittery, how the use proposed will meet the
3780 special exception criteria found in § 16.2.12.D and how the proposed
3781 development will adapt and relate to the natural environmental conditions
3782 found on the site.
- 3783

3784 **16.4.27 Transportation – Maine Turnpike T-MT**

3785 A. Purpose

3786 The purpose of the Transportation – Maine Turnpike Zone (T-MT) is to provide for
3787 the safe, effective, efficient and environmentally compatible use of the right-of-
3788 way owned and operated by the Maine Department of Transportation and the
3789 Maine Turnpike Authority as authorized by the state, as well as for safe and
3790 environmentally compatible buffering for the adjacent land uses along the right-of-
3791 way.

3792 B. Permitted uses: Permitted and special exception land uses include the highway,
3793 information center and other uses as authorized by the state.

3794 C. Special exception uses: none.

3795 D. Standards.

3796 (1). The design and performance standards of § 16.7 and 16.8 and the Shoreland and
3797 Resource Protection Overlay Zones, where applicable.

3798 (2). Dimensional standards.

3799 a. Minimum land area per dwelling unit: not applicable.

3800 b. Minimum lot size: not applicable.

3801 c. Minimum street frontage: not applicable.

3802 d. Minimum front yard: not applicable.

3803 e. Maximum building coverage: not applicable.

3804 f. Minimum rear and side yards: not applicable.

3805 g. Maximum building height: 35 feet.

3806 h. Minimum distance between principal buildings on the same lot: not
3807 applicable.

3808 i. Minimum setback from water bodies and wetlands: not applicable.

3809 E. Shoreland Overlay Zone OZ-SL – Transportation – Maine Turnpike (T-MT)

3810 [Amended 9-26-2011 by Ord. No. 11-15]

3811 (1). Permitted uses: Permitted and special exception land uses include the highway,
3812 information center and other uses as authorized by the state.

3813 (2). Special Exceptions: None.

3814 (3). See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

3815 F. Resource Protection Overlay Zone OZ-RP – Transportation – Maine Turnpike (T-MT)

3816 (1). Permitted Uses.

3817 a. Permitted and special exception land uses include the highway, information
3818 center and other uses as authorized by the state.

3819 b. Special Exception uses: none.

3820

3821 **16.4.28 Shoreland Overlay Zone OZ-SL**

3822 A. Purposes

3823 The purpose of the Shoreland Overlay Zone OZ-SL is to further the maintenance of
3824 safe and healthful conditions; to prevent and control water pollution; to protect fish
3825 spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings
3826 and lands from flooding and accelerated erosion; to protect archaeological and
3827 historic resources, to protect commercial fishing and maritime industries; to protect
3828 freshwater and coastal wetlands; to control building sites, placement of structures
3829 and land uses; to conserve shore cover and visual as well as actual points of access
3830 to inland and coastal waters; to conserve natural beauty and open space; and to
3831 anticipate and respond to the impacts of development in shoreland areas.

3832 B. Authority

3833 These provisions have been prepared in accordance with the provisions of 38
3834 M.R.S. §§ 435 to 449.

3835 C. Applicability and boundaries

3836 The provisions of this section apply to all uses, lots and structures within the
3837 following:

- 3838 (1). Shoreland Overlay Zone – Water Body/Wetland Protection Area 250 feet (OZ-SL-
3839 250 feet): Land areas within 250 feet, horizontal distance, of the:
- 3840 a. Normal high-water line of any river or saltwater body.
 - 3841 b. Upland edge of a coastal wetland, including all areas affected by tidal
3842 action.
 - 3843 c. Land edge of a fresh water wetland connecting to a protected stream as
3844 identified on the Zoning Map.
- 3845 (2). Shoreland Overlay Zone – Stream Protection Area 75 feet (OZ-SL-75 feet): Land
3846 areas within 75 feet, horizontal distance, of the normal high-water line of a stream,
3847 exclusive of those areas within 250 feet horizontal distance of the normal high-
3848 water line of a river or within 250 feet horizontal distance of the upland edge of a
3849 freshwater or coastal wetland. [Amended 9-26-2011 by Ord. No. 11-15]
- 3850 a. However, where a stream and its associated Shoreland Overlay Zone area
3851 are located within 250 feet, horizontal distance, of the above water bodies
3852 or wetlands, that land area will be regulated under the provisions of the
3853 Shoreland Overlay Zone associated with that water body or wetland.
 - 3854 b. Where uncertainty exists as to the exact location of the Shoreland Overlay
3855 Zone boundary, the Planning Board, with expert consultation as may be
3856 required, is the final authority as to location.

3857 D. Permitted and special exception land use

3858 The permitted and special exception uses in the Shoreland Overlay Zone section
3859 are allowed in accordance with the land use standards established in the underlying
3860 base zone in this chapter and land uses identified by the Mandatory Shoreland
3861 Zoning Act, 38 M.R.S. §§ 435 to 449.

3862 E. Standards

3863 [Amended 1-28-2015 by Ord. No. 15-01; 7-25-2016 by Ord. No. 16-03]

3864 (1). Minimum lot standards

3865 a. Minimum lot size by base zone, within the:

- 3866 i. Residential-Village (R-V) Zone: 8,000 square feet.

- 3867 ii. Residential-Urban (R-U) Zone: 20,000 square feet.
- 3868 iii. Residential-Rural (R-RL), Residential-Suburban (R-S) and
- 3869 Residential-Kittery Point Village (R-KPV) Zones: 40,000 square
- 3870 feet.
- 3871 iv. Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-
- 3872 L) and Business-Local 1 (B-L1) Zones: 60,000 square feet.
- 3873 v. Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.
- 3874 vi. Business-Park (B-PK) Zone: 120,000 square feet.
- 3875 vii. Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.
- 3876 viii. Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square
- 3877 feet.
- 3878 b. Minimum land area per dwelling unit by base zone, within the:
- 3879 i. Residential-Village (R-V) Zone: 8,000 square feet.
- 3880 ii. Business-Park (B-PK) Zone: 10,000 square feet.
- 3881 iii. Residential-Urban (R-U), Business-Local (B-L) and Business-Local
- 3882 1 (B-L1) Zones: 20,000 square feet.
- 3883 iv. Mixed-Use (M-U), Residential-Rural (R-RL), Residential-Suburban
- 3884 (R-S) and Residential-Kittery Point Village (R-KPV) Zones: 40,000
- 3885 square feet.
- 3886 v. Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.
- 3887 vi. Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.
- 3888 [NOTE: 3,000 square feet for the first two dwelling units.]
- 3889 vii. Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.
- 3890 c. Minimum shore frontage by base zone per lot and dwelling unit.
- 3891 i. Mixed Use-Badgers Island (MU-BI): 25 feet.
- 3892 ii. Residential-Village (R-V), Residential Urban (R-U), and Mixed-Use
- 3893 Kittery Foreside (MU-KF) Zones: 50 feet.
- 3894 iii. Mixed-Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND),
- 3895 Business-Park (B-PK), Business-Local (B-L) and Business-Local 1
- 3896 (B-L1) Zones:
- 3897 1. Shore frontage per lot: 150 feet.
- 3898 2. Shore frontage per dwelling unit: 50 feet.
- 3899 iv. Residential-Rural (R-RL), Residential-Suburban (R-S), and
- 3900 Residential-Kittery Point Village (R-KPV) Zones:
- 3901 1. Shore frontage per lot: 150 feet.
- 3902 2. Shore frontage per dwelling unit: 100 feet.
- 3903 v. Residential-Rural Conservation (R-RLC) Zone (per lot and dwelling
- 3904 unit): 250 feet.
- 3905 vi. The minimum shore frontage requirement for public and private
- 3906 recreational facilities is the same as that for residential development
- 3907 in the respective zone.
- 3908 (2). The total footprint of devegetated area must not exceed 20% of the lot area located
- 3909 within the Shoreland Overlay Zone, except in the following zones:
- 3910 a. Mixed-Use – Badgers Island (MU-BI) and Mixed-Use – Kittery Foreside
- 3911 (MU-KF) Zones, where the maximum devegetated area is 60%. The Board
- 3912 of Appeals may approve a miscellaneous appeal application to increase
- 3913 allowable devegetated area in the Mixed-Use – Badgers Island (MU-B1)
- 3914 Zone to 70% where it is clearly demonstrated that no practicable alternative

- 3915 exists to accommodate a water-dependent use.
- 3916 b. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1) and
- 3917 Industrial (IND) Zones where the maximum devegetated area is 70%.
- 3918 c. Residential – Urban (R-U) Zone where the lot is equal to or less than
- 3919 10,000 square feet, the maximum devegetated area is 50%.
- 3920 (3). Principal and accessory structures — setbacks and development
- 3921 a. All new principal and accessory structures [except certain patios and decks
- 3922 per § 16.4.28(5)b.ii)] must be set back at least 100 feet, horizontal distance,
- 3923 from the normal high-water line of any water bodies, tributary streams, the
- 3924 upland edge of a coastal wetland, or the upland edge of a freshwater
- 3925 wetland, with the following exceptions:
- 3926 i. In the Mixed Use – Badgers Island and Kittery Foreside Zones, the
- 3927 setback requirement is 75 feet, horizontal distance, from the normal
- 3928 high-water line of any water bodies, or the upland edge of a
- 3929 wetland, unless modified according to the terms of
- 3930 §§ 16.4.10.QQ.(4) through (7) and 16.4.10.TT.(4).
- 3931 ii. In the Resource Protection Overlay Zone, the setback requirement is
- 3932 250 feet, horizontal distance, except for structures, roads, parking
- 3933 spaces or other regulated objects specifically allowed in the zone, in
- 3934 which case the setback requirements specified above apply.
- 3935 iii. The water body, tributary stream, or wetland setbacks do not apply
- 3936 to structures that require direct access to the water body or wetland
- 3937 as an operational necessity, such as piers and retaining walls, nor do
- 3938 they apply to other functionally water-dependent uses, as defined in
- 3939 § 16.3.
- 3940 b. Accessory patios or decks no larger than 500 square feet in area must be set
- 3941 back at least 75 feet from the normal high-water line of any water bodies,
- 3942 tributary streams, the upland edge of a coastal wetland, or the upland edge
- 3943 of a freshwater wetland. Other patios and decks must satisfy the normal
- 3944 setback required for principal structures in the Shoreland Overlay Zone.
- 3945 c. If there is a bluff, setback measurements for principal structures, water and
- 3946 wetland must be taken from the top of a coastal bluff that has been
- 3947 identified on coastal bluff maps as being "highly unstable" or "unstable" by
- 3948 the Maine Geological Survey pursuant to its "Classification of Coastal
- 3949 Bluffs" and published on the most recent Coastal Bluff Map. If the
- 3950 applicant and Code Enforcement Officer are in disagreement as to the
- 3951 specific location of a "highly unstable" or "unstable" bluff, or where the top
- 3952 of the bluff is located, the applicant is responsible for the employment of a
- 3953 Maine-registered professional engineer, a Maine-certified soil scientist, or a
- 3954 Maine state geologist qualified to make a determination. If agreement is
- 3955 still not reached, the applicant may appeal the matter to the Board of
- 3956 Appeals.
- 3957 d. Public access to the waterfront must be discouraged through the use of
- 3958 visually compatible fencing and/or landscape barriers where parking lots,
- 3959 driveways or pedestrian routes abut the protective buffer. The planting or
- 3960 retention of thorny shrubs, such as wild rose or raspberry plants, or dense
- 3961 shrubbery along the perimeter of the protective buffer is encouraged as a
- 3962 landscape barrier. If hedges are used as an element of a landscape barrier,
- 3963 they must form a solid continuous visual screen of at least three feet in
- 3964 height immediately upon planting.
- 3965 e. On a nonconforming lot of record on which only a residential structure

3966 exists, and it is not possible to place an accessory structure meeting the
3967 required water body, tributary stream or wetland setbacks, the Code
3968 Enforcement Officer may issue a permit to place a single accessory
3969 structure, with no utilities, for the storage of yard tools and similar
3970 equipment. Such accessory structure must not exceed 80 square feet in area
3971 nor eight feet in height and must be located as far from the shoreline or
3972 tributary stream as practical and meet all other applicable standards,
3973 including lot coverage and vegetation clearing limitations. In no case will
3974 the structure be allowed to be situated closer to the shoreline or tributary
3975 stream than the existing principal structure.

3976 f. The lowest floor elevation or openings of all buildings and structures,
3977 including basements, must be elevated at least one foot above the elevation
3978 of the one-hundred-year flood, the flood of record or, in the absence of
3979 these, the flood as defined by soil types identified as recent floodplain soils.

3980 g. Stairways or similar structures may be allowed with a permit from the Code
3981 Enforcement Officer to provide shoreline access in areas of steep slopes or
3982 unstable soils, provided the:

3983 i. Structure is limited to a maximum of four feet in width;

3984 1. Structure does not extend below or over the normal high-
3985 water line of a water body or upland edge of a wetland
3986 (unless permitted by the Department of Environmental
3987 Protection pursuant to the Natural Resources Protection Act,
3988 38 M.R.S. § 480-C); and

3989 ii. Applicant demonstrates that no reasonable access alternative exists
3990 on the property.

3991 h. If more than one dwelling unit, principal governmental, institutional,
3992 commercial or industrial structure or use, or combination thereof, is
3993 constructed or established on a single parcel in the Shoreland Overlay Zone,
3994 all dimensional requirements shall be met for each additional dwelling unit,
3995 principal structure, or use.

3996

3997 **16.4.29 Resource Protection Overlay Zone OZ-RP**

3998 A. Purpose

3999 The purposes of this zone are to further the maintenance of safe and healthful
4000 conditions; prevent and control potential water pollution sources; protect spawning
4001 grounds, fish, aquatic life, bird and other wildlife habitat; and conserve shore
4002 cover, visual as well as actual point of access to inland and coastal waters, and
4003 natural beauty.

4004 B. Authority

4005 These provisions have been prepared in accordance with the provisions of 38
4006 M.R.S. §§ 435 to 449.

4007 C. Applicability and boundaries

4008 The provisions of this section apply to all uses, lots and structures within areas
4009 where the existing conservation and accessory development is consistent with the
4010 allowed uses for this zone. The Resource Protection Overlay Zone includes areas
4011 where development would adversely affect water quality, productive habitat,
4012 biological ecosystems, or scenic and natural values. This includes the following
4013 areas when they also occur within the limits of the Shoreland Overlay Zone,
4014 exclusive of a stream protection area, except currently developed areas and areas
4015 that meet the criteria for commercial fisheries/maritime uses:

- 4016 (1). Waterfowl and wading bird habitat/water body related wetland areas. Land areas
4017 within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt
4018 marshes and salt meadows, and wetlands associated with rivers which are rated
4019 "moderate" or "high" value waterfowl and wading bird habitat, including nesting
4020 and feeding areas as identified as of December 31, 2008, and salt marshes and salt
4021 meadows as identified as of January 1, 1973, by the Maine Department of Inland
4022 Fisheries and Wildlife (MDIF&W). For the purposes of this section "wetlands
4023 associated with rivers" means: areas characterized by nonforested wetland
4024 vegetation and hydric soils that are contiguous with a river and have a surface
4025 elevation at or below the water level of the river during the period of normal high
4026 water. "Wetlands associated with rivers" are considered to be part of that river.
- 4027 (2). Steep slope areas.
- 4028 a. Land areas that have two or more contiguous acres of land where the slopes
4029 are 20% or greater; and
 - 4030 b. Land areas along rivers subject to severe bank erosion, undercutting or
4031 riverbed movement; and
 - 4032 c. Land adjacent to tidal waters which are subject to severe erosion or mass
4033 movement, such as steep coastal bluffs.
- 4034 (3). Independent wetland areas. Land areas of two or more contiguous acres supporting
4035 wetland vegetation and hydric soils which are not part of a freshwater or coastal
4036 wetland as defined and which are not surficially connected to a water body during
4037 the period of normal high water.
- 4038 (4). Floodplain areas. This includes areas along rivers, areas adjacent to tidal waters,
4039 and other areas susceptible to flooding as defined as being located within the one-
4040 hundred-year floodplain as designated on the FEMA Flood Insurance Rate Maps or
4041 Flood Hazard Boundary Maps, or the flood of record or, in the absence of these, by
4042 soil types identified as recent floodplain soils.

4043 D. Standards

- 4044 (1). The design and performance standards of § 16.7 and 16.8 and Shoreland Overlay
16.4 Land Use Zones Regulations - Page 94 of 96

- 4045 Zone provisions of § 16.4.28 apply, where applicable, in addition to the following
4046 standards, whichever is the most restrictive.
- 4047 (2). Dimensional standards such as front, side and rear yards, building coverage, height
4048 and the like are the same as those in the underlying zone.
- 4049 (3). Road construction and parking facilities are allowed in the Resource Protection
4050 Overlay Zone only where no reasonable alternative route or location is available
4051 outside the Resource Protection Overlay Zone, in which case a permit or site plan
4052 or subdivision plan approval is required by the Planning Board.
- 4053 (4). Clearing or removal of vegetation for uses, other than timber harvesting as limited
4054 per § 16.5.27, in a Resource Protection Overlay Zone, is prohibited within the strip
4055 of land extending 100 feet, horizontal distance, inland from the normal high-water
4056 line, except to remove safety hazards. Elsewhere in a Resource Protection Overlay
4057 Zone, the cutting or removal of vegetation is limited to that which is necessary for
4058 uses expressly authorized in the Resource Protection Overlay Zone.
- 4059

4060 **16.4.30 Commercial Fisheries/Maritime Activities Overlay Zone OZ-CFMU**

4061 A. Purpose

4062 The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is to
4063 provide for the development and expansion of water-dependent commercial
4064 fisheries/maritime activities. Commercial fisheries/maritime activities and other
4065 areas suitable for functionally water-dependent uses, considers:

- 4066 (1). Shelter from prevailing winds and waves;
4067 (2). Slope of the land within 250 feet, horizontal distance, of the normal high-water
4068 line;
4069 (3). Depth of the water within 150 feet, horizontal distance, of the shoreline;
4070 (4). Available support facilities, including utilities and transportation facilities; and
4071 (5). Compatibility with adjacent upland uses.

4072 B. Authority

4073 These provisions have been prepared in accordance with the provisions of 38
4074 M.R.S. §§ 435 to 449.

4075 C. Applicability and boundaries

4076 The provisions of this section apply to all uses, lots and structures within areas
4077 where the existing predominant pattern of development is consistent with the
4078 allowed uses for this overlay zone, where consistent with dimensional requirements
4079 of the underlying base zone, and where the active use of lands, buildings, wharves,
4080 piers, floats or landings with the principal intent of such activity is the production
4081 of income by an individual or legal business entity through the operation of a
4082 vessel(s) as shown on the Zoning Map. The activity may be either a principal or
4083 accessory use, as defined in this title.

4084 D. Permitted uses: Functionally water-dependent Commercial Fisheries/Marine Activities.

4085 E. Special exception uses: none

4086 F. Standards. Dimensional standards of the underlying base and overlay zone(s).

4087 G. Prohibited uses. All permitted uses in the base zones, including R-KPV, R-U, R-S, IND
4088 and MU-KF, except as permitted herein.

4089

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33
34

35

16.5.1 General

The purpose of this chapter is to outline development design and performance standards to ensure public health, safety and welfare.

16.5.2 Abutter Notice

A. Purpose.

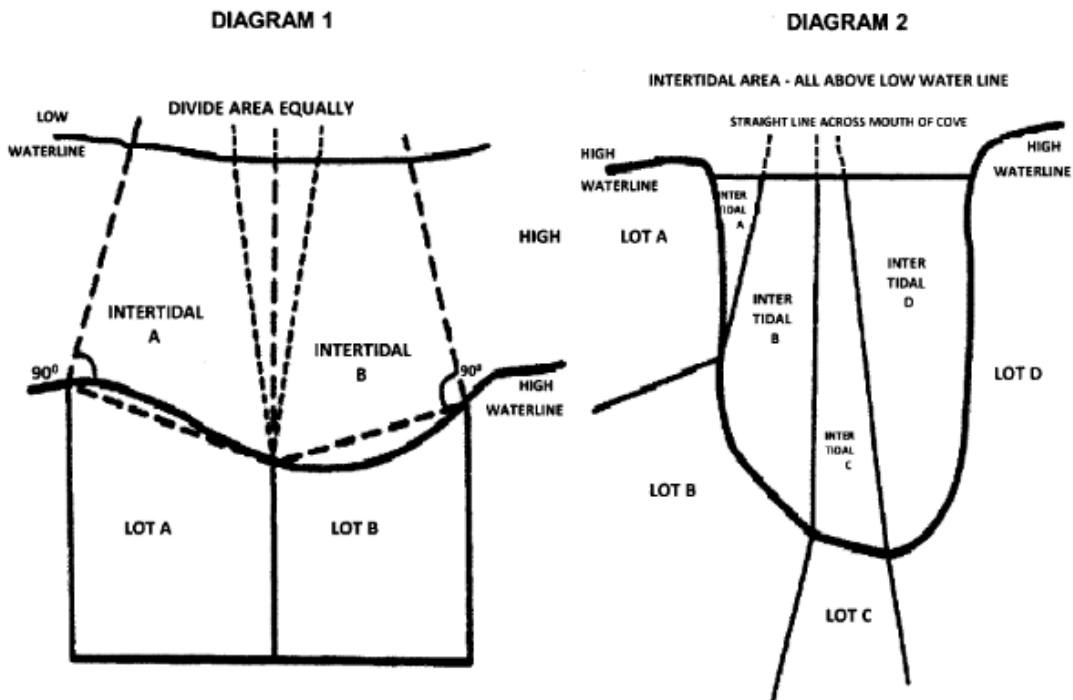
It is the intent of this article to impose standards to identify abutting property owners who must be notified in writing when new development or redevelopment is proposed within 150 feet of their property boundary(ies).

B. Applicability.

(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.

(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.

Figure 1. Formula for Determining Ownership of Intertidal Land as a Guide for Identifying Abutters



- 62 (3) For a wireless communication system facility (WCSF) plan application, the Town Planner
63 must cause written notice of the hearing sent by postage paid, first-class mail, provided by
64 the applicant, at least seven days prior to the hearing to all owners of abutting property and
65 property located within 1,000 feet of any property line of the property located within 1,000
66 feet of the proposed telecommunications facility. The applicant must provide this
67 notification and must present proof of such notification to the Town Planner. The
68 notification must include: the name of the applicant, location of the property, a brief
69 description of the project, and a plot plan identifying the proposed site layout in relation to
70 nearby streets and properties.

71 **16.5.3 Accessory Dwelling Units**

72 [Amended 9-26-2011 by Ord. No. 11-15; 10-28-2019 by Ord. No. 19-09]

73 A. Purpose.

74 It is the intent of this article to provide standards that enable homeowners to create accessory
75 dwelling units that are compatible with this title and to provide a means for residents, including
76 seniors, single parents, and families with grown children, to remain in their homes and
77 neighborhoods, and increase the housing stock of existing neighborhoods in a manner that is
78 compatible with their size and scale, and allow more efficient use of existing housing stock and
79 infrastructure, and provide a broader range of affordable housing options. The purpose of this
80 article is not intended to create a new supply of short-term rental (STR) units, such as those
81 commonly advertised to tourists.

82 B. Applicability.

- 83 1) An accessory dwelling unit is allowed in all zoning districts where the use is permitted in
84 Chapter 16.3. The unit must be located:

- 85 a. Within an existing structure, either principal or accessory on the property; or
86 b. Attached to the existing principal structure, sharing a
87 common wall; or
88 c. Within a new accessory structure constructed for this
89 purpose on the property.

- 90 2) Accessory dwelling units that have a valid certificate of occupancy or have vested rights in
91 the permitting process with an active building permit as of April 28, 2020 are exempted
92 from the use standard, § 16.5.3.D.(3).

93 C. Application for accessory dwelling unit.

- 94 (1) An application for an accessory dwelling unit must be made by the owner of the parcel on
95 which the primary residential unit sits. The completed application and associated fees must
96 be submitted to the Code Enforcement Officer for review.
97 (2) Applications for an accessory dwelling unit that meets the unit size standards and
98 development standards contained in this article may be approved administratively and
99 require approval by the Code Enforcement Officer.
100 (3) An accessory dwelling unit that fails to meet the standards provided in this article may not
101 receive administrative approval; however, the accessory dwelling unit may still be
102 allowed. See § 16.5.3.D.(4) below.

103 D. Accessory dwelling unit standards.

104 (1) Lot standards.

105 (a.) Legal lot/residence. An accessory dwelling unit is allowed only on lots
106 within the Town that contain one legal, single- family residence as the
107 primary unit.

108 (b.) Number of accessory dwelling units per lot. No more than one accessory

109 dwelling unit is permitted on a lot.

110 (c.) Zone lot size and unit density. The property on which an accessory dwelling
111 unit is located must meet the size required by the applicable zoning
112 standards for the principal residence, except in the case of legally
113 nonconforming lots. However, an accessory dwelling unit is exempt from
114 the density requirements of the zone in which they are located.

115 (d.) Setbacks and coverage. Yard setbacks for the zone must be met. However,
116 for legally nonconforming lots where a proposed accessory dwelling unit
117 will be attached to a principal dwelling unit and cannot meet the zone's side
118 and rear yard setbacks, the percentage by which a lot is smaller than the
119 required lot size for the zone will dictate the required setback for that lot.
120 For example, a 30,000 square foot legally nonconforming lot in a zone that
121 requires 40,000 square feet would require side and rear yard setbacks that
122 are 75% of the zone's side and rear yard setbacks. Building coverage
123 requirements will remain as required by the zone.

124 (e.) Utility connections. Accessory dwelling units must be connected to
125 adequate water and wastewater services.

126 [1.] Public sewer.

127 (a.) Service: verification in writing, of adequate service to
128 support the additional flow from the Superintendent of
129 Wastewater Treatment Facilities

130 (a.) Fees: Payment of appropriate fees for connection to the
131 municipal sewer system is required prior to obtaining the
132 certificate of occupancy.

133 [2.] Septic systems. Verification of adequate sewage disposal for
134 subsurface waste disposal is required. The septic system, existing or
135 proposed, must be verified as adequate or reconstructed as required.
136 Plans for subsurface waste disposal must be prepared by a Maine-
137 licensed site evaluator in full compliance with the State of Maine
138 Subsurface Wastewater Disposal Rules, 10-144 C.M.R. 241.

139 [3.] Public water. Verification in writing is required from the Kittery
140 Water District for volume and supply.

141 [4.] Wells. Verification of the potable water supply for private wells is
142 required. Tests of the existing well or proposed well, if applicable,
143 must indicate that the water supply is potable and acceptable for
144 domestic use and must conform to the recommendations included in
145 the "Manual for Evaluating Public Drinking Water Supplies, Public
146 Health Service No. 1180 (1969)."

147 (f.) Parking. Each accessory dwelling unit must have one on-site parking space
148 in addition to the parking for the primary dwelling unit. Tandem parking is
149 permitted.

150 (g.) Private road or right-of-way access. Where an applicant seeks to locate an
151 accessory dwelling unit on a privately maintained road or right-of-way the
152 following applies:

153 [1.] Applicant must submit written consent from the road or
154 homeowner's association or owner and parties responsible for street
155 maintenance.

156 (2) Unit standards.

157 (a) Unit size. The size of an accessory dwelling unit must meet the minimum size for a
158 dwelling unit as set by building code standards adopted and amended from time to
159 time by Maine's Bureau of Building Codes and Standards, and be no larger than

1,000 square feet. For principal dwelling units 1,000 square feet or smaller, an accessory dwelling unit may be no greater than 80% of the size of the principal dwelling unit, as measured in square feet. An accessory dwelling unit may have no more than two bedrooms.

(b) Unit location.

[1] An accessory dwelling unit must meet one or more of the following conditions:

- [a] Be fully constructed within the existing footprint of any legal primary residence or accessory building; or
- [b] Share a common wall with the principal residence, providing yard setbacks per § 16.5.3.D.(2)(a); or
- [c] Be constructed as a new accessory building containing an accessory dwelling unit, providing yard setbacks can be met for the zone.

[2] Accessory dwelling units will be allowed to be fully constructed within the principal residence even if the building does not meet yard setbacks.

[3] Accessory dwelling units will not be allowed in accessory buildings encroaching on yard setbacks.

- (3) Use standards. The accessory dwelling unit may not be rented to the same person or party for less than a thirty-day period.
- (4) Development standards. Should an accessory dwelling unit fail to meet the applicable unit standards listed in this article, the accessory dwelling unit may still be allowed if the applicant obtains approval from the Board of Appeals under the provisions of a miscellaneous variation request, as outlined in § 16.2.12.D.(4). The Board of Appeals shall review any appeal decision in conformance with § 16.2.12.F, Basis for decision.

E. A violation of the use standard § 16.5.3.D.(3) will lose the certificate of occupancy for the unit for no less than 30 days, and be assessed a penalty of \$500.

16.5.2 Agriculture

- A. Agricultural practices must be conducted to minimize soil erosion, sedimentation, contamination and nutrient enrichment of groundwater and surface waters.
- B. All spreading or disposal of manure must be accomplished in conformance with the Manure Utilization Guidelines, November 1, 2001, published by the Maine Department of Agriculture and the Nutrient Management Act (7 M.R.S. §§ 4201 to 4214).
- C. Manure must not be stored or stockpiled within 100 feet, horizontal distance, of the normal high-water line of any water bodies, tributary streams, coastal wetlands or freshwater wetlands shown on the Map. Within five years of the effective date of this chapter, all manure storage areas within the Shoreland Overlay and Resource Protection Overlay Zones must be constructed or modified so the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirement may remain, but must meet the no-discharge provision within the above five-year period.
- D. Owners of agricultural activities involving tillage of soil greater than 40,000 square feet in surface area or the spreading, disposal or storage of manure within the Shoreland Overlay Zone are required to submit a soil and water conservation plan to the Planning Board for review and approval. Nonconformance with the provisions of said approved plan will be considered to be a violation of this section.
- E. New tilling of soil within 100 feet, horizontal distance, of the normal high-water line of water bodies or coastal wetlands; within 25 feet, horizontal distance, of the normal high-water line of tributary streams and freshwater wetlands shown on the Map is prohibited. Operations in existence

209 on the effective date of this chapter and not in conformance with this provision may be
210 maintained.

211 F. After the effective date of this section, newly established livestock grazing areas will not be
212 permitted within 100 feet, horizontal distance, of the normal high-water line of any water bodies
213 or coastal wetlands or within 25 feet, horizontal distance, of the normal high-water line of
214 tributary streams and freshwater wetlands shown on the Zoning Map. Livestock grazing
215 associated with ongoing farm activities, and which are not in conformance with the above setback
216 provision, may continue, provided that such grazing is conducted in accordance with a soil and
217 water conservation plan that has been approved by the Planning Board.

218 **16.5.3 Agriculture, Piggery**

219 A. Number of animals. These standards apply to the keeping of two (2) or more pigs that are six (6)
220 months old or older. These standards do not apply to the raising and selling of any number of pigs
221 that are under six (6) months of age.

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

224 (3) Structures: 50 ft.

225 (4) Feed lots, pens and extensively used areas: 100 ft.

226

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

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

233 **16.5.4 Agriculture, Poultry Facility**

234 A. Number of Animals. These standards apply to the keeping of thirteen (13) or more poultry animals
235 that are six (6) months old or older in zoning districts in which Agriculture, Poultry Facility is
236 either a permitted use or a special exception use. These standards do not apply to the raising and
237 selling of any number of poultry that are under six (6) months of age.

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

240 (3) Structure, including Barn or Coops: 50 ft.

241 (4) Feed lots, pens and extensively used areas: 100 ft.

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

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

248 **16.5.5 Campgrounds and Campsites**

249 A. Campgrounds. Campgrounds must meet the minimum requirements according to state licensing
250 procedures and the following:

251 (3) Campgrounds must contain a minimum of 5,000 square feet of land, not including roads
252 and driveways, for each site.

253 (4) Land supporting wetland vegetation and land below the normal high-water line of a water
254 body is not to be included in calculating land area per site.

- 255 (5) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and
256 service buildings must be set back a minimum of 75 feet, horizontal distance, from the
257 normal high-water line of water bodies, tributary streams or the upland edge of a wetland.
- 258 B. Individual private campsites. Individual private campsites not associated with campgrounds may
259 be permitted in a Shoreland Overlay Zone, provided the following conditions are met:
- 260 (3) One campsite per lot existing on the effective date of this chapter or 30,000 square feet of
261 lot area within the SL-OZ, whichever is less, may be permitted. [Amended 9-26-2011 by
262 Ord. No. 11-15]
- 263 (4) Campsite placement on any lot, including the area intended for a recreational vehicle or
264 tent platform, must be set back 75 feet, horizontal distance, from the normal high-water
265 line of water bodies, tributary streams or the upland edge of a wetland.
- 266 (5) Only one recreational vehicle is allowed on a campsite. Permanent foundations for
267 recreational vehicles are prohibited. Gravel pads for temporary recreational vehicle
268 parking are permissible. No structures, other than canopies, are allowed for attachment to
269 the recreational vehicle.
- 270 (6) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter
271 in a Resource Protection Overlay Zone is limited to 1,000 square feet.
- 272 (7) A written sewage disposal plan describing the proposed method and location of sewage
273 disposal is required for each campsite and must be approved by the local Plumbing
274 Inspector. Where disposal is off site, written authorization from the receiving facility or
275 property owner is required.
- 276 (8) Recreational vehicles, tents or similar shelters are not allowed to remain on site for a
277 period longer than 120 days per year, unless it can be demonstrated that all requirements
278 for residential structures have been met, including the installation of a subsurface sewage
279 disposal system in compliance with the State of Maine Subsurface Wastewater Disposal
280 Rules and/or the site is served by public sewage facilities.

281 **16.5.6 Conservation of Wetlands Including Vernal Pools**

282 A. Purpose.

283 Wetlands are a fragile natural resource which, in their natural state, directly and indirectly
284 benefit the public by serving valuable functions such as pollution filtration systems (i.e.,
285 retention of suspended solids, phosphorus and other nutrients), control of floodwaters,
286 erosion control, groundwater recharge, educational and scientific study, wildlife habitat,
287 open space and recreation. Considerable wetland acreage has been lost or impaired by
288 draining, dredging, filling, excavating, building, pollution and other acts inconsistent with
289 the valuable functions and natural limitations of wetlands. It is, therefore, the intent of the
290 Town to:

- 291 (a.) Prevent the development of structures and land uses within wetlands and
292 wetland setback areas that may contribute to the pollution of surface water
293 and groundwater by sewage or toxic substances;
- 294 (b.) Prevent the destruction of, or significant changes to, wetlands which
295 provide flood and shoreline protection, recharge groundwater supplies, and
296 augment stream flow during dry periods;
- 297 (c.) Protect wetland areas and promote healthy wetland buffers that will
298 preserve and enhance the wetlands;
- 299 (d.) Protect wildlife habitats, such as vernal pools, deer habitat, nesting sites,
300 etc., and maintain ecological balances; and
- 301 (e.) Establish maintenance responsibility and/or fees to protect and maintain the
302 wetland areas.

- 303 (3) The number of healthy, functional wetlands in Kittery is decreasing; therefore, practices

304 and strategies, such as buffering and the avoidance of wetland alterations that serve to
305 protect functional wetlands and the repair of degraded wetlands, are encouraged. The
306 reviewing authority will review plans for proposed development within 100 feet of a
307 wetland to determine if wetlands of special significance are impacted. The applicant may
308 be required to pay the cost of an independent study. For the reviewing authorities, refer to
309 § 16.2.

- 310 (4) Wetlands of special significance have one or more of the following characteristics:
- 311 (a.) Critically imperiled or imperiled community. The freshwater wetland
312 contains a natural community that is "critically imperiled" as defined by the
313 Maine Natural Areas Program.
 - 314 (b.) Significant wildlife habitat. The freshwater wetland contains significant
315 wildlife habitat as defined by 38 M.R.S. §480-B(10).
 - 316 (c.) Location near coastal wetland. The freshwater wetland is located within 250
317 feet of a coastal wetland.
 - 318 (d.) Location near a water body. The freshwater wetland is located within 250
319 feet of the normal high-water line and within the same watershed of a lake
320 or pond.
 - 321 (e.) Aquatic vegetation, emergent marsh vegetation or open water. The
322 freshwater wetland contains, under normal circumstances, at least 20,000
323 square feet of aquatic vegetation, emergent marsh vegetation or open water,
324 unless the twenty-thousand or more square foot area is the result of an
325 artificial pond or impoundment.
 - 326 (f.) Wetlands subject to flooding. The freshwater wetland is inundated with
327 floodwater during a one-hundred-year flood event based on flood insurance
328 maps produced by the Federal Emergency Management Agency or other
329 site-specific information.
 - 330 (g.) Peatlands. The freshwater wetland is or contains peatlands, except that the
331 Planning Board may determine that a previously mined peatland, or portion
332 thereof, is not a wetland of special significance.
 - 333 (h.) River, stream or brook. The freshwater wetland is located within 25 feet of
334 a river, stream or brook.
 - 335 (i.) Monetary value. An estimation can be determined based on the importance
336 of the wetland with respect to the individual or collective functions it
337 provides.
 - 338 (j.) Vernal pools. The wetland contains a particular aquatic habitat as defined
339 by the Maine Department of Environmental Protection (MDEP), including
340 those mapped as significant vernal pools by MDEP.

341 B. Wetlands boundaries.

342 The definition of wetland boundaries is as described in this section and in § 16.3. Planning Board
343 approval to alter a wetland area one acre or larger in size will not be issued until the applicant has
344 submitted to the Town a wetlands delineation map and summary prepared by a qualified wetlands
345 scientist or a Maine-certified soil scientist, at the applicant's expense. The qualified wetlands
346 scientist or Maine-certified soil scientist must determine through field investigation the presence,
347 location and configuration of wetlands on the area proposed for use.

- 348 (3) Disturbed areas. An area which has been disturbed or modified such that natural
349 vegetation, hydrology or soils are altered or removed may still satisfy the wetland criteria.
350 In the event disturbance of a wetland causes the wetland boundary to be altered, a new
351 boundary may need to be delineated in order to determine if the wetland is a regulated
352 wetland. Wetland boundaries are to be delineated according to procedures described in
353 the Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station
354 Technical Report Y-87-1, January 1987, (1987 Manual). Notwithstanding the above,

355 areas legally disturbed or modified prior to May 13, 1987 will be considered "wetlands"
356 for the purpose of this title if such disturbed areas currently meet the normal criteria for
357 delineating undisturbed wetlands.

- 358 (4) Settling disputes over wetland boundaries. If there is a dispute regarding the existence or
359 boundaries of the wetlands, the boundaries of the wetland are to be determined, at the
360 expense of the applicant, by a qualified wetlands scientist or a qualified Maine-certified
361 soils scientist agreeable to both the Planning Board and the applicant.
- 362 (5) Permits required from other agencies. The determination of wetlands boundaries for
363 Town jurisdiction by the Town Planning Board, the Conservation Commission, or the
364 Code Enforcement Officer does not eliminate the need for the applicant to seek
365 jurisdictional determinations and/or permits from the Maine Department of
366 Environmental Protection and the United States Army Corps of Engineers when required.

367 C. Regulated activities within wetlands. [Amended 9-26-2011 by Ord. No. 11-15]

- 368 (3) Unless otherwise specified, all new structures and activities within wetlands, including
369 but not limited to dredging and filling and expansions of existing structures and activities,
370 are subject to the provisions of these regulations. Proposed activities and structures within
371 a freshwater wetland smaller than 501 square feet in total size are exempt from the
372 regulations in this article.

373 D. Permitted activities within regulated wetlands. [Amended 9-26-2011 by Ord. No. 11-15] The
374 following uses are considered to be compatible within regulated wetlands and are permitted within
375 regulated wetlands without Planning Board approval, provided they are in conformance with all
376 local, federal and state regulations:

- 377 (3) Agriculture, including pasturing, farming, haying and harvesting of wild crops. Such
378 agriculture must not cause or contribute to surface water or groundwater pollution by use
379 of pesticides, toxic chemicals or other pollutants and must not cause soil erosion;
- 380 (4) Conservation areas and nature trails;
- 381 (5) Education and scientific research;
- 382 (6) Forestry, tree farming and timber harvesting using the best management practices in order
383 to protect streams from damage and prevent sedimentation. Timber harvesting must be
384 conducted during periods when the ground is frozen. The practice known as "clear
385 cutting" is not permitted by right and requires a special permit under § 16.5.27;
- 386 (7) Low-intensity recreation;
- 387 (8) Repair and maintenance of existing ways, roads, driveways, railroad beds, wharfs, docks
388 or utilities. Such repair and maintenance must not negatively impact the wetland or alter
389 the existing watercourse and related hydrology;
- 390 (9) Repair and maintenance of existing permanent structures requiring the addition or
391 removal of 10 cubic yards or less of earth material to (form) a water body or wetland;
- 392 (10) Placement of drainage outfall pipes requiring the addition or removal of less than 10
393 cubic yards of material;
- 394 (11) Repair in kind, maintenance and necessary upgrade of existing drainage facilities;
- 395 (12) Repair in kind and maintenance of existing transportation facilities;
- 396 (13) Placement of moorings, subject to Harbormaster approval;
- 397 (14) Wilderness areas and natural wildlife refuges;
- 398 (15) Piers, fences, blinds, footbridges and shelters to enhance wildlife, provided they do not
399 involve draining, grading, filling or dredging within the wetland. All such structures must
400 be constructed of nontoxic materials and designed in such a manner to permit the
401 unobstructed flow of waters and must preserve the natural contour and hydrology of the
402 wetland, unless otherwise authorized by special permit as per § 16.5.8.D;
- 403 (16) Emergency public safety operations; and

404 (17) Any other activity as determined by the Planning Board that does not result in a
405 measurable alteration of the wetland.

406 E. Prohibited uses within regulated wetlands.

407 The following structures and activities are considered to be incompatible with protecting wetlands
408 and are prohibited within regulated wetlands:

409 (3) Disposal or storage of waste and/or hazardous materials;

410 (4) Manure stockpiles;

411 (5) Road salt stockpiles;

412 (6) Topsoil removal except as permitted in § 16.5.8.D or with Planning Board approval;

413 (7) Bulk fuel storage;

414 (8) Herbicidal spraying;

415 (9) Invasive nonnative wetland plants; and

416 (10) Snow dumping.

417 F. Procedures for wetlands alteration application.

418 (3) Application and review process. The application and review process for the review of
419 proposals within regulated wetlands must conform to the procedures explained in § 16.5.8
420 of this chapter, except where specifically stated otherwise in this section.

421 (4) Submission requirements. An application to alter a wetland must be made in accordance
422 with the submission requirements in § 16.5.8.L to the Town Planner, or designee,
423 accompanied by a fee as determined in Appendix A. **[Amended 9-26-2011 by Ord. No.
424 11-15]**

425 (5) Advisory opinion. The Planning Board may request the Town Planner to acquire more
426 specific data and analysis from qualified sources and/or the opinion of the Conservation
427 Commission concerning the proposed activity.

428 (6) Timing after Board acceptance. The Planning Board will issue its decision within 35 days
429 of receipt of the completed wetlands alteration application, unless a public hearing is
430 necessary. A hearing is not necessary if the Planning Board finds that the activity is so
431 minor that it will not significantly affect the wetland or that the hearing will not produce
432 additional information useful to the review. A decision may be rendered at the scheduling
433 hearing if the Board determines that a complete application has been received and no
434 public hearing is necessary. If a public hearing is held, the Planning Board is required to
435 issue its decision within 35 days of completion of the public hearing.

436 (7) Abutter notice. Owners of property within 150 feet, horizontal distance, of the proposed
437 alteration must be notified by first class U.S. Mail of any public hearing on the
438 application for wetlands alteration.

439 (8) Coordination. Submission requirements for an application for a wetlands alteration will
440 be integrated into the required submissions for a subdivision or development review
441 application to the Planning Board.

442 G. Wetlands alteration approval criteria. [Amended 9-26-2011 by Ord. No. 11-15]

443 (3) In making the final determination as to whether a wetland application should be
444 approved, the Planning Board will consider existing wetland destruction and the
445 cumulative effect of reasonably anticipated future uses similar to the one proposed.
446 Preference will be given to activities that meet wetland setbacks, have a reasonable
447 stormwater management plan (subject to Planning Board review and approval), and that
448 dedicate easements for the purposes of maintaining the wetland and the associated
449 drainage system. Approval to alter a wetland will not be granted for dredging or ditching
450 solely for the purpose of draining wetlands and creating dry buildable land areas. An
451 application for a wetlands alteration will not be approved for the purpose of creating a
452 sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from

- 453 an increase in impermeable surfaces from development activities are not allowed.
- 454 (4) It is the responsibility and burden of the applicant to show that the proposed use meets the
455 purposes of this title and the specific standards listed below to gain Planning Board
456 approval to alter a wetland. The Planning Board will not approve a wetlands alteration
457 unless the applicant provides clear and convincing evidence of compliance with this title.
- 458 (5) In evaluating the proposed activity, the Planning Board may need to acquire expert
459 advisory opinions. The applicant must be notified in writing, by the Town Planner at the
460 Planning Board's request, that the applicant will bear the expenses incurred for the expert
461 persons or agencies. The Planning Board will consider the advisory opinion, including
462 any recommendations and conditions, provided by the Conservation Commission.
- 463 (6) When the Planning Board finds the demonstrated public benefits of the project as
464 proposed, or modified, clearly outweigh the detrimental environmental impacts, the
465 Planning Board may approve such development, but not prior to granting approval of a
466 reasonable and practicable mitigation plan (see § 16.5.8.I) and not prior to the completion
467 of all performance guaranties for the project (see § 16.8.9.D(11)).
- 468 (7) The applicant must submit applicable documentation that demonstrates there is no
469 practicable alternative to the proposed alteration of the wetland. In determining if no
470 practicable alternative exists, the Planning Board will consider the following:
- 471 (a.) The proposed use:
- 472 [1.] Uses, manages or expands one or more other areas of the site that
473 will avoid or reduce the wetland impact;
- 474 [2.] Reduces the size, scope, configuration or density of the project as
475 proposed, thereby avoiding or reducing the wetland impact;
- 476 [3.] Provides alternative project designs, such as cluster development,
477 roof gardens, bridges, etc., that avoid or lessen the wetland impact;
478 and
- 479 [4.] Demonstrates that the proposed development meets or exceeds best
480 management practices for stormwater management in the wetland
481 areas.
- 482 (8) In determining if the proposed development plan affects no more wetland than is
483 necessary, the Planning Board will consider if the alternatives discussed above in
484 Subsection (1) of this section accomplish the following project objectives:
- 485 (a.) The proposed use will not:
- 486 [1.] Unreasonably impair or diminish the wetland's existing capacity to
487 absorb, store and slowly release stormwater and surface water
488 runoff;
- 489 [2.] Unreasonably increase the flow of surface waters through the
490 wetland;
- 491 [3.] Result in a measurable increase in the discharge of surface waters
492 from the wetland;
- 493 [4.] Unreasonably impair or diminish the wetland's capacity for retention
494 and absorption of silt, organic matter, and nutrients;
- 495 [5.] Result in an unreasonable loss of important feeding, nesting,
496 breeding or wintering habitat for wildlife or aquatic life; all
497 crossings must be designed to provide a moist soil bed in culvert
498 inverts and to not significantly impede the natural migration of
499 wildlife across the filled area;
- 500 [6.] Result in a measurable increase of the existing seasonal temperature
501 of surface waters in the wetland or surface waters discharged from
502 the wetlands; or

[7.]Result in a measurable alteration or destruction of a vernal pool.

H. Expiration of wetlands alteration approval. [Amended 1-28-2015 by Ord. No. 15-01]

- (3) Wetlands alteration approval will expire if work has not commenced within one year of the Planning Board date of approval. Where work has commenced within one year of approval, such approval will expire unless work is complete within two years of the original approval date.
- (4) Prior to expiration, the Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed five years for a subdivision plan and three years for all other development plans.

I. Mitigation plan.

- (3) Mitigation activities are actions taken to offset potential adverse environmental impact, as well as the remittance of fees and a plan for the preservation of buildable/usable upland areas when the applicant has proven to the Planning Board's satisfaction that there are no practical alternatives to impacting a wetland.
- (4) Required fees and compensation.
 - (a.) For activities which in total will alter or fill less than 501 square feet of regulated wetlands, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered.
 - (b.) For activities which in total alter or fill a five-hundred-and-one-square foot to twenty-thousand-square-foot wetland, the mitigation plan must include the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered. The undisturbed buffer zone from the wetland boundary must be placed in deed restrictions and be located and configured in a manner acceptable to the Planning Board.
 - (c.) In addition, a wetlands preservation fee for each square foot of altered wetland area, as determined in Appendix A, will be deposited into the account of the Town to achieve one or more of the following objectives related to the conservation of Kittery wetlands, with the Planning Board's recommendation and release of funds by the Town Council: [Amended 9-26-2011 by Ord. No. 11-15]
 - [1.] Restoration and preservation of wetlands;
 - [2.] Purchase of buffer areas for wetlands deemed at risk;
 - [3.] Monitoring and improvement of water quality;
 - [4.] Environmental and conservation projects, such as, but not limited to, education;
 - [5.] Matching grant funds;
 - [6.] Open space land purchases in conjunction with the Open Space Committee;
 - [7.] Assistance to the Kittery Land Trust; and/or
 - [8.] Purchase of signage to denote sensitive and wetland areas.
 - (d.) Assessment. A functional assessment and report of the wetlands to be altered must be conducted in accordance with the requirements in § 16.5.8.L(3). The assessment must demonstrate the existing wetland functions and functional value and summarize the impairments, degradation and/or loss of function due to the proposed development.
 - [1.] When required. Fees for deposit to the wetlands preservation

552 account are required whenever wetland areas or wetland functions
553 will be lost or degraded due to the project, as identified by the
554 functional assessment.

555 [2.]Where required. Fees for deposit to the wetlands preservation
556 account must be used on the proposed site or on parcels adjacent to
557 the project site when possible. If not possible, the fees must be used
558 within the same watershed as the proposed alteration, or within the
559 project vicinity, except as allowed for mitigation banking approved
560 in writing by the Maine Department of Environmental Protection. In
561 all cases, use of the fees must occur within the boundaries of the
562 Town.

563 [3.]Wetland impact mitigation process. Fees or developable land, or a
564 combination thereof, as determined by the Planning Board, will be
565 used to replace lost wetlands and wetland functions. Where the
566 Maine Department of Environmental Protection and this title require
567 and the Planning Board has approved a mitigation plan, such plan is
568 deemed to satisfy Town standards.

569 (e.) Homeowners' association documents, deed covenants, maintenance
570 agreements, and easements must establish responsibility for the
571 maintenance of wetlands. The association documents must stipulate
572 periodic maintenance of the surface and subsurface stormwater system,
573 including but not limited to catch basins, stormwater manholes, pipes,
574 ditches, curbs, settling basins and other structures designed to direct, retain
575 and/or discharge stormwater runoff. In the event the Code Enforcement
576 Officer and/or the Town's Engineer finds the wetlands are not in a natural
577 healthy state, the association will be required to hire a qualified wetlands
578 scientist or a Maine-certified soils scientists to evaluate all wetlands within
579 the development at the association's expense.

580 J. Coordination.

581 To reduce delays, the applicant may, upon written notice to the Town Planner, simultaneously
582 apply to the Army Corps of Engineers and the Maine Department of Environmental Protection for
583 permits during the Town review process. In addition, the applicant may simultaneously apply for
584 other local land use regulation approvals while applying for wetlands alteration approval.

585 K. Enforcement.

586 The provisions of this Section (§16.5.8), Conservation of Wetlands Including Vernal Pools, are to
587 be administered and enforced pursuant to the provisions of § 16.2, Administration and
588 Enforcement.

589 L. Submission requirements for wetland alteration application.

590 (3) Minimum requirements. Unless specifically waived by the Planning Board, all
591 applications must contain the following information:

592 (a.) Fifteen copies of the narrative, the site plan and the vicinity map required in
593 this subsection. [Amended 9-26-2011 by Ord. No. 11-15]

594 (b.) A copy of the official documents showing legal interest of the applicant in
595 the property to be affected.

596 (c.) A narrative, describing:

597 [1.]The purpose of the project;

598 [2.]The type of alteration to the wetland (fill, culvert, dredge, etc.);

599 [3.]Why there is no practicable alternative to impacting the wetland;
600 and

601 [4.]How the proposed activity has been designed to minimize the

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impact on the wetland.

(d.) A plan view showing the site as viewed from above is required. The plan view must:

[1.] Be drawn at an appropriate scale, but no smaller scale than one inch equals 100 feet, and show the proposed activity, the location and size of all existing and proposed structures, roads, parking areas and sewage treatment facilities.

[2.] Contain a code block in the lower right-hand corner. The block must contain the:

a. Name(s) and address(es) of the applicant or owner;

b. Name and address of the preparer of the plan, with professional seal, if applicable;

c. Name of plan, date of plan preparation, and a revision number and date, if applicable; and

d. Map and lot number(s), according to Kittery tax maps, shown in the lower right-hand corner in bold lettering and 1/4 inch high.

[3.] Show a North arrow.

[4.] Show property boundaries.

[5.] Show the location of any wetlands, shorelines and floodplains. Wetland boundaries must be delineated using the Corps of Engineers Wetlands Delineation Manual — "Waterways Experiment Station Technical Report Y-87-1, January 1987," (1987 Manual).

[6.] Show the location (tied by measurement to identifiable structures or boundary points) of all proposed draining, fill, grading, dredging and vegetation removal, including specification of amount of materials to be added or removed and procedures to be used.

[7.] Indicate the square footage of wetlands to be affected by the proposed activity.

[8.] Show the direction of natural water flow over the land, in the wetland, and in the proposed alteration area.

[9.] 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.

[10.] Specify the number of cubic yards and type of material to be used as fill, if fill material is involved.

[11.] 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.

(4) 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

652 understanding of the application. Such material may include the following items:

- 653 (a.) A site plan showing existing and proposed topographic contours at two-foot
654 intervals;
- 655 (b.) A hydrologic analysis in accordance with the requirements of this chapter;
- 656 (c.) Cross-section drawings showing the nature of the construction, the depth of
657 excavation or height of fill, if applicable, and surface water and
658 groundwater elevations; and
- 659 (d.) An evaluation, by a qualified wetlands scientist or a Maine-certified soils
660 scientist, assessing the functions of the wetland and the impact of the
661 proposed activity on these functions.

662 (5) Wetlands mitigation plan and report. A wetlands mitigation plan and report is required for
663 activities which, in total, affect or fill more than 500 square feet of wetlands.

664 (a.) The wetland mitigation plan and report must contain the following:

- 665 [1.] Plan at a scale of one inch equals 100 feet that shows two-foot
666 contour intervals, existing wetland boundaries, the area of wetland
667 to be altered, project dimensions and all off-site wetlands being
668 extensions of the wetland to be altered;
- 669 [2.] Existing wetland characteristics, including water depth, vegetation
670 and fauna;
- 671 [3.] Functional assessment, conducted by a qualified wetlands scientist
672 or a Maine-certified soils scientist, on the wetland to be altered,
673 which analyzes the wetland's value based on the functions it serves
674 and how the wetland will be affected by the proposed alteration. The
675 Wetland Evaluation Technique (WET) methodology, published by
676 the U.S. Army Corps of Engineers, is one acceptable methodology.
677 Other comparable assessment techniques may be accepted, provided
678 the applicant submits documentation of how the methodology was
679 developed, how the wetland functions and values are determined,
680 and how much field testing the technique has undergone; and
- 681 [4.] Photographs of the wetland to be altered which show its
682 characteristics.

683 (b.) Description of the overall proposed activity with particular reference to its
684 impact on the wetland, including the precise location of the activity, its
685 dimensions, the amount and type of fill (if any proposed), any proposed
686 drainage, the timing and procedures proposed for the alteration, and any
687 efforts proposed for reducing impacts. The Planning Board may require
688 certain fill areas (such as stormwater storage basins, solid waste landfills,
689 fill behind retaining walls, etc.) to be structurally engineered.

690 (c.) Plan for the proposed wetlands work, if any, including a topographic plan at
691 the scale of one inch equals 100 feet, showing two-foot contour intervals
692 and proposed wetland boundaries. This plan must also include:

- 693 [1.] Proposed boundaries and characteristics of the mitigation site,
694 including elevation, sources of water, and proposed vegetation;
- 695 [2.] Narrative describing the specific goals in terms of particular wetland
696 functions and values. These goals must be related to those of the
697 original wetland;
- 698 [3.] Narrative describing the available literature or experience to date (if
699 any) for carrying out the mitigation work;
- 700 [4.] Proposed implementation and management procedures for the
701 wetlands work;

- 702 [5.]Description of the short-term and long-term sources of water for this
703 wetland, including the water quality of these sources;
- 704 [6.]Plans for replanting, including a description of plant species, sizes
705 and sources of plant material, as well as how, when and where
706 seeding or planting will take place;
- 707 [7.]Proposed buffers or protective measures, such as sediment control
708 methods;
- 709 [8.]Plans for monitoring the wetlands work, showing capability for mid-
710 course corrections; and
- 711 [9.]Plans, if any, for control of nonindigenous plant species.
- 712 (d.)For wetlands work involving creation, restoration and/or enhancement of
713 degraded wetlands, a maintenance agreement must be approved by the
714 Board and recorded in the York County Registry of Deeds. The
715 maintenance agreement must be conveyed or a deed restriction imposed,
716 and such maintenance responsibility is not dissolvable without Council
717 approval. The maintenance agreement must meet or exceed the criteria
718 listed in § 16.5.8.I.
- 719 (e.)For projects involving preservation of wetlands or adjacent uplands, a
720 conservation easement must be conveyed or deed restriction imposed so
721 that the parcel will remain undeveloped in perpetuity.

722 **16.5.7 Essential Services**

723 A. Installation.

724 Where feasible, the installation of essential services will be limited to existing public ways and
725 existing service corridors.

726 B. Location in CON or OZ-RP Zone.

727 The installation of essential services is not permitted in a Conservation Zone or Resource
728 Protection Overlay Zone, except to provide services to a permitted use within said zone, or except
729 where the applicant demonstrates no reasonable alternative exists. Where permitted, such
730 structures and facilities must be located to minimize any adverse impacts on surrounding uses and
731 resources, including visual impacts.

732 C. Replacement of equipment without permit.

733 Damaged or destroyed public utility transmission and distribution lines, towers and related
734 equipment may be replaced or reconstructed without a permit.

735 **16.5.8 Floodplain Management**

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

737 A. Statement of purpose and intent.

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

741 (4) Therefore, the Town has chosen to become a participating community in the National
742 Flood Insurance Program and agrees to comply with the requirements of the National
743 Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this article.

744 (5) It is the intent of the Town to require the recognition and evaluation of flood hazards in
745 all official actions relating to land use in the floodplain areas having special flood
746 hazards. This body has the legal authority to adopt land use and control measures to
747 reduce future flood losses pursuant to 30-A M.R.S §§ 3001-3007, 4352 and 4401-4407.

748 B. Definitions.

749 Unless specifically defined in § 16.3, words and phrases used in this article have the same

750 meanings as they have in common law to give this article its most reasonable application.

751 C. Establishment of areas.

752 (3) The Town elects to comply with the requirements of the National Flood Insurance Act of
753 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in
754 the aforesaid Act, provides that areas of the Town having a special flood hazard be
755 identified by the Federal Emergency Management Agency and that floodplain
756 management measures be applied in such flood hazard areas. This article establishes a
757 flood hazard development permit system and review procedure for development activities
758 in the designated flood hazard areas of the Town.

759 (4) The areas of special flood hazard, Zones A, A1 — 30, AE, AO, AH, V1 — 30 and/or VE,
760 identified by the Federal Emergency Management Agency in a report entitled "Flood
761 Insurance Study — Town of Kittery, Maine, York County," dated January 5, 1984, with
762 accompanying Flood Insurance Rate Map dated July 3, 1986, are adopted by reference
763 and declared to be a part of this article.

764 D. Permit required.

765 Before any construction or other development (as defined in § 16.9.8.2), including the placement
766 of manufactured homes, begins within any areas of special flood hazard established in
767 § 16.5.10.C, a flood hazard development permit is to be obtained from the Code Enforcement
768 Officer. This permit is in addition to any other building/regulated activity permits which may be
769 required pursuant to this title.

770 E. Application for permit.

771 The application for a flood hazard development permit is to be submitted to the Code Enforcement
772 Officer and include:

773 (3) The name and address of the applicant.

774 (4) An address and a map indicating the location of the construction site.

775 (5) A site plan showing the location of existing and/or proposed structures, sewage disposal
776 facilities, water supply facilities, areas to be cut and filled, and lot dimensions.

777 (6) A statement of the intended use of the structure.

778 (7) A statement as to the type of sewage system proposed.

779 (8) Specification of dimensions of the proposed structure.

780 (9) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally
781 established datum in Zone A only, of the:

782 (a.) Base flood at the proposed site of all new or substantially improved
783 structures, which is determined:

784 [1.] In Zones A1 — 30, AE, AO, AH, V1 — 30, and VE, from data
785 contained in the "Flood Insurance Study — Town of Kittery,
786 Maine," as described in § 16.5.10.C or

787 [2.] In Zone A, to be the elevation of the ground at the intersection of the
788 floodplain boundary and a line perpendicular to the shoreline which
789 passes along the ground through the site of the proposed building.

790 (b.) Highest and lowest grades at the site adjacent to the walls of the proposed
791 building.

792 (c.) Lowest floor, including basement, and whether or not such structures
793 contain a basement.

794 (d.) Level, in the case of nonresidential structures only, to which the structure
795 will be floodproofed.

796 (10) A description of a base flood elevation reference point established on the site of all new
797 or substantially improved structures.

- 798 (11) A written certification by a registered land surveyor that the elevations shown on the
799 application are accurate.
- 800 (12) Certification by a registered professional engineer or architect that floodproofing methods
801 for any:
- 802 (a.) Nonresidential structures will meet the floodproofing criteria of Subsection
803 7(d) of this section. Subsection 7 of § 16.5.10.H, and other applicable
804 standards in § 16.5.10.H; and
- 805 (b.) Construction in coastal high-hazard areas, Zones V1 — 30 and VE, will
806 meet the floodproofing criteria of Subsection 11 of § 16.5.10.H and other
807 applicable standards in § 16.5.10.H
- 808 (13) A description of the extent to which any watercourse will be altered or relocated as a
809 result of the proposed development.
- 810 (14) A statement of construction plans describing in detail how each applicable development
811 standard in § 16.5.10.H will be met.

812 F. Application fee and expert's fee.

- 813 (3) A nonrefundable application fee as set out in Appendix A is to be paid to the Town Clerk,
814 and a copy of a receipt for the same must accompany the application.
- 815 (4) An additional fee may be charged if the Code Enforcement Officer and/or Board of
816 Appeals needs the assistance of a professional engineer or other expert. The expert's fee
817 must be paid in full by the applicant within 10 days after the Town submits a bill to the
818 applicant. Failure to pay the bill constitutes a violation of this title and is grounds for the
819 issuance of a stop-work order. An expert may not be hired by the municipality at the
820 expense of an applicant until the applicant has either consented to such hiring in writing
821 or been given an opportunity to be heard on the subject. An applicant who is dissatisfied
822 with a decision of the Code Enforcement Officer may appeal that decision to the Board of
823 Appeals.

824 G. Review of flood hazard development permit applications.

825 The Code Enforcement Officer must:

- 826 (3) Review all applications for a flood hazard development permit to assure that proposed
827 building sites are reasonably safe from flooding and to determine that all pertinent
828 requirements of § 16.5.10.H, Development standards, have or will be met.
- 829 (4) Utilize, in the review of all flood hazard development permit applications, the base flood
830 data contained in the "Flood Insurance Study — Town of Kittery, Maine," as described in
831 § 16.5.10.C. In special flood hazard areas where base flood elevation data are not
832 provided, the Code Enforcement Officer is to obtain, review and reasonably utilize any
833 base flood elevation and floodway data from federal, state, or other sources, including
834 information obtained pursuant to §16.5.10.E(7)a.ii, § 16.5.10.H(9) and §16.5.10.J, in
835 order to administer § 16.5.10.H of this article.
- 836 (5) Make interpretations of the location of boundaries of special flood hazard areas shown on
837 the maps described in § 16.5.10.C.
- 838 (6) In the review of flood hazard development permit applications, determine that all
839 necessary permits have been obtained from those federal, state and local government
840 agencies from which prior approval is required by federal or state law, including, but not
841 limited to, Section 404 of the Federal Water Pollution Control Act Amendments of 1972,
842 33 U.S.C. § 1334.
- 843 (7) Notify adjacent municipalities, the Department of Environmental Protection, and the
844 Maine Office of Community Development prior to any alteration or relocation of a
845 watercourse and submit copies of such notifications to the Federal Emergency
846 Management Agency.
- 847 (8) Issue a two-part flood hazard development permit for elevated structures. Part I is to

848 authorize the applicant to build a structure to and including the first horizontal floor only
849 above the base flood level. At that time the applicant must provide the Code Enforcement
850 Officer with an application for Part II of the flood hazard development permit and include
851 an elevation certificate completed by a registered Maine surveyor for compliance with the
852 elevation requirements of Subsections 6, 7, 8 and 11 of § 16.5.10.H. Following review of
853 the application, which review must take place within three working days of receipt of the
854 application, the Code Enforcement Officer is to issue Part II of the flood hazard
855 development permit. Part II authorizes the applicant to complete the construction project.

- 856 (9) Maintain, as a permanent record, copies of all flood hazard development permits issued
857 and data relevant thereto, including reports of the Board of Appeals on variances granted
858 under the provisions of § 16.2.3; and copies of elevation certificates and certificates of
859 compliance required under the provisions of § 16.5.10.I.

860 H. Development standards.

861 All developments in areas of special flood hazard are to meet the following applicable standards:

- 862 (3) New construction or substantial improvement of any structure must:
- 863 (a.) Be designed or modified and adequately anchored to prevent flotation,
864 collapse or lateral movement of the structure resulting from hydrodynamic
865 and hydrostatic loads, including the effects of buoyancy;
 - 866 (b.) Use construction materials that are resistant to flood damage;
 - 867 (c.) Use construction methods and practices that will minimize flood damage;
868 and
 - 869 (d.) Use electrical, heating, ventilation, plumbing, and air-conditioning
870 equipment, and other service facilities, that are designed and/or located so
871 as to prevent water from entering or accumulating within the components
872 during flooding conditions.
- 873 (4) All new and replacement water supply systems are to be designed to minimize or
874 eliminate infiltration of floodwaters into the systems.
- 875 (5) All new and replacement sanitary sewage systems are to be designed and located to
876 minimize or eliminate infiltration of floodwaters into the system and discharges from the
877 system into floodwaters.
- 878 (6) On-site waste disposal systems are to be located and constructed to avoid impairment to
879 them or contamination from them during floods.
- 880 (7) All development is to be constructed and maintained in such a manner that no reduction
881 occurs in the flood-carrying capacity of any watercourse.
- 882 (8) New construction or substantial improvement of any residential structure located within:
- 883 (a.) Zones A1 — 30, AE and AH is to have the lowest floor (including
884 basement) elevated to at least one foot above the base flood elevation.
 - 885 (b.) Zones AO and AH is to have adequate drainage paths around structures on
886 slopes, to guide floodwater away from the proposed structures.
 - 887 (c.) Zone AO is to have the lowest floor (including basement) elevated above
888 the highest adjacent grade:
 - 889 [1.] At least one foot higher than the depth specified in feet on the
890 community's Flood Insurance Rate Map; or
 - 891 [2.] At least three feet if no depth number is specified.
 - 892 (d.) Zone A is to have the lowest floor (including basement) elevated to at least
893 one foot above the base flood elevation utilizing information obtained
894 pursuant to § 16.5.10.E(7)a.ii, 16.5.10.G(2) or 16.5.10.J(4).
 - 895 (e.) Zones V1 — 30 and VE is to meet the requirements of Subsection **11** of
896 this section.

- 897 (9) New construction or substantial improvement of any nonresidential structure located
898 within:
- 899 (a.) Zones A1 — 30, AE and AH is to have the lowest floor (including
900 basement) elevated to at least one foot above the base flood elevation or,
901 together with attendant utility and sanitary facilities, must:
- 902 [1.] Be floodproofed to at least one foot above the base flood level so
903 that below that elevation the structure is watertight with walls
904 substantially impermeable to passage of water;
- 905 [2.] Have structural components capable of resisting hydrostatic and
906 hydrodynamic loads and the effects of buoyancy; and
- 907 [3.] Be certified by a registered professional engineer or architect that
908 the design and methods of construction are in accordance with
909 accepted standards of practice for meeting the provisions of this
910 section. Such certification must be provided with the application for
911 a flood hazard development permit, as required by § 16.5.10.E(10),
912 and include a record of the elevation above mean sea level of the
913 lowest floor, including basement.
- 914 (b.) Zones AO and AH is to have adequate drainage paths around structures on
915 slopes, to guide floodwater away from the proposed structures.
- 916 (c.) Zone AO is to have the lowest floor (including basement) elevated above
917 the highest adjacent grade:
- 918 [1.] At least one foot higher than the depth specified in feet on the
919 community's Flood Insurance Rate Map; or
- 920 [2.] At least three feet if no depth number is specified; or
- 921 [3.] Together with attendant utility and sanitary facilities, be
922 floodproofed to meet the elevation requirements of this section and
923 floodproofing standards of Subsection 7(a) of this section.
- 924 (d.) Zone A is to have the lowest floor (including basement) elevated to at least
925 one foot above the base flood elevation utilizing information obtained
926 pursuant to § 16.5.10.E(7)a.ii, 16.5.10.G(2) or 16.5.10.J
- 927 (e.) Zones V1 — 30 and VE is to meet the requirements of Subsection 11 of
928 this section.
- 929 (10) New or substantially improved manufactured homes located within:
- 930 (a.) Zones A1 — 30, AE or AH must:
- 931 [1.] Be elevated on a permanent foundation such that the lowest floor is
932 at least one foot above the base flood elevation; and
- 933 [2.] Be securely anchored to an adequately anchored foundation system
934 to resist flotation, collapse, or lateral movement. Methods of
935 anchoring may include, but are not limited to:
- 936 a. Over-the-top ties anchored to the ground at the four corners
937 of the manufactured home, plus two additional ties per side
938 at intermediate points (manufactured homes less than 50 feet
939 long require one additional tie per side); or
- 940 b. By frame ties at each corner of the home, plus five
941 additional ties along each side at intermediate points
942 (manufactured homes less than 50 feet long require four
943 additional ties per side).
- 944 c. All components of the anchoring system described in
945 Subsection 8(a)(ii)[a] and [b] of this section must be capable
946 of carrying a force of 4,800 pounds.

- 947 (b.) Zones AO and AH are to have adequate drainage paths around structures on
948 slopes, to guide floodwater away from the proposed structures.
- 949 (c.) Zone AO are to have the lowest floor (including basement) elevated above
950 the highest adjacent grade:
- 951 [1.] At least one foot higher than the depth specified in feet on the
952 community's Flood Insurance Rate Map; or
- 953 [2.] At least three feet if no depth number is specified; and
- 954 [3.] Meet the requirements of Subsection 8(a)(i) and (ii) of this section.
- 955 (d.) Zone A are to have the lowest floor (including basement) elevated to at
956 least one foot above the base flood elevation utilizing information obtained
957 pursuant to § 16.5.10.E(7)a.ii, 16.5.10.G(2) or 16.5.10.J.
- 958 (e.) Zones V1 — 30 and VE are to meet the requirements of Subsection 11 of
959 this section.

960 (11) Floodways.

- 961 (a.) In Zones A1 — 30 and AE, encroachments, including fill, new
962 construction, substantial improvement, and other development, are not
963 permitted in riverine areas, for which a regulatory floodway is designated
964 on the community's "Flood Boundary and Floodway Map," unless a
965 technical evaluation certified by a registered professional engineer is
966 provided demonstrating that such encroachments will not result in any
967 increase in flood levels within the community during the occurrence of the
968 base flood discharge.
- 969 (b.) In Zones A1 — 30 and AE riverine areas, for which no regulatory floodway
970 is designated, encroachments, including fill, new construction, substantial
971 improvement, and other development, are not permitted unless a technical
972 evaluation certified by a registered professional engineer is provided
973 demonstrating that the cumulative effect of the proposed development,
974 when combined with all other existing development and anticipated
975 development:
- 976 [1.] Will not increase the water surface elevation of the base flood more
977 than one foot at any point within the community; and
- 978 [2.] Is consistent with the technical criteria contained in Section 2-7,
979 entitled "Hydraulic Analyses," Flood Insurance Study — Guidelines
980 and Specifications for Study Contractors, FEMA 37/September,
981 1985, as amended.
- 982 (c.) In Zone A riverine areas, in which the regulatory floodway is determined to
983 be the channel of the river or other watercourse and the adjacent land areas
984 to a distance of 1/2 the width of the floodplain as measured from the normal
985 high-water mark to the upland limit of the floodplain, encroachments,
986 including fill, new construction, substantial improvement, and other
987 development, are not permitted unless a technical evaluation certified by a
988 registered professional engineer is provided meeting the requirements of
989 Subsection 9(b) of this section.

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

- 996 (a.) Walls, with the exception of crawl spaces less than three feet in height,
997 must not be part of the structural support of the building; and

- 998 (b.) Enclosed areas are not "basements" as defined in § 16.5.10.B; and
999 (c.) Enclosed areas are to be designed to automatically equalize hydrostatic
1000 flood forces on exterior walls by allowing for the entry and exit of
1001 floodwater. Designs for meeting this requirement must either:
1002 [1.] Be certified by a registered professional engineer or architect; or
1003 [2.] Meet or exceed the following minimum criteria:
1004 a. A minimum of two openings having a total net area of not
1005 less than one square inch for every square foot of the
1006 enclosed area;
1007 b. The bottom of all openings may be no higher than one foot
1008 above the lowest grade; and
1009 c. Openings may be equipped with screens, louvers, valves, or
1010 other coverings or devices, provided that they permit the
1011 entry and exit of floodwaters automatically without any
1012 external influence or control, such as human intervention,
1013 including the use of electrical and other nonautomatic
1014 mechanical means; and
1015 (d.) The enclosed area may not be used for human habitation; and
1016 (e.) The enclosed area may be used for building maintenance, access, parking
1017 vehicles, or storing of articles and equipment used for maintenance of the
1018 building.
- 1019 (13) Coastal floodplains.
- 1020 (a.) All new construction located within Zones V1 — 30 and VE is to be
1021 located landward of the reach of the highest annual spring tide.
- 1022 (b.) New construction or substantial improvement of any structure located
1023 within Zones V1 — 30 or VE must:
1024 [1.] Be prohibited unless the following criteria are met:
1025 a. The area is zoned for general development or its equivalent,
1026 as defined in the Mandatory Shoreland Zoning guidelines
1027 adopted pursuant to 38 M.R.S. § 438-A; or
1028 b. The area is designated as densely developed as defined in 38
1029 M.R.S. § 436-A, Subsection 3.
1030 [2.] Be elevated on posts or columns such that:
1031 a. The bottom of the lowest structural member of the lowest
1032 floor (excluding the pilings or columns) is elevated to one
1033 foot above the base flood level;
1034 b. The pile or column foundation and the elevated portion of
1035 the structure attached thereto is anchored to resist flotation,
1036 collapse, and lateral movement due to the effects of wind
1037 and water loads acting simultaneously on all building
1038 components; and
1039 c. Water loading values used must be those associated with the
1040 base flood. Wind loading values used must be those required
1041 by applicable state and local building standards.
1042 [3.] Have the space below the lowest floor:
1043 a. Free of obstructions; or
1044 b. Constructed with open wood lattice-work, or insect
1045 screening intended to collapse under wind and water without
1046 causing collapse, displacement, or other structural damage to

- 1047 the elevated portion of the building or supporting piles or
1048 columns; or
- 1049 c. Constructed with nonsupporting breakaway walls which
1050 have a design safe loading resistance of not less than 10 nor
1051 more than 20 pounds per square foot.
- 1052 (c.) A registered professional engineer or architect must:
- 1053 [1.] Develop or review the structural design, specifications and plans for
1054 the construction, which must meet or exceed the technical criteria
1055 contained in the Coastal Construction Manual (FEMA-55/February,
1056 1986); and
- 1057 [2.] Certify that the design and methods of construction to be used are in
1058 accordance with accepted standards of practice for meeting the
1059 criteria of Subsection **11(b)** of this section.
- 1060 (d.) The use of fill for structural support in Zones V1 — 30 and VE is
1061 prohibited.
- 1062 (e.) Human alteration of sand dunes within Zones V1 — 30 and VE is
1063 prohibited unless it can be demonstrated that such alterations will not
1064 increase potential flood damage.
- 1065 (f.) The enclosed areas may be used solely for parking vehicles, building
1066 access, and storage.

1067 I. Certificate of compliance.
1068 No land in a special flood hazard area may be occupied or used and no structure which is
1069 constructed or substantially improved may be occupied until a certificate of compliance is issued
1070 by the Code Enforcement Officer subject to the following provisions:

- 1071 (3) The applicant must submit an elevation certificate completed by:
- 1072 (a.) A registered Maine surveyor for compliance with Subsection 6, 7, 8 or 11
1073 of § 16.5.10.H; and
- 1074 (b.) A registered professional engineer or architect in the case of:
- 1075 [1.] Floodproofed, nonresidential structures, for compliance with
1076 § 16.5.10.H(7); and
- 1077 [2.] Construction of structures in the coastal floodplains for compliance
1078 with § 16.5.10.H(11)c.
- 1079 (4) The application for a certificate of compliance is to be submitted by the applicant in
1080 writing, along with a completed elevation certificate, to the Code Enforcement Officer.
- 1081 (5) The Code Enforcement Officer is to review the application within 10 working days of
1082 receipt of the application and issue a certificate of compliance, provided the building
1083 conforms with the provisions of this article.

1084 J. Review of subdivision and development proposals.
1085 The Planning Board must, when reviewing subdivisions and other proposed developments that
1086 require review under other federal law, state law or local ordinances or regulations, and all
1087 projects on five or more acres, or in the case of manufactured home parks divided into two or
1088 more lots, assure that:

- 1089 (3) All such proposals are consistent with the need to minimize flood damage.
- 1090 (4) All public utilities and facilities, such as sewer, gas, electrical and water systems, are
1091 located and constructed to minimize or eliminate flood damages.
- 1092 (5) Adequate drainage is provided so as to reduce exposure to flood hazards.
- 1093 (6) All proposals include base flood elevation and, in a riverine floodplain, floodway data.
- 1094 (7) Any proposed development plan must include a statement that the developer will require

1095 that structures on lots in the development be constructed in accordance with § 16.5.10.H
1096 and that such requirement will be included in any deed, lease, purchase and sale
1097 agreement, or document transferring or expressing an intent to transfer any interest in real
1098 estate or structure, including, but not limited to, a time-share interest. The statement must
1099 clearly articulate that the municipality may enforce any violation of the construction
1100 requirement and that fact is also to be included in the deed or any other document
1101 previously described. The construction requirement must also be clearly stated on any
1102 map, plat or plan to be signed by the Planning Board or local reviewing authority as part
1103 of the approval process.

1104 **16.5.9 Home Occupation**

1105 A. Purpose.

- 1106 (3) It is the intent of these regulations governing home occupations to balance the economic
1107 and community benefits of allowing home-based businesses with the goal of protecting
1108 the quality of life of the surrounding residential neighborhood from unreasonable or
1109 unsafe intrusions and nuisances inappropriate to a residential setting. The regulations
1110 attempt to ensure that any home-based business operates in a manner that respects the
1111 neighborhood in which it is situated.
- 1112 (4) Regulation of home occupations should not prohibit beneficial and unobtrusive uses and
1113 should provide standards to protect the health, safety and general welfare of the
1114 surrounding neighborhood. A home occupation should not degrade the residential
1115 character of the neighborhood.
- 1116 (5) These regulations take a two-tier approach to regulating home occupations. At the least
1117 intrusive level are business activities that by their nature and intensity will be compatible
1118 with a residential location. These types of businesses are considered minor home
1119 occupations and require only review by the Code Enforcement Officer for compliance
1120 with the standards. A major home occupation in a residential district has the potential to
1121 be incompatible with its neighborhood setting. Therefore, a public hearing with
1122 notification to abutting property owners and BOA approval is necessary.
- 1123 (6) A more extensive business activity that does not satisfy the standards for a major home
1124 occupation is treated as a type of commercial use and does not qualify as an acceptable
1125 type of home occupation. Such businesses should be located in an appropriately zoned
1126 area of the Town.

1127 B. Minor home occupation standards.

- 1128 (3) Compliance with the definition of a "home occupation."
- 1129 (a.) An applicant must be a resident of a dwelling on the premises where the
1130 home occupation will occur. An applicant who is not the owner of the
1131 property, but is residing on the premises, must submit written permission of
1132 the property owner for the proposed home occupation.
- 1133 (b.) As an accessory use, the home occupation(s) must be subordinate to the
1134 principal use. Quantitative measures that may be considered in determining
1135 whether a proposed activity is an accessory use include, but are not limited to,
1136 percentage and/or total amount of square footage attributed to the home
1137 occupation(s) use in relation to the residential use. Qualitative factors
1138 include, but are not limited to, the projected activity level of the home
1139 occupation(s) on the premises in relation to the residential use and whether
1140 the proposed home occupation is a traditional accessory use in the
1141 community.
- 1142 (4) Number of workers. There must be no more than three persons, inclusive of residents of
1143 the premises, working in the home occupation(s) at the site at any one time.
- 1144 (5) Prohibited uses. The following uses are categorically prohibited as minor home

- 1145 occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking;
1146 commercial outdoor storage; machine shop; wholesale use; junkyard; auto salvage yard;
1147 seafood cooking; processing and/or cleaning; bait sales; marijuana retail use; and
1148 marijuana medical use. [Amended 5-22-2017 by Ord. No. 17-09]
- 1149 (6) Business hours. Business activities involving clients or customers on the premises or
1150 vehicular traffic to and from the premises must not be conducted between the hours of
1151 7:00 p.m. and 8:00 a.m., except for a bed-and-breakfast, a day-care facility or a
1152 functionally water-dependent use.
- 1153 (7) Nuisances.
- 1154 (a.) Any excessive noise, dust, smoke, vibrations, glare, direct lighting,
1155 objectionable fumes, traffic or electrical interference detected at the
1156 property boundary must not be greater in duration or intensity than that
1157 expected in the surrounding residential neighborhood.
- 1158 (b.) When reviewing a functionally water-dependent use, the above standards
1159 allow customary noises and smells caused by the use if all practicable steps
1160 are taken to manage and minimize the adverse impact on abutting property
1161 owners.
- 1162 (8) Parking. A plan must be submitted showing sufficient and safe parking for customers',
1163 clients' and workers' use during normal business operations. To the maximum extent
1164 practicable, parking should be arranged so as to avoid vehicles backing out into the street.
1165 In addition to parking required for the residence, the following parking is required:
1166 [Amended 9-26-2011 by Ord. No. 11-15]
- 1167 (a.) One parking space per nonresident worker at the site during the peak shift;
1168 (b.) One parking space if clients or customers frequently visit the site;
1169 (c.) One parking space per adult student up to the maximum class size; or
1170 (d.) One parking space per rental unit.
- 1171 (9) The parking design standards in Table 16.7.11.F of § 16.7 Site Plan Review, set out at the
1172 end of § 16.7.11.F, Parking Loading and Traffic (e.g., aisle width, stall size, etc.), may be
1173 modified for parking by workers if the parking arrangement will still provide for practical
1174 off-street parking adequate to prevent parking from overflowing the site.
- 1175 (10) With the exception of a bed-and-breakfast with more than three rooms for rent, three
1176 additional off-street parking spaces should satisfy the parking demand for a minor home
1177 occupation. Any recurring observed parking overflow is a violation of these standards.
- 1178 (11) The CEO may approve the joint use of a parking area where it is clearly demonstrated
1179 that the parking area will be available for use by customers or workers during the hours of
1180 operation due to the variation in time of use.
- 1181 (12) Outdoor storage. All outdoor storage of equipment, vehicles, items or equipment
1182 associated with the home occupation is prohibited except for the following:
- 1183 (a.) One vehicle used in conjunction with the home occupation;
1184 (b.) Seasonal storage of items necessary for functionally water-dependent uses,
1185 such as lobster traps; and
1186 (c.) Vehicles owned by residents of the premises with valid license plates.
1187 (d.) All bait must be stored indoors and must be kept refrigerated or otherwise
1188 stored to prevent offensive odors.
- 1189 (13) Business conduct. All business activities on the site must take place within the dwelling
1190 or enclosed buildings, except for outdoor recreational uses, agriculturally oriented uses or
1191 functionally water-dependent uses.
- 1192 (14) Refuse and recyclables. All refuse and recyclables must be stored within an enclosed
1193 building. No outdoor dumpsters are allowed. All waste materials from the home
1194 occupation must be removed from the premises on at least a monthly basis.

- 1195 (15) Traffic. The home occupation must not result in creating or significantly exacerbating a
1196 traffic hazard. Recurring vehicle traffic involving vehicles larger than a twenty-foot fixed
1197 axle, thirty-foot total length truck is prohibited.
- 1198 (16) Retail sales. Retail sales in which customers do not come to the premises are permissible,
1199 such as mail order or telephone sales. On-site retail sales are limited to the following:
- 1200 (a.) Sales of products grown, raised or produced on the premises. For the
1201 purposes of this subsection, the term "produced" is not to be construed to
1202 allow the assembly of a product from components produced elsewhere; and
- 1203 (b.) Sales of items customarily incidental and subordinate to a nonretail home
1204 occupation, such as sales of shampoo and hair brushes at a beauty salon.
- 1205 (c.) All other on-site retail sales are prohibited as a minor home occupation.
- 1206 (17) Health and safety. The proposed use must not create a health or safety hazard.

1207 C. Major home occupation standards.

1208 [Amended 5-22-2017 by Ord. No. 17-10]

1209 (3) Compliance with the Definition of a "Home Occupation."

- 1210 (a.) An applicant must be a resident of a dwelling on the premises where the
1211 home occupation will occur. An applicant who is not the owner of the
1212 property, but is residing on the premises, must submit written permission of
1213 the property owner for the proposed home occupation.
- 1214 (b.) As an accessory use, the home occupation(s) must be subordinate to the
1215 principal use. Quantitative measures that may be considered in determining
1216 whether a proposed activity is an accessory use include, but are not limited to,
1217 percentage and/or total amount of square footage attributed to the home
1218 occupation(s) use in relation to the residential use. Qualitative factors
1219 include, but are not limited to, the projected activity level of the home
1220 occupation(s) on the premises in relation to the residential use and whether
1221 the proposed home occupation is a traditional accessory use in the
1222 community.

1223 (4) Number of workers. There must be no more than five persons, inclusive of residents of
1224 the premises, working in the home occupation(s) at the site at any one time.

1225 (5) Prohibited uses. The following uses are categorically prohibited as major home
1226 occupations: motor vehicle repair; motor vehicle sales or rental; commercial parking;
1227 commercial outdoor storage; junkyard; auto salvage yard; marijuana retail use; and
1228 marijuana medical use except the activities of a primary caregiver registered under 22
1229 M.R.S. § 2425.

1230 (6) Business hours. Business activities involving clients or customers on the premises or
1231 vehicular traffic to and from the premises must not be conducted between the hours of
1232 7:00 p.m. and 7:00 a.m., except for a bed-and-breakfast, a day-care facility or a
1233 functionally water-dependent use. This limitation may be modified by the BOA provided
1234 the proposal satisfies the intent of this section.

1235 (7) Nuisances.

- 1236 (a.) Any excessive noise, dust, smoke, vibrations, glare, direct lighting,
1237 obnoxious fumes or odors, traffic, or electrical interference detected at the
1238 property boundary must not be greater in duration or intensity than that
1239 expected in the surrounding residential neighborhood.
- 1240 (b.) When reviewing a functionally water-dependent use, the above standards
1241 allow customary noises and smells caused by the use if all practicable steps
1242 are taken to manage and minimize the adverse impact on abutting
1243 properties.

1244 (8) Parking. A plan must be submitted that provides safe and sufficient off-street parking to

- 1245 meet the needs of the business to prevent parking from overflowing off the site. Any
1246 recurring observed parking overflow is a violation of these standards. The creation of
1247 more than four off-street parking spaces must be located, designed, screened and
1248 landscaped to minimize adverse impact on abutting properties.
- 1249 (9) Outdoor storage. All outdoor storage of equipment, vehicles or items associated with the
1250 home occupation must be screened from view of abutting properties and from all streets
1251 except for the following:
- 1252 (a.) One vehicle used in conjunction with the home occupation;
 - 1253 (b.) Seasonal storage of items necessary for functionally water-dependent uses,
1254 such as lobster traps; and
 - 1255 (c.) Vehicles owned by residents of the premises with valid license plates.
 - 1256 (d.) All bait must be stored indoors and must be kept refrigerated or otherwise
1257 stored to prevent offensive odors.
- 1258 (10) Business conduct. All business activities on the site must take place within an enclosed
1259 building or be screened from view of abutting properties and from all publicly maintained
1260 streets, except for outdoor recreational uses, agriculturally oriented uses or functionally
1261 water-dependent uses. This standard may be modified by the BOA provided the proposal
1262 satisfies the intent of this section.
- 1263 (11) Refuse and recyclables. All refuse and recyclables must be stored in containers that are
1264 screened from view of abutting properties and from streets. No emptying of dumpsters is
1265 allowed before 8:00 a.m. or after 7:00 p.m.
- 1266 (12) Traffic. The home occupation must not result in creating or significantly exacerbating a
1267 traffic hazard. Furthermore, the home occupation must not create an objectionable
1268 increase in vehicle traffic considering the type, time and amount of vehicle traffic
1269 generated and the design and capacity of the roads to the site and traffic normal for the
1270 neighborhood.
- 1271 (13) Retail sales. Retail sales on the premises are limited to the following:
- 1272 (a.) Sales in which customers do not come to the premises, such as mail order
1273 or telephone sales;
 - 1274 (b.) Sales of products grown, raised or produced on the premises;
 - 1275 (c.) Sales of seafood harvested by the residents of the premises;
 - 1276 (d.) Sales of items customarily incidental and subordinate to a nonretail home
1277 occupation, such as sales of shampoo and hair brushes at a beauty salon;
1278 and/or
 - 1279 (e.) Sales by appointment only for which any signage identifying the business
1280 states a "by appointment only" policy.
- 1281 (14) Health and safety. The proposed use must not create a health or safety hazard.
- 1282 (15) Neighborhood compatibility. The proposed use is determined to be compatible with the
1283 surrounding neighborhood. In reaching this determination, the following factors are to be
1284 considered:
- 1285 (a.) The nature of the property;
 - 1286 (b.) The physical characteristics of the neighborhood, including the amount of
1287 nonresidential activity;
 - 1288 (c.) Hours of operation;
 - 1289 (d.) Intensity of the activity;
 - 1290 (e.) Potential to degrade the quality of life for residents of the surrounding
1291 neighborhood; and
 - 1292 (f.) The cumulative impact of existing home occupations and other accessory
1293 uses both on the premises and in the surrounding neighborhood.

- 1294 (g.) Medical marijuana use is restricted to single-family residences only.
- 1295 (16) Large lots. When a seventy-five-foot-deep buffer yard is provided between all business
- 1296 activities (including storage and parking, except a driveway) and contiguous properties,
- 1297 and the buffer yard is sufficiently vegetated, fenced or otherwise screened so as to
- 1298 obscure the home occupation activities from an abutting property, the BOA may relax the
- 1299 above standards, except those pertaining to nuisances and prohibited uses, if the use is
- 1300 considered to comply with the intent of this subsection.
- 1301 (17) Annual renewal.
- 1302 (a.) Upon approval of a major home occupation by the Board of Appeals, the
- 1303 Code Enforcement Officer is authorized to issue a certificate of occupancy
- 1304 permit for not more than a one-year time period. Such permit may be
- 1305 renewed annually upon application to the Code Enforcement Officer.
- 1306 Operation of a major home occupation with an expired certificate of
- 1307 occupancy is a violation of this Code.
- 1308 (b.) The annual permit may be renewed only if the Code Enforcement Officer
- 1309 finds the major home occupation complies with all applicable standards of
- 1310 this Code and any conditions required by the Board of Appeals in the
- 1311 original approval.

1312 **16.5.10 Junkyards and/or Automobile Salvage Yards**

- 1313 A. Buffering.
- 1314 Buffering will be 100 feet on all sides except on the street, where 200 feet will be the minimum.
- 1315 Trees, shrubbery and fencing not less than eight feet in height, or all three, may be required by the
- 1316 Board to restrict visibility of the area from the road and neighbors. Land contour is to be taken
- 1317 into consideration. Approval of the junkyard plan is required by the Police, Highway and Fire
- 1318 Departments before any permit is presented to the Town Council for consideration.
- 1319 B. Buildings.
- 1320 Office, control or storage building must be inside the buffered area and no more than a maximum
- 1321 of 30 feet in height. The adequacy of buffering is to be considered in allowing heights over 20
- 1322 feet.
- 1323 C. Junk piles.
- 1324 Junk piles may only be inside the buffered area and piled no higher than 15 feet.
- 1325 D. Waste.
- 1326 No garbage, toxic waste or liquid or sanitary wastes are permitted. The Maine State Plumbing
- 1327 Code will apply for sanitary waste and any state laws regulating toxic waste. Separate storage
- 1328 must be maintained for toxic waste, including but not limited to oil, grease, gasoline and solvents.
- 1329 This waste must be removed at least twice a year by an accredited dealer in such wastes. All tanks
- 1330 of vehicles must be drained and contents properly disposed of.
- 1331 E. Drainage.
- 1332 Provision must be made for proper drainage of stormwater or other wastewater, so that
- 1333 contaminated, rusted or other noticeable effluent does not go beyond actual junk area or into
- 1334 buffering. Special attention is to be given to acceptable drainage of normal stormwater. §
- 1335 16.7.11.C of this chapter also applies.
- 1336 F. Hours of operation.
- 1337 Work in connection with demolishing or wrecking cars or purchasing or selling items is permitted
- 1338 only on Monday through Saturday between the hours of 7:00 a.m. and 6:00 p.m.
- 1339 G. Signs.
- 1340 One four-foot-by-six-foot maximum, non-illuminated sign is permitted at the entrance to the
- 1341 property.
- 1342 H. Cleanliness.

1343 Junkyards and salvage yards should be kept reasonably neat and clean, with no debris or other
1344 nuisance permitted outside of the buffered area.

1345 I. Permits.

1346 A permit for not more than one year's operation is required in addition to the state permit. The
1347 Town fee is as set by the Town Council. Periodic inspections must be made by the Code
1348 Enforcement Officer during the year to ensure compliance with the state and local ordinances.

1349 J. Other standards application.

1350 All other applicable standards of this chapter not specifically mentioned here, such as parking,
1351 noise, etc., also apply to this use.

1352 **16.5.11 Lots**

1353 [Amended 9-28-2015 by Ord. No. 15-06]

1354 A. Dimensions.

1355 The lot size, width, depth and shape and orientation and the minimum building setback lines must
1356 be appropriate for the location of the development and for the type of development and use
1357 contemplated. The lot configuration should be designed to maximize access to solar energy for
1358 building sites with suitable orientation.

1359 B. Lot shape.

1360 (3) The ratio of lot length to width must not be more than 3:1. Flag-shaped lots are
1361 prohibited. Other odd-shaped lots in which narrow strips are joined to other parcels in
1362 order to meet minimum lot size requirements are also prohibited.

1363 (4) Spaghetti lots prohibited. If any lots in a proposed subdivision have shore frontage on a
1364 river, stream, brook or coastal wetland, as these features are defined in 38 M.R.S. §480-B,
1365 none of the lots created within the subdivision may have a lot depth to shore frontage
1366 ratio greater than 5:1.

1367 C. Double/reverse-frontage lots.

1368 Double-frontage and reverse-frontage lots are to be avoided except where essential to provide
1369 separation of residential development from traffic arteries or to overcome specific disadvantages
1370 of topography and orientation. A planting screen easement of at least 10 feet, across which there
1371 may be no right of access, is to be provided along the lot lines abutting such a traffic artery or
1372 other disadvantageous use.

1373 D. Side lot lines.

1374 Side lot lines must be substantially at right angles or radial to street lines.

1375 E. Substantially larger lots.

1376 Where a tract is subdivided into lots substantially larger than the minimum size required in the
1377 zone in which a subdivision is located, and where no covenants exist to preclude lots from
1378 resubdivision, the Board may require that streets and lots be laid out so as to permit future
1379 resubdivision in accordance with the requirements contained in these standards.

1380 F. Multiple frontages.

1381 When lots have frontage on two or more streets, the plan and deed restrictions must indicate
1382 vehicular access to be located only on the least-traveled way.

1383 G. Divided lots.

1384 If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum
1385 requirements for lot size, it may not be combined with a lot on the other side of such barrier to
1386 meet the minimum lot size unless in conformance with § 16.1.8.B, General Development
1387 Requirements, Conformity.

1388 H. Off-street parking.

1389 Depth and width of properties reserved or laid out for all purposes must be adequate to provide for
1390 off-street parking and service facilities for vehicles required by type of development and use

1391 contemplated.

1392 I. Access to arterial street.

1393 Where a major subdivision abuts or contains an existing or proposed arterial street, no residential
1394 lot may have vehicular access directly onto the arterial street. This requirement must be noted on
1395 the plan and in the deed of any lot with frontage on the arterial street.

1396 J. Land subdivision.

1397 The subdividing of land must conform to the requirements of § 16.4.

1398 **16.5.12 Manufactured Housing**

1399 A. Standards.

1400 Standards for manufactured housing include the following:

- 1401 (3) All mobile home units must be manufactured after June 15, 1976, and shall have a
1402 manufacturer-installed sticker indicating HUD approval.
- 1403 (4) All units must be manufactured with a pitched, shingled roof, with a minimum slope three
1404 inches on 12 inches (3:12).
- 1405 (5) All units must have residential-type siding, such as clapboards, shakes, horizontally
1406 applied aluminum, or vinyl resembling clapboards.
- 1407 (6) All units, excluding individual mobile home park installations, must have a permanent
1408 foundation, which may be either a full basement or a poured or block frost wall.
- 1409 (7) All other sections of this title must be adhered to.

1410 **16.5.13 Mineral/earth material exploration and removal**

1411 A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where
1412 permitted under the terms of this title, only after a special permit for such operations has been
1413 issued by the Code Enforcement Officer, upon approval and review of plans by the Planning
1414 Board in accordance with the provisions of this title, and provided that nothing herein may be
1415 deemed to apply to normal excavation operations incidental to construction activities for which a
1416 valid permit is held. The following standards must be met:

- 1417 (3) The applicant must submit to the Code Enforcement Officer plans of the proposed
1418 extraction site, showing the property lines and names of all abutting owners and ways,
1419 indicating by not greater than five-foot contour intervals related to U.S. Geodetic Survey
1420 data, the location and slope of the grades existing and as proposed upon completion of the
1421 extraction operation; proposed fencing; buffer strips; signs; lighting; parking and loading
1422 areas; entrances and exits, together with a written statement of the proposed method,
1423 regularity, working hours and total proposed rehabilitation and restoration of the site upon
1424 completion of the operation.
- 1425 (4) Said plans and statement are to be promptly submitted with the recommendations of the
1426 Code Enforcement Officer to the Planning Board for its consideration with respect to the
1427 effect of the proposed operation upon existing and foreseeable traffic patterns within the
1428 Town, upon existing or approved land uses which might be affected by the operations.
1429 The Planning Board may recommend changes to the applicant for resubmission to the
1430 Planning Board. The Planning Board is to promptly call and hold a public hearing upon
1431 the final application in the same manner as provided for any final plan review.
- 1432 (5) The Planning Board shall render a written decision as to whether, and under what
1433 conditions, the proposed operation may be permitted, consistent with public health and
1434 safety; the preservation of attractive natural features; compatibility, despite temporary and
1435 reasonable disturbance, with existing or approved land uses which might be affected; and
1436 implementation of the Comprehensive Plan. If the Planning Board approves the
1437 application, it may condition the special permit upon such alterations in the proposed
1438 operation or upon the performance or omission of such acts as it may deem proper to
1439 assure attainment of the objectives set forth in the preceding sentence, and it may require

1440 filing of a performance guaranty in an amount and form acceptable to the Town Manager
1441 to indemnify the Town against any claims arising from the proposed operations and to
1442 assure satisfactory performance of all conditions imposed or otherwise applicable.

1443 B. Mandatory restrictions. All extraction operations and sites within the Town must be conducted and
1444 maintained in accordance with, and the Planning Board shall impose, such conditions upon any
1445 special permit issued under this subsection as it deems necessary or desirable to assure compliance
1446 with the following requirements:

- 1447 (3) Mineral exploration to determine the nature or extent of mineral resources must be
1448 accomplished by hand sampling, test boring, or other methods which create minimal
1449 disturbance of less than 100 square feet of ground surface. A permit from the Code
1450 Enforcement Officer is required for mineral exploration which exceeds the above
1451 limitation. All excavations, including test pits and holes, must immediately be capped,
1452 filled or secured by other equally effective measures so as to restore disturbed areas and
1453 to protect the public health and safety.
- 1454 (4) Mineral extraction, including sand and gravel extraction, is prohibited within the
1455 Conservation, Shoreland Overlay and Resource Protection Overlay Zones.
- 1456 (5) No part of any extraction operation may be permitted within 100 feet of any property or
1457 street line, and natural vegetation must be left and maintained on the undisturbed land.
1458 Minimize the volume of earth cut and fill, in general, with no cut or fill greater than seven
1459 feet for construction in an urban residential zone. Topographical change will not result in
1460 cuts or fills exceeding seven feet.
- 1461 (6) No standing water may be permitted in any extraction site during or after extraction
1462 operations; except that, during or after extraction operations, standing water may be
1463 permitted under strict conditions with respect to fencing, safe levels of coliform bacteria
1464 count, and treatment to prevent breeding of insects so as to assure the public health and
1465 safety, as determined by the Town Health Officer.
- 1466 (7) No slopes steeper than three feet horizontal to one foot vertical may be permitted at any
1467 extraction site unless a fence at least three feet high is erected to limit access to such
1468 locations.
- 1469 (8) Before commencing removal of any earth materials, the owner or operator of the
1470 extraction site must present evidence to the Planning Board of insurance against liability
1471 arising from the proposed extraction operations and maintain such insurance throughout
1472 the period of operation.
- 1473 (9) Any topsoil and subsoil suitable for purposes of revegetation must, to the extent required
1474 for restoration, be stripped from the locations of extraction operations and stockpiled for
1475 use in restoring the location after extraction operations have ceased.
- 1476 (10) Upon completion of active extraction operations, the land must be left so that natural
1477 storm drainage and watercourses leave the location at the original natural drainage points
1478 and in a manner such that the amount of drainage at any point is not significantly
1479 increased.
- 1480 (11) The hours of operation at any extraction site are to be limited as the Planning Board
1481 deems advisable to ensure operational compatibility with residents of the Town.
- 1482 (12) Loaded vehicles must be suitably covered to prevent dust and contents from spilling or
1483 blowing from the load, and all trucking routes and methods are subject to approval by the
1484 Chief of Police.
- 1485 (13) All access roads leading from the extraction site to public ways must be treated with
1486 stone, calcium or other suitable materials to reduce dust and mud for a distance of at least
1487 100 feet from such public ways.
- 1488 (14) No equipment, debris, junk or other material is permitted at an extraction site except those
1489 directly relating to active extraction operations, and any temporary shelters or buildings
1490 erected for such operations and equipment used in connection therewith must be removed

1491 within 30 days following completion of active extraction operations.

- 1492 (15) Following the completion of extraction operations at any extraction site or at any one or
1493 more locations within any extraction site, ground levels and grades must be established in
1494 accordance with the approved plans filed with the Planning Board; all debris, stumps,
1495 boulders and similar materials must be removed and disposed of in an approved location
1496 or, in the case of inorganic material, buried and covered with a minimum of two feet of
1497 soil. Sufficient topsoil or loam must be retained to cover all disturbed areas, so that they
1498 must be revegetated and properly restored to a stable condition adequate to meet the
1499 provisions of the "Maine Erosion and Sediment Control BMPs," March 2003.

- 1500 C. Issuance and renewal of permits. Special permits may be issued in accordance with the foregoing
1501 provisions for a period not to exceed one year, and they are renewable only upon application by
1502 the owner, after a finding by the Planning Board that the conduct of the operation has been
1503 substantially in accordance with any and all conditions imposed or material representations made
1504 in connection with the original special permit, and upon such additional and altered conditions as
1505 the Board may deem necessary in accordance with Subsection A(3) of this section.

1506 **16.5.14 Mobile Home Parks, Recreational Vehicle Parks and Campgrounds**

- 1507 A. Permit required. No person, firm, corporation or other legal entity may establish or maintain a
1508 Mobile Home Park, Recreational Vehicle Park or Campground within the Town without a permit
1509 issued in conformity with the provisions of this title. It is the park operator's responsibility to
1510 obtain the permit.

- 1511 (3) Application. Application for a Mobile Home Park, Recreational Vehicle Park or
1512 Campground permit must be filed with the Code Enforcement Officer, who will present
1513 said application to the Planning Board for review as a subdivision, except that permit
1514 renewals are not subject to Board review. The Board must review the proposal in
1515 accordance with the standards contained herein and inform the CEO of its decision. The
1516 CEO shall then act on the application as required.
- 1517 (4) Fee and expiration. Each application for a permit or a renewal thereof must be
1518 accompanied by a fee as established by the Town Council for a Mobile Home Park,
1519 Recreational Vehicle Park or Campground designed for the accommodation of no more
1520 than 10 Manufactured Housing units, Recreational Vehicles or tent sites and an additional
1521 fee, as established by the Town Council, for each additional Manufactured Housing unit,
1522 Recreational Vehicle or tent site located at the site. (See Appendix A for annual mobile
1523 home park fee schedule.) Permits expire on the first day of April next following date of
1524 issuance. Before any permit is renewed, the premises are subject to inspection by the
1525 Health Officer and CEO. If all requirements of this and other federal, state and local laws
1526 have been complied with, the same is to be certified and the permit renewed.
- 1527 (5) Permit display. Permits issued under this section must be conspicuously posted on the
1528 premises at all times and are not transferable.
- 1529 (6) Revocation. The CEO is authorized to revoke any permit issued under this section
1530 pursuant to the terms of this title if, after due investigation, it is determined the holder
1531 thereof has violated any of the provisions of this or any applicable code, law or statute.

- 1532 B. Compliance.
1533 Applications for development of Mobile Home Parks, Recreational Vehicle Parks or
1534 Campgrounds must comply with all state laws and local ordinances and meet the requirements of
1535 subdivision law, except as stipulated below. Such developments in existence prior to adoption of
1536 this title may be enlarged only if the extension complies with the terms specified herein.

- 1537 C. Recreational Vehicle Parks and Campgrounds.
1538 In any district where Campgrounds or Recreational Vehicle Parks are permitted under the terms
1539 of this title, the following regulations and minimum standards apply:

- 1540 (3) A time limit is placed on the occupancy of any one camping space on a continuing basis

1541 as follows: 12 weeks for the period May 15 to October 15 of each year and two weeks for
1542 all other periods. No Recreational Vehicles or Manufactured Housing units other than
1543 such as are camping units, as defined herein, are permitted within any camper park,
1544 temporarily or otherwise.

- 1545 (4) A Campground or Recreational Vehicle Park may not be constructed on less than five
1546 acres of land.
- 1547 (5) Each tent site must be provided with a masonry or metal fireplace approved by the Fire
1548 Chief.
- 1549 (6) Spaces in Campgrounds and Recreational Vehicle Parks may be used by travel trailers,
1550 equivalent facilities constructed in or on automotive vehicles, tents or other short-term
1551 shelter devices.
- 1552 (7) A Recreational Vehicle Park or Campground must provide water and sewerage systems,
1553 sanitary stations and convenience facilities in accordance with the regulations of the State
1554 Plumbing Code and the Maine Department of Human Services. In no case may less than
1555 one toilet, lavatory and shower be provided for each sex for every 10 camping and tent
1556 sites or major portion thereof.
- 1557 (8) Recreational Vehicles must be parked on sites containing a minimum of 2,500 square feet
1558 and having a minimum frontage along the traveled way of 50 feet, exclusive of drives and
1559 aisles.
- 1560 (9) Tent sites must contain a minimum of 2,500 square feet. There must be a minimum of 30
1561 feet between tents.
- 1562 (10) Recreational Vehicles must be so parked in spaces that:
- 1563 (a.) There will be a minimum of 15 feet between vehicles.
- 1564 (b.) There will be a minimum of 15 feet between all Recreational Vehicles and
1565 the exterior boundary of the park.
- 1566 (c.) There will be a minimum of 25 feet between all Recreational Vehicles and
1567 all public rights-of-way located inside the boundaries of the Recreational
1568 Vehicle Park or Campground. Setbacks from roads outside the Recreational
1569 Vehicle Park will be a minimum of 150 feet.
- 1570 (d.) No camping unit or structure may be located less than 100 feet from any
1571 residence.
- 1572 (e.) Buffering: planting, landscaping, disposition and form of building and other
1573 improvements, or fencing and screening is to be utilized to integrate the
1574 proposed development with the landscape and the character of any
1575 surrounding development.
- 1576 (11) The storage, collection and disposal of refuse must not create health hazards, rodent
1577 harborage, insect breeding areas, accident hazards or air pollution.
- 1578 (12) No unoccupied camping unit may be stored or exhibited for sale for commercial purposes
1579 within the park.

1580 D. Mobile Home Parks.

- 1581 (3) Mobile Home Parks, by special exception, may be located as indicated in § 16.4.
- 1582 (4) Lots within a shoreland zoning district must meet the lot area, setback and shore frontage
1583 requirements for that district.
- 1584 (5) Lots in a Mobile Home Park must meet the following lot size, width and density
1585 requirements:
- 1586 (a.) Lots by public sewer.
- 1587 [1.] Minimum lot area: 6,000 square feet.
- 1588 [2.] Minimum lot width: 50 feet.
- 1589 (b.) Lots served by individual on-site subsurface wastewater disposal system.

- 1590 [1.]Minimum lot area: 20,000 square feet.
- 1591 [2.]Minimum lot width: 100 feet.
- 1592 (c.) Lots served by a central on-site subsurface wastewater disposal system*.
- 1593 * The overall density of a Mobile Home Park served by a central on-site
- 1594 subsurface wastewater disposal system may be no greater than one unit per
- 1595 20,000 square feet of total park area
- 1596 [1.]Minimum lot area: 12,000 square feet.
- 1597 [2.]Minimum lot width: 75 feet.
- 1598 (d.)The overall density of the Mobile Home Park is the combined area of its
- 1599 mobile home lots plus:
- 1600 [1.]The area required for road rights-of-way;
- 1601 [2.]The area required for buffer strips, if any;
- 1602 [3.]For areas served by public sewer, an open space area for storage and
- 1603 recreation equal to 10% of the combined area of the individual lots;
- 1604 and
- 1605 [4.]The area within the municipality's shoreland setback.
- 1606 (e.) All buildings on the lot, including accessory buildings and structures, but
- 1607 excluding open decks and parking spaces, may not cover more than 50% of
- 1608 the lot area.
- 1609 (6) The following setback rules apply to all mobile homes and accessory buildings:
- 1610 (a.) Front and side setbacks are to be 20 feet; rear setbacks, 10 feet. If these
- 1611 requirements conflict with the requirements of the title, 38 M.R.S. § 435 et
- 1612 seq., Mandatory Shoreland Zoning, or subsequent amendments or revisions
- 1613 thereto, the stricter standards apply.
- 1614 (b.) If a lot is on a public road, the setback must conform with the residential
- 1615 setback requirements applicable to other residential dwelling units in the
- 1616 zone.
- 1617 (c.) So as to avoid monotony and sameness, the Code Enforcement Officer may
- 1618 allow:
- 1619 [1.]The front setback on a private road within a mobile home park to be
- 1620 varied, provided no mobile home may be closer than 10 feet from
- 1621 the right-of-way and the average distance is at least 20 feet for all
- 1622 units.
- 1623 [2.]The replacement and/or relocation of a mobile home to be located
- 1624 no closer to the front yard setback than the existing mobile home or
- 1625 pad.
- 1626 (d.) Carports of noncombustible materials are not subject to setback
- 1627 requirements.
- 1628 (e.) The CEO may allow side yard setbacks to be reduced to five feet, provided
- 1629 a distance of 20 feet is maintained between mobile homes for the purpose of
- 1630 providing more usable yard space on one side of the home.
- 1631 (f.) A minimum twenty-foot separation must be maintained between all mobile
- 1632 homes in all directions.
- 1633 (7) All buildings on the lot, including accessory buildings and structures, but excluding open
- 1634 decks and parking spaces, may cover not more than 50% of the lot area.
- 1635 (8) Where a developer elects to create a Mobile Home Park where all land is under unified
- 1636 ownership, the park plan must demonstrate that the development standards described
- 1637 herein are met.
- 1638 (9) Privately owned roads within the Mobile Home Park must be designed by a professional

- 1639 engineer, registered in the State of Maine, and built according to accepted engineering
1640 standards.
- 1641 (a.) The layout and general development plan for major and minor access streets
1642 within the Mobile Home Park, together with the location and dimensions of
1643 access junctions with existing public streets and rights-of-way must be
1644 approved by the Planning Board.
- 1645 (b.) For Mobile Home Park expected to generate 200 trips per day or more,
1646 there must be at least two entrances from public streets or roads.
- 1647 (10) Mobile home park streets which intersect with public roads must meet the following
1648 standards:
- 1649 (a.) Angle of intersection. The desired angle of intersection is to be 90°. The
1650 minimum angle of intersection is to be 75°.
- 1651 (b.) Grade. The maximum permissible grade within 75 feet of the intersection is
1652 2%.
- 1653 (c.) Minimum sight distance. The minimum sight distance must be 10 times the
1654 posted speed limit on the existing road. Sight distance is measured from the
1655 driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder
1656 line with the height of the eye 3 1/2 feet above the pavement and the height
1657 of an object 4 1/4 feet.
- 1658 (d.) Distance from other intersections. The center line of any street within a park
1659 intersecting an existing public street must be at least 125 feet from the
1660 center line of any other street intersecting that public street.
- 1661 (11) Right-of-way and pavement width are to be as follows:
- 1662 (a.) Two-way park roads must have a minimum right-of-way of 23 feet and a
1663 minimum paved surface of 20 feet. On-street parking is prohibited.
- 1664 (b.) One-way streets must have a minimum right-of-way of 18 feet and a
1665 minimum paved surface of 14 feet. On-street parking is prohibited.
- 1666 (c.) Parking lanes are to be a minimum of eight feet in width, if provided.
- 1667 (d.) Cul-de-sac turnarounds are to have minimum radii of 50 feet at the outer
1668 edge of the pavement, exclusive of any parking areas.
- 1669 (e.) Curvilinear streets must be utilized wherever possible. No street within the
1670 park may be more than 200 feet without a curve or bend.
- 1671 (f.) If the developer intends to dedicate park streets to the public, such streets
1672 must meet municipal standards as contained in § 16.7.12.F and § 16.8.11.L
1673 of this chapter.
- 1674 (12) No mobile home lot may have vehicular access directly onto a state highway.
- 1675 (13) A traffic impact analysis is required if the park will generate more than 500 trips/day.
- 1676 (14) Parking requirements for Mobile Home Park areas follows:
- 1677 (a.) For each mobile home lot there must be provided and maintained at least
1678 two off-street parking spaces. This requirement may be waived if an
1679 equivalent number of spaces are provided by a parking lane. Each space is
1680 design-dependent as indicated in Table 16.7.11.F of this chapter, set out at
1681 the end of § 16.7.11, Parking Loading and Traffic. This requirement may be
1682 waived if an equivalent number of spaces are provided by a parking lane.
- 1683 (b.) In addition to occupant parking, off-street guest and service parking must
1684 be provided within the boundaries of the park at a ratio of one space for
1685 each four mobile home lots. Such parking must be reserved for that sole
1686 use. This requirement may be waived if a parking lane provides an
1687 equivalent number of spaces.
- 1688 (c.) On-street parking is prohibited unless an eight-foot parking lane is

- 1689 provided, in which case on-street parking may be permitted on the side of
1690 the road where the parking lane is located.
- 1691 (15) The mobile home park must contain pedestrian walkways that link all units and all service
1692 and recreational facilities. Such walkways are to be adequately surfaced and lit. A portion
1693 of the road surface may be reserved for walkways, provided the street width is increased
1694 accordingly. Walkways should be a minimum of width of three feet. [Amended 9-26-
1695 2011 by Ord. No. 11-15]
- 1696 (16) Outdoor lighting is to be provided to adequately illuminate internal streets and pedestrian
1697 walkways. Lights are to be sized and directed to avoid adverse impacts on adjacent
1698 properties and vehicular traffic.
- 1699 (17) Open space calculations are as follows:
- 1700 (a.) For Mobile Home Park served by a public sewer, an area amounting to 10%
1701 of the total area devoted to individual lots must be set aside for open space
1702 and/or recreation. Such space is to be accessible and usable by all residents
1703 of the park. Parking space, driveways and streets and buffer areas are not
1704 considered usable open space but community recreation buildings, pools
1705 and courts are considered as open space.
- 1706 (b.) At least 50% of the required open space must consist of land that is suitable
1707 for active recreation.
- 1708 (c.) All developed open space is to be designed and landscaped for the use and
1709 enjoyment of the park residents and maintained for their long-term use.
1710 Plans for these areas must be submitted by the developer.
- 1711 (d.) To the maximum extent possible, undeveloped open space must be left in
1712 its natural state. Improvements to make trails for walking and jogging or to
1713 make picnic areas are permitted.
- 1714 (e.) The developer must submit, as part of the application, a copy of that portion
1715 of the proposed park rules and a plan which specify how the open space is
1716 to be used and maintained and what conditions apply to its use. The plan
1717 must specify the area to be dedicated open space or recreation.
- 1718 (f.) Open space must be maintained and used for its approved purposes.
- 1719 (18) All Mobile Home Park must provide permanent electrical, water and sewage disposal
1720 connections to each mobile home in accordance with applicable state and local rules and
1721 regulations. If other than public water is to be utilized, the water system(s) must be
1722 capable of delivering 250 gallons per day per lot of water certified to be of primary
1723 drinking water standards.
- 1724 (19) Signs and advertising devices are prohibited in a Mobile Home Park, except:
- 1725 (a.) One identifying sign at each entrance of the Mobile Home Park sized in
1726 compliance with § 16.5.16 of this chapter may be installed.
- 1727 (b.) Directional and informational signs for the convenience of tenants and the
1728 public relative to parking, office, traffic movement, etc., are permitted.
- 1729 (c.) Mobile/manufactured home "for sale" signs, provided that such signs that
1730 face a public road may be no more than 10 square feet and limited to two
1731 signs per Mobile Home Park.
- 1732 (d.) Mobile/manufactured homes address signs are permitted when in
1733 compliance with § 16.5.16 of this chapter.
- 1734 (e.) The styles and location of the identifying sign must not interfere with
1735 vehicle sight distance and be constructed in accordance with § 16.5.16 of
1736 this chapter.
- 1737 (20) At least 300 cubic feet of enclosed tenant storage facilities must be conveniently provided
1738 on or near each mobile home lot for the storage of materials and equipment.

- 1739 (21) A storm drainage plan must be prepared by a professional engineer, registered in the State
 1740 of Maine, in accordance with § 16.7.11.C, Stormwater drainage. Such plan must be
 1741 approved by the York County Soil and Water Conservation District or found satisfactory
 1742 and compliant to the Code by the Town's Engineering Peer Reviewer prior to Planning
 1743 Board approval of the final plan. [Amended 9-26-2011 by Ord. No. 11-15]
- 1744 (22) Groundwater requirements for Mobile Home Park are as contained in § 16.7.11.J, which
 1745 must be complied with for all Mobile Home Park applications.
- 1746 (23) Each mobile home lot must be provided with an area for refuse storage. Within a
 1747 maximum 150 feet from each mobile home lot, there must be a fly tight, watertight and
 1748 rodent proof container capable of storing the amount of refuse that the mobile home park
 1749 for which it was designed could generate within one week as well as any separation
 1750 containers as required by the Kittery recycling program. The park management is
 1751 responsible for disposal of refuse from such containers at least once a week.
- 1752 (24) Buffering requirements are as follows:
- 1753 (a.) A fifty-foot-wide buffer strip must be provided along all property boundary
 1754 lines that:
- 1755 [1.] Abut residential land which has a gross density of less than half that
 1756 proposed in the park; or
- 1757 [2.] Abut residential land that is zoned at a density of less than half that
 1758 proposed in the park.
- 1759 (b.) Further, no structures, streets or utilities may be placed in the buffer strip,
 1760 except that they may cross a buffer strip to provide services to the park.
- 1761 (c.) Within 25 feet of any property line and within the buffer strip, visual
 1762 screening and/or landscaping must be provided. The visual screening may
 1763 consist of fences, berms, landscaping (such as shrubs or trees) and/or
 1764 natural existing vegetation. This screening is to effectively screen at least
 1765 80% of the homes from view from the adjacent property and be maintained
 1766 throughout the life of the project.
- 1767 (25) The owner or operator of a mobile home park is responsible for ensuring the maintenance
 1768 of all park-owned structures, open space areas, roads and pedestrianways/sidewalks. Park
 1769 management must comply with state laws. Compliance with this title does not exempt the
 1770 park owner, developer or manager from complying with other applicable local, state and
 1771 federal codes and regulations. [Amended 9-26-2011 by Ord. No. 11-15]
- 1772 (26) No development or subdivision which is approved under this section as a mobile home
 1773 park may be conveyed to another use without the approval of the Planning Board and
 1774 meeting the appropriate lot size, lot width, setback and other requirements contained in
 1775 this title. The approved final plan is to be recorded at the York County Registry of Deeds
 1776 and filed with the Town and have noted the following restrictions as well as any other
 1777 notes or conditions of approval: (1) "The land within this park must remain in a unified
 1778 ownership and the fee to lots or portions of lots not be transferred." (2) "No dwelling unit
 1779 other than a mobile home unit may be located within the park."

16.5.15 Net Residential Acreage

[Added 9-28-2015 by Ord. No. 15-05]

A. Purpose.

To determine for regulatory purposes the land area suitable for dwelling units. This land area, the net residential acreage, is used to determine the maximum number of dwelling units allowed on a parcel that is subject to subdivision. The total number of dwelling units allowed is equal to the net residential acreage divided by the minimum land area per dwelling unit for a given land use zone.

B. Net residential acreage calculation.

To calculate net residential acreage, the land area listed below must be subtracted from a parcel's

- 1789 gross area. Where land areas to be subtracted overlap, the area therein is subtracted once.
- 1790 (3) All land located below the highest annual tide elevation as published in the Maine DEP
1791 Highest Annual Tide (HAT) levels for the most-current year.
- 1792 (4) All land located within the floodplain as defined in the definition of "flood, one-hundred-
1793 year" in § 16.3.
- 1794 (5) All wetlands as defined in the definition of "wetland" in § 16.3, as well as vernal pools,
1795 ponds, lakes, streams and other water bodies, including 50% of the associated setbacks
1796 described in other Buildings and Structures, Table 16.5.28, § 16.5 of this title.
- 1797 (6) All land located on filled tidal lands, per the definition of "tidal land, filled" in § 16.3.
- 1798 (7) All land located within existing rights-of-way and other existing easements wherein
1799 dwelling units cannot be built.
- 1800 (8) All land located within proposed rights-of-way, including parking and travel ways.
1801 Driveways are excluded.
- 1802 (9) All land isolated from the principal location for development on the parcel by a
1803 road/street, existing land uses, or any physical feature, natural or man-made, such that it
1804 creates a barrier to the central development of the site and no means of access is proposed
1805 nor likely to be provided in the future. However, to demonstrate that identified isolated
1806 land may be considered developable for the purpose of this calculation, the applicant must
1807 submit a plan and supporting documentation for the Board's consideration.
- 1808 (10) All land zoned commercial (C-1, C-2, or C-3).
- 1809 (11) All land one acre or more of contiguous area with sustained slopes of 20% or greater.
- 1810 (12) All land identified as exposed bedrock, and soils with a drainage class of "poorly drained"
1811 and/or "very poorly drained" as defined in the definition of "soils" in § 16.3.
- 1812 (13) Fifty percent of all land characterized as drainage class of "somewhat poorly drained,"
1813 unless public sewer is used, in which case no land area is subtracted.
- 1814 (14) All land area within a cemetery and burying ground as defined in § 16.3, including
1815 associated setback per 13 M.R.S.A. § 1371-A, Limitations on construction and excavation
1816 near burial sites.
- 1817 (15) All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource
1818 Protection Overlay Zone not included in Subsection 12 above.

1819 C. Documentation.

1820 The net residential acreage calculation must be supported by verifiable information and accurate
1821 data and be shown on the subdivision plan or other plan when applicable.

1822 D. Exemptions to net residential acreage calculations.

- 1823 (3) The maximum number of dwelling units for residential development not subject to
1824 subdivision is based on minimum land area per dwelling unit defined in § 16.2,
1825 Definitions of this title.
- 1826 (4) The creation of dwelling units subject to subdivision within existing buildings that are
1827 connected to Town sewer and are located in the Mixed Use - Kittery Foreside, Mixed Use
1828 - Badgers Island, Residential Village, Business Local, or Business Local-1 Zones are
1829 exempt from the net residential acreage calculations in § 16.5.17.A. The total number of
1830 dwelling units permitted is determined by dividing the gross lot area by the minimum
1831 land area per dwelling unit allowed in the zone. The exemption is allowed in the above
1832 base zones when subject to the Shoreland Overlay Zone.

1833 **16.5.16 Nonstormwater Discharge**

1834 [Amended 5-22-2017 by Ord. No. 17-06]

1835 A. Basis/purpose/objectives.

- 1836 (3) The Maine Department of Environmental Protection, through its promulgation of the
1837 "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm
1838 Sewer Systems" dated July 2013, has listed the Town of Kittery as having a regulated
1839 small municipal separate storm sewer system ("small MS4"); under this general permit,
1840 listing as a regulated small MS4 necessitates enactment of this article as part of the
1841 municipality's stormwater management plan.
- 1842 (4) The purpose of this article is to provide for the health, safety, and general welfare of the
1843 citizens of the Town of Kittery, through the regulation of nonstormwater discharges to the
1844 municipality's storm drainage system as required by federal and state law. This article
1845 establishes methods for controlling the introduction of pollutants into the Town's storm
1846 drainage system in order to comply with requirements of the federal Clean Water Act and
1847 state law.
- 1848 (5) The objectives of this article are:
- 1849 (a.) To prohibit unpermitted or unapproved nonstormwater discharges to the
1850 storm drainage system; and
- 1851 (b.) To set forth the legal authority and procedures to carry out all inspection,
1852 monitoring and enforcement activities necessary to ensure compliance with
1853 this article.
- 1854 B. Applicability.
1855 This article shall apply to all persons discharging stormwater and/or nonstormwater discharge
1856 from any premise into the storm drainage system.
- 1857 C. Responsibility for administration.
1858 The Code Enforcement Officer is the enforcement authority who shall administer, implement, and
1859 enforce the provisions of this article.
- 1860 D. Prohibition of nonstormwater discharges.
- 1861 (3) Except as allowed or exempted herein, a person may not create, initiate, originate or
1862 maintain a nonstormwater discharge to the storm drainage system. Such nonstormwater
1863 discharges are prohibited even where the municipality has approved the connections,
1864 drains or conveyances through which a person creates an illicit nonstormwater discharge
1865 to the storm drainage system.
- 1866 (4) The creation, initiation, origination and maintenance of the following nonstormwater
1867 discharges to the storm drainage system are allowed as long as they do not cause or
1868 contribute to a violation of the state's water quality standards:
- 1869 (a.) Flow: Landscape irrigation; diverted stream flows; rising groundwaters;
1870 uncontaminated groundwater infiltration [as defined at 40 CFR
1871 35.2005(20)]; uncontaminated pumped groundwater; uncontaminated flows
1872 from foundation drains; air conditioning and compressor condensate;
1873 irrigation water; flows from uncontaminated springs; uncontaminated water
1874 from crawlspace pumps; uncontaminated flows from footing drains; lawn
1875 watering runoff; flows from riparian habitats and wetlands; residual street
1876 wash water (where spills/leaks of toxic or hazardous materials have not
1877 occurred, unless all spilled material has been removed and detergents are
1878 not used); hydrant flushing and firefighting activity runoff; water line
1879 flushing and discharges from potable water sources; individual residential
1880 car washing; and dechlorinated swimming pool discharges, as defined as
1881 having 0.5 ppm or less. Pools may only be emptied a minimum of 48 hours
1882 after any chemical treatments were added.
- 1883 (b.) Discharges specified in writing by the enforcement authority as being
1884 necessary to protect public health and safety; and
- 1885 (c.) Dye testing, with verbal notification to the enforcement authority prior to

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the time of the test.

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E. Exempt person or discharge.

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This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

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F. Suspension of access to municipality's storm drainage system.

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(3) The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened nonstormwater discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a nonstormwater discharge to the storm drainage system.

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(4) If the person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons. Only with the consent of the premises' owner, occupant or agent may the enforcement authority enter the premises that are the source of the actual or threatened nonstormwater discharge to the storm drainage system.

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G. Monitoring of discharges.

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In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours with the consent of the premises' owner, occupant or agent: to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

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H. Enforcement and penalties.

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See §§ 16.2.7 and 16.2.13.

1914

I. Ultimate responsibility of discharger.

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The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the municipality, or any officer agent or employee thereof for any damages that result from any person's reliance on this article or any administrative decision lawfully made hereunder.

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16.5.17 Overboard Discharge Systems

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A. Treated overboard discharge system defined.

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"Treated overboard discharge system" means any sand-filter system, mechanical system or primary treatment with disinfection system designed to State of Maine Department of Environmental Protection specifications which discharges effluent or other liquids into any water body or watercourse.

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B. Permit requirement.

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No person, firm or corporation may construct, install or maintain any treated overboard discharge system without first obtaining a Town permit for the same. Such permit is in addition to any other permit or license required by state or federal authorities for the same.

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1930

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C. Permit application.

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(3) Application for permit; fee. All applicants for permits must first apply to the Board of Appeals with a copy of the application given to the Code Enforcement Officer. The application form for a treated overboard discharge system must include the property

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1935 owner's name and mailing address and telephone number, the applicant's name and
1936 address and telephone number, the location address; tax maps and lot numbers; engineer's
1937 scale drawing showing all relevant details of the system; and any other information
1938 deemed relevant or necessary by either the Board of Appeals or the Code Enforcement
1939 Officer. A fee as set out in Appendix A is required for each application. Application
1940 forms are to be available from the Code Enforcement Officer.

1941 (4) Issuance of permits; fee. The treated overboard discharge permit may be issued by the
1942 Code Enforcement Officer only after Board of Appeals approval. A permit issue fee as set
1943 out in Appendix A is required for each system.

1944 (5) Notice of hearing.
1945 (a.) Upon receipt of the completed application, the Board must timely notify the
1946 Code Enforcement Officer of the established hearing date, which may be no
1947 more than 30 days from the date of the receipted application. The Code
1948 Enforcement Officer must also notify the Planning Board, abutters and
1949 applicant of the hearing date. The Code Enforcement Officer must also give
1950 public notice of the permit hearing date by advertising the same in a
1951 newspaper of general circulation within the Town at least seven days prior
1952 to the hearing date.

1953 (b.) For the purposes of this section, the abutting owners of property are
1954 considered to be the parties listed by the Assessors of taxes for the Town as
1955 those against whom taxes are assessed. Failure of any property owner to
1956 receive a notice of public hearing does not necessitate another hearing or
1957 invalidate any action by the Board of Appeals.

1958 (6) Conduct of hearing and standards. The Board must conduct the hearing on the application
1959 for a treated overboard discharge system permit by following the same procedures
1960 established for the consideration of a special exception under the terms of § 16.2.12.F.

1961 (a.) The Board may receive oral and documentary evidence and testimony. At
1962 the close of the evidentiary portion of the hearing, the Board must consider
1963 whether the effluent or discharge from the proposed treated overboard
1964 discharge system will have a negative impact on any aquatic or fowl life,
1965 will lower the water quality standard or impair the uses designated by the
1966 classification of the receiving waters. In addition, the Board may consider
1967 any relevant provisions of the performance standards set forth in § 16.7 and
1968 16.8.

1969 (b.) The Board may also consider any relevant state or federal statute, rules or
1970 regulations bearing on the same. After applying the standards contained
1971 herein, the Board must issue its decision containing its findings of fact and
1972 conclusions and approve the application if the Board is satisfied that the
1973 standards have been met.

1974 (7) Notice of decision. The Board of Appeals must notify the applicant in writing of its
1975 decision no later than 10 days thereafter.

1976 D. Systems exempted.

1977 The permit requirement of this chapter does not apply to any sewage disposal system in operation
1978 at the time this chapter is adopted or the subsequent repair or replacement of any such system,
1979 including replacement by treated overboard discharge system, except that any treated overboard
1980 discharge system, as defined herein and operating as of the date of the adoption of this chapter or
1981 subsequently installed as a replacement for an existing malfunction in-ground or overboard system
1982 under license by the State of Maine, is required to conform to the standards of maintenance and
1983 monitoring set forth in § 16.5.19.E.

1984 E. Standards of maintenance and monitoring.

1985 Treated overboard discharge systems that are operating by virtue of a permit issued under the

1986 terms of this chapter, or any such system operating as of the date of the enactment of this chapter
1987 pursuant to a license issued by the State of Maine, must be maintained and monitored pursuant to
1988 the following standards:

- 1989 (3) Disinfection. Disinfection is to be provided in a manner acceptable to the Maine
1990 Department of Environmental Protection. An approved disinfectant must be used and
1991 maintained according to the replacement or renewal schedule established by the
1992 Department of Environmental Protection.
- 1993 (4) Septic tanks. Septic tanks which are part of an overboard discharge system must be
1994 pumped annually to ensure that the accumulated sludge is never nearer than 12 inches to
1995 the invert of the outlet pipe leading from the septic tank to the sand filter.
- 1996 (5) Monitoring.
- 1997 (a.) The permit holder and/or the property owner must supply to the Code
1998 Enforcement Officer, prior to August 1 of each year, a report of the effluent
1999 analysis conducted by a recognized testing laboratory. All water samples
2000 for evaluation must be obtained and analyzed during the month of July.
2001 Each analysis must include the following tests:
- 2002 [1.] Fecal coliform (number of colonies per milligram of water);
2003 [2.] Biological oxygen demand (BOD) and suspended solids (mg/l); and
2004 [3.] Settleable solids (mg/l after a twenty-minute settling period in an
2005 Imhoff cone).
- 2006 (b.) In addition to the requirements contained in this subsection, the Code
2007 Enforcement Officer may require periodic operational reports from
2008 recognized laboratories in such form and containing such information as the
2009 Code Enforcement Officer may require.
- 2010 (6) Sand filters. Whenever the BOD levels exceed the limits specified in the regulations of
2011 the Maine Department of Environmental Protection, or when there are other indications of
2012 the sand-filter malfunctioning, the sand filter is to be inspected by a qualified
2013 professional. If the sand filter is found to be clogged, it must be replaced with new
2014 material meeting specifications of the Maine Department of Environmental Protection.
- 2015 (7) Emergency measures. In the event that a treated overboard discharge system is found to
2016 be malfunctioning, for any reason, the septic or settling tank must be pumped
2017 immediately and continue to be pumped as often as required until the malfunctioning is
2018 corrected.

2019 F. Malfunctioning of systems.

2020 The permit owner and/or property owner must immediately notify the Code Enforcement Officer
2021 of any malfunction of any component of the treated overboard discharge system. In the event that
2022 the system malfunctions, the Code Enforcement Officer may order that the effluent discharge
2023 cease within a time set by the Code Enforcement Officer.

2024 G. System construction.

- 2025 (3) Notice to Code Enforcement Officer and DEP. Before any work is undertaken pursuant to
2026 a permit issued under the terms of this chapter, the permit holder and/or property owner
2027 must notify the Code Enforcement Officer and the Department of Environmental
2028 Protection (DEP) at least seven days prior to commencement of the system's construction
2029 in order that all proper inspections of the proposed construction may be made by the Code
2030 Enforcement Officer and the DEP.
- 2031 (4) Certificate of compliance. Upon the completion of the construction of the treated
2032 overboard discharge system and prior to its operation, the Code Enforcement Officer is to
2033 issue a certificate of compliance, certifying that the system complies with all municipal
2034 ordinances, rules and regulations.

2035 H. Violations and penalties.

2036 Failure to conform to the provisions of the chapter constitutes a violation. A written notice of
2037 violation must be sent by the Code Enforcement Officer to the permit holder and/or the property
2038 owner operating the treated overboard discharge system which is in noncompliance with this
2039 chapter.

2040 (3) This notice is to be sent by certified mail, return receipt requested, and must inform the
2041 permit holder and/or property owner of the deadline for correcting the malfunction. The
2042 permit holder and/or property owner is to be given a reasonable time, not to exceed 30
2043 days, to correct the malfunction.

2044 (4) If the violation is not corrected within this specified time period, the Code Enforcement
2045 Officer must notify the permit holder and/or the property owner by certified mail, return
2046 receipt requested, that the permit is revoked.

2047 (5) Each day that the system is allowed to discharge after the notice of permit revocation is
2048 received constitutes a separate offense. A fine of not more than \$100 will be levied for
2049 each such separate offense. In addition to the remedy contained herein, said violation
2050 constitutes a nuisance for which the municipality, through its Code Enforcement Officer,
2051 may seek adequate remedy.

2052 (6) Any actual and direct expenses incurred by the Town in abatement of such nuisance may
2053 be recovered from the permit holder and/or property owner by civil complaint.

2054 I. Property rights.

2055 The issuance of any permit authorized by this chapter does not convey any property rights to the
2056 permit holder. The permit holder and/or the property owner, by accepting the permit under the
2057 terms of this chapter, consent to allow the Code Enforcement Officer or authorized agent, at all
2058 reasonable and proper times, to enter upon the property for inspection of the system or otherwise
2059 enforce the terms of this chapter.

2060 J. Permit expiration date.

2061 Such permit automatically expires within 90 days after the municipal sanitary sewer system
2062 becomes available within 200 feet of the property line of the lot or parcel of land on which the
2063 treated overboard discharge system is located, as measured along the public way.

2064 **16.5.18 Piers, Wharves, Marinas and Other Uses Projecting into Water Bodies**

2065 A. Standards.

2066 Development involving piers, wharves, marinas and other uses projecting into water bodies must
2067 conform to the following standards:

2068 (3) In accordance with 38 M.R.S. § 435 et seq., Mandatory Shoreland Zoning, all
2069 dimensional and other standards (excluding setbacks from water bodies) of this title apply
2070 to structures and uses projecting into a water body beyond the normal high-water mark.

2071 (4) Boathouses, while convenient to locate near the water, are not considered functionally
2072 water-dependent uses and must meet the same setback requirement as principal structures.
2073 The State of Maine no longer issues permits for construction of boathouses below the
2074 normal high-water line due to the adverse environmental impact; therefore, new
2075 boathouses must be located on uplands.

2076 (5) Only functionally water-dependent uses are allowed on, over or abutting a pier, wharf or
2077 other structure beyond the normal high-water line.

2078 (6) Access from shore must be developed on soils appropriate for such use and constructed so
2079 as to control erosion.

2080 (7) The location must not interfere with existing developed recreational and maritime
2081 commerce or natural beach areas.

2082 (8) The facility must be located so as to minimize adverse effects on fisheries.

2083 (9) The facility must be a water-dependent use and no larger in dimension than necessary to
2084 carry on the activity and must be consistent with existing conditions, use and character of

- 2085 the area.
- 2086 (10) No new structure may be built on, over or abutting a pier, wharf, dock or other structure
2087 extending beyond the normal high-water line of a water body or within a wetland unless
2088 the structure requires direct access to the water as an operational necessity.
- 2089 (11) No existing structures built on, over or abutting a pier, dock, wharf or other structure
2090 extending beyond the normal high-water line of a water body or within a wetland may be
2091 converted to residential dwelling units in any district.
- 2092 (12) Except in the Commercial Fisheries/Maritime Uses Overlay Zone, structures built on,
2093 over or abutting a pier, wharf, dock or other structure extending beyond the normal high-
2094 water line of a water body or within a wetland must not exceed 20 feet in height above the
2095 pier, wharf, dock or other structure.
- 2096 (13) Applicants proposing any construction or fill activities in a waterway or wetland requiring
2097 approval by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean
2098 Water Act, Section 9 or 10 of the Rivers and Harbors Act, or Section 103 of the Marine
2099 Protection, Research and Sanctuaries Act, must submit proof of a valid permit issued.
- 2100 (14) Proposals for any principal marine structure use, any residential joint- and/or shared-use
2101 pier, or any residential-development-use pier require Planning Board approval.
- 2102 (15) A residential development containing five or more lots in a zone permitting a residential-
2103 development-use pier may construct only one residential development use pier.
- 2104 (16) Commercial development of the shorefront must provide for access by the general public
2105 as part of a shorefront development plan.
- 2106 (17) Only one pier, ramp and float structure is permitted on any noncommercial or
2107 nonindustrial lot.
- 2108 (18) Marine-related permanent structures located below the mean low-water line require the
2109 following permits, leases and approvals:
- 2110 (a.) Port Authority approval;
- 2111 (b.) Department of Environmental Protection permit pursuant to the Natural
2112 Resources Protection Act, 38 M.R.S. § 480-C;
- 2113 (c.) Army Corps of Engineers permit;
- 2114 (d.) Maine State Department of Conservation, Bureau of Parks and Lands,
2115 Submerged Land Coordinator approval; and
- 2116 (e.) Building permit.

2117 **16.5.19 Signs**

2118 A. Purpose.

2119 The purpose of this article is to balance the need for adequate identification and advertising for
2120 land uses to promote the economic well-being of the Town with the need to protect the public
2121 safety and maintain and enhance the physical appearance of the community. This objective is to be
2122 achieved by:

- 2123 (3) Allowing adequate signage for the effective use of signs as a means of identifying,
2124 advertising and communication of land uses;
- 2125 (4) Establishing the appropriate bounds for location, size, number, type and use of signs to
2126 protect traffic safety, preserve property values and to promote visual order and clarity;
2127 and
- 2128 (5) Establishing procedures and regulations for the fair and consistent administration and
2129 enforcement of these sign restrictions.

2130 B. Nonconforming existing signs.

- 2131 (3) All signs lawfully existing on October 1, 1997 that do not conform to the terms of this
2132 article may be continued and maintained, subject to § 16.5.21.B(2), but may neither be

enlarged nor substantially altered except in conformity with this article.

- (4) Lawfully nonconforming signs must be made to conform or be removed if any of the following circumstances occur, individually or in combination, for a consecutive three-year time period:

(a.) The sign has ceased to be accurate by reason of vacancy or closure of the business which the sign advertises.

(b.) The sign face is blank, illegible, obscured, painted over, concealed or otherwise not decipherable.

- (5) In no event may the degree of nonconformity of any sign or type of signage on any lot be increased.

C. General requirements.

- (3) No sign may be erected, posted, enlarged, or substantially changed without a permit issued by the Code Enforcement Officer (CEO) and also approved by the Town Planner, except where § 16.5.21.J provides otherwise. [Amended 9-26-2011 by Ord. No. 11-15]

- (4) No exterior sign may be artificially illuminated except where hooded or shielded or otherwise designed to prevent direct light spilling onto traveled ways or neighboring property.

- (5) No sign may contain a moving message board or intermittent illumination, except where necessary in time/temperature/date signs. [Amended 9-26-2011 by Ord. No. 11-15; 12-8-2014 by Ord. No. 14-08]

- (6) Any sign that interferes with or closely imitates any official traffic sign, signal or device is prohibited.

- (7) No sign designed to be transported by means of wheels is allowed, unless said vehicle is used in the normal day-to-day transportation operations of the business. All trailer signs are prohibited.

- (8) Any changeable message signs must be integrated into a permanently-mounted sign. Such a changeable message board is to be mounted a minimum of 3 1/2 feet above ground level.

- (9) All signs must be maintained in a safe and sound structural condition.

- (10) Advertising. No advertising or signage is permitted on wireless communication services facilities.

- (11) Any sign not expressly permitted herein is prohibited.

D. Sign location.

- (3) All signs must be permanently installed on the premises of the activity to which the advertising message refers, except where § 16.5.21.H provides otherwise or upon approval by the Town Council.

- (4) All signs must be located outside the full width of the right-of-way of any public way, unless authorized by the Town Council.

- (5) Except for signs authorized in §§ 16.5.21.H and 16.5.21.J, freestanding signs erected after October 1, 1997 must be located at least 33 feet from the center line of any U.S. or state numbered highway less than 66 feet in width and at least 20 feet from the outside edge of the paved portion of any travel lane of any U.S. or state numbered highway which has both more than two travel lanes and a total paved portion in excess of 24 feet in width.

- (6) Signs must not be placed on or above the roof of any building. All signs must be located below the level of the eaves of the portion of building where the sign is to be erected, except as follows:

(c.) Signage may be located above the eaves on a gable or dormer of a building, providing it does not extend above or beyond the roofline of the gable or dormer; and

2182 (d.) Signage may be located on a parapet wall, provided the sign neither extends
2183 any more than eight feet above the roof-wall junction of the parapet wall
2184 nor extends beyond the height of the parapet wall.

2185 Note: Please see Figure 3 of § 16.5 at the end of this article to assist the
2186 reader in understanding acceptable and unacceptable locations of building-
2187 mounted signs according to the terms of § 16.5.21.D

- 2188 (7) Building-mounted signs which extend more than six inches from the surface of the
2189 structure must provide a minimum of eight feet of vertical clearance to a walkway,
2190 parking area, private drive and ground surface. Such signs must not extend beyond the
2191 street right-of-way boundary unless authorized by the Town Council.
- 2192 (8) Freestanding signs must not extend higher than 20 feet above the original ground level or
2193 the elevation of the center line of the nearest street measured at the closest point to the
2194 sign, whichever is greater.
- 2195 (9) Signs must not be posted on trees, utility poles, traffic control devices, or unregistered
2196 motor vehicles or trailers. Signs posted on fences are treated as a type of freestanding
2197 sign. Any unpermitted and unallowed sign located in a public road right-of-way may be
2198 caused to be removed by the Town without notice to the owner of such sign.
- 2199 (10) No sign may be located so that it interferes with the safe sight distances necessary for
2200 motorists to proceed safely through intersections or to enter onto or exit from public
2201 streets, private roads or driveways.
- 2202 (11) All building-mounted signs must be located only on the building that contains the
2203 activities or businesses advertised, except that up to 10% of the allowed signage for
2204 building-mounted signs in § 16.5.21.K may be allocated to signs mounted on fuel pumps
2205 and/or fuel pump canopies.
- 2206 (12) In cases where multiple freestanding signs are permitted, any additional allowed smaller
2207 freestanding sign must face and be located along a separate publicly maintained street.

2208 E. Number of freestanding signs.

- 2209 (3) Except as otherwise authorized in this section, as well as §§ 16.5.21.I and 16.5.21.J, each
2210 development is prohibited from having more than one freestanding sign.
- 2211 (4) Multisided signs are considered as one sign; however, the square footage of each sign
2212 face is calculated to determine total sign area.
- 2213 (5) Where a development fronts on two publicly maintained streets and has designed and
2214 approved access onto both those publicly maintained streets, the development is allowed
2215 one additional freestanding sign that faces and is located along a second publicly
2216 maintained street in accordance with § 16.5.21.G.
- 2217 (6) Where a development fronts on three publicly maintained streets and has designed and
2218 approved access onto each publicly maintained street, a third freestanding sign facing and
2219 located along the third publicly maintained street may be authorized at the Planning
2220 Board's discretion if it finds that other freestanding signage is not visible from the third
2221 street and that there is a need for a third freestanding sign to adequately communicate the
2222 business location to travelers on a third road fronted by the business.

2223 F. Number of building-mounted signs.

2224 To prevent sign clutter, except for those signs authorized by § 16.5.21.I or 16.5.21.J, each business
2225 facility which is on a site where two or more businesses occupy the same building, lot or
2226 development is prohibited from having more than two building-mounted, nontemporary signs.

2227 G. Sign area.

2228 [Amended 9-26-2011 by Ord. No. 11-15]

- 2229 (3) Residential Zones. Zones designated Residential - Rural Conservation, Residential -
2230 Rural, Residential - Suburban, Residential - Urban, and Residential - Village on the
2231 Zoning Map are residential zones for the purpose of this section.

- 2232 (a.) Accessory uses, including home occupations, are allowed sign area no
2233 greater than eight square feet.
- 2234 (b.) Other permitted uses are allowed sign area no greater than 16 square feet,
2235 except as otherwise provided. Residential developments are also allowed 24
2236 square feet, provided that signs are located within the development on
2237 premises owned by the developer or an owners' association.
- 2238 (4) All other zones.
- 2239 (a.) A single business situated on a lot of record is allowed a total sign area no
2240 greater than 300 square feet or 1 1/2 square feet for every linear foot of
2241 building frontage, whichever is smaller. In any case, a single business on a
2242 lot of record is allowed a minimum sign area of 72 square feet.
- 2243 (b.) Where two or more business facilities occupy the same building, lot or
2244 development, allowable sign area is calculated as follows:
- 2245 [1.] Total building-mounted sign area equals 1 1/2 square feet per linear
2246 foot of building frontage for each business facility. The total
2247 allowed building-mounted sign area may be allocated among
2248 individual business facilities at the property owner's discretion.
- 2249 [2.] The development is allowed one freestanding sign not greater than
2250 150 square feet in sign area. An additional freestanding sign no
2251 greater than 72 square feet in sign area facing and located along that
2252 secondary street is allowed if the development fronts on multiple
2253 streets and has designed and approved access onto each publicly
2254 maintained street. A third freestanding sign may be permitted at the
2255 Planning Board's discretion in accordance with § 16.5.21.E.

2256 H. Off-premises signs.

- 2257 (3) An individual business or service, upon application, may be assigned no more than three
2258 off-premises business directional signs (OBDS). An OBDS must be designed and located
2259 so as to avoid conflict with other signs and minimize impact on the scenic environment
2260 through the following standards:
- 2261 (a.) Dimensions: 12 inches by 48 inches.
- 2262 (b.) Coloring: state standard blue background, white lettering, logo may be any
2263 color.
- 2264 (c.) Reflectorization: optional.
- 2265 (d.) Location: on existing assemblies (posts) where possible. No more than two
2266 assemblies per intersection approach.
- 2267 (e.) Restricted areas: An OBDS must not be placed on an inbound leg of the
2268 Kittery traffic circle within 400 feet of its outer perimeter, or adjacent to
2269 points of scenic or historical interest, including but not limited to federal,
2270 state and local parks and reserves, recognized historic sites and buildings,
2271 water bridges and cemeteries.
- 2272 (4) An off-premises sign which advertises commercial or other activity without advertising
2273 any specific enterprise (generic signs) may be approved by the Planning Board at size and
2274 location to be specified.

2275 I. Temporary signs.

2276 All temporary signs must be installed on the premises of the activity to which the advertising
2277 message refers. Moveable signs are prohibited as temporary signs. The following types of
2278 temporary signs are allowed with an approved sign permit:

- 2279 (3) The use of one temporary sign, other than a trailer sign, at any one time per business, that
2280 is mounted to the building or attached to a freestanding sign structure for the purpose of
2281 advertising special events, provided that such signs are displayed for no longer than a

combined total of 21 days in any calendar quarter (January 1 to March 30, etc.), may be permitted. Total sign area for a temporary sign must not exceed 72 square feet. The allowed twenty-one-day display period may be divided into no more than three separate, nonoverlapping temporary periods of not less than seven days.

- (4) One additional temporary sign, other than a trailer sign, mounted to the building or to a freestanding sign structure, is permitted per legally participating site for the duration of each Town Council-approved sidewalk sales event.

J. Signs allowed without sign permit.

The following types of signs, in sizes and under conditions stated, are allowed without a Town sign permit, but must conform with all other provisions of § 16.5.21 of this chapter except for the provisions restricting the number of signs (§§ 16.5.21.E and 16.5.21.F) and limiting the total sign area (§ 16.5.21.G).

- (3) Public information signs. Signs for the control of traffic and other regulatory purposes, route markers, street signs, warning signs, utility, danger or warning signs, signs which indicate direction to hospitals, churches or other places of worship, or other public facilities.
- (4) General information signs. Signs which provide direction or instruction, such as location of telephone, restrooms, parking, automatic teller machines (ATMs), transit stops, entrances and exits, open and closed signs, where installed entirely upon the property to which they pertain. "Enter" and "Exit" signs must not exceed four square feet in size. All other general information signs must not exceed two square feet in size. Except for identifying approved off-premises parking stalls, no logos, trademarks or names of businesses are permitted on general information signs. The Planning Board may approve increased sizes and/or the use of logos or names of businesses on general information signs when considered necessary to promote safety or eliminate confusion.
- (5) Memorial tablets. Grave markers, signs commemorating a historical figure or event, names or dates of buildings to which a sign is attached.
- (6) Public notices and community signs. Official notices posted by public employees in performance of their duties, and any sign for Town sponsored or supported events or facilities as approved by the Town Council.
- (7) Flags of any government or recognized political subdivision. The flag of any government or recognized political subdivision is allowed, provided it is displayed no higher than 50 feet above the original ground level or the elevation of the center line of the nearest street measured at the closest point to the flag, whichever is greater. A single memorial flagpole installation sponsored by private funding not to exceed 129 feet in height installed on Town-owned or regulated property at Memorial Circle is allowed. [Amended 9-26-2011 by Ord. No. 11-15]
- (8) Religious symbols.
- (9) Building street numbers. In accordance with the street-numbering map on file with the Town Assessing Department;
- (10) Political campaign signs. Signs bearing political messages relating to an election, primary or referendum, provided these signs may be displayed on:
 - (a.) Public property not earlier than 30 days prior to the election, primary or referendum to which they relate and are removed not later than two days thereafter.
 - (b.) Private property without time constraints.
- (11) Interior signs. Signs placed inside a building which are located at least 10 feet inside the building or otherwise not oriented to be viewed from outside the building;
- (12) Vehicular signs. Signs painted on or affixed to registered motor vehicles or trailers where

- 2332 such signs are clearly incidental to the regular transportation function of the vehicle.
- 2333 (13) Service club signs. Service club signs may be placed within the right-of-way of a street
 2334 with approval of the Commissioner of Public Works. Such signs are encouraged to be
 2335 consolidated on a single designated assembly structure at major entranceways to the
 2336 Town. In addition, such signs not exceeding four feet in size may be erected at locations
 2337 where meetings of such service clubs are convened.
- 2338 (14) Real estate signs. Any sign advertising real estate for sale, lease or rent, provided:
 2339 (a.) Each sign does not exceed 12 square feet;
 2340 (b.) Each sign is located on the property being advertised, except one sign may
 2341 be located as an off-premises directional sign, provided the sign does not
 2342 restrict safe sight distances or impair safety;
 2343 (c.) No more than two signs are erected per property being advertised; and
 2344 (d.) Each sign is removed within 60 days of transfer of title.
- 2345 (15) Window signs. Any sign that is placed inside a window and is visible from the exterior of
 2346 the window, provided such signage covers no more than 50% of the area of any window.
- 2347 (16) Legally required signs. Any sign required by local, state or federal law with sign area no
 2348 greater than two square feet or the minimum size required by law, whichever is larger.
- 2349 (17) Food menu signs. Up to two signs advertising food items for sale on the premises at a
 2350 legally existing restaurant, fast-food outlet, drive-in restaurant, or snack bar are allowed,
 2351 provided that:
- 2352 (a.) The total sign area of each such food menu sign on the site must not exceed
 2353 32 square feet; and
- 2354 (b.) Such food menu signs must either be building-mounted or comply with the
 2355 front yard requirements for structures and be located within 75 feet of the
 2356 restaurant.
- 2357 (18) Undercanopy, pedestrian-oriented signs. One building-mounted business identification
 2358 sign per business facility, not to exceed 10 square feet in size per sign, where two or more
 2359 businesses occupy the same building with a pedestrian walkway and canopy that parallels
 2360 and connects the front entrances of the business facilities. The sign must be oriented
 2361 toward pedestrians using the walkway, be located under the canopy near the main
 2362 entrance to the business advertised and solely identify the business name or logo.
- 2363 (19) Construction phase and contractor signs. Signs, other than trailer signs, identifying the
 2364 name of a contractor working on the premises or describing a construction project,
 2365 erected only during the construction phase of a development, provided each sign does not
 2366 exceed 75 square feet.
- 2367 (20) Garage sale signs as allowed by § 5.4.9A(2).

2368 K. Signs in Shoreland Overlay and Resource Protection Overlay Zones.

2369 The following provisions govern signs in the Conservation, Shoreland Overlay and Resource
 2370 Protection Overlay Zones, except where either is overlaid by the Commercial Fisheries/Maritime
 2371 Uses Overlay Zone:

- 2372 (3) Signs relating to goods and services sold on the premises are allowed, provided such signs
 2373 do not exceed six square feet in area and do not exceed two signs per premises.
- 2374 (4) Signs relating to goods or services not sold or rendered on the premises are prohibited.
- 2375 (5) Name signs are allowed, provided such signs do not exceed two signs per premises and
 2376 do not exceed 12 square feet in the aggregate.
- 2377 (6) Residential users may display a temporary single sign not over three square feet in area
 2378 relating to the sale, rental or lease of the premises.
- 2379 (7) Signs relating to trespassing and hunting are allowed without restriction as to number,
 2380 provided no such sign exceeds two square feet in area.

- 2381 (8) Signs relating to public safety are allowed without restriction.
2382 (9) Signs higher than 20 feet above the ground are prohibited.
2383 (10) Signs may be illuminated only by shielded, nonflashing lights.

2384 L. Sign permit application procedures.

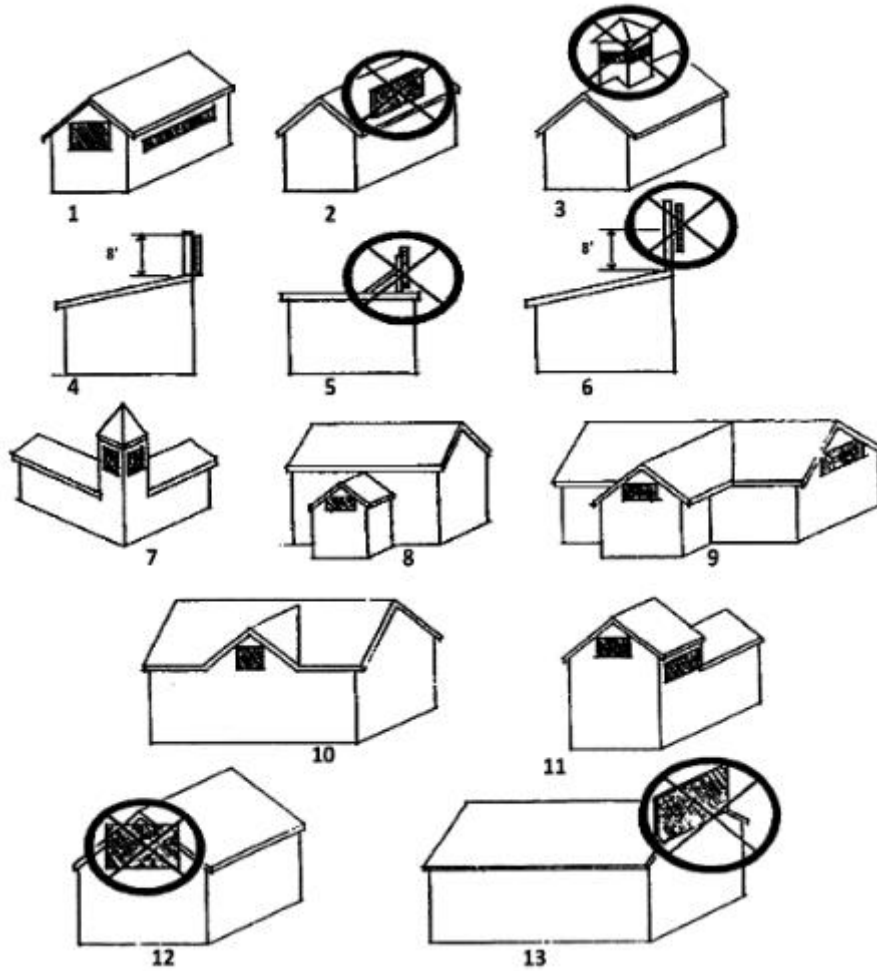
- 2385 (3) No person may erect, post, enlarge, relocate, replace or modify a sign except in
2386 conformance with a permit issued by the Code Enforcement Officer and also approved by
2387 the Town Planner. Notwithstanding the above statement, the following signs may be
2388 erected or modified without a sign permit: [Amended 9-26-2011 by Ord. No. 11-15]
- 2389 (a.) Signs authorized in § 16.5.21.J.
 - 2390 (b.) Changes to nameplates or "shingles" to reflect occupancy changes on an
2391 existing approved freestanding sign identifying individual occupants on the
2392 site, provided no change is made to the shape or size of the sign or sign
2393 area.
 - 2394 (c.) Characters, letters and numbers may be changed on approved changeable
2395 message signs without a sign permit, provided no other change is made to
2396 the sign.
 - 2397 (d.) Signs may be maintained, cleaned or repainted, provided no change is made
2398 to the shape or size of the sign or to the sign area, and provided no new
2399 business name is advertised.
- 2400 (4) A complete sign application submission consists of the following items submitted to the
2401 Code Enforcement Officer:
- 2402 (a.) A completed sign permit application form provided by the Town;
 - 2403 (b.) An application fee in accordance with a fee schedule established by the
2404 Town Council; and
 - 2405 (c.) A self-addressed, stamped envelope.
- 2406 (5) Complete applications must be reviewed by the CEO for compliance with this title.
2407 Complete sign permit application submissions must be returned by the CEO after
2408 rendering a decision to the applicant if accompanied by an SASE. Incomplete sign permit
2409 application submissions will only be returned to the applicant if accompanied by an
2410 SASE.
- 2411 (6) Unless the proposed sign is located within the Shoreland Zone, the CEO must issue, deny
2412 or seek a formal Planning Board opinion within 14 working days of receiving a complete
2413 sign permit application submission. If either a Planning Board opinion is sought or the
2414 proposed sign is located within the Shoreland Zone, the CEO must issue or deny the
2415 application within 35 calendar days of receiving a complete sign permit application
2416 submission.
- 2417 (7) The sign permit must be approved if the proposed sign conforms in every respect with the
2418 requirements of this article. In the CEO's absence, or if no action is taken by the CEO
2419 within the above time limits, the Town Manager or the Town Manager's designee may
2420 approve or deny the sign permit application submission.

2421 M. Sign violations and appeal.

- 2422 (3) The CEO must notify and order the owner to immediately correct any sign that endangers
2423 public safety. Signs that endanger public safety include, but are not limited to, those
2424 which are dangerous by reason of structural defect or those that interfere or obstruct a
2425 driver's safe operation of a motor vehicle.
- 2426 (4) A nonconforming sign which is required to conform to the sign regulations per
2427 § 16.5.21.B must be brought into conformity.
- 2428 (5) Enforcement of the provisions of this article is in accordance with §16.2.
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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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16.5.20 Single- and Duplex-Family Dwellings

2437 A. Dwellings in Resource Protection and Shoreland Overlay Zones.

2438 [Amended 1-28-2015 by Ord. No. 15-01]

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The Code Enforcement Officer may issue a building permit for a new dwelling outside the base zone setback in the Shoreland Overlay Zone only provided the structure is 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- or family dwelling special exception use request within the Resource Protection Overlay Zone, provided the applicant demonstrates all of the following conditions are met:

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(3) There is no location on the property, other than a location within the Resource Protection Overlay Zones, where a single-family dwelling can be built, provided the structure is conforming with all base zone standards.

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(4) The lot on which the structure is proposed is undeveloped and was established and recorded in the York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

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(5) All proposed buildings, sewage disposal systems, other than municipal sewer, and other improvements are located:

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(a.) On natural ground slopes of less than 20%;

- 2455 (b.) Outside the floodway of the one-hundred-year floodplain along rivers; and
2456 (c.) Outside the velocity zone in areas subject to tides, based on detailed flood
2457 insurance studies and as delineated on the Federal Emergency Management
2458 Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate
2459 Maps.
- 2460 (6) The lowest floor elevation or openings of all buildings and structures, including
2461 basements, must be elevated at least one foot above the elevation of the one-hundred-year
2462 flood, the flood of record or, in the absence of these, the flood as defined by soil types
2463 identified as recent floodplain soils.
- 2464 (7) If the floodway is not shown on the Federal Emergency Management Agency Maps, it is
2465 deemed to be 1/2 the width of the one-hundred-year floodplain.
- 2466 (8) The total ground-floor area, including cantilevered or similar overhanging extensions, of
2467 all principal and accessory structures is limited to a maximum of 1,500 square feet. This
2468 limitation may not be altered by variance.
- 2469 (9) All structures, except functionally water-dependent structures, are set back from the
2470 normal high-water line of a water body, tributary stream or upland edge of a wetland to
2471 the greatest practical extent but not less than 75 feet horizontal distance. In determining
2472 the greatest practical extent, the Planning Board must consider the depth of the lot, the
2473 slope of the land, the potential for soil erosion, the type and amount of vegetation to be
2474 removed, the proposed building site's elevation in regard to the floodplain and its
2475 proximity to the wetlands.

2476 **16.5.21 Sprinkler Systems**

2477 A. Requirement.

- 2478 (3) An approved automatic sprinkler system must be installed in all areas of new buildings
2479 meeting any or all of the following criteria:
- 2480 (a.) Three or more stories in height; or
 - 2481 (b.) Thirty-six or more feet in height; or
 - 2482 (c.) One hundred thousand cubic feet in volume or 10,000 square feet in floor
2483 area; or
 - 2484 (d.) Multiple-family or multiple-occupant dwelling and/or all lodging units; or
 - 2485 (e.) Any single-family attached units, such as garden apartments or townhouse
2486 with three or more units attached together; or
 - 2487 (f.) All motels, hotels, rooming houses, inns or other structures containing more
2488 than two dwelling or living units, hotel or motel rooms.
- 2489 (4) An approved automatic sprinkler system must be installed in new additions to existing
2490 buildings and to the existing building(s) meeting any or all of the following criteria:
- 2491 (a.) When the addition causes the building to become three or more stories in
2492 height; or
 - 2493 (b.) When the addition causes the building to become 36 or more feet in height;
2494 or
 - 2495 (c.) When the addition causes the building to become 100,000 cubic feet in
2496 volume or 10,000 square feet in area;
 - 2497 (d.) When the addition to or renovation of the existing building results in the
2498 end use becoming a motel, hotel, rooming house, inn or other structure
2499 which contains more than two dwelling or living units, hotel or motel
2500 rooms; or
 - 2501 (e.) When the addition to or renovation of the existing building results in the
2502 end use becoming single-family attached units, such as garden apartments
2503 or townhouses with three or more units attached together.

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B. Sprinkler system standards.

- (3) 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.
- (4) Any structure requiring the installation of a NFPA Standard 13 system must have a Fire Department connection with location approved by the Fire Chief.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.
- (9) Any building having more than one sprinkler riser must have the risers separately zoned and wired to a local energy alarm panel to provide zone identification upon activation. The energy 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 energy alarm panel showing each zone of the building.
- (10) 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 compatible with existing lock box systems, the type of lock box must be approved by the Fire Chief.
- (11) Any structure containing a sprinkler system is required to have a yearly test completed on the system by a qualified sprinkler technician. A written copy of the yearly test report must be forwarded to the Fire Chief.

C. Permit.

- (3) A permit must be obtained from the Fire Chief before the start of construction of the system and a set of blueprints showing the entire sprinkler system and the rate of flow provided to and approved by the Fire Chief in order to obtain the permit.
- (4) A copy of the permit must be forwarded to the CEO, and no certificate of occupancy may be issued until the system has been properly installed, tested by a qualified technician and

2554 approved by the Fire Chief or duly authorized designee.

2555 D. Fees and fines.

2556 (3) A sprinkler system permit fee is to be paid with the permit request in such amount as
2557 established by Council. The fee for a sprinkler permit is as set out in Appendix A.
2558 [Amended 9-26-2011 by Ord. No. 11-15]

2559 (4) Any person, firm or corporation being the owner or having control or use of any building
2560 or premises who violates this section of this title will be assessed a penalty under Title 1,
2561 Chapter 1.3. Each day such violation is permitted to exist after notification constitutes a
2562 separate offense.

2563 E. Sprinkler administrative appeal.

2564 If any party is aggrieved by a determination of the Fire Chief under the requirements of this
2565 section, a written appeal may be filed with the BOA within 10 days from the date of notification
2566 of such determination by the Fire Chief. Such written appeal must set forth a concise statement of
2567 the grounds upon which the party contends the Fire Chief's determination to be in error.

2568 **16.5.22 Street Signage**

2569 A. Names.

2570 Streets which join or are in alignment with streets of abutting or neighboring properties must bear
2571 the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to, the
2572 names of existing streets within the municipality and are subject to the approval of the Planning
2573 Board.

2574 B. Signs provided.

2575 Street name signs are to be furnished and installed by the developer; the type, size and location to
2576 be approved by the Commissioner of Public Works.

2577 **16.5.23 Streets and Pedestrianways/Sidewalks Site Design Standards**

2578 [Amended 9-24-2012 by Ord. No. 12-11]

2579 A. Purpose.

2580 The design of streets must provide for proper continuation of streets from adjacent development
2581 and for proper projection into adjacent undeveloped and open land. These design standards must
2582 be met by all streets within Kittery and control street shoulders, curbs, pedestrianways/sidewalks,
2583 drainage systems, culverts and other appurtenances.

2584 B. Layout.

2585 (3) Streets are to be designed to discourage through traffic on minor streets within a
2586 residential subdivision.

2587 (4) Reserve strips controlling access to streets are prohibited except where control is
2588 definitely placed with the municipality.

2589 (5) Any development expected to generate average daily traffic of 201 or more trips per day
2590 is to have at least two street connections with existing public street(s).

2591 (6) Where a development borders an existing narrow street (below standards set herein) or
2592 when the Comprehensive Plan indicates plans for realignment or widening of a street that
2593 would require use of some of the land in a development, the plans must indicate reserved
2594 areas for widening or realigning such streets, marked on the plan "reserved for street
2595 widening/realignment purposes." Land reserved for such purposes may not be included in
2596 computing lot area or setback requirements of this title.

2597 (7) Where a development abuts or contains an existing or proposed arterial street, the Board
2598 may require marginal access streets (i.e., street parallel to arterial street providing access
2599 to adjacent lots), reverse frontage (i.e., frontage on a street other than the existing or
2600 proposed arterial street) with screen planting contained in a non-access reservation along
2601 the rear property line, or such other treatments as may be necessary for adequate

2602 protection of residential properties and to afford separation of through and local traffic.

2603 (8) Entrances onto existing or proposed arterial highways/secondary arterials may not exceed
2604 a frequency of one per 1,000 feet of street frontage.

2605 C. Street classification.

2606 Streets are classified by purpose, function and use frequency.

2607 (3) Arterial highways are major traffic ways that provide connections with other thoroughfare
2608 or interstate roads and have a high potential for the location of significant community
2609 activity centers as well as retail, commercial and industrial facilities. The average daily
2610 traffic count (ADT) would be 9,001 or more trip ends.

2611 (4) Secondary arterials carry relatively high volumes of traffic to or from arterial highways,
2612 adjacent communities and through local residential areas, activity centers and minor
2613 commercial establishments. The ADT would be 3,001 to 9,000 trip ends.

2614 (5) Commercial, light industrial and mixed-use zone developments are located in areas where
2615 street design is oriented to accommodate community-wide and regional interests with
2616 limited residential uses. The intended uses, ADT, peak hour traffic, and any other
2617 additional information that may be required by the Board will determine their
2618 classification, which may not be lower than a secondary collector.

2619 (6) Primary collectors may be residential or business, or both, and serve both as collectors to
2620 lesser residential streets and as connections to or between arterials. The ADT would be
2621 from 801 to 3,000 trip ends, and in the interests of traffic and public safety must be owned
2622 and maintained by the Town.

2623 (7) Secondary collectors may be residential or business, or both, and connect to or between
2624 streets of a higher classification, and/or may collect traffic from minor streets or private
2625 ways. The ADT would be 201 to 800 trip ends.

2626 (8) Minor streets are predominantly single-family residential short or dead-end streets, which
2627 may have branching minor streets, private lanes or private ways and conduct traffic to
2628 streets of higher classification. This is the lowest level of public street in the hierarchy
2629 and must serve at least four dwelling units. The ADT would be 35 to 200 trip ends.

2630 (9) Private streets function exclusively as residential streets serving high-density housing
2631 developments, including clustered housing, multi-family dwellings, elderly housing, and
2632 mobile home parks, and may not be dedicated for public acceptance. Maintenance and
2633 improvements must be controlled by proprietorship, corporation, association or deed
2634 covenants. The ADT would be 72 to 800 trip ends. Design and construction is to be in
2635 accordance with the applicable standards and specifications for minor streets or secondary
2636 collectors.

2637 (10) Private lanes are short low-traffic volume residential dead-end streets which may serve
2638 part of a high-density development or other residential uses conforming to the applicable
2639 standard residential space requirements enumerated in this title. Private ways may not be
2640 dedicated for public acceptance, and improvements must be controlled by proprietorship,
2641 corporation, association or deed covenants. The ADT would be 35 to 71 trip ends.

2642 (11) Private ways are dead-end, very-low-volume residential streets that connect to streets of a
2643 higher classification and function similar to an individual driveway by providing a low
2644 standard two-way traffic flow. Private ways may not be used in high-density residential
2645 developments or subdivisions of four or more lots. Private ways cannot be dedicated for
2646 public acceptance, and all maintenance and improvements must be controlled by
2647 proprietorship, corporation, association or deed covenants. The ADT would be 12 to 35
2648 trip ends.

2649 (12) Average daily traffic (ADT) is computed using the latest Institute for Transportation
2650 Engineers (ITE) codes and figures.

2651 D. Street design standards.

2652 Design standards for classified streets and sidewalks are those contained in attachment Table 1
2653 Design and Construction Standards for Streets and Pedestrianways, which is attached to this
2654 chapter.

2655 E. Access control and traffic impacts.

2656 Provision must be made for vehicular access to a development and circulation upon the lot in such
2657 a manner as to safeguard against hazards to traffic and pedestrians in the street and within the
2658 development, to avoid traffic congestion on any street and to provide safe and convenient
2659 circulation on public streets and within the development. Access and circulation must also
2660 conform to the standards and criteria listed below.

- 2661 (3) Vehicular access to the development must be arranged to avoid traffic use of local
2662 residential streets.
- 2663 (4) Where a lot has frontage on two or more streets, the access to the lot must be provided to
2664 the lot across the frontage and to the street where there is lesser potential for traffic
2665 congestion and for hazards to traffic and pedestrians.
- 2666 (5) The street giving access to the lot and neighboring streets which can be expected to carry
2667 traffic to and from the development must have traffic-carrying capacity and be suitably
2668 improved to accommodate the amount and types of traffic generated by the proposed use.
2669 No development may increase the volume/capacity ratio of any street above 0.8 nor
2670 reduce any intersection or link level of service to "D" or below.
- 2671 (6) Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid
2672 traffic congestion, provision must be made for turning lanes, traffic directional islands,
2673 frontage roads, driveways and traffic controls within public streets.
- 2674 (7) Accessways must be of a design and have sufficient capacity to avoid hazardous queuing
2675 of entering vehicles on any street.
- 2676 (8) Where topographic and other conditions allow, provision must be made for circulation
2677 driveway connections to adjoining lots of similar existing or potential use:
- 2678 (a.) When such driveway connection will facilitate fire protection services as
2679 approved by the Fire Chief; or
- 2680 (b.) When such driveway will enable the public to travel between two existing
2681 or potential uses, generally open to the public, without need to travel upon a
2682 street.

2683 F. Center line.

2684 The center line of a roadway must be the center line of the right-of-way.

2685 G. Dead-end streets.

- 2686 (3) Where a permanent cul-de-sac is placed in an area, wooded prior to development, a stand
2687 of trees must be maintained within the center of the cul-de-sac.
- 2688 (4) The Board may require the reservation of a twenty-foot easement in line with the street to
2689 provide continuation of pedestrian traffic or utilities to the next street.
- 2690 (5) The Board may also require the reservation of a fifty-foot easement in line with the street
2691 to provide for continuation of the road where future development is possible.

2692 H. Grades, intersections and sight distances.

- 2693 (3) Grades of all streets are to conform, where feasible, to the terrain, so that cut and fill are
2694 minimized while maintaining the grade standards of this title.
- 2695 (4) All changes in grade are to be corrected by vertical curves in order to provide the
2696 following minimum stopping distance where based on street design speed calculated with
2697 a 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

- 2698 (5) Intersections of streets are to be at angles as close to 90° as possible, and in no case may
 2699 two streets intersect at an angle smaller than 60°. To this end, where one street approaches
 2700 another between 60° and 90°, the former street should be curved approaching the
 2701 intersection.
- 2702 (6) Where new street intersections or curb cuts are proposed, sight distances, as measured
 2703 along the street onto which traffic would be turning, is based on the posted speed limit
 2704 and 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

- 2705 (a.) Sight distance is the length of roadway visible to a driver exiting an
 2706 intersection or curb cut. Such sign distance is measured from a point that is
 2707 located at the center line of the exit lane and 15 feet back from the edge of
 2708 the travel way to the center line of the oncoming lane(s), with the height of
 2709 eye at 3.5 feet and the height of an object 4.25 feet above the pavement.
- 2710 (b.) When the actual traveling speed of normal traffic on a road is substantially
 2711 higher than the posted speed limit, the sight distance is computed by
 2712 multiplying the 85th percentile of such speed as measured by a qualified
 2713 traffic engineer by a factor of 10. The result, in feet, is the minimum sight
 2714 distance required.
- 2715 (c.) Where necessary, corner lots must be cleared of all growth or other sight
 2716 obstructions, including ground excavations, to achieve the required
 2717 visibility.

2718 (7) Cross (four-cornered) intersections are to be avoided insofar as possible.

2719 I. Side slopes.

2720 Side slopes of all streets must be graded, covered with appropriate compost or loamed, fertilized
 2721 and seeded in accordance with the specifications of the erosion and sedimentation plan.

2722 J. Right-of-way (ROW) grading.

2723 Streets are to be rough-graded full width.

2724 K. Street construction standards.

- 2725 (3) The subgrade of the roadway. On soils which have been identified by the Commissioner
 2726 of Public Works as not suitable for roadways, the subsoil must be removed from such
 2727 locations to a depth of two feet below subgrade and replaced with material meeting the
 2728 specifications for gravel aggregate subbase or a substitute acceptable to the Commissioner
 2729 of Public Works.
- 2730 (4) The aggregate subbase course must be sand or gravel of hard, durable particles, free from
 2731 vegetative matter, lumps or balls of clay and other deleterious substances. The gradation
 2732 of the part that passes a three-inch-square mesh sieve must meet the following grading
 2733 requirements and contain no particles of rock exceeding four inches in diameter [MDOT
 2734 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%

- 2735 (5) The aggregate base course must be sand or gravel of hard, durable particles, free from
 2736 vegetative matter, lumps or balls of clay and other deleterious substances. The gradation
 2737 of the part that passes a three-inch square mesh sieve must meet the following
 2738 requirements [MDOT Specification 703.06(a) Type A]:

Sieve Designation Percent by Weight Passing Square Mesh Sieve	
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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%

- 2739 L. Street plantings.
2740 When appropriate, the Board may require a street design that incorporates a green space/planting
2741 area within the street's ROW. Said plantings must be installed at the developer's expense
2742 according to a plan drawn up by a landscape architect.
- 2743 M. Sidewalks.
- 2744 (3) Where required, sidewalks must be installed to meet minimum requirements as specified
2745 in Table 1 of this chapter.
- 2746 (4) The position of any sidewalk within the street ROW in relation to the pavement surface is
2747 to be determined by the Planning Board.
- 2748 N. Road and driveway standards in Shoreland and Resource Protection Overlay Zones.
- 2749 (3) Road construction and parking facilities are allowed in the Resource Protection Overlay
2750 Zone only where no reasonable alternative route or location is available outside the
2751 Resource Protection Overlay Zone, in which case a permit or site plan or subdivision plan
2752 approval is required by the Planning Board.
- 2753 (4) The following standards apply to the construction of roads and/or driveways and drainage
2754 systems, culverts and other related features in the Shoreland and Resource Protection
2755 Overlay Zones:
- 2756 (a.) Roads and driveways must be set back:
- 2757 [1.] At least 100 feet from the normal high-water line of any water
2758 bodies, tributary streams, the upland edge of a coastal wetland, or
2759 the upland edge of a freshwater wetland; and
- 2760 [2.] Seventy-five feet from the normal high-water line of any water
2761 bodies or the upland edge of a wetland on Badgers Island, unless no
2762 reasonable alternative exists, as determined by the Planning Board.
- 2763 [3.] If no other reasonable alternative exists, the Planning Board may
2764 reduce the road and/or driveway setback requirement to no less than
2765 50 feet upon clear showing by the applicant that appropriate
2766 techniques will be used to prevent sedimentation of the water body.
2767 Said erosion and sediment control measures for roads and driveways
2768 must meet "Maine Erosion and Sediment Control Best Management
2769 Practices," March 2003.
- 2770 (b.) On slopes of greater than 20%, the road and/or driveway setback must be
2771 increased by 10 feet, horizontal distance, for each five-percent increase in
2772 slope above 20%.
- 2773 (c.) Existing public roads may be expanded within the legal road right-of-way,
2774 regardless of their setback from a water body.
- 2775 (d.) New roads and driveways are prohibited in a Resource Protection Overlay
2776 Zone, except the Planning Board may grant a permit to construct a road or
2777 driveway to provide access to permitted uses within the zone. A road or
2778 driveway also may be approved by the Planning Board in a Resource
2779 Protection Overlay Zone, upon a finding no reasonable alternative route or
2780 location is available outside the zone. When a road or driveway is permitted
2781 in a Resource Protection Overlay Zone, the road and/or driveway must be

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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:

[1.] 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

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[2.] Drainage dips may be used in place of ditch relief culverts only where the grade is 10% or less.

[3.] 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.

[4.] Ditch relief culverts must be sufficiently sized and properly installed to allow for effective functioning, and their inlet and outlet ends appropriately stabilized with acceptable materials and construction techniques.

- (i.) Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads and driveways must be maintained by the owner(s) on a regular basis to assure effective functioning.
- (j.) In a Shoreland or Resource Protection Overlay Zone, when replacing an existing culvert the watercourse must be protected so the crossing does not block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of the water in the watercourse.
- (k.) A permit is not required for the replacement of an existing road culvert, provided the replacement culvert is:

[1.] Not more than one standard culvert size larger in diameter than the

2826 culvert being replaced;
2827 [2.]Not more than 25% longer than the culvert being replaced; and

2828 **16.5.24 Not longer than 75 feet. Temporary Housing**

- 2829 A. Purpose. The intent of this section is to provide temporary housing for resident owners (exclusive
2830 of corporations, trusts and estates) and their immediate families who have lost primary dwellings
2831 through fire or natural disaster.
- 2832 B. Dwellings uninhabitable by disaster. In case a fire or natural disaster destroys, or damages, or
2833 renders a dwelling or dwelling unit uninhabitable, the following apply:
- 2834 (3) The dwelling owner may apply to the CEO for a permit to place a mobile home on the lot
2835 as a temporary residence for the dwelling owner for a period of six months;
 - 2836 (4) The applicant must file such an application within six months from the date of the disaster
2837 and agree, in writing, that a time limit of six months is acceptable. Proof of financial
2838 ability to reconstruct the building must be furnished;
 - 2839 (5) If at the end of six months substantial work has been completed to the satisfaction of the
2840 CEO, the permit may be extended for an additional six months. No further extensions
2841 may be granted;
 - 2842 (6) A multifamily dwelling may be temporarily replaced by a single mobile home unit for the
2843 use of the dwelling owner only; and
 - 2844 (7) Setback requirements may be waived for temporary mobile homes by the CEO, provided
2845 matters of public health and safety are not impaired.

2846 **16.5.25 Timber Harvesting**

- 2847 A. Timber harvesting (as permitted in R-RLC and MU Zones).
- 2848 (3) Repeal of the timber harvesting regulation. Subsequent to the establishment of the State
2849 of Maine Department of Conservation's Bureau of Forestry Timber Harvesting Standards,
2850 the state will commence administration of all timber harvesting within the Shoreland
2851 Overlay Zone. Under 38 M.R.S. § 438-A(5), the following provisions of this title will be
2852 repealed: In § 16.3, the definitions of "forest management activities" and "residual basal
2853 area."
 - 2854 (4) Timber harvesting must conform to the following provisions:
 - 2855 (a.) Selective cutting of no more than 40% of the total volume of trees four
2856 inches or more in diameter, measured at 4 1/2 feet above ground level, on
2857 any lot in any ten-year period is permitted. In addition:
 - 2858 [1.] Within 75 feet, horizontal distance, of the normal high-water line of
2859 water bodies, tributary streams or the upland edge of a wetland,
2860 clear-cut openings are prohibited and a well-distributed stand of
2861 trees and other vegetation, including existing ground cover, must be
2862 maintained.
 - 2863 [2.] At distances greater than 75 feet, horizontal distance, of the normal
2864 high-water line of water bodies or the upland edge of a wetland,
2865 harvesting operations are limited to single clear-cut openings of
2866 10,000 square feet or less in the forest canopy. Where such openings
2867 exceed 5,000 square feet, they must be at least 100 feet, horizontal
2868 distance, apart. Such clear-cut openings must be included in the
2869 calculation of total volume removal. For purposes of these
2870 standards, volume may be considered equivalent to basal area.
 - 2871 (b.) Timber harvesting operations exceeding the forty-percent limitation in
2872 § 16.5.27(2)a above may be allowed by the Planning Board upon a clear
2873 showing, including a forest management plan signed by a Maine-licensed

2874 professional forester, that such an exception is necessary for good forest
 2875 management and will be carried out in accordance with the purposes of this
 2876 title. The Planning Board is required to notify the Commissioner of the
 2877 Department of Environmental Protection of each exception allowed within
 2878 14 days of the Planning Board's decision.

2879 (c.) No accumulation of slash is to be left within 50 feet, horizontal distance, of
 2880 the normal high-water line of a water body. In all other areas slash must
 2881 either be removed or disposed of in such a manner that it lies on the ground
 2882 and no part thereof extends more than four feet above the ground. Any
 2883 debris that falls below the normal high-water line of a water body or
 2884 tributary stream must be removed.

2885 (d.) Timber harvesting equipment is prohibited from using stream channels as
 2886 travel routes, except when:

2887 [1.] Surface waters are frozen; and
 2888 [2.] The activity will not result in any ground disturbance.

2889 (e.) All crossings of flowing water require a bridge or culvert, except in areas
 2890 with low banks and channel beds which are composed of gravel, rock or
 2891 similar hard surface which would not be eroded or otherwise damaged.

2892 (f.) Skid trail approaches to water crossings must be located and designed to
 2893 prevent water runoff from directly entering the water body or tributary
 2894 stream. Upon completion of timber harvesting, temporary bridges and
 2895 culverts must be removed and areas of exposed soil revegetated.

2896 (g.) Except for water crossings, skid trails and other sites where the operation of
 2897 machinery used in timber harvesting results in the exposure of mineral soil
 2898 must be located so an unscarified strip of vegetation of at least 75 feet,
 2899 horizontal distance, in width for slopes up to 10% must be retained between
 2900 the exposed mineral soil and the normal high-water line of a water body or
 2901 upland edge of a wetland. For each ten-percent increase in slope, the
 2902 unscarified strip must be increased by 20 feet, horizontal distance. The
 2903 provisions of this section apply only to a face sloping toward the water
 2904 body or wetland; provided, however, that no portion of such exposed
 2905 mineral soil on a back face can be closer than 25 feet, horizontal distance,
 2906 from the normal high-water line of a water body or upland edge of a
 2907 wetland.

2908 **16.5.26 Wetland Setbacks for Special Situations**

- 2909 A. Wetland setbacks extending beyond publicly accepted streets.
 2910 The required setback distances do not extend beyond the center line of publicly accepted street
 2911 that generally parallels the normal high-water line of a water body, tributary stream or the upland
 2912 edge of a wetland.
- 2913 B. Newly created wetlands and water bodies.
 2914 Setbacks are not required from a wetland or water body created from upland land area, provided
 2915 the newly created wetland or water body is not part of a required mitigation plan.
- 2916 (3) Wetland setbacks for the zoning district and the Shoreland Overlay District apply.
 2917 (4) A performance guarantee, such as an escrow or bond, is required to guarantee that new
 2918 vegetation will survive. Prior to the release or drawdown of funds in such accounts, a
 2919 written statement from a qualified wetlands scientist that says the vegetation is thriving
 2920 must be submitted to the Town Manager.
- 2921 C. Setbacks from altered wetlands or water bodies. [Amended 9-26-2011 by Ord. No. 11-15]
 2922 (3) The illegal altering of a water body or wetland area, where the surface area of the water

- 2923 body is decreased (lowered), after May 13, 1987, may not be used to change the location
 2924 from which a setback is measured. The illegal filling of a water body or wetland area,
 2925 where the normal water surface area of the water body is increased (raised), after May 13,
 2926 1987, must be measured from the most recent edge of the normal water surface elevation.
- 2927 (4) Alterations to the wetland boundaries that have been approved by the Planning Board and
 2928 are in compliance with regulations of the Army Corps of Engineers and the Maine
 2929 Department of Environmental Protection may be constructed per the Planning Board's
 2930 approved wetlands alteration plan.
- 2931 D. Setbacks for utility poles.
 2932 Setbacks for utility poles must be shown and identified on the development plans. Distances from
 2933 utility pole structures and the upland edge of wetlands of any type may not have to be set back
 2934 from the wetland. Such setback distances require Planning Board approval.
- 2935 E. Utilities within wetland.
 2936 Where it is demonstrated that there is no alternative to avoid utilities within a wetland, the
 2937 applicant's engineer must provide trench details for depth, distance between pipes, if applicable,
 2938 fill materials, minimum compaction and/or encasement.
- 2939 (3) Rotted material, muck and unsuitable soils must be removed from the trench and replaced
 2940 with select materials that provide the required compaction, pipe support and protection.
- 2941 (4) Trenches for shallow-depth pipes (having less than four feet of cover) must be designed
 2942 to avoid pipe movement that may result in breakage.

Table 16.5.28			
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 greater than 18 feet in width ¹	0	30 or 10 from toe of slope, whichever is greater	30 or 10 from toe of 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

**Table 16.5.28
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)
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
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:			

Table 16.5.28			
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)
*	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.		

2943 **16.5.27 Wireless Communication Services Facilities**

2944 A. Purpose. This article is designed and intended to balance the interests of the residents of the Town,
 2945 telecommunications providers, and telecommunications customers in the siting of wireless
 2946 communication services facilities (WCSF) within the Town. These standards are also intended:

- 2947 (3) To avoid or minimize the adverse impacts of such facilities on visual, environmental,
 2948 historically significant areas, health and safety, and property value;
- 2949 (4) To require the use of alternative structures for the purposes of co-location of carriers and
 2950 minimize the total number of towers located within the Town;
- 2951 (5) To permit the construction of new towers only where all other opportunities have been
 2952 exhausted;
- 2953 (6) To require the users of WCSF and antenna structures to configure them in a way that
 2954 minimizes the need for additional WCSF in the Town;
- 2955 (7) To provide for the removal of WCSF and associated development which are no longer
 2956 being used for telecommunications purposes;
- 2957 (8) These regulations are not intended to place any restrictions on privately operated and
 2958 licensed amateur radio operators as per FCC regulations.

2959 B. Location, height and setback requirements.

- 2960 (3) New WCSF are permitted within 1,000 feet from the I-95 corridor center line north of
 2961 Dennett Road with Planning Board approval conforming to the performance standards
 2962 and dimensional requirements. Shared use of preexisting accessory-use towers and
 2963 alternative tower structures in all zones is permitted with Town Planner's approval,
 2964 provided the tower or structure height is not increased. Location on existing structures in
 2965 a manner that camouflages or conceals the presence of antennas or towers, also referred
 2966 by the industry as "stealth," is permitted with Town Planner's approval in all districts
 2967 except the Resource Conservation, Shoreland and Resource Protection Overlay Zones.
 2968 The Town Planner may request Planning Board review of any proposed siting of a WCSF
 2969 facility.
- 2970 (4) Height. Towers, antennas and all WCSF may not exceed a height of 150 feet, except for

2971 those towers expressly satisfying all co-location requirements for four or more carriers,
2972 which may be constructed to a maximum height of 199 feet.

2973 (5) Setbacks.

2974 (h.) All telecommunications towers must be set back from the lot lines a
2975 distance equal to at least 125% of the tower height.

2976 (i.) Tower, guyed wires and accessory facilities must meet the minimum zoning
2977 district setback requirements.

2978 C. Aesthetics, landscaping, buffers and fencing.

2979 (3) Towers and antennas are to have a neutral finish or be painted a neutral color as approved
2980 so as to reduce visual impact.

2981 (4) All WCSF must maintain the required setbacks as undisturbed vegetated buffers, except
2982 for the access road. Access roads are to be constructed in a nonlinear manner so as not to
2983 provide a direct view corridor to the support structures. The Planning Board/Town
2984 Planner may require additional plantings in the buffer area to enhance the quality and
2985 effectiveness of the buffer area to serve as a visual screen. The size and quantity of
2986 plantings is subject to Planning Board/Town Planner approval.

2987 (5) At a WCSF, the design of the buildings and related structures must, to the extent possible,
2988 use materials, colors, textures, screenings and landscaping that will blend the facilities to
2989 be compatible with the natural setting and built environment. The building and related
2990 structures must be planned in a manner to accept equipment of co-locators. Underground
2991 utilities must be used to serve the WCSF.

2992 (6) Towers may not be artificially lighted.

2993 (7) Road access to the telecommunications structure is to be the minimum size necessary to
2994 allow safe access.

2995 (8) The base of a telecommunications tower may not be located in wetland, floodplain,
2996 Resource Conservation, Shoreland and Resource Protection Overlay Zones.

2997 (9) A security fence to be approved by the Planning Board/Town Planner of not fewer than
2998 eight feet in height from the finished grade is to be provided around the tower and painted
2999 a neutral color as approved to minimize visual impacts. Access to the tower is to be
3000 through a gate that can be secured.

3001 D. Investigation of existing alternative towers, sites and structures.

3002 Applicants must identify all existing and proposed towers, including their heights, located in the
3003 Town and within two miles beyond Town boundaries. Applicants must provide evidence of the
3004 lack of antenna space on all such towers and identify alternative tower structures and sites which
3005 have been investigated as an alternative to constructing a new tower. Applicant must address the
3006 pros and cons of utilizing co-location and other alternative tower structures with respect to their
3007 application and demonstrate that they cannot provide adequate communication service utilizing
3008 such existing towers or structures.

3009 E. Co-location.

3010 (3) The applicant and owner must allow other future wireless service carriers, including
3011 providing space at no charge to public agencies (including but not limited to police, fire,
3012 ambulance, communications and highway if requested at the time of review by the
3013 Planning Board), using functionally equivalent personal wireless technology to co-locate
3014 antennas, equipment and facilities on a telecommunications tower and site, unless
3015 satisfactory evidence is presented and the Planning Board/Town Planner concurs that
3016 technical constraints prohibit co-location. Applicant and other wireless service carriers
3017 must provide a mechanism for the construction and maintenance of shared facilities and
3018 infrastructure and for reasonable sharing of cost in accordance with industry standards. (A
3019 reasonable charge for shared use is based on generally accepted accounting principles.

3020 (4) This charge may include, but not be limited to, a pro rata share of the cost of site

3021 selection, planning, project administration, land costs, site design, construction and
3022 maintenance, financing, return of equity, depreciation and all of the costs of adapting the
3023 tower or equipment to accommodate a shared user without causing electromagnetic
3024 interference, all being pertinent to the southern Maine market area.)
3025 (5) To ensure co-location, the Planning Board/Town Planner may require co-location on a
3026 tower so as to prevent the need for new carriers to build new towers, may deny an
3027 application for a telecommunications facility because of inadequate provisions and/or
3028 arrangements for co-location, and may require an existing tower to be extended in height
3029 (provided that a structural analysis indicates that such extension is structurally feasible
3030 and safe) in order to provide for co-location.

3031 F. Performance guarantees.

3032 No building permit may be issued until the applicant has filed a performance guarantee and
3033 approved by the Town Manager equal to 125% of the cost of completing the following
3034 improvements:

- 3035 (3) The construction of any drainage systems involving piping, culverts, or retention or
3036 detention facilities;
- 3037 (4) The construction of erosion and sedimentation control measures or landscaping required
3038 to meet the standards of this article; and
- 3039 (5) Other site improvements required by the Board/Town Planner to meet the standards of
3040 this article.

3041 G. Removal of abandoned or unused facilities.

- 3042 (3) The owner of a telecommunications facility is required to remove the tower and
3043 associated facilities should it not be used for the use or uses approved for a period of 90
3044 consecutive days. This period may be extended by the Planning Board/Town Planner if
3045 there are extenuating circumstances beyond the control of the applicant. An applicant for
3046 a permit under this article must post a performance guarantee approved by the Town
3047 Manager with the Town prior to obtaining a permit that is equal to 125% of the cost of
3048 removing the structure. The performance guarantee must be in effect for the life of the
3049 WCSF;
- 3050 (4) The performance guarantee covering such removal must be reviewed for renewal at a
3051 maximum term of five years, to account for cost adjustments. It must contain a
3052 mechanism, satisfactory to the Town, for review of the cost of removal of the structure
3053 every five years and a mechanism for increasing the amount of the guarantee should the
3054 revised cost estimate so necessitate.

3055 H. Annual permit renewal.

3056 To ensure compliance with the prescribed ordinances, all approvals will be subject to an annual
3057 permit renewal conducted by the Town Planner. The Town Planner at a minimum is to review the
3058 continued use of the facility; maintenance of the facility and site improvements; availability for
3059 co-location of new service; and review of bonding documents. The documents and permit renewal
3060 fee must be submitted to the Town Planner no later than October 1 of each year following the
3061 original approval.

1 **16.6 Master Site Development Plan Review**

2 **Contents**

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10

11 **16.6.1 General**

12 Master Site Development Plans are intended to show an overall development scheme for a
13 large property so that the Planning Board can ensure that development of large sites, with
14 potential town-wide or regional impacts, proceeds in an orderly sequence with coordinated
15 phasing. Master Site Development Plans are to assure adequate provisions are made to protect
16 the public health and safety, taking into account such factors as traffic safety and access; water
17 supply and sewage disposal; management of stormwater, erosion, and sedimentation;
18 protection of the environment; and other criteria as noted below.

19 **16.6.2 Applicability**

20 A. A person who has right, title, or interest in a parcel of land shall obtain Master Site
21 Development Plan approval for a site when:

- 22 (1). The cumulative lot area is one acre or larger, and
23 (2). The site is designed as a cohesive and integral development program consisting of
24 multiple buildings and associated site improvements proposed to be built in phases.

25 **16.6.3 Review Process & Submission Requirements**

26 A. Pre-application and Conference

- 27 (1). Process
28 Before submitting a proposed Master Site Development Plan to the Board, the
29 owner must meet with the Town Planner to discuss the feasibility and conceptual
30 design, including sketch plans, regarding land use, parcel layout, public
31 improvement, and the surrounding existing development and environment.

32 A. Sketch Plan Review

- 33 (1). Process
34 The applicant must prepare and submit, for review and consideration by the
35 Planning Board, a sketch plan and subsequently, for review and possible approval
36 by the Planning Board, a Master Site Development Plan for the mixed-use
37 development of the parcel.

38 (2). Plan Requirements

39 A Master Site Development Sketch Plan must include, at a minimum:

- 40 a. Location, type and amount of the uses proposed to be developed on the
41 parcel, including the proposed area, percentage and intensity of each
42 proposed use;
43 b. Proposed provisions for utilities, access roads, parking and public and
44 private ways;
45 c. Areas proposed to be permanently dedicated for public or private open
46 space or other public purpose;
47 d. Proposed phasing of the overall site development, including the general
48 sequence in which related public and private improvements are to be
49 completed, clearly defined on Master Site Development Plan.

50 (3). Written Submission Requirements

- 51 a. A project narrative, describing the nature of the proposed project along with
52 an anticipated timeframes for project phases and overall project buildout.
53 b. In the event the development site is not comprised of a single parcel, the
54 master site development plan must detail the manner in which multiple
55 parcels will be consolidated into a single parcel and subsequently
56 subdivided, if necessary, to facilitate the completion of the plan.

57 (4). Decisions.

- a. The Planning Board must determine whether the Sketch Plan proposal complies with the standards contained herein 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
- d. bicycle circulation, recreation, water, wastewater, drainage and other elements as set forth in this title.
- e. 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. Stormwater, traffic and other impacts of project phases are cumulative.

B. Infrastructure.

- (1). Improvements within the right-of-way, including streetlights, sidewalks, streets, guardrails and more will maintain consistency 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 rely on later phase construction for necessary stormwater treatment.

D. Traffic.

- (1). New streets in the Master Site Development Plan will include provisions for adequate turnarounds between project phases. Hammerheads or cul-de-sacs installed at the end of each phase may be removed if the street is extended in future

104 phases.

105 **16.6.5 Decisions**

106 A. The Planning Board shall approve, approve with conditions, or deny a Master Site
107 Development Plan application based on the applicable review standards. An approval,
108 including any approval of waivers from Performance Standards, establishes the general
109 parameters to be adhered to for the development, including the supporting documentation
110 for floor area and/or residential density, general types of uses, building coverage,
111 generalize open space plans and infrastructure systems.

112 (1). A Master Site Development Plan approval shall not be construed as final
113 authorization of the development. Approval shall confer pending proceeding status
114 upon the development with the effect of maintaining the applicability of regulations
115 in effect at the time of approval for as long as the Master Site Development Plan
116 remains valid, including permissible extensions, if granted.

117 (2). Final approved Master Site Development Plan signing. The Planning Board must
118 sign and date the plan to indicate that it is the Master Site Development Plan
119 approved by the Board.

120 B. A Master Site Development Plan and each subsequent development plan thereof has final
121 approval only when the Planning Board has indicated approval by formal action and the
122 plan has been properly signed by a majority of the Planning Board members or by the
123 Chair only, if so voted by the Planning Board.

124 **16.6.6 Post-Approval Activities**

125 A. Recording of master planned property survey.

126 (1). The owner must record the signed Master Site Development Plan at the York
127 County Registry of Deeds after Planning Board approval.

128 B. Land division applications.

129 (1). After approval of the Master Site Development Plan and recording of the master
130 site development plan property survey, the owner may initiate land division
131 applications.

132 (2). The Code Enforcement Officer may issue permits only after the Master Site
133 Development Plan property survey has been recorded and all other applicable state
134 and local approvals have been obtained.

1 **16.7 Site Plan Review**

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16.7.2 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.

16.7.3 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

- 90 increases the number of dwelling units in the structure by three (3) or
91 more in any five (5) year period.
- 92 (8). The conversion of an existing nonresidential building or structure, in
93 whole or in part, into three (3) or more dwelling units within a five (5)
94 year period.
- 95 (9). The cumulative Development of an area equal to, or greater than, one (1)
96 acre within any five (5) year period. The applicability of this section does
97 not include the construction of streets that are reviewed as part of a
98 Subdivision application.
- 99 B. Other development review [Amended 9-26-2011 by Ord. No. 11-15; 7-25-
100 2016 by Ord. No. 16-02]
101 Unless subject to a shoreland development plan review or Right of Way
102 Plan per § 16.7.3A, the following do not require Planning Board approval:
- 103 (1). Single and duplex family dwellings.
104 (2). Division of land into lots (i.e., two lots), which division is not otherwise
105 subject to Planning Board review as a subdivision.
106 (3). Business use as provided in § 16.2.6.D.

107 **16.7.4 Other Potential Reviews**

- 108 A. Shoreland development review. [Amended 7-25-2016 by Ord. No. 16-02]
- 109 (1). All development in the Shoreland, Resource Protection, and Commercial
110 Fisheries/Maritime Uses Overlay Zones involving the use, expansion,
111 change or replacement of an existing use or structure, or renewal of a
112 discontinued nonconforming use, must be reviewed and approved as
113 provided in § 16.11.1.5 and elsewhere in this title, and tracked as a
114 shoreland development for reporting purposes.
- 115 (2). All development in the Shoreland, Resource Protection, and Commercial
116 Fisheries/Maritime Uses Overlay Zones must be approved by the Planning
117 Board except for the following:
- 118 a. Proposed development of principal and accessory structures in
119 compliance with § 16.4.11(5)b., when not subject to Planning
120 Board review as explicitly required elsewhere in this title. Such
121 proposed development must be reviewed and approved by the
122 Code Enforcement Officer (CEO) prior to issuing a building
123 permit. The total devegetated area of the lot (that portion within the
124 Shoreland Overlay Zone) must be calculated by the applicant and
125 verified by the CEO and recorded in the Town's property records.
126 Any development proposed in the Resource Protection and
127 Shoreland - Stream Protection Area Overlay Zones must be
128 approved by the Planning Board.
- 129 b. Piers, docks, wharves, bridges and other structures and uses
130 extending over or below the highest annual tide (HAT) elevation,
131 subject to review and approval by the Port Authority as outlined in
132 Chapter 16.11, Marine-related development.

- 133 c. Division of a conforming parcel that is not subject to subdivision
134 as defined in § 16.3.
135 d. Clearing of vegetation for activities other than timber harvesting.
136 These are subject to review and approval by the Shoreland
137 Resource Officer or Code Enforcement Officer.

138 **16.7.5 Review and Approval Authority**

- 139 A. Application Classification. The review and approval authority for Site Plans
140 shall depend on the classification of the project.
- 141 (1). Major Site Plan. The Planning Board is authorized to review and act on
142 all Site Plans for Major Site Plan applications. In considering Site Plans
143 under this section, the Planning Board may act to approve, disapprove, or
144 approve with project with such conditions as are authorized by this
145 section.
- 146 (2). Minor Site Plan. The Kittery Director of Planning and Development
147 authorized to review all Site Plans for Minor Site Plan applications and
148 may approve, disapprove, or approve the project with such conditions as
149 are authorized by this section. This administrative review will be made in
150 consultation with the Town Planner and Code Enforcement Officer. In
151 addition, the Director may reclassify a Minor Site Plan as a Major Site
152 Plan, due to the scope or anticipated impacts of a project, and forward it to
153 the Planning Board with recommendations for Planning Board action.
- 154 B. Technical Review Committee Established. There is hereby created a
155 Technical Review Committee. The Technical Review Committee shall
156 provide advisory comments on all Site Plan applications. Membership will
157 consist of Town department heads and senior staff. The Technical Review
158 Committee will meet on an as needed basis, dependent upon the timing Site
159 Plan application submissions.

160 **16.7.6 Classification of Projects**

- 161 A. The Town Planner shall classify each project as a Major or Minor Site Plan.
162 Minor Site Plans are smaller scale projects for which a minor review process
163 is adequate to protect the Town's interest. Major Site Plans are larger, more
164 complex projects for which a more detailed review process and additional
165 information are necessary. The following review thresholds shall be used
166 by the Town Planner in classifying each project. The Town Planner may,
167 due to the scope or anticipated impacts of a project, classify any project as a
168 Major Site Plan.
- 169 (1). Minor Site Plans shall include those projects involving:
- 170 a. The cumulative construction or addition of fewer than five
171 thousand (5,000) square feet of gross nonresidential floor area.
- 172 b. Any individual or cumulative construction or addition of five
173 thousand (5,000) square feet or more of gross nonresidential floor
174 area within an approved subdivision.

- 175 c. The establishment of a new nonresidential use even if no buildings
176 or structures are proposed, that involves the Development of more
177 than twenty-five thousand (25,000) square feet but less than one
178 (1) acre of land.
- 179 (2). Major Site Plans shall include projects involving:
 - 180 a. The individual or cumulative construction or addition of five
181 thousand (5,000) or more square feet of gross nonresidential floor
182 area on a lot that is not part of an approved subdivision,
 - 183 b. The individual or cumulative Development of one (1) acre or more
184 land, unless the Development is part of a Site Plan application in
185 an approved subdivision,
 - 186 c. Any mixed-use project that contains residential and non-residential
187 uses,
 - 188 d. Projects that involve Wireless Communication System Facilities
189 (WCSF),
 - 190 e. Projects that require any waiver from performance standards.
 - 191 f. Projects that also require subdivision or special exception
192 approval, or
 - 193 g. Other projects requiring review which are not classified as a minor
194 development.

195 **16.7.7 Application and Review Fees**

- 196 A. Review fee(s); reimbursements.
 - 197 (1). All applications for plan approval for properties which come under this
198 title must be accompanied by a fee as determined by the Town Council.
 - 199 (2). The applicant must reimburse the Town for all expenses incurred for
200 notifying abutters of the proposed plan and advertising of any public
201 hearing regarding a development.
- 202 B. Independent peer review.
203 [Amended 9-28-2015 by Ord. No. 15-08]
 - 204 (1). The Planning Board or, after the Town Manager's approval, the Town
205 Planner and the Code Enforcement Officer, may require an independent
206 consultant or specialist engaged by the Town, at the applicant's expense,
207 to:
 - 208 a. Determine compliance with all requirements of this title related to
209 public health, safety and welfare and the abatement of nuisances;
210 or
 - 211 b. Assist with the technical review of applications submitted for new
212 or amended development.
- 213 C. When peer review is required of the applicant, sufficient funds, based on a
214 written estimate by the required consultant, must be deposited in an
215 applicant's service account per Chapter 3.3, prior to commencing said

216 review and continuing with the review of the development plan application.

217 **16.7.8 Applicant attendance at review meeting(s).**

218 The applicant or duly authorized representative must attend all Board meetings for which
219 the applicant's application has been placed on the agenda. Relief may be given from this
220 requirement by the Board Chairperson.

221 **16.7.9 Waivers [Amended 9-26-2011 by Ord. No. 11-14]**

222 A. Waiver authorization.

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

228 B. Only waivers from submission requirements may be considered for Minor
229 Site Plans, and not waivers from performance standards. Projects seeking
230 such waivers must be classified as Major Site Plan applications to be
231 reviewed by the Planning Board.

232 C. Objectives secured.

233 In granting modifications or waivers, the Planning Board must require such
234 conditions as will, in its judgment, secure substantially the objectives of the
235 requirements so waived or modified.

236 **16.7.10 Other Requirements**

237 A. Burden of proof.

238 In all instances, the burden of proof is upon the applicant proposing the
239 development.

240 B. Comprehensive Plan.

241 Any proposed development or use must be in harmony with the Town
242 Comprehensive Plan guidance adopted into the provisions of this title.

243 C. Site inspection determination.

244 (1). At the Planning Board's first meeting on any Site Plan application, the
245 Board should make a determination on whether a site inspection would be
246 beneficial in order for the Planning Board to be fully informed about the
247 site and in a knowledgeable position to prescribe contour intervals to be
248 employed on topographic maps and grading plans for the development, the
249 applicant must arrange a joint inspection of the site with the Planning
250 Board.

251 (2). If a site inspection is required, the applicant must stake out property
252 corners, entrance locations, and building corners, along with other site
253 features to help orient the Board and members of the public.

254 (3). The applicant must provide each Board member with a copy of the plan on
255 an 11"x17" sheet at the site walk.

256 D. Safe use.
257 The land/water area to be developed must be of such character that it can be
258 used without danger to health or peril from fire, flood, soil failure or other
259 hazard.

260 **16.7.11 Review Process and Submission Requirements**

261 A. Pre-Application and Conference

262 (1). Process. Pre-Application Conference. Applicants for Site Plan review are
263 encouraged to schedule a Pre-Application conference with the Town
264 Planner. The purpose of this meeting is to familiarize the applicant with
265 the review procedures and submission requirements, and approval criteria,
266 and to familiarize the Planner with the nature of the project.

267 a. Such review shall not cause the plan to be a pending application or
268 proceeding under 1 M.R.S.A. §302. No decisions relative to the
269 plan may be made at this meeting.

270 b. To request a Pre-Application conference the applicant shall submit,
271 at a minimum, a brief narrative describing the project, the location
272 of the project on a US Geologic Survey (USGS) topographic map,
273 a rough drawing of the proposal for the subject property, and a
274 copy of the Tax Map showing the development parcel.

275 B. Sketch Plan Review

276 (1). Major Site Plan applicants may choose to submit a development sketch
277 plan with design concept, at their discretion. The purpose of Sketch Plan
278 Review with the Planning Board is a chance for the applicant to ask
279 questions and get feedback and guidance from the Board before
280 proceeding with on concepts from the Board, and for the Board to provide
281 guidance on submission requirements.

282 Any person requiring Site Plan review must submit an application on
283 forms prescribed by the Planning Board. No more than one
284 application/plan for a piece of property may be under review before the
285 Planning Board. No more than one approved Final Plan for a piece of
286 property may exist.

287 a. A completed application must be submitted to the Town Planner
288 no later than 21 days prior to the meeting date for the item to be
289 included on the agenda.

290 i. Refer to current Planning Department application checklist
291 for required number of paper copies.

292 ii. One electronic submission in PDF format of the complete
293 submission including all forms, plans, and documentation.

294 (2). Planning Board review. The Planning Board must, within 30 days of
295 Sketch Plan submission, act upon the Sketch Plan as follows:

296 a. The Planning Board must determine whether the Sketch Plan
297 proposal complies with the standards contained herein.

- b. Where it deems necessary, make specific suggestions in writing to be incorporated by the applicant in subsequent submissions.
- c. The Planning Board should provide guidance as to whether or not an on-site inspection will be required.
- d. The applicant should provide an indication as to whether or not waivers from the submission requirements or performance standards will be part of the next phase of review.
- e. 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.
 - i. 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.

(3). Plan Requirements

- a. The Sketch Plan must be submitted to the Planning Board at the time of, or prior to, the on-site inspection.
- b. 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.
- c. The sketch may be a freehand penciled sketch and must include the data listed below.

(4). Written Submission Requirements

- a. Any person requiring development review must submit an application on forms prescribed by the Planning Board, together with a development plan and such submission contents as may be required in § 16.7.10.C. A complete application consists of all the required elements. No more than one application/plan for a piece of property may be under review at a time. No more than one approved Final Plan for a piece of property may exist.
- b. General project information must describe or outline the existing conditions of the site, including:
 - i. Covenants.
 - ii. Available community facilities.
 - iii. Utilities.
- c. Proposed development, such as:

- 341 i. Number of residential or business lots and/or dwelling
- 342 units;
- 343 ii. Typical lot width and depth;
- 344 iii. Price range;
- 345 iv. Business areas;
- 346 v. Playgrounds, park areas and other public areas;
- 347 vi. Protective covenants;
- 348 vii. Utilities; and
- 349 viii. Street improvements.

350 C. Preliminary Plan Review

351 (1). General Process

- 352 a. Within six months after Planning Board acceptance of a Sketch
- 353 Plan, if applicable, the applicant must submit an application for
- 354 preliminary Site Plan approval in the form prescribed herein.
- 355 **[Amended 9-26-2011 by Ord. No. 11-15]**
- 356 b. Preliminary Plan application filing and completeness review. A
- 357 determination as to whether the Town Planner validates an
- 358 application is based on a review of the application in accordance
- 359 with the submission contents checklist filed with the plan, which
- 360 indicates all elements required under §§ 16.7.10.C and 16.7.10.D
- 361 have been received, or written request for any waivers of
- 362 submission requirements or performance standards is included.
- 363 The application must be accompanied by a plan and the required
- 364 fee, together with a certification the applicant has notified abutters
- 365 by mail of the filing of the plan application for approval.
- 366 c. Receipt and scheduling review. Upon validation, the Town Planner
- 367 must place the application on the Planning Board's agenda for
- 368 Planning Board completeness review and vote to find the
- 369 Preliminary Plan application complete and, upon Planning Board
- 370 approval, issue a dated notice to the applicant, which is thereafter
- 371 the official time of submission. [Amended 9-26-2011 by Ord. No.
- 372 11-15]
- 373 d. Site inspection. In the course of the review of the plan, the Planner
- 374 must, and the Planning Board may at its discretion, make a
- 375 physical inspection and may make photographic record of the
- 376 existing conditions on the site. [Amended 9-26-2011 by Ord. No.
- 377 11-15; 1-23-2012 by Ord. No. 12-01]
- 378 e. Advisory opinions. At any time during review, the Planner may
- 379 request an advisory opinion from the Planning Board,
- 380 Conservation Commission or Port Authority on issues related to
- 381 the application. Where applications are for land within wetland
- 382 setbacks or the Resource Protection Overlay Zone, the
- 383 Conservation Commission must be invited to review and offer

384 recommendations from an environmental protection perspective.
385 The Planner also must make recommendation on the necessity for
386 independent review.

387 f. Planner analysis. The Planner must analyze the application and
388 forward comments and recommendations to the applicant and the
389 Planning Board. .

390 g. A completed application must be submitted to the Town Planner
391 no later than 21 days prior to the meeting date for the item to be
392 included on the agenda. The submission must include on the plan
393 or attached thereto, the requirements of subsection (4) Plan
394 Requirements and subsection (5) Written Submission
395 Requirements, unless upon the applicant's written request, the
396 Planning Board, by formal action, waives or defers any
397 requirement(s) for submission.

398 i. Refer to current Planning Department application checklist
399 for required number of paper copies.

400 ii. One electronic submission in PDF format of the complete
401 submission including all forms, plans, and documentation.

402 (2). Public hearing

403 a. Scheduling

404 i. A Major Site Plan application must be scheduled for review
405 and public hearing once the Preliminary Plan application
406 has been found complete by the Planning Board.

407 b. Public notice.

408 i. The Town Planner must place a public notice of such
409 public hearing in a newspaper of general circulation in the
410 Town at least seven and not more than 14 days prior to the
411 scheduled hearing date; said notice must also be posted in
412 at least three prominent public locations in Town at least 10
413 days prior to the hearing; and, in the case of a plan located
414 within 500 feet of the Towns of Eliot or York, Maine, must
415 be forwarded to the Southern Maine Planning and
416 Development Commission and to the Town Clerk of Eliot
417 or York, Maine, at least 10 days prior to the hearing.

418 c. Abutter notice.

419 i. The Town Planner must cause written notice of the public
420 hearing to be sent by postage paid, first-class mail (cost to
421 be paid by the applicant) to all owners of abutting property,
422 as herein defined (within 150 feet of the property), and by
423 regular mail to the Code Enforcement Officer, the
424 Commissioner of Public Works, and where applicable, the
425 Port Authority or Conservation Commission, at least seven
426 days prior to the scheduled date. Failure of the parties to
427 receive said notice does not invalidate any Board action.

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- 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 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 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.
- (3). Planning Board review schedule and decision on Preliminary Plan application.
- a. Within 35 of a Public Hearing, the Planning Board must approve the plan, approve the plan with conditions, disapprove the plan, postpone action on the plan, or continue the review to another time/location.
 - b. Continuation or tabling of a review beyond the thirty-five-day period for Site Plan applications must be for good and sufficient reason and be acceptable to both the applicant and the Planning

- 472 Board.
- 473 c. Any plan may be continued for a total period not to exceed 90
- 474 calendar days for good and sufficient reason (i.e., for revisions to
- 475 be made, studies completed or additional information submitted)
- 476 and acceptable to both the applicant and the Planning Board. Such
- 477 plan is automatically scheduled for the agenda of the next regular
- 478 Planning Board meeting after the 90th day and action completed in
- 479 accordance with the requirements and timing contained in this title,
- 480 whether the applicant has accomplished the purposes for which
- 481 continued or not.
- 482 d. The action to table by the Planning Board must be an action to
- 483 temporarily suspend action and not to suppress a vote on the plan.
- 484 e. Failure to act within the thirty-five-day period constitutes
- 485 disapproval of the plan, in which case the applicant may resubmit
- 486 the plan without payment of an additional application fee.
- 487 Conditions of approval may include, but are not limited to, type of
- 488 vegetation, increased setbacks and yard space, specifications for
- 489 sewage and water supply facilities, buffers and screens, period of
- 490 maintenance sureties, deed restrictions, locations of piers, docks,
- 491 parking or signs, type or style of construction, and the amount of
- 492 all guarantees which may be required.
- 493 f. The decision of the Planning Board plus any conditions imposed
- 494 must be noted on three copies of the Preliminary Plan. One copy
- 495 must be returned to the applicant, one retained by the Planning
- 496 Board and one forwarded to the municipal officials.
- 497 (4). Plan Requirements
- 498 a. Plan sheets drawn on a reproducible medium and must measure no
- 499 less than 11 inches by 17 inches and no larger than 24 inches by 36
- 500 inches;
- 501 b. With scale of the drawings no greater than one inch equals 30 feet
- 502 for developments less than 10 acres, and one inch equals 50 feet
- 503 for all others;
- 504 c. Code block in the lower right-hand corner. The block must
- 505 contain:
- 506 i. Name(s) and address(es) of the applicant and owner;
- 507 ii. Name of the project;
- 508 iii. Name and address of the preparer of the plan, with
- 509 professional seal, if applicable;
- 510 iv. Date of plan preparation/revision, and a unique ID number
- 511 for the plan and any revisions;
- 512 d. Standard boundary survey conducted by a surveyor licensed in the
- 513 State of Maine, in the manner recommended by the State Board of
- 514 Registration for Land Surveyors;

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- e. An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;
 - f. Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;
 - g. Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within 500 feet from any boundary of the proposed development;
 - h. Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;
 - i. Names and addresses of all owners of record of property abutting the development, including those across a street;
 - j. Existing Development Area Conditions, including but not limited to:
 - i. Location and description of all structures, including signs, existing on the site, together with accesses located within 100 feet of the property line;
 - ii. Essential physical features such as watercourses, wetlands, floodplains, wildlife habitat areas, forest cover, and outcroppings;
 - iii. Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainageways.
 - k. Proposed development area conditions including, but not limited to:
 - i. 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.
 - ii. Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways;
 - iii. Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown;
 - iv. Domestic water source;
 - v. Parks, open space, or conservation easement locations;
 - vi. Lot lines, interior and exterior, right-of-way, and street alignments;
 - vii. Road and other paved ways plans, profiles and typical sections including all relevant data;

- 558 viii. Setbacks existing and proposed;
- 559 ix. Machinery permanently installed locations likely to cause
- 560 appreciable noise at the lot lines;
- 561 x. Raw, finished or waste materials to be stored outside the
- 562 buildings, and any stored material of a toxic or hazardous
- 563 nature;
- 564 xi. Topographic contours of existing contours and finished
- 565 grade elevations within the development;
- 566 xii. Pedestrian ways/sidewalks, curbs, driveways, fences,
- 567 retaining walls and other artificial features locations and
- 568 dimensions proposed;
- 569 xiii. Temporary marker locations adequate to enable the
- 570 Planning Board to readily locate and appraise the layout of
- 571 the development;
- 572 xiv. Land proposed to be dedicated to public use and the
- 573 conditions of such dedication;
- 574 a. Natural features or site elements to be preserved. Written
- 575 Submission RequirementsLegal interest documents showing legal
- 576 interest of the applicant in the property to be developed. Such
- 577 documents must contain the description upon which the survey
- 578 was based;
- 579 b. Property encumbrances currently affecting the property, as well as
- 580 any proposed encumbrances;
- 581 c. Water District approval letter, if public water is used, indicating
- 582 there is adequate supply and pressure to be provided to the
- 583 development;
- 584 d. Erosion and sedimentation control plan endorsed by the York
- 585 County Soil and Water Conservation District or the Town's
- 586 engineering consultant;
- 587 e. Stormwater management preliminary plan for stormwater and
- 588 other surface water drainage prepared by a registered professional
- 589 engineer including the general location of stormwater and other
- 590 surface water drainage areas;
- 591 f. Soil survey for York County covering the development. Where the
- 592 soil survey shows soils with severe restrictions for development, a
- 593 high intensity Class "A" soil survey must be provided;
- 594 g. Vehicular traffic report estimating the amount and type of
- 595 vehicular traffic that will be generated by the development on a
- 596 daily basis and for peak hours;
- 597 h. Traffic impact analysis in accordance with § 16.5.25.E for
- 598 developments involving 40 or more parking spaces or which are
- 599 projected to generate more than 400 vehicle trips per day;
- 600 i. Test pit(s) analysis prepared by a licensed site evaluator when

- 601 sewage disposal is to be accomplished by subsurface disposal, pits,
602 prepared by a licensed site evaluator;
- 603 j. Town Sewage Department or community system authority letter,
604 when sewage disposal is to be through a public or community
605 system, approving the connection and its location;
 - 606 k. Letters of evaluation of the development by the Chief of Police,
607 Fire Chief, Commissioner of Public Works, and, for residential
608 applications, the superintendent of schools, must be collected and
609 provided by the Town Planner.
 - 610 l. Additional submissions as may be required by other sections of
611 this title such as for clustered development, mobile home parks, or
612 junkyards must be provided.
- 613 (5). Additional requirements. In its consideration of an application/plan, the
614 Planning Board may at any point in the review require the applicant to
615 submit additional materials, studies, analyses, and agreement proposals as
616 it may deem necessary for complete understanding of the application.
617 Such materials may include:
- 618 a. Traffic impact analysis, for projects that are not otherwise required
619 to submit a traffic impact analysis by submission requirement
620 C.(5).h., above.
 - 621 b. Environmental analysis. An analysis of the effects that the
622 development may have upon surrounding lands and resources,
623 including intensive study of groundwater, ecosystems, or pollution
624 control systems;
 - 625 c. Hydrologic analysis. An analysis of the effects that the
626 development may have on groundwater must be conducted in
627 accordance with § 16.7.11.J. This analysis is always required for
628 mobile home park proposals.
- 629 (6). Additional Submittal Content Required for Review of Wireless
630 Communication Services Facilities (WCSF).
- 631 a. A visual impact analysis prepared by a landscape architect or other
632 qualified professional acceptable to the Town that quantifies the
633 amount of visual impact on properties located within 500 feet,
634 within 2,500 feet and within two miles of the WCSF. This analysis
635 will include recommendations to mitigate adverse visual impacts
636 on such properties;
 - 637 b. An analysis prepared by a qualified professional acceptable to the
638 Town that describes why this site and structure is critical to the
639 operation for which it is proposed. The analysis must address, at a
640 minimum: existing and proposed service area; how this WCSF is
641 integrated with other company operations, particularly other
642 structures in Kittery and surrounding communities; future
643 expansion needs in the area; the effect on company operations if
644 this structure is not constructed in this location; other sites

- 645 evaluated for location of this structure and how such sites compare
646 to the proposed site; other options, if any, which could be used to
647 deliver similar services, particularly if the proposed equipment can
648 be co-located (shared use) on an existing structure; and an analysis
649 to the projected life cycle of this structure and location;
- 650 c. Certification by a structural engineer that construction of the
651 structure satisfies all federal, state and local building code
652 requirements as well as the requirement of maximum permitted co-
653 location at the site as approved by the Planning Board/Town
654 Planner;
 - 655 d. A plan note stating the payment of all required performance
656 guarantees as a condition of plan approval;
 - 657 e. Payment of the Planning Board application fees;
 - 658 f. And all other requirements per this chapter.

659 D. Final Plan Review

660 (1). Process, Major Site Plan

- 661 a. Final Plan application. The applicant must, within six months after
662 approval of a Preliminary Plan, file with the Planning Board an
663 application for approval of the Final Plan in the form prescribed
664 herein.
- 665 b. Failure to submit Final Plan application. If the Final Plan is not
666 submitted to the Planning Board within six months after the
667 approval of the Preliminary Plan, the Planning Board may refuse to
668 act on the Final Plan and require resubmission of the Preliminary
669 Plan. Any plan resubmitted must comply with all application
670 requirements, including payment of fees.
- 671 c. A completed application must be submitted to the Town Planner
672 no later than 21 days prior to the meeting date for the item to be
673 included on the agenda. The submission must include on the plan
674 or attached thereto, the requirements of subsection (3) Final Plan
675 Requirements, unless upon the applicant's written request, the
676 Planning Board, by formal action, waives or defers any
677 requirement(s) for submission.
 - 678 i. Refer to current Planning Department application checklist
679 for required number of paper copies.
 - 680 ii. One electronic submission in PDF format of the complete
681 submission including all forms, plans, and documentation.
 - 682 iii. GIS data for all property corners and site plan elements.
- 683 d. Application/plan review expiration.
 - 684 i. Uncounted time. When an approved plan is required to be
685 reviewed/approved by another agency (e.g., DEP, BOA,
686 KPA), any period the plan is at such an agency or that a
687 plan is continued by the Planning Board in accordance with

688 § 16.7.10.C(3) from time of submission to time of decision
689 inclusive, verifiable by recorded documentation, is not
690 counted as part of the cumulative time periods described in
691 this section.

692 ii. Requests for extension. The Planning Board may grant
693 extensions to expiration dates upon written request by the
694 developer, on a case-by-case basis.

695 (2). Process, Minor Site Plan

696 a. The Final Plan application may be submitted concurrently with
697 Preliminary Plan submission requirements to the Director of
698 Planning and Development for administrative review and decision.

699 (3). Final Plan Requirements

700 A complete Final Plan application must fulfill all the requirements of a
701 Preliminary Plan as indicated in § 16.7.10.C of this section and must show
702 the following items, unless the Planning Board, by formal action, upon the
703 applicant's written request, waives or defers any requirement(s) for
704 submission. If no changes occurred to the Preliminary Plan, it also may be
705 considered to be the Final Plan.

- 706 a. Preliminary Plan information, including vicinity map and any
707 amendments thereto suggested or required by the Planning Board
708 or other required reviewing agency.
- 709 b. Street names and lines, pedestrianways, lots, easements and areas
710 to be reserved for or dedicated to public use.
- 711 c. Street length of all straight lines, the deflection angles, radii,
712 lengths of curves and central angles of all curves, tangent distances
713 and tangent bearings.
- 714 d. Lots and blocks within a subdivision, numbered in accordance with
715 local practice.
- 716 e. Markers/permanent reference monuments: Their location, source
717 references and, where required, constructed in accordance with
718 specifications herein.
- 719 f. Structures: their location and description, including signs, to be
720 placed on the site, floor plans and elevations of principal structures
721 as well as detail of all structures, showing building materials and
722 colors, and accesses located within 100 feet of the property line.
- 723 g. Outdoor lighting and signage plan if the application involves the
724 construction of more than 5,000 square feet of nonresidential floor
725 area; or the creation of more than 20,000 square feet of impervious
726 area; or the creation of three or more dwelling units in a building
727 — prepared by a qualified lighting professional, showing at least
728 the following at the same scale as the site plan:
 - 729 i. All buildings, parking areas, driveways, service areas,
730 pedestrian areas, landscaping and proposed exterior
731 lighting fixtures;

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- 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.
- h. Machinery in permanently installed locations likely to cause appreciable noise at the lot lines.
 - i. Materials (raw, finished or waste) storage areas, their types and location, and any stored toxic or hazardous materials, their types and locations.
 - j. Fences, retaining walls and other artificial features locations and dimensions proposed.
 - k. Landscaping plan, including location, size and type of plant material.
 - l. Stormwater management plan for stormwater and other surface water drainage prepared by a registered professional engineer, including the location of stormwater and other surface water drainage area; a post-construction stormwater management plan that defines maintenance responsibilities, responsible parties, shared costs, and schedule for maintenance; a draft maintenance agreement for stormwater management facilities; and, where applicable, draft documents creating a homeowners' association referencing the maintenance responsibilities. Where applicable, the maintenance agreement must be included in the document of covenants, homeowners' documents and/or as riders to the individual deed and recorded with the York County Registry of Deeds. **[Added 9-26-2011 by Ord. No. 11-15;7-25-2016 by Ord. No. 16-06]**

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- m. Phasing plan. Upon applicant's request, the Planning Board may permit phasing of the plans, where it can be demonstrated to the Planning Board's satisfaction that such phasing would result in a safe and orderly development of the plan.
 - i. The applicant may file a section of the approved plan with the municipal officials and the York County Registry of Deeds if said section constitutes at least 25% of the total number of lots, or for plans including buildings, 25% of the gross area, contained in the approved plan. In all circumstances, plan approval of the remaining sections of the plan will remain in effect for three years unless the applicant requests and the Planning Board grants extensions of time equivalent to the requirements for approved plans in § 16.7.12.
 - ii. Phasing is subject to any conditions deemed necessary to assure a reasonable mixture of uses is completed within each separate phase of the plan.
 - iii. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.
 - iv. Portions of both the developed and undeveloped site impacted by interim infrastructure conditions such as unlooped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be clearly defined and shown on the plans.
 - v. The Planning Board may permit construction of phases out of order only when the storm drainage plan and the water plan, etc., have been reviewed, and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

(4). Written Submission Requirements

- a. Municipal impact analysis of the relationship of the revenues to the Town from the development and the costs of additional publicly funded resources, including:
 - i. Review for impacts. A list of the construction items that will be completed by the developer prior to the sale of lots.
 - ii. Municipal construction and maintenance items. A list of construction and maintenance items that must be borne by the municipality, which must include, but not be limited to:
 - a. Schools, including busing;
 - b. Road maintenance and snow removal;
 - c. Police and fire protection;
 - d. Solid waste disposal;

- 820 e. Recreation facilities;
- 821 f. Runoff water disposal drainageways and/or storm
- 822 sewer enlargement with sediment traps.
- 823 iii. Municipal costs and revenues. Cost estimates to the Town
- 824 for the above services and the expected tax revenue of the
- 825 development.
- 826 b. Open space land cession offers. Written offers of cession to the
- 827 municipality of all public open space shown on the plan, and
- 828 copies of agreements or other documents showing the manner in
- 829 which space(s), title to which is reserved by the subdivider, are to
- 830 be maintained.
- 831 c. Open space land cession offers acknowledgement by Town.
- 832 Written evidence that the municipal officers are satisfied with the
- 833 legal sufficiency of the documents referred to in § 16.7.10.D(4)b.
- 834 Such written evidence does not constitute an acceptance by the
- 835 municipality of any public open space referred to in
- 836 § 16.7.10.D(4)b.
- 837 d. Maintenance plan and agreement defining maintenance
- 838 responsibilities, responsible parties, shared costs and schedule.
- 839 Where applicable, a maintenance agreement must be included in
- 840 the document of covenants, homeowners' documents and/or as
- 841 riders to the individual deed.
- 842 e. Estimated costs. Specify the estimated total cost of the
- 843 development and itemize the estimated major expenses. The
- 844 itemization of major costs should include, but not be limited to, the
- 845 costs of the following activities: roads, sewers, structures, water
- 846 supply, erosion control, pollution abatement and landscaping.
- 847 (5). Findings of Fact.
- 848 a. After considering all submissions, evidence and testimony in
- 849 accordance with the requirements of all applicable state and the
- 850 Town Code, the Planning Board or Director of Planning and
- 851 Development must make a finding of facts for each and every
- 852 proposed phase of development, including the development master
- 853 plan and each subsequent development plan, and take formal
- 854 action as required in this title.
- 855 b. Findings of fact. Action by the Planning Board must be based upon
- 856 findings of fact which certify or waive compliance with all the
- 857 required standards of this title and which certify the development
- 858 meets the following requirements:
- 859 i. Development conforms to local ordinances. The proposed
- 860 development conforms to a duly adopted Comprehensive
- 861 Plan as per adopted provisions in the Town Code, zoning
- 862 ordinance, subdivision regulation or ordinance,
- 863 development plan or land use plan, if any. In making this

- 864 determination, the municipal reviewing authority may
865 interpret these ordinances and plans.
- 866 ii. Water supply sufficient. The proposed development has
867 sufficient water available for the reasonably foreseeable
868 needs of the development.
- 869 iii. Sewage disposal adequate. The proposed development will
870 provide for adequate sewage waste disposal and will not
871 cause an unreasonable burden on municipal services, if
872 they are utilized.
- 873 iv. Stormwater managed. The proposed development will
874 provide for adequate stormwater management.
- 875 v. Traffic managed. The proposed development will:
- 876 a. Not cause unreasonable highway or public road
877 congestion or unsafe conditions with respect to the
878 use of the highways or public roads existing or
879 proposed; and
- 880 b. Provide adequate traffic circulation, both on site and
881 off site.
- 882 vi. Parking and Loading. Provisions have been made for safe
883 internal vehicular circulation, loading and service areas,
884 and parking associated with the proposed development.
- 885 vii. Utilities. The size, type, and locations of all public utilities
886 and private utilities to serve the proposed development will
887 be installed per accepted engineering practices.
- 888 viii. Erosion controlled. The proposed development will
889 not cause unreasonable soil erosion or a reduction in the
890 land's capacity to hold water so that a dangerous or
891 unhealthy condition results.
- 892 ix. Groundwater protected. The proposed development will
893 not, alone or in conjunction with existing activities,
894 adversely affect the quality or quantity of groundwater.
- 895 x. Freshwater wetlands identified. All freshwater wetlands
896 within the project area have been identified on any maps
897 submitted as part of the application, regardless of the size
898 of these wetlands.
- 899 xi. River, stream or brook identified. Any river, stream or
900 brook within or abutting the proposed project area has been
901 identified on any maps submitted as part of the application.
902 For purposes of this section, "river, stream or brook" has
903 the same meaning as in 38 M.R.S. § 480-B, subsection 9.
904 Municipal solid waste disposal available. The proposed
905 development will not cause an unreasonable burden on the
906 municipality's ability to dispose of solid waste, if municipal
907 services are to be used.

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- xii. Water body quality and shoreline protected. Whenever situated entirely or partially within 250 feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. Flood areas identified and development conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application. Water and air pollution minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:
 - a. Elevation of the land above sea level and its relation to the floodplains;
 - b. Nature of soils and subsoils and their ability to adequately support waste disposal;
 - c. Slope of the land and its effect on effluents;
 - d. Availability of streams for disposal of effluents;
 - e. Applicable state and local health and water resource rules and regulations; and
 - f. Safe transportation, disposal and storage of hazardous materials.
 - xiii. Aesthetic, cultural and natural values protected. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas, or any public rights for physical or visual access to the shoreline.
 - xiv. Environmental Considerations. The proposed development will not result in undue levels of lighting, noise, vibrations, smoke, heat, glare, fumes, dust, toxic matter, otors, or electromagnetic interference.
 - xv. Utilization of the site. The proposed development does reflect the natural capabilities of the site to support development.
 - xvi. Developer financially and technically capable. Developer is financially and technically capable to meet the standards of this section.
- c. For wireless communication system facility (WCSF). In development, the WCSF:
- i. Tower or other structure height does not exceed that which is essential for its intended use and public safety;
 - ii. Proximity of tower to residential development or zones is acceptable;

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- iii. Nature of uses on adjacent and nearby properties is compatible;
 - iv. Surrounding topography is protected;
 - v. Surrounding tree coverage and foliage is protected;
 - vi. Design of the tower, antenna or facility with particular reference to design characteristics effectively eliminating or significantly reducing visual obtrusiveness is minimized;
 - vii. Proposed ingress and egress to the site is adequate;
 - viii. Co-location with another existing WCSF has been thoroughly pursued and is not feasible;
 - ix. Visual impacts on view sheds, ridgelines and other impacts caused by tower location, tree and foliage clearing and placement of structures and associated development is minimized;
 - x. Will not unreasonably interfere with the view of or from any public park, natural scenic vista, and historic building or major view corridor and the Kittery waterfront and harbor;
 - xi. Is not constructed in such a manner as to result in needless height, mass and guy-wire supports, with documentation having been provided and reviewed regarding the design capacity and/or the remaining co-location capacity of the tower/facility; and
 - xii. "Stealth" technology has been pursued and is not a viable option.
- d. In Shoreland, Resource Protection or Commercial Fisheries/Maritime Use Overlay Zones, the proposed use will:
- i. Maintain safe and healthful conditions;
 - ii. Not result in water pollution, erosion or sedimentation to surface waters;
 - iii. Adequately provide for the disposal of all wastewater;
 - iv. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
 - v. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
 - vi. Protect archaeological and historic resources as designated in the comprehensive plan;
 - vii. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/maritime activities district;
 - viii. Avoid problems associated with floodplain development and use; and

- 994 ix. Is in conformance with the provisions of this title.
- 995 e. For a right-of-way plan. The proposed right-of-way:
- 996 i. Does not create any nonconforming lots or buildings; and
- 997 ii. Could reasonably permit the right of passage for an
- 998 automobile.
- 999 f. For special exception use – special exception use permitted. If a
- 1000 special exception use is requested, the special exception use will:
- 1001 [Added 9-26-2011 by Ord. No. 11-15]
- 1002 i. Not prevent the orderly and reasonable use of adjacent
- 1003 properties or of properties in adjacent use zones;
- 1004 ii. Not prevent the orderly and reasonable use of permitted or
- 1005 legally established uses in the zone wherein the proposed
- 1006 use is to be located, or of permitted or legally established
- 1007 uses in adjacent use zones; and
- 1008 iii. Not adversely affect the safety, the health, and the welfare
- 1009 of the Town.
- 1010 iv. Be in harmony with and promote the general purposes and
- 1011 intent of this title.
- 1012 (6). Final Plan approval and recording.
- 1013 a. Agreement form. An approval by the Planning Board or Director
- 1014 of Planning and Development must take the form of an agreement
- 1015 between the Town and the applicant, incorporating as elements the
- 1016 application, the Planning Board's findings of fact, and such
- 1017 conditions as the Planning Board may impose upon approval.
- 1018 b. Agreement distribution. The Planning Board must send copies of
- 1019 the agreement to the Town Manager and Code Enforcement
- 1020 Officer. [Amended 9-26-2011 by Ord. No. 11-15]
- 1021 c. Updated GIS information. The applicant shall provide revised GIS
- 1022 data with any changes made during the review process for Major
- 1023 Site Plans, if necessary.
- 1024 d. Approved Final Plan signing. A plan has final approval only when
- 1025 the Planning Board has indicated approval by formal action and the
- 1026 plan has been properly signed by a majority of the Planning Board
- 1027 members or by the Chair only, if so voted by the Planning Board.
- 1028 e. Approved Final Plan recording. An approved plan involving the
- 1029 division of land, easements, or property boundary modification
- 1030 must be recorded by the York County Registry of Deeds.
- 1031 [Amended 9-26-2011 by Ord. No. 11-15]

16.7.12 Performance Standards and Approval Criteria

- 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 16.5.28,
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 16.5.28 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 16.5.28 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). (Reserved)
- 1148 (5). Sanitary facilities/restrooms.
- 1149 a. Any development containing a retail use or a food service use, or a
1150 combination thereof, exceeding 10,000 square feet must provide
1151 public toilet facilities in accordance with Subsections **b**, **c** and **d** of
1152 this section.
- 1153 b. Public toilet facilities are to consist of at least one separate toilet
1154 for each sex; be clearly marked; maintained in a sanitary condition
1155 and in good repair. Lavatory facilities must be located within or
1156 immediately adjacent to all toilet rooms or vestibules. There may
1157 be no charge for their use.
- 1158 c. Where a retail development exceeds 60,000 square feet, each toilet
1159 facility must contain a minimum of two water closets.
- 1160 d. Requirements for handicapped accessibility to sanitary facilities
1161 are pursuant to applicable state standards.

1162 C. Stormwater and Surface Drainage

- 1163 (1). Adequate provision must be made for drainage of all stormwater generated
1164 with the development and any drained groundwater through a
1165 management system of natural and constructed features. Where possible,
1166 existing natural runoff control features, such as berms, swales, terraces
1167 and wooded areas must be retained to reduce runoff and encourage

- 1168 infiltration of storm waters. Otherwise drainage may be accomplished by a
1169 management system of constructed features such as swales, culverts,
1170 underdrains and storm drains.
- 1171 (2). To ensure proper functioning, stormwater runoff control systems must be
1172 maintained in good working order per § 16.7.11.D, Post-construction
1173 stormwater management.
- 1174 (3). Where a development is traversed by a stream, river or surface water
1175 drainage way, or where the Planning Board or Director of Planning and
1176 Development determines that surface runoff should be controlled,
1177 easements and or drainage rights-of-way must be provided which conform
1178 substantially to the lines of existing natural drainage paths. The minimum
1179 width of the drainage easements or rights-of-way is 30 feet.
- 1180 a. The minimum pipe size for any storm drainage pipe must be 12
1181 inches. Maximum trench width at the pipe crown must be the
1182 outside diameter of the pipe plus two feet. The pipe must be
1183 bedded in a fine granular material, containing no stones larger than
1184 three inches, lumps of clay, or organic matter, reaching a minimum
1185 of six inches below the bottom of the pipe extending to six inches
1186 above the top of the pipe.
- 1187 b. Except for normal thinning and landscaping, existing vegetation
1188 must be left intact to prevent soil erosion.
- 1189 (4). When proposed development does not require Maine Department of
1190 Environmental (MDEP) approval under MDEP Chapters 500 and 502, the
1191 following applies:
- 1192 a. All components of the stormwater management system must be
1193 designed to limit peak discharge to predevelopment levels for the
1194 two-year and twenty-five-year, twenty-four-hour duration,
1195 frequencies, based on the rainfall data for Portsmouth, NH. When
1196 the development discharges directly to a major water body, peak
1197 discharge may be increased from predevelopment levels, provided
1198 downstream drainage structures are suitably sized.
- 1199 b. The stormwater management system must be designed to
1200 accommodate upstream drainage, taking into account existing
1201 conditions and approved or planned developments not yet built and
1202 must include a surplus design capacity factor of 25% for potential
1203 increases in upstream runoff.
- 1204 c. Downstream drainage requirements must be studied to determine
1205 the effect of the proposed development. The storm drainage must
1206 not overload existing or future planned storm drainage systems
1207 downstream from the development. The developer is responsible
1208 for financing any improvements to existing drainage systems
1209 required to handle the increased storm flows.
- 1210 i. Wherever the storm drainage system is not within the right-
1211 of-way of a public street, perpetual easements must be
1212 provided to the Town allowing maintenance and

- 1213 improvement to the system.
- 1214 ii. All sediment and erosion control measures must be
- 1215 designed in accordance with MDEP's "Maine Erosion and
- 1216 Sediment Control BMPs," March 2003.
- 1217 iii. Catch basins in streets and roads must be installed where
- 1218 necessary and located at the curblin. In parking lots and
- 1219 other areas, catch basins must be located where necessary
- 1220 to ensure proper drainage.
- 1221 iv. Where soils require a subsurface drainage system, the
- 1222 drains must be installed and maintained separately from the
- 1223 stormwater drainage system.
- 1224 v. Where the Board has required a stormwater management
- 1225 and erosion control plan and MDEP approval under
- 1226 Chapters 500 and 502 is not required, said plan must be
- 1227 endorsed by the York County Soil and Water Conservation
- 1228 District.
- 1229 vi. Drainage easements for existing or proposed drainageways
- 1230 located outside a public way must be maintained and/or
- 1231 improved in accordance with § 16.7.11.D, Post-
- 1232 construction stormwater management.

1233 D. Post-construction stormwater management.

- 1234 (1). Purposes. This section is enacted to provide for the health, safety and
- 1235 general welfare of the citizens of Kittery through monitoring and
- 1236 enforcement of compliance with post-construction stormwater
- 1237 management plans in order to comply with minimum control measures
- 1238 requirements of the federal Clean Water Act, of federal regulations and of
- 1239 Maine's Small Municipal Separate Storm Sewer Systems General Permit.
- 1240 This section seeks to ensure that post-construction stormwater
- 1241 management plan are followed and stormwater management facilities,
- 1242 including but not limited to any parking areas, catch basins, drainage
- 1243 swales, detention basins and ponds, pipes and related structures that are
- 1244 part of the storm drainage system, are properly maintained and pose no
- 1245 threat to public safety.
- 1246 (2). Authority. The Maine Department of Environmental Protection, through
- 1247 its dissemination of the General Permit for the Discharge of Stormwater
- 1248 from Small Municipal Separate Storm Sewer Systems, has listed the Town
- 1249 of Kittery, Maine, as having a regulated small municipal separate storm
- 1250 sewer system ("small MS4"); under this general permit, listing as a
- 1251 regulated small MS4 requires enactment of this section as part of the
- 1252 Town's stormwater management program in order to satisfy the minimum
- 1253 control measures required by Part IV D 5 ("Post-construction stormwater
- 1254 management in new development and redevelopment").
- 1255 (3). Applicability.
- 1256 a. In general. This section applies to all new development or

1257 redevelopment (any construction activity on premises already
1258 improved that alters stormwater drainage patterns) including one
1259 acre or more of disturbed area, or activity with less than one acre
1260 of total land area that is part of a subdivision, if the subdivision
1261 will ultimately disturb an area equal to or greater than one acre.
1262 [Amended 7-25-2016 by Ord. No. 16-06]

1263 b. Exception. This section does not apply to new development or
1264 redevelopment on a lot, tract or parcel where that lot, tract or
1265 parcel is part of a subdivision that has received approval of its
1266 post-construction stormwater management plan and stormwater
1267 management facilities under the Town's subdivision or other
1268 zoning, planning or other land use ordinances; said lot, tract or
1269 parcel will not require additional review under this section but
1270 must comply with the post-construction stormwater management
1271 plan for that approved subdivision.

1272 c. Post-construction stormwater management plan approval.

1273 i. General requirement. Notwithstanding any ordinance
1274 provision to the contrary, and except as provided in
1275 § 16.7.11.D(3), Exception, no applicant for a building
1276 permit, Subdivision approval, Site Plan approval or other
1277 zoning, planning or other land use approval for new
1278 development or redevelopment to which this section is
1279 applicable will receive such permit or approval for that new
1280 development or redevelopment unless the applicant also
1281 receives approval for its post-construction stormwater
1282 management plan and stormwater management facilities.

1283 ii. Notice of BMP discharge to Town's MS4. At the time of
1284 application for a building permit, subdivision approval, Site
1285 Plan approval or other zoning, planning or other land use
1286 approval for new development or redevelopment to which
1287 this section is applicable, the applicant must notify the
1288 Town Planner if its post-construction stormwater
1289 management plan includes any BMP(s) that will discharge
1290 to the Town's MS4 and must include in this notification a
1291 listing of which BMP(s) will so discharge.

1292 iii. Engineering and administrative fees. At the time of
1293 application, the applicant must pay an amount to the Town
1294 estimated to be sufficient to pay the engineering review
1295 costs and administrative costs incurred by the Town in
1296 review of the post-construction stormwater management
1297 plan. The Town will deduct from this amount the
1298 engineering and administrative costs incurred by the Town
1299 based upon the hours of engineering review time and
1300 prevailing hourly rate for reimbursement of the Town's
1301 administrative costs. Any remaining engineering and

1302 administrative review costs owed by the applicant must be
1303 paid in full by the applicant prior to the issuance of any
1304 temporary or permanent certificate of occupancy, and any
1305 unused balance remaining at that time will be refunded to
1306 the applicant.

- 1307 d. Post-construction stormwater management plan compliance.
 - 1308 i. General requirements. Any person owning, operating,
1309 leasing or having control over stormwater management
1310 facilities required by a post-construction stormwater
1311 management plan approved under the Town's Subdivision,
1312 Site Plan or other zoning, planning or other land use
1313 ordinances must demonstrate compliance with that plan as
1314 follows:
 - 1315 a. That person or a qualified post-construction
1316 stormwater inspector hired by that person must, at
1317 least annually, inspect the stormwater management
1318 facilities in accordance with all municipal and state
1319 inspection, cleaning and maintenance requirements
1320 of the approved post-construction stormwater
1321 management plan;
 - 1322 b. If the stormwater management facilities require
1323 maintenance to function as intended by the
1324 approved post-construction stormwater
1325 management plan, that person must take corrective
1326 action(s) to address the deficiency or deficiencies;
1327 and
 - 1328 c. That person or a qualified post-construction
1329 stormwater inspector hired by that person must, on
1330 or by July 1 of each year, provide a completed and
1331 signed certification to the Code Enforcement
1332 Officer in a form provided by the Town, certifying
1333 that the person has inspected the stormwater
1334 management facilities and that they are adequately
1335 maintained and functioning as intended by the
1336 approved post-construction stormwater
1337 management plan or that they require maintenance
1338 or repair, describing any required maintenance and
1339 any deficiencies found during inspection of the
1340 stormwater management facilities, and if the
1341 stormwater management facilities require
1342 maintenance or repair of deficiencies in order to
1343 function as intended by the approved post-
1344 construction stormwater management plan, the
1345 person must provide a record of the required
1346 maintenance or deficiency and corrective action(s)

- 1347 taken.
- 1348 ii. Right of entry. In order to determine compliance with this
- 1349 section and with the post-construction stormwater
- 1350 management plan, the Code Enforcement Officer may enter
- 1351 upon property at reasonable hours with the consent of the
- 1352 owner, occupant or agent to inspect the stormwater
- 1353 management facilities.
- 1354 e. Annual report. Beginning July 1, 2009, and each year thereafter,
- 1355 the Town must include the following in its annual report to the
- 1356 Maine Department of Environmental Protection:
- 1357 i. Cumulative number of sites that have stormwater
- 1358 management facilities discharging into its MS4;
- 1359 ii. Summary of the number of sites that have stormwater
- 1360 management facilities discharging into its MS4 that were
- 1361 reported to the Town;
- 1362 iii. Number of sites with documented functioning stormwater
- 1363 management facilities; and
- 1364 iv. Number of sites that require routine maintenance in order
- 1365 to continue the original line and grade, the hydraulic
- 1366 capacity, and the original purpose of improvements; or
- 1367 remedial action to ensure that stormwater management
- 1368 facilities are functioning as intended.
- 1369 f. Enforcement. It is the duty of the Code Enforcement Officer to
- 1370 enforce the provisions of this section and take appropriate actions
- 1371 to seek the correction of violations. Enforcement of the post-
- 1372 construction stormwater management regulations are conducted in
- 1373 accordance with Chapter 16.4.
- 1374 (4). Storm drainage construction standards.
- 1375 a. Materials:
- 1376 i. Reinforced concrete pipe must meet the requirements of
- 1377 ASTM Designation C-76 (AASHTO M170). Pipe classes
- 1378 are required to meet the soil and traffic loads with a safety
- 1379 factor of 1.2 on the 0.01 inch crack strength with Class B
- 1380 bedding. Joints are to be of the rubber gasket type, meeting
- 1381 ASTM Designation C443-70, or of an approved performed
- 1382 plastic jointing material such as "Ramnek." Perforated
- 1383 concrete pipe must conform to the requirements of
- 1384 AASHTO M175 for the appropriate diameters.
- 1385 ii. Corrugated metal pipe must be bituminous-coated, meeting
- 1386 the requirements of AASHTO Designation M190 Type C
- 1387 for an iron or steel pipe or AASHTO Designation M196 for
- 1388 aluminum alloy pipe for sectional dimensions and type of
- 1389 bituminous coating. Pipe gauge is to be as required to meet
- 1390 the soil and traffic loads with a deflection of not more than

- 1391 5%.
- 1392 iii. SDR-35 plastic pipe installed in conformance with
- 1393 AASHTO bedding requirements.
- 1394 iv. Aluminized steel (AASHTO M274) and aluminum pipe
- 1395 (AASHTO M46).
- 1396 v. Catch basins are to be precast concrete truncated cone
- 1397 section construction, meeting the requirements of ASTM
- 1398 Designation C478, or precast concrete manhole block
- 1399 construction, meeting the requirements of ASTM C139,
- 1400 radial type. Castings are to be square cast iron sized for the
- 1401 particular inlet condition with the gratings perpendicular to
- 1402 the curbline. Bases may be cast-in-place 3,000 psi twenty-
- 1403 eight-day strength concrete or may be of precast concrete,
- 1404 placed on a compacted foundation of uniform density.
- 1405 Metal frames and traps must be set in a full mortar bed with
- 1406 tops and are to conform to the requirements of AASHTO
- 1407 M103 for carbon steel casings, AASHTO M105, Class 30
- 1408 for gray iron castings or AASHTO M183 (ASTM A283,
- 1409 Grade B or better) for structure steel.
- 1410 b. Drain inlet alignment is to be straight in both vertical and
- 1411 horizontal alignment unless specific approval for curvilinear drain
- 1412 is obtained in writing from the Commissioner of Public Works.
- 1413 c. Manholes are to be provided at all changes in vertical or horizontal
- 1414 alignment and at all junctions. On straight runs, manholes are to be
- 1415 placed at a maximum of three-hundred-foot intervals.
- 1416 d. Upon completion, each catch basin or manhole must be cleared of
- 1417 all accumulation of silt, debris or other foreign matter and kept
- 1418 clean until final acceptance.

1419 E. Vehicular Traffic

- 1420 (1). Adequacy of Road System. Vehicular access to the site shall be on roads
- 1421 which have adequate capacity to accommodate the additional traffic
- 1422 generated by the development. Intersections on arterial streets within a
- 1423 half (0.5) mile of any entrance road which are functioning at a Level of
- 1424 Service of D or better prior to the development shall function at a
- 1425 minimum at Level of Service D after development. If any such
- 1426 intersection is functioning at a Level of Service E or lower prior to the
- 1427 development, the project shall not reduce the current level of service. This
- 1428 requirement may be waived by the Planning Board if the project is located
- 1429 within a growth area designated in the Town's adopted Comprehensive
- 1430 Plan and the Board determines that the project will not have an
- 1431 unnecessary adverse impact on traffic flow or safety.
- 1432 a. A development not meeting this requirement may be approved if
- 1433 the applicant demonstrates that:
- 1434 i. A public agency has committed funds to construct the

- 1435 improvements necessary to bring the level of access to this
1436 standard, or
- 1437 ii. The applicant will assume financial responsibility for the
1438 improvements necessary to bring the level of service to this
1439 standard and will assure the completion of the
1440 improvements with a financial guarantee acceptable to the
1441 municipality.
- 1442 (2). Traffic Impact Study. When required by the Planning Board or Director
1443 of Planning and Development, a Traffic Impact Study will include the
1444 following elements related to the project and surrounding street network.
- 1445 a. An executive summary outlining the study findings and
1446 recommendations.
- 1447 b. A physical description of the project site and study area
1448 encompassed by the report with a diagram of the site and its
1449 relationship to existing and proposed development sites within the
1450 study area.
- 1451 c. A complete description of the proposed uses for the project site (in
1452 cases where specific uses have not been identified, the highest
1453 traffic generators within the category best fitting the proposed
1454 development must be used to estimate traffic generators).
- 1455 d. Existing land uses and zone(s) in the vicinity of the site must be
1456 described. Any proposals for the development of vacant parcels or
1457 redevelopment of parcels within the study area of which the
1458 municipality makes the applicant aware, must be included in the
1459 description.
- 1460 e. Street geometry and existing traffic control devices on all major
1461 streets and intersections affected by the anticipated traffic
1462 generated.
- 1463 f. Trip generation must be calculated for the proposed project and
1464 other proposed new projects and redevelopment projects within the
1465 study area using the most recent data available from the Institute of
1466 Transportation Engineers' (ITE) Trip Generation Guide, and/or
1467 actual field data collected from a comparable trip generator (i.e.,
1468 comparable in size, location and setting). This data will be
1469 presented in a summary table such that assumptions on trip
1470 generation and rates arrived at by the engineer are fully
1471 understandable to the Planning Board.
- 1472 g. The anticipated trip distribution of vehicles entering and exiting
1473 the proposed site during the appropriate peak hour(s) must be
1474 described and diagrammed.
- 1475 h. Trip assignment, the anticipated utilization of study area streets by
1476 traffic generated by the proposed project, must be described and
1477 diagrammed.
- 1478 i. Existing traffic conditions in the study area will be identified and

- 1479 analyzed based upon actual field counts and/or recent available
1480 machine counts.
- 1481 j. Existing traffic conditions in the study area will be described and
1482 diagrammed, specifically AADT, appropriate peak design hour(s),
1483 traffic volumes, street and intersection capacities, and levels of
1484 service.
- 1485 k. Existing safety conditions must be evaluated based upon the traffic
1486 accident data available for the most current three years and
1487 described including link and node critical rate factors (CRF).
- 1488 l. Future traffic conditions on the street system will be estimated
1489 based on existing volumes, projected traffic growth in the general
1490 study area, projected traffic from approved development, and
1491 traffic generated by the proposed project, specifically AADT
1492 traffic, appropriate peak hour(s) traffic volumes, street and
1493 intersection capacity, street and intersection levels of service will
1494 be analyzed. When other projects are being proposed within the
1495 impact area of the project, the Planning Board may require these
1496 projects to be incorporated into the analysis.
- 1497 m. When the analysis of the proposed project's impact on traffic
1498 indicates unsatisfactory CRF, levels of service or operating
1499 capacity on study area streets and intersections, a description of
1500 proposed improvements to remedy identified deficiencies must be
1501 included.
- 1502 n. The base data collected and analyzed during the course of the
1503 traffic impact study.
- 1504 o. If a development that requires a traffic impact study is within 500
1505 feet of York or Eliot, Maine, or if the study identifies impacts on
1506 segments of Route 1 or Route 236 or on their intersections located
1507 in York or Eliot, Maine, the applicant must provide evidence that a
1508 copy of the impact study has been given to the impacted
1509 municipality's chief administrative officer;
- 1510 (3). Access to the Site. Vehicular access to and from the development shall be
1511 safe and convenient.
- 1512 a. Any driveway or proposed street shall be designed so as to provide
1513 the minimum sight distance according to the Maine Department of
1514 Transportation standards.
- 1515 b. Points of access and egress shall be located to avoid hazardous
1516 conflicts with existing turning movements and traffic flows.
- 1517 c. The grade of any proposed drive shall be not more than $\pm 3\%$ for a
1518 minimum of fifty (50) feet, from the intersection.
- 1519 d. The intersection of any access/egress drive or proposed street shall
1520 function: (a) at a Level of Service of D following development if
1521 the project will generate one thousand (1,000) or more vehicle trips
1522 per twenty-four (24) hour period.

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- e. Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot shall be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
 - f. Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.
 - g. Accessways shall be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
 - h. The following criteria shall be used to limit the number of driveways serving a proposed project:
 - i. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway shall be no greater than forty (40) feet wide.
 - ii. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways shall not exceed sixty (60) feet.
 - iii. The Planning Board or Development Review Committee may limit a development to one (1) point of ingress/egress onto Routes 302, 35 and 115.
- (4). Accessway Location and Spacing. Accessways shall meet the following standards:
- a. Private entrances/exits shall be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
 - b. Private accessways in or out of a development shall be separated by a minimum of seventy-five (75) feet where possible.
 - c. Accessways shall be aligned with accessways on the opposite side of a public street to the greatest extent possible.
- (5). Internal Vehicular Circulation. The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.
- a. Nonresidential projects that will be served by delivery vehicles shall provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of SU-30 vehicles.

- 1567 i. If the project is to be served by “tractor-trailer” delivery
1568 vehicles, a clear route for such vehicles with appropriate
1569 geometric design shall allow for turning and backing for a
1570 minimum of WB-50 vehicles.
- 1571 b. Clear routes of access shall be provided and maintained for
1572 emergency vehicles to and around buildings and shall be posted
1573 with appropriate signage (fire lane - no parking).
- 1574 c. The layout and design of parking areas shall provide for safe and
1575 convenient circulation of vehicles throughout the lot.
- 1576 d. All roadways shall be designed as follows:
- 1577 i. To harmonize with the topographic and natural features of
1578 the site insofar as practical by minimizing filling, grading,
1579 excavation, or other similar activities which result in
1580 unstable soil conditions and soil erosion,
- 1581 ii. By fitting the development to the natural contour of the
1582 land and avoiding substantial areas of excessive grade and
1583 tree removal, and by retaining existing vegetation during
1584 construction,
- 1585 iii. The road network shall provide for vehicular, pedestrian,
1586 and cyclist safety, all season emergency access, snow
1587 storage, and delivery and collection services.
- 1588 e. Nonresidential projects that include drive-through services shall be
1589 designed and have sufficient stacking capacity to avoid the
1590 queuing of vehicles on any public street.

1591 F. Parking and Loading

1592 (1). General standards.

- 1593 a. All development, special exceptions and changes in use must
1594 comply with the performance standards herein and, where
1595 applicable, those contained in § 16.7.12.F of this chapter. The
1596 Planning Board may impose additional reasonable requirements,
1597 which may include off-site improvements, based on the following
1598 considerations:
- 1599 i. Sight distances along public rights-of-way;
- 1600 ii. The existence and impact upon adjacent access points and
1601 intersections;
- 1602 iii. Turning movements of vehicles entering and leaving the
1603 public streets;
- 1604 iv. Snow removal; and
- 1605 v. General condition and capacity of public streets serving the
1606 facility.
- 1607 b. Such requirements are intended to maintain traffic safety and an
1608 acceptable level of service throughout the impact area of the
1609 facility.

- 1610 c. In front of areas zoned and designed for commercial use, or where
- 1611 a change of zoning to one which permits commercial use is
- 1612 contemplated, the street right-of-way and/or pavement width must
- 1613 be increased by such amount on each side as may be deemed
- 1614 necessary to assure the free flow of through traffic without
- 1615 interference by parked or parking vehicles, and to provide adequate
- 1616 and safe parking space for such commercial or business district.
- 1617 d. The Town reserves the right to designate in conjunction with the
- 1618 Maine State Department of Transportation all ingress and egress
- 1619 points to the public highway and to select areas for the grouping
- 1620 and placement of signs and traffic directions.
- 1621 e. All traffic flow in parking areas is to be clearly marked with signs
- 1622 and/or surface directions at all times.
- 1623 f. Off-street parking must be constructed in accordance with Table 2
- 1624 of this chapter, set out at the end of § 16.7.11.F, Parking Loading
- 1625 and Traffic.

1626 (2). Corner clearances.

1627 For purposes of traffic safety in all zoning districts, no building or

1628 structure other than public utility structures and traffic control devices may

1629 be erected, and no vegetation other than shade trees may be maintained

1630 above a height of two feet above the plane through the curb grades of

1631 intersection streets within a triangle, two sides of which are the edges of

1632 the traveled public ways for 20 feet measured from their point of

1633 intersection or, in the case of rounded street corners, the point of

1634 intersection of their tangents. The Town is not responsible for violations

1635 which lead to accidents. The Town will direct, however, a continued

1636 program designed to identify intersections having traffic safety problems.

1637 (3). Off-street loading standards.

1638 a. In those districts where off-street loading is required, the following

1639 minimum off-street loading bays or loading berths must be

1640 provided and maintained in the case of new construction,

1641 alterations and changes of use:

- 1642 i. Office buildings, hospitals, long-term nursing care
- 1643 facilities, convalescent care facilities, elder-care facilities,
- 1644 hotels and motels with a gross floor area of more than
- 1645 100,000 square feet: one bay.
- 1646 ii. Retail, wholesale, warehouse and industrial operations with
- 1647 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

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- b. Each loading bay is to have minimum dimensions of 70 feet by 14 feet and may be located either within a building or outside and adjoining an opening in the building. Every part of such loading bay is to be located completely off the street. In case of trucks, trailers or other motor vehicles larger than the dimensions of the minimum loading bay habitually serve the building in question, or so that said equipment can be kept on site while awaiting loading or unloading, additional space is to be provided, so that such vehicle parks or stands completely off the street.
 - c. The provisions of this section for off-street loading do not prohibit incidental curbside business deliveries, dispatches or services, provided that they are in compliance with all applicable state and local traffic regulations.
 - d. The Board of Appeals has full authority to waive the requirements of this section if it is shown that appropriate parking and loading spaces will be maintained sufficient for intended use.
- (4). Off-street parking standards.
- a. Off-street parking, in addition to being a permitted use, is considered as an accessory use when required or provided to serve conforming uses located in any district.
 - b. The following minimum off-street parking and loading requirements must be provided and maintained in case of new construction, alterations and changes of use. Such parking may be provided in the open air in design-dependent spaces dimensioned as may be required to suit the particular use as indicated in Table 2 of this chapter, set out at the end of § 16.7.12.F, Parking Loading and Traffic, or in garages.
 - c. All spaces must be accessible from lanes of adequate size and location as per Table 2 of this chapter, set out at the end of § 16.7.12.F, Parking Loading and Traffic. In cases not specifically covered, the Town Board or officer with jurisdiction to approve the application is authorized to determine the parking requirements and projected development use intensity. Existing parking standards are to be used as a guide where applicable to ensure that a sufficient number of parking spaces are provided to accommodate the number and type of vehicles attracted to the development during peak parking demand times.
 - d. When determination of the number of parking spaces required results in a requirement of a fractional space, any fraction of 1/2 or less may be disregarded, while a fraction in excess of 1/2 is counted as one parking space. [Amended 9-26-2011 by Ord. No. 11-15]

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 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

Use	Parking Spaces Required
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 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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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.

- f. A parking area must meet the wetland and water body setback requirements for structures for the district in which such areas are located, per Table 16.5.28, Minimum Setback from Wetlands and Water Bodies; except, in the Commercial Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least 25 feet from the normal high-water line or the upland edge of a wetland. The setback requirement for a parking area serving public boat-launching facilities, in zones other than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than 50 feet from the normal high-water line or upland edge of a wetland if the Planning Board finds no other reasonable alternative exists.
- g. Parking landscaping is required for parking areas containing 10 or more parking spaces and must have at least one tree per eight spaces. Such trees are to be located either within the lot or within five feet of it. Such trees are to be at least 1 1/2 inches in diameter, with no less than 25 square feet of unpaved soil or permeable surface area per tree. At least 10% of the interior of any parking area having 25 or more spaces is to be maintained with landscaping, including trees, in plots of at least five feet in width.
- h. Required off-street parking in all residential districts is to be located on the same lot as the principal building or use, except that where it cannot reasonably be provided on the same lot, the Board of Appeals may authorize residential off-street parking to be located on another lot within 300 feet of the residential uses served, as measured along lines of public access. Such parking areas must be held under the same ownership or lease as the residential uses served, and evidence of such control or lease is required. Leases obtained for this purpose must be reviewed by the Town Attorney at the developer's expense and include requirement for notice to the Town upon termination of lease. Approval for uses dependent on such lease is terminated upon termination of the lease.
- i. If parking spaces are provided for employees, customers or visitors, then accessible parking spaces must be included in each such parking area in conformance with the following table:

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1

Total Parking in Lot	Required Minimum Number of Accessible Spaces
26 to 50	2
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

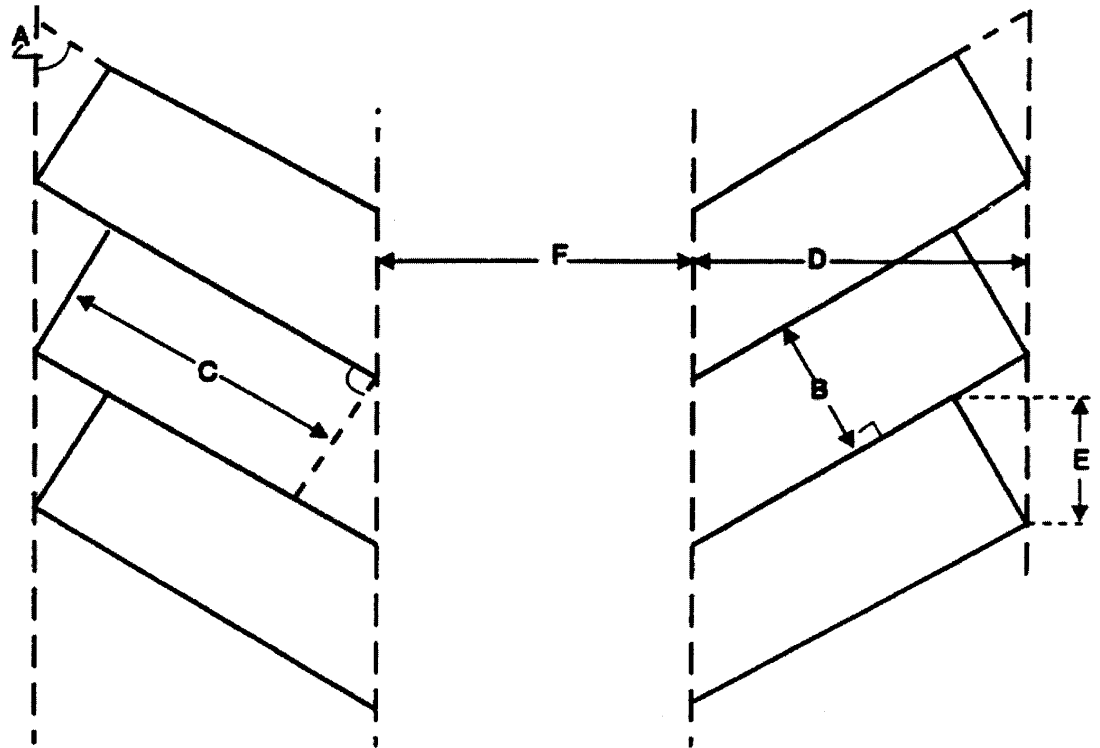
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- i. Each accessible parking space must contain a rectangular area at least 19 feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces are to be identified by a vertical sign 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

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use of a parking facility by two or more principal buildings or uses 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.

Table 16.7.11.F 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



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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 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

- 1816 a solid panel or full-face louvers. Exposed lamps, reflectors or
1817 refractors may not be visible from any part of the fixture except the
1818 bottom light-emitting surface.
- 1819 d. Light fixtures located on or within canopies must be recessed into
1820 the ceiling of the canopy so that the lamp, reflector and lens are not
1821 visible from public streets. Fixtures must limit the direction of light
1822 as required for a cutoff fixture. Refractors or diffusing panels that
1823 are dropped below the canopy ceiling surface are not permitted.
- 1824 e. Light fixtures must be mounted at the lowest level that allows
1825 reasonable compliance with IESNA-recommended practices and
1826 the provisions of this article.
- 1827 i. In approving new or modified lighting, the Planning Board
1828 may permit a maximum light fixture height for pole-
1829 mounted or mast-mounted light fixtures located between
1830 the building and the front lot line of not more than 15 feet,
1831 unless the applicant demonstrates that a higher height is
1832 necessary to allow reasonable compliance with the lighting
1833 standards and the Planning Board finds that no practicable
1834 alternative for lighting of the site exists.
- 1835 ii. The Planning Board may permit a maximum light fixture
1836 height for pole-mounted or mast-mounted light fixtures for
1837 other areas of the site of not more than 20 feet, unless the
1838 applicant demonstrates that a higher height is necessary to
1839 allow reasonable compliance with the lighting standards
1840 and the Planning Board finds that no practicable alternative
1841 for lighting of that area of the site exists.
- 1842 iii. The maximum light fixture height for building-mounted
1843 light fixtures is the equivalent of that allowed for a pole-
1844 mounted light illuminating the same area. See the Design
1845 Handbook for examples of acceptable lighting installations.
- 1846 f. Lamps in exterior light fixtures must be incandescent, metal halide,
1847 high-pressure sodium, compact fluorescent or light-emitting diode
1848 (LED). This provision does not prohibit the use of fluorescent
1849 lamps in internally lighted signs where such signs are otherwise
1850 permitted, provided such signs meet the requirements of this
1851 article. See the Design Handbook for appropriate examples of
1852 signs. With the use of LED lighting, the applicant is required to
1853 demonstrate that standards within this article are met and/or meet
1854 comparable accepted standards for LED exterior lighting. Required
1855 photometric test reports for LED lighting must be based on the
1856 IESNA LM-79-08 test procedure.
- 1857 g. Period or historical fixtures that do not meet the requirements of
1858 this section may be used as an alternative to cutoff fixtures,
1859 provided the maximum initial lumens generated by each fixture
1860 does not exceed 2,000. The maximum initial lumens for metal

1861 halide lamps may be increased to 8,500 if the lamp is internally
1862 recessed within the fixture or is shielded by internal louvers or
1863 refractors. The mounting height of period or historical fixtures may
1864 not exceed 12 feet above the adjacent ground. See the Design
1865 Handbook for examples.

1866 h. State and national flags that are flown on flagpoles may be
1867 illuminated by ground-mounted lighting that shines vertically as
1868 long as exposed lamps, reflectors or refractors are not visible from
1869 any public street.

1870 (3). Illumination standards for nonresidential uses and multifamily housing.
1871 New or revised exterior lighting serving nonresidential uses and
1872 multifamily housing must conform to the following standards:

1873 a. The illumination of access drives must provide for a uniformity
1874 ratio of not more than 4:1 (ratio of average to minimum
1875 luminance). The illumination of parking lots and outdoor sales and
1876 service areas must provide for a uniformity ratio of not more than
1877 20:1 (ratio of maximum to minimum luminance).

1878 b. The maximum illumination level within access drives, parking lots
1879 and sales and service areas may not exceed eight footcandles
1880 measured at the ground surface.

1881 c. The maximum illumination level at the property line of a
1882 nonresidential or multifamily housing use with abutting properties
1883 in a residential district may not exceed 0.1 footcandle.

1884 d. Areas directly under canopies must be illuminated so that the
1885 uniformity ratio (ratio of average to minimum luminance) will be
1886 not greater than 3:1 with an average illumination level at ground
1887 level of not more than 30 footcandles. Areas of access drives,
1888 parking lots, sales display areas, etc., which are adjacent to
1889 canopies must taper down in illumination level from the
1890 illumination level permitted under the canopy to the maximum
1891 illumination level permitted in Subsection **b** of this section for the
1892 access drive, parking lot or sales display area adjacent to the
1893 canopy within a horizontal distance equivalent to the height of the
1894 canopy.

1895 e. The maximum illumination levels and uniformity ratios for areas
1896 other than parking lots, access drives and canopies must be
1897 consistent with IESNA-recommended practices and be compatible
1898 with the overall lighting of the project and be specifically approved
1899 by the Planning Board.

1900 f. Illuminated signs must not produce glare and are otherwise
1901 governed by § 16.7.11.H of this chapter.

1902 (4). Illumination standards for outdoor sports and recreational facilities.
1903 New or revised exterior lighting serving sports fields and outdoor
1904 recreational facilities, including commercial recreational uses, must
1905 conform to the following standards:

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- a. Such fields and facilities may be illuminated for use during daylight hours and until 10:00 p.m. unless the Planning Board specifically approves a later time based upon the applicant demonstrating that such later time is needed for the reasonable operation of the facility and will be compatible with and will not result in adverse impacts on neighboring properties. If a later hour is approved, the Planning Board may impose conditions on the approval, including provisions for the periodic review of the time limit.
 - b. The illumination levels and mounting heights of the lighting fixtures may not exceed the minimum necessary to provide reasonable illumination for the proposed use consistent with IESNA-recommended practices.
 - c. The maximum illumination level at the property line of the use with abutting properties in a residential district may not exceed 0.1 footcandle.
- (5). Illumination standards for single- and two-family residential uses. New or revised exterior lighting serving single- and two-family residential uses must be located and designed so that it does not result in excessive illumination levels on adjoining properties such as to amount to a public or private nuisance and must be compatible with the zone requirements in the neighborhood in which it is located. A maximum illumination level at the property line of more than 0.1 footcandle is considered to be excessive if the lighting level is in dispute. In the case of a major home occupation, the application must include a lighting plan meeting the requirements of § 16.7.10.D(3)g.
- I. Prevention of erosion
- [Amended 9-26-2011 by Ord. No. 11-15; 10-26-2015 by Ord. No. 15-12]
- (1). No person may perform any act or use the land in a manner which would cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water flow in the Town. This does not affect any extractive operations complying with the standards of performance specified elsewhere in this title.
 - a. When an excavation contractor, as defined in § 16.3, performs an activity that requires or results in more than one cubic yard of soil disturbance within the Shoreland or Resource Protection Overlay Zones, there must be a person responsible for management of erosion and sedimentation control practices on site, and that person must be certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until

- 1951 the area is sufficiently covered with vegetation necessary to
1952 prevent soil erosion. The name and certification number of the
1953 person who will oversee the activity causing or resulting in soil
1954 disturbance must be included on the permit application. Excavation
1955 contractors will have one year from the date of the adoption of this
1956 subsection to comply with certification requirements.
- 1957 b. The above requirement of § 16.7.11.I(1)a does not apply to a
1958 property owner performing work themselves, or a person or firm
1959 engaged in agriculture or timber harvesting when best management
1960 practices for erosion and sedimentation control are used.
- 1961 c. The above requirement of § 16.7.11.I(1)a only applies to regulated
1962 activities requiring local, state or federal permits and/or Planning
1963 Board approval.
- 1964 (2). All development must generally comply with the provisions of the
1965 "Environmental Quality Handbook, Erosion and Sediment Control,"
1966 published by the Maine Soil and Water Conservation Commission.
- 1967 a. The developer must:
- 1968 i. Select a site with the right soil properties, including natural
1969 drainage and topography, for the intended use;
- 1970 ii. Utilize for open space uses those areas with soil unsuitable
1971 for construction;
- 1972 iii. Preserve trees and other vegetation wherever possible;
- 1973 iv. Hold lot grading to a minimum by fitting the development
1974 to the natural contour of the land; avoid substantial areas of
1975 excessive grade;
- 1976 v. Spread jute matting, straw or other suitable material during
1977 construction in critical areas subject to erosion;
- 1978 vi. Construct sediment basins to trap sediment from runoff
1979 waters during development; expose as small an area of
1980 subsoil as possible at any one time during development and
1981 for as short a period as possible;
- 1982 vii. Provide for disposing of increased runoff caused by
1983 changed land formation, paving and construction, and for
1984 avoiding sedimentation of runoff channels on or off the
1985 site;
- 1986 viii. Plant permanent and, where applicable, indigenous,
1987 vegetation and install structures as soon as possible for the
1988 purpose of soil stabilization and revegetation;
- 1989 b. All logging or woodlot roads must be located, constructed and
1990 maintained in conformance with the erosion prevention provisions
1991 of "Permanent Logging Roads for Better Woodlot Management,"
1992 published by the United States Department of Agriculture.
- 1993 (3). Where the Board has required a stormwater management and erosion

- 1994 control plan, said plan must be endorsed by the York County Soil and
 1995 Water Conservation District or found satisfactory by the Town's
 1996 Engineering Peer Reviewer.
- 1997 (4). All activities which involve filling, grading, excavation or other similar
 1998 activities that potentially may result in unstable soil conditions, and which
 1999 require a permit, must be made known in a written soil erosion and
 2000 sedimentation control plan in accordance with the "Maine Erosion and
 2001 Sediment Control Practices Field Guide for Contractors," 2015, and as
 2002 amended. The plan must be submitted to the permitting authority for
 2003 approval and must include, where applicable, provisions for:
- 2004 a. Mulching and revegetation of disturbed soil;
 - 2005 b. Temporary runoff control features, such as straw bales, silt
 2006 fencing, filter socks or diversion ditches;
 - 2007 c. Permanent stabilization structures, such as retaining walls or
 2008 riprap.
- 2009 (5). To create the least potential for erosion, development must be designed to
 2010 fit with the topography and soil of the site. Areas of steep slopes where
 2011 high cuts and fills may be required are to be avoided wherever possible,
 2012 and natural contours must be followed as closely as possible.
- 2013 (6). Erosion and sedimentation control measures apply to all aspects of the
 2014 proposed project involving land disturbance and must be in operation
 2015 during all stages of the activity. The amount of exposed soil at every phase
 2016 of construction must be minimized to reduce the potential for erosion.
- 2017 (7). Any exposed ground area must be temporarily or permanently stabilized in
 2018 accordance with the "Maine Erosion and Sediment Control Practices
 2019 Field Guide for Contractors," 2015, and as amended. All erosion control
 2020 measures that are no longer necessary as determined by the CEO or
 2021 Shoreland Resource Officer must be removed at the owner's expense.
- 2022 (8). Natural and man-made drainageways and drainage outlets must be
 2023 protected from erosion from water flowing through them. Drainageways
 2024 must be designed and constructed in order to carry water from a twenty-
 2025 five-year storm or greater and be stabilized with vegetation or lined with
 2026 riprap.
- 2027 J. Water quality and wastewater pollution
- 2028 (1). No activity is allowed to deposit on or into the ground or discharge to any
 2029 river, stream or brook, pond, or wetland any pollutant that, by itself or in
 2030 combination with other activities or substances, will impair designated
 2031 uses or the water classification of the water body.
- 2032 (2). Wastewater to be discharged into Kittery Sewer Department sewers,
 2033 should they be available, must be in such quantities and/or of such quality
 2034 as to be compatible with standards established by the municipality or the
 2035 Sewer Department.
- 2036 (3). To meet those standards, the municipality or Sewer Department may

- 2037 require that such wastes undergo pretreatment or full treatment at the site
 2038 in order to render them acceptable for the treatment processes.
- 2039 (4). The disposal of wastewater by means other than a public system must
 2040 comply with the laws of the State of Maine and the Town concerning
 2041 water pollution. Where a public sanitary sewer system is located within
 2042 200 feet of the property line as measured along a public way, the Town
 2043 requires individual entrance into said sewer.
- 2044 (5). Discharge of sanitary wastes to any water body is subject to the issuance
 2045 of Maine State Department of Environmental Protection licenses, but no
 2046 such off-site discharge will be allowed unless same is buried or not visible
 2047 to a point below normal low water and is secured against damage and
 2048 uncovering by the tides, erosion or other foreseeable action.
- 2049 (6). Flood prone areas must be identified on plan submissions, and based on
 2050 the Federal Emergency Management Agency's Flood Boundary and
 2051 Floodway Maps and Flood Insurance Rate Maps and information
 2052 presented by the applicant.
- 2053 (7). If the proposed development, or any part of it, is in such an area, the
 2054 applicant must determine the one-hundred-year flood elevation and flood
 2055 hazard boundaries within the project area. The proposed plan must include
 2056 a condition of plan approval requiring that principal structures in the
 2057 development will be constructed with their lowest floor, including the
 2058 basement, at least one foot above the one-hundred-year flood elevation.

2059 K. Air pollution

2060 All air pollution control shall comply with the minimum state requirements,
 2061 and detailed plans shall be submitted to the State of Maine Department of
 2062 Environmental Protection for approval before a building/regulated activity
 2063 permit is granted. In any case, no objectionable odor, dust or smoke shall be
 2064 detectable beyond the property line.

2065 L. Noise abatement

- 2066 (1). Excessive noise at unreasonable hours shall be controlled so as not to be
 2067 objectionable due to intermittence, beat frequency, shrillness or volume.
- 2068 (2). The maximum permissible sound pressure level of any continuous, regular
 2069 or frequent source of sound produced by any activity regulated by this title
 2070 shall be as established by the time period and type of land use district
 2071 listed below. Sound pressure levels shall be measured at all major lot lines
 2072 at a height of at least four feet above the ground surface. Sound from any
 2073 source controlled by this title shall not exceed the following limits at the
 2074 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

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.
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 construction is to be completed pursuant to any applicable building/regulated activity permit.

(5). The following uses and activities shall be exempt from the sound pressure level regulations:

a. Home maintenance activities (i.e., mowing lawns, cutting one's own firewood, etc.) between the hours of 7:00 a.m. and 9:00 p.m.;

b. Timber harvesting (felling trees and removing logs from the woods);

c. Noise created by construction and maintenance activities between 7:00 a.m. and 9:00 p.m.;

d. The noises of safety signals, warning devices and emergency pressure relief valves and any other public emergency activity; and

e. Traffic noise on existing public roads, railways or airports.

(6). These noise regulations are enforceable by law enforcement officers and by the Code Enforcement Officer (who may measure noise levels, and who shall report documented violations to the police). For the purposes of enforcement, sounds exceeding the above limits shall be deemed to constitute "loud and unreasonable noise" under Title 17-A M.R.S. § 501-A ("disorderly conduct").

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M. Radiation

No dangerous radiation shall be detectable at the property line, in accordance with the applicable state and federal laws. In the case of electromagnetic pulses emanating from electrical service components, the Planning Board or Director of Planning and Development shall require the developer to adopt a "prudent avoidance" approach, wherever possible.

N. Utilization of the Site

- (1). The plan for the development shall reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities shall be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers shall be maintained and preserved to the maximum extent. Natural drainage areas shall also be preserved to the maximum extent. The development shall include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

O. Storage of Materials

- (1). Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.
- (2). All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. The dumpster or receptacle shall be screened by fencing or landscaping.
- (3). Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.

P. Technical and Financial Capacity

- (1). Financial Capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the standards of these regulations. In making its determination the Planning Board shall consider all relevant evidence to the effect that the developer has the financial capacity to construct, operate, and maintain all aspects of the development.
- (2). Technical Capacity. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed site plan.

2156 a. In determining the applicant's technical ability the Planning Board
2157 shall consider the applicant's previous experience, the experience
2158 and training of the applicant's consultants and contractors, and the
2159 existence of violations of previous approvals granted to the
2160 applicant.

2161 **16.7.13 Post-Approval**

2162 A. Approved plan expiration. [Amended 1-28-2015 by Ord. No. 15-01]

- 2163 (1). A Site Plan approval will expire if work has not commenced within one
2164 year from the date of Planning Board or Director of Planning and
2165 Development approval. Where work has commenced within one year of
2166 such approval, the approval will expire if work is not complete within two
2167 years of the original date of approval.
- 2168 (2). Prior to expiration, the Planning Board or Director of Planning and
2169 Development may, on a case-by-case basis, grant extensions to an
2170 approved plan expiration date upon written request by the developer for an
2171 inclusive period from the original approval date, not to exceed three years.
- 2172 (3). When a plan's approval expires, the applicant may reapply subject to the
2173 Town Code current at the time of reapplication.

2174 B. Inspection of required improvements.

2175 [Amended 9-28-2015 by Ord. No. 15-08]

- 2176 (1). A preconstruction meeting is required for an approved Site Plan. Prior to
2177 the commencement of any work associated with development approved in
2178 accordance with this title, the developer or duly authorized representative
2179 must provide a schedule of expected construction activities by phase to the
2180 inspecting official [the Code Enforcement Officer (CEO) or their
2181 representative or, when applicable, the Town's Peer Review Engineer],
2182 and coordinate a preconstruction meeting. Attendance at said meeting
2183 must at a minimum include authorized representation from the Town, the
2184 developer and their general contractor. Meeting minutes must be prepared
2185 by the Town's representative and distributed to all attendees and the Town
2186 Planner.
- 2187 (2). The developer or general contractor shall coordinate inspections with the
2188 inspecting official and provide written notice at least seven days prior to
2189 commencing each major phase of construction as outlined in the
2190 construction schedule. When all phases of work are complete, the general
2191 contractor shall request a final inspection from the inspecting official, who
2192 shall prepare a punch list of any outstanding items to be completed, within
2193 seven days of the final inspection. Once all outstanding items have been
2194 completed, the developer or the general contractor shall coordinate a final
2195 walk-through where the inspecting official determines if the construction
2196 has been completed in accordance with the approved plans. The inspecting
2197 official shall provide, in writing, to the developer or the general contractor
2198 within seven days of the final walk-through what, if any, construction is

- 2199 not complete or confirm that the development is complete and has been
2200 constructed according to the approved plans.
- 2201 (3). If the inspecting official finds, upon inspection of the required
2202 improvements, that any of the required improvements have not been
2203 constructed in accordance with the approved plans and specifications, the
2204 inspecting official must report, in writing, to the Town Planner, the
2205 developer or duly authorized representative of the developer, and, when
2206 applicable, the CEO. The Town Planner shall inform the Planning Board
2207 of any issues identified by the inspections. The Town shall take any steps
2208 necessary to preserve the municipality's rights.
- 2209 (4). Where applicable and in advance of any construction, the developer must
2210 deposit sufficient funds for said inspections in an applicant's service
2211 account per Chapter 3.3. The amount is based on a scope of services and
2212 fee prepared by the Town's Peer Review Engineer after review of the
2213 developer's construction estimate prepared by a professional engineer or a
2214 qualified contractor.
- 2215 (5). Stormwater and erosion control inspection.
- 2216 a. During October to November of each year in which construction
2217 for grading, paving and landscaping occurs on a development site,
2218 the Town will, at the expense of the developer, cause the site to be
2219 inspected by a qualified individual. By December 1, the inspector
2220 must submit a site report to the Town Planner that describes the
2221 inspection findings and indicates whether stormwater and erosion
2222 control measures (both temporary and permanent) are in place and
2223 properly installed. The report must include a discussion and
2224 recommendation on any and all problem areas encountered.
- 2225 b. After major construction activities have been completed on a
2226 development site, the developer must, on or by July 1 of each year,
2227 provide a completed and signed certification to the Code
2228 Enforcement Officer per § 16.7.11.E, Post-construction stormwater
2229 management.
- 2230 c. Erosion control debris. The owner or occupant of any land in any
2231 zone must not allow erosion control materials, such as plastic
2232 erosion control fences and related stakes or other materials, to
2233 remain on the site but must remove the same within six months of
2234 the date such erosion control materials were installed, or the date
2235 when no longer required, whichever is later. When a violation is
2236 discovered, the Code Enforcement Officer will order compliance
2237 by written notice of violation to the owner of any land in any zone
2238 requesting removal of such violation within 30 days of the date of
2239 written notice. An extension of time to correct may be made by the
2240 Code Enforcement Officer for good and sufficient reason.
- 2241 C. Plan revisions after approval.
- 2242 No changes, erasures, modifications or revisions may be made to any

2243 Planning Board approved Final Plan, unless in accordance with the Planner's
2244 and CEO's powers and duties as found in § 16.2, or unless the plan has been
2245 resubmitted and the Planning Board specifically approves such
2246 modifications. In the event a Final Plan is recorded without complying with
2247 this requirement, the same is null and void, and the Planning Board must
2248 institute proceedings to have the plan stricken from Town records and the
2249 York County Registry of Deeds. [Amended 9-26-2011 by Ord. No. 11-15]

2250 (1). Field changes. [Amended 9-24-2012 by Ord. No. 12-11]

2251 a. If at any time before or during the construction of the required
2252 improvements it appears to be necessary or desirable to modify the
2253 required improvements, the Code Enforcement Officer and Town
2254 Planner are authorized to approve minor plan amendments due to
2255 unforeseen field circumstances, such as encountering hidden
2256 outcrops of bedrock, natural springs, etc. The Code Enforcement
2257 Officer and Town Planner must issue any approval under this
2258 subsection in writing and transmit a copy of the approval to the
2259 Planning Board. Revised plans must be filed with the Town and
2260 recorded, where appropriate. The developer must provide the
2261 revised plan to the Town Planner, and it shall be recorded in the
2262 York County Register of Deeds when applicable.

2263 (2). Modifications to approved plan.

2264 a. Minor modifications. Modifications to an approved plan that do
2265 not require review per § 16.7.2.B may be approved by the Code
2266 Enforcement Officer and Town Planner. Such approvals must be
2267 issued in writing to the developer with a copy to the Planning
2268 Board. The developer must provide the revised plan to the Town
2269 Planner, and it shall be recorded in the York County Register of
2270 Deeds, when applicable. [Amended 9-24-2012 by Ord. No. 12-11]

2271 b. Major modifications. Major modifications (e.g., relocations of
2272 principal structures, rights-of-way or property boundaries; changes
2273 of grade by more than 1%) require Planning Board or Director of
2274 Planning and Development approval.

2275 D. Maintenance of improvements.

2276 E. The developer, or owner, is required to maintain all improvements and
2277 provide for snow removal on streets and pedestrianways/sidewalks unless
2278 and until the improvement has been accepted by the Town Council.

2279 Acceptance of Streets and Ways

2280 (1). Conditions. A street or way constructed on private lands by the owner(s)
2281 thereof and not dedicated for public travel prior to the enactment of this
2282 title must be laid out and accepted as a public street or way by the Town
2283 Council only upon the following conditions:

2284 a. The owners must give the Town a deed to the property within the
2285 boundaries of the street at the time of acceptance by the Town.

2286 b. A plan of said street or way must be recorded in the York County

- 2287 Registry of Deeds at the time of its acceptance.
- 2288 c. A petition for laying out and acceptance of said street or way must
- 2289 be submitted to the Town Council upon a form prescribed by the
- 2290 Commissioner of Public Works. Said petition must be
- 2291 accompanied by a plan, profile and cross section of said street as
- 2292 follows:
- 2293 i. A plan drawn, when practical, to a scale of 40 feet to one
- 2294 inch and to be on one or more sheets of paper not
- 2295 exceeding 24 inches by 36 inches in size. Said plan must
- 2296 show the North point; the location and ownership of all
- 2297 adjoining lots of land; rights-of-way and easements;
- 2298 streetlights and electric lines; boundary monuments;
- 2299 waterways, topography and natural drainage courses with
- 2300 contour at not greater than two-foot intervals; all angles,
- 2301 bearings and radii necessary for the plotting of said street
- 2302 and lots and their reproduction on the ground; the distance
- 2303 to the nearest established street or way, together with the
- 2304 stations of their side lines;
- 2305 ii. A profile of said street or way drawn to a horizontal scale
- 2306 of 40 feet to one inch and a vertical scale of four feet to one
- 2307 inch. Said profile must show the profile of the side lines
- 2308 and center line of said street or way and the proposed
- 2309 grades thereof. Any buildings abutting the street or way
- 2310 must be shown on said profile;
- 2311 iii. A cross section of said street or way drawn to a horizontal
- 2312 scale of five feet to one inch and a vertical scale of one foot
- 2313 to one inch; and
- 2314 iv. The location and size of water and sewer mains and surface
- 2315 water drainage systems, as installed.
- 2316 (2). Such street or way must have been previously constructed in accordance
- 2317 with the standards and criteria established in § 16.5.25 of this chapter.
- 2318 (3). Acceptance of streets and ways required in public interest.
- 2319 a. Notwithstanding the provisions of any other section hereof, the
- 2320 Town may at any time lay out and accept any street or way in the
- 2321 Town as a public street or way of said Town whenever the general
- 2322 public interest so requires. The cost of said street or way may be
- 2323 borne by the Town.
- 2324 (4). Easements.
- 2325 a. The Board may require easements for sewerage, other utilities,
- 2326 drainage and stream protection. In general, easements may not be
- 2327 less than 20 feet in width. Wider easements may be required.
- 2328 (5). No street or way to be accepted until after report.
- 2329 a. No street or way may be laid out and accepted by the Town
- 2330 Council until the Planning Board and the Public Works

2331 Commissioner have made a careful investigation thereof and
2332 reported to the Town Council their recommendations in writing
2333 with respect thereto.

2334 b. Upon completion of construction of any street/road intended for
2335 proposal for acceptance as a Town way, a written certification that
2336 such way meets or exceeds the design and construction standards
2337 of this title, signed by a professional engineer registered by the
2338 State of Maine, prepared at the developer's expense, must be
2339 submitted to the Board. If underground utilities are laid in such
2340 way, the developer must also provide written certification from the
2341 servicing utility(ies), that such installation was in a manner
2342 acceptable to the utility. The Board is to review the proposal and
2343 forward a recommendation to the Town Council regarding
2344 acceptance.

2345 F. Recordkeeping in Shoreland and Resource Protection Overlay Zones.

2346 The Code Enforcement Officer is to keep a complete record of all essential
2347 transactions of development in the Shoreland and Resource Protection
2348 Overlay Zones, including applications submitted, permits granted or denied,
2349 variances granted or denied, revocation actions, revocation of permits,
2350 appeals, court actions, violations investigated, violations found, and fees
2351 collected. On a biennial basis, a summary of this record must be submitted
2352 to the Director of the Bureau of Land and Water Quality within the
2353 Department of Environmental Protection.

2354 G. Nonstormwater discharge.

2355 No person, except where exempted in § 16.5.18, may create, initiate,
2356 originate, or maintain a nonstormwater discharge to the storm drainage
2357 system. Such nonstormwater discharges are prohibited notwithstanding the
2358 fact that the municipality may have approved the connections, drains or
2359 conveyances by which a person discharges unallowable nonstormwater
2360 discharges to the storm drainage system. [Amended 5-22-2017 by Ord. No.
2361 17-06; 5-30-2018 by Ord. No. 04-18]

2362 H. Nuisances.

2363 Any violation of this title is deemed to be a nuisance.

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1 16.8 Subdivision Review

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16.8.1 General

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The purpose of this chapter is to assure the comfort, convenience, safety, health, and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To that end, the Planning Board will evaluate proposed subdivisions using the following criteria. The subdivision provisions set forth in these regulations 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 that assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of groundwater; protection of the 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.

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16.8.2 Authority and Statutory Review Criteria

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- A. These standards have been prepared in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq., and all amendments thereto.
- B. When reviewing any application for a subdivision, the Planning Board shall find that the criteria as found in Title 30-A M.R.S.A. §4404 have been met, as well as all applicable provisions of Title 16, Land Use and Development Code have been met, before granting approval.

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16.8.3 Preapproval development prohibited

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The applicant or applicant's authorized agent must obtain final Planning Board approval before:

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- A. Any contract or offer for the conveyance of the proposed development (or portion thereof) has been made;
- B. Any subdivision into three or more lots has been recorded in the York County Registry of Deeds;
- C. A building/regulated activity permit for any structure within the development is issued; or
- D. Work on any improvements (including installation of roads or utilities or land clearing) has begun.

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16.8.4 Other Potential Reviews

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- A. Shoreland development review.
[Amended 7-25-2016 by Ord. No. 16-02]
 - (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 § 16.10.10 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 § 16.3.2.17D(2), 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 16.11, Marine-related development.

91 c. Division of a conforming parcel that is not subject to subdivision
92 as defined in § 16.2.2.

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 in harmony 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;

232 vii. Utilities; and
233 viii. Street improvements.

234 C. Preliminary Plan Review

- 235 (1). Applicability. Preliminary Plan Review only applies to Major Subdivision
236 applications.
- 237 (2). General Process
 - 238 a. Preliminary plan application filing and completeness review. A
239 determination as to whether the Town Planner validates an
240 application is based on a review of the application in accordance
241 with the submission contents checklist filed with the plan, which
242 indicates all elements required under §16.8.9.C.6 and §16.8.9.C.7
243 have been received, or written request for waiver of submittal for
244 any nonreceived items is included. The application must be
245 accompanied by a plan and the required fee, together with a
246 certification the applicant has notified abutters by mail of the filing
247 of the plan application for approval.
 - 248 b. Receipt and scheduling review. Upon validation, the Town Planner
249 must place the application on the Planning Board's agenda for
250 Planning Board completeness review and acceptance and, upon
251 Planning Board acceptance, issue a dated receipt to the applicant,
252 which is thereafter the official time of submission. [Amended 9-
253 26-2011 by Ord. No. 11-15]
 - 254 c. Site inspection. In the course of the review of the plan, the Planner
255 must, and the Planning Board may at its discretion, make a
256 physical inspection and may make photographic record of the
257 existing conditions on the site. [Amended 9-26-2011 by Ord. No.
258 11-15; 1-23-2012 by Ord. No. 12-01]
 - 259 d. Advisory opinions. At any time during review, the Planner may
260 request an advisory opinion from the Planning Board,
261 Conservation Commission or Port Authority on issues related to
262 the application. Where applications are for land within wetland
263 setbacks or the Resource Protection Overlay Zone, the
264 Conservation Commission must be invited to review and offer
265 recommendations from an environmental protection perspective.
266 The Planner also must make recommendation on the necessity for
267 independent review.
 - 268 e. Planner analysis. The Planner must analyze the application and
269 forward comments to the applicant and the Planning Board with a
270 recommendation as to review category (e.g., minor/major
271 subdivision).
 - 272 f. A completed application must be submitted to the Town Planner
273 no later than 21 days prior to the meeting date for the item to be
274 included on the agenda. The submission must include on the plan
275 or attached thereto, the following items, unless upon the applicant's

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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
378 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 a. Planning Board review and decision. The Planning Board must
386 approve, approve with conditions or deny the preliminary plan.
- 387 a. Approval of a preliminary plan does not constitute approval of a
388 final plan, but rather it is be deemed an expression of approval of
389 the design submitted on the preliminary plan as a guide to the
390 preparation of the final plan.
- 391 b. Conditions of the Planning Board's approval may include, but are
392 not limited to, type of vegetation, increased setbacks and yard
393 space, specifications for sewage and water supply facilities, buffers
394 and screens, period of maintenance sureties, deed restrictions,
395 locations of piers, docks, parking or signs, type or style of
396 construction, and the amount of all guarantees which may be
397 required.
- 398 c. Conditions required by the Planning Board at the preliminary plan
399 review phase must have been met before the final plan may be
400 given final approval unless specifically waived, upon written
401 request by the applicant, by formal Planning Board action, wherein
402 the character and extent of such waivers which may have been
403 requested are such that they may be waived without jeopardy to the
404 public health, safety and general welfare.
- 405 d. The decision of the Planning Board plus any conditions imposed
406 must be noted on three copies of the preliminary plan. One copy
407 must be returned to the applicant, one retained by the Planning
408 Board and one forwarded to the municipal officials.

409 e. If the final plan is not submitted to the Planning Board within six
410 months after classification of the sketch plan, the Planning Board
411 may refuse to act on the subdivision preliminary plan and require
412 resubmission of the sketch plan. All such plans resubmitted must
413 comply with all normal application requirements.

414 (5). Plan Requirements, Preliminary Plan

415 a. Plan sheets drawn on a reproducible medium and must measure no
416 less than 11 inches by 17 inches and no larger than 24 inches by 36
417 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 b. Utilities existing, including power, water, sewer, holding tanks,
456 bridges, culverts and drainageways. Proposed development area
457 conditions including, but not limited to:
- 458 i. Structures; their location and description including signs, to
459 be placed on the site, floor plan of exterior walls and
460 accesses located within 100 feet of the property line;
- 461 ii. Utilities proposed including power, water, sewer, holding
462 tanks, bridges, culverts and drainageways;
- 463 iii. Sewage facilities type and placement. Test pit locations, at
464 least two of which must meet the State of Maine Plumbing
465 Code requirements, must be shown;
- 466 iv. Domestic water source;
- 467 v. Parks, open space, or conservation easement locations;
- 468 vi. Lot lines, interior and exterior, right-of-way, and street
469 alignments;
- 470 vii. Road and other paved ways plans, profiles and typical
471 sections including all relevant data;
- 472 viii. Setbacks existing and proposed;
- 473 ix. Machinery permanently installed locations likely to cause
474 appreciable noise at the lot lines;
- 475 x. Raw, finished or waste materials to be stored outside the
476 buildings, and any stored material of a toxic or hazardous
477 nature;
- 478 xi. Topographic contours of existing contours and finished
479 grade elevations within the development;
- 480 xii. Pedestrian ways/sidewalks, curbs, driveways, fences,
481 retaining walls and other artificial features locations and
482 dimensions proposed;
- 483 xiii. Temporary marker locations adequate to enable the
484 Planning Board to readily locate and appraise the layout of
485 the development;
- 486 xiv. Land proposed to be dedicated to public use and the
487 conditions of such dedication;
- 488 xv. Natural features or site elements to be preserved.
- 489 (6). Written Submission Requirements, Preliminary Plan
- 490 a. Legal interest documents showing legal interest of the applicant in
491 the property to be developed. Such documents must contain the
492 description upon which the survey was based;
- 493 b. Property encumbrances currently affecting the property, as well as

- 494 any proposed encumbrances;
- 495 c. Water District approval letter, if public water is used, indicating
- 496 there is adequate supply and pressure to be provided to the
- 497 development;
- 498 d. Erosion and sedimentation control plan endorsed by the York
- 499 County Soil and Water Conservation District or the Town's
- 500 engineering consultant;
- 501 e. Stormwater management preliminary plan for stormwater and
- 502 other surface water drainage prepared by a registered professional
- 503 engineer including the general location of stormwater and other
- 504 surface water drainage areas;
- 505 f. Soil survey for York County covering the development. Where the
- 506 soil survey shows soils with severe restrictions for development, a
- 507 high intensity Class "A" soil survey must be provided;
- 508 g. Vehicular traffic report estimating the amount and type of
- 509 vehicular traffic that will be generated by the development on a
- 510 daily basis and for peak hours;
- 511 h. Traffic impact analysis in accordance with § 16.8.9.C.8.a for
- 512 developments involving 40 or more parking spaces or which are
- 513 projected to generate more than 400 vehicle trips per day;
- 514 i. Test pit(s) analysis prepared by a licensed site evaluator when
- 515 sewage disposal is to be accomplished by subsurface disposal, pits,
- 516 prepared by a licensed site evaluator;
- 517 j. Town Sewage Department or community system authority letter,
- 518 when sewage disposal is to be through a public or community
- 519 system, approving the connection and its location;
- 520 k. Letters of evaluation of the development by the Chief of Police,
- 521 Fire Chief, Commissioner of Public Works, and, for residential
- 522 applications, the superintendent of schools, must be collected and
- 523 provided by the Town Planner.
- 524 l. Additional submissions as may be required by other sections of
- 525 this title such as for clustered development, mobile home parks, or
- 526 junkyards must be provided.
- 527 (7). Additional requirements. In its consideration of an application/plan, the
- 528 Planning Board may at any point in the review require the applicant to
- 529 submit additional materials, studies, analyses, and agreement proposals as
- 530 it may deem necessary for complete understanding of the application.
- 531 Such materials may include:
- 532 a. Traffic impact analysis, including the following data:
- 533 i. An executive summary outlining the study findings and
- 534 recommendations.
- 535 ii. A physical description of the project site and study area
- 536 encompassed by the report with a diagram of the site and

- 537 its relationship to existing and proposed development sites
538 within the study area.
- 539 iii. A complete description of the proposed uses for the project
540 site (in cases where specific uses have not been identified,
541 the highest traffic generators within the category best fitting
542 the proposed development must be used to estimate traffic
543 generators).
- 544 iv. Existing land uses and zone(s) in the vicinity of the site
545 must be described. Any proposals for the development of
546 vacant parcels or redevelopment of parcels within the study
547 area of which the municipality makes the applicant aware,
548 must be included in the description.
- 549 v. Street geometry and existing traffic control devices on all
550 major streets and intersections affected by the anticipated
551 traffic generated.
- 552 vi. Trip generation must be calculated for the proposed project
553 and other proposed new projects and redevelopment
554 projects within the study area using the most recent data
555 available from the Institute of Transportation Engineers'
556 (ITE) Trip Generation Guide, and/or actual field data
557 collected from a comparable trip generator (i.e.,
558 comparable in size, location and setting). This data will be
559 presented in a summary table such that assumptions on trip
560 generation and rates arrived at by the engineer are fully
561 understandable to the Planning Board.
- 562 vii. The anticipated trip distribution of vehicles entering and
563 exiting the proposed site during the appropriate peak
564 hour(s) must be described and diagrammed.
- 565 viii. Trip assignment, the anticipated utilization of study
566 area streets by traffic generated by the proposed project,
567 must be described and diagrammed.
- 568 ix. Existing traffic conditions in the study area will be
569 identified and analyzed based upon actual field counts
570 and/or recent available machine counts.
- 571 x. Existing traffic conditions in the study area will be
572 described and diagrammed, specifically AADT, appropriate
573 peak design hour(s), traffic volumes, street and intersection
574 capacities, and levels of service.
- 575 xi. Existing safety conditions must be evaluated based upon
576 the traffic accident data available for the most current three
577 years and described including link and node critical rate
578 factors (CRF).
- 579 xii. Future traffic conditions on the street system will be
580 estimated based on existing volumes, projected traffic

581 growth in the general study area, projected traffic from
582 approved development, and traffic generated by the
583 proposed project, specifically AADT traffic, appropriate
584 peak hour(s) traffic volumes, street and intersection
585 capacity, street and intersection levels of service will be
586 analyzed. When other projects are being proposed within
587 the impact area of the project, the Planning Board may
588 require these projects to be incorporated into the analysis.

589 xiii. When the analysis of the proposed project's impact
590 on traffic indicates unsatisfactory CRF, levels of service or
591 operating capacity on study area streets and intersections, a
592 description of proposed improvements to remedy identified
593 deficiencies must be included.

594 xiv. The base data collected and analyzed during the
595 course of the traffic impact study.

596 xv. If a development that requires a traffic impact study is
597 within 500 feet of York or Eliot, Maine, or if the study
598 identifies impacts on segments of Route 1 or Route 236 or
599 on their intersections located in York or Eliot, Maine, the
600 applicant must provide evidence that a copy of the impact
601 study has been given to the impacted municipality's chief
602 administrative officer;

603 b. Environmental analysis. An analysis of the effects that the
604 development may have upon surrounding lands and resources,
605 including intensive study of groundwater, ecosystems, or pollution
606 control systems;

607 D. Final Plan Review

608 (1). Process

609 a. Final plan application. The applicant must, within six months after
610 approval of a preliminary plan, file with the Planning Board an
611 application for approval of the final plan in the form prescribed
612 herein.

613 b. Failure to submit final plan application. If the final plan is not
614 submitted to the Planning Board within six months after the
615 approval of the preliminary plan, the Planning Board may refuse to
616 act on the final plan and require resubmission of the preliminary
617 plan. Any plan resubmitted must comply with all application
618 requirements, including payment of fees.

619 c. Within 30 days after acceptance by the Planning Board of a Final
620 Subdivision plan, the Planning Board must approve the plan,
621 approve the plan with conditions, disapprove the plan, postpone
622 action on the plan, or continue the review to another time/location.

623 d. Continuation or tabling of a review beyond the thirty-day period
624 for subdivision applications must be for good and sufficient reason

- 625 and be acceptable to both the applicant and the Planning Board.
- 626 e. Any plan may be continued for a total period not to exceed 90
- 627 calendar days for good and sufficient reason (i.e., for revisions to
- 628 be made, studies completed or additional information submitted)
- 629 and acceptable to both the applicant and the Planning Board. Such
- 630 plan is automatically scheduled for the agenda of the next regular
- 631 Planning Board meeting after the 90th day and action completed in
- 632 accordance with the requirements and timing contained in this title,
- 633 whether the applicant has accomplished the purposes for which
- 634 continued or not.
- 635 f. The action to table by the Planning Board must be an action to
- 636 temporarily suspend action and not to suppress a vote on the plan.
- 637 g. Failure of the Planning Board to act within the thirty-day period
- 638 for an accepted subdivision application, and the thirty-five-day
- 639 period for other Planning Board accepted applications, constitutes
- 640 disapproval of the plan, in which case the applicant may resubmit
- 641 the plan without payment of an additional application fee.
- 642 h. Application/plan review expiration.
- 643 i. Uncounted time. When an approved plan is required to be
- 644 reviewed/approved by another agency (e.g., DEP, BOA,
- 645 KPA), any period the plan is at such an agency or that a
- 646 plan is continued by the Planning Board in accordance with
- 647 this section from time of submission to time of decision
- 648 inclusive, verifiable by recorded documentation, is not
- 649 counted as part of the cumulative time periods described in
- 650 this section.
- 651 ii. Requests for extension. The Planning Board may grant
- 652 extensions to expiration dates upon written request by the
- 653 developer, on a case-by-case basis.
- 654 i. A completed application must be submitted to the Town Planner
- 655 no later than 21 days prior to the meeting date for the item to be
- 656 included on the agenda. The submission must include on the plan
- 657 or attached thereto, the following items, unless upon the applicant's
- 658 written request, the Planning Board, by formal action, waives or
- 659 defers any requirement(s) for submission.
- 660 i. Refer to current Planning Department application checklist
- 661 for required number of paper copies.
- 662 ii. One electronic submission in PDF format of the complete
- 663 submission including all forms, plans and documentation.

664 (2). Final Plan Requirements

665 A complete final plan application must fulfill all the requirements of a

666 preliminary plan as indicated in § 16.8.C.6-8 and must show the following

667 items, unless the Planning Board, by formal action, upon the applicant's

668 written request, waives or defers any requirement(s) for submission. If no

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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.
- b. Street names and lines, pedestrian ways, 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;
 - 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

- 713 luminance levels of the walls, and the aiming points for any
714 remote light fixtures; and
- 715 vi. A narrative that describes the hierarchy of site lighting and
716 how the lighting will be used to provides safety, security
717 and aesthetic effects.
- 718 h. Machinery in permanently installed locations likely to cause
719 appreciable noise at the lot lines.
- 720 i. Materials (raw, finished or waste) storage areas, their types and
721 location, and any stored toxic or hazardous materials, their types
722 and locations.
- 723 j. Fences, retaining walls and other artificial features locations and
724 dimensions proposed.
- 725 k. Landscaping plan, including location, size and type of plant
726 material.
- 727 l. Stormwater management plan for stormwater and other surface
728 water drainage prepared by a registered professional engineer,
729 including the location of stormwater and other surface water
730 drainage area; a post-construction stormwater management plan
731 that defines maintenance responsibilities, responsible parties,
732 shared costs, and schedule for maintenance; a draft maintenance
733 agreement for stormwater management facilities; and, where
734 applicable, draft documents creating a homeowners' association
735 referencing the maintenance responsibilities. Where applicable, the
736 maintenance agreement must be included in the document of
737 covenants, homeowners' documents and/or as riders to the
738 individual deed and recorded with the York County Registry of
739 Deeds. [Added 9-26-2011 by Ord. No. 11-15;7-25-2016 by Ord.
740 No. 16-06]
- 741 m. Phasing plan. Upon applicant's request, the Planning Board may
742 permit phasing of the plans, where it can be demonstrated to the
743 Planning Board's satisfaction that such phasing would result in a
744 safe and orderly development of the plan.
- 745 i. The applicant may file a section of the approved plan with
746 the municipal officials and the York County Registry of
747 Deeds if said section constitutes at least 25% of the total
748 number of lots, or for plans including buildings, 25% of the
749 gross area, contained in the approved plan. In all
750 circumstances, plan approval of the remaining sections of
751 the plan will remain in effect for three years unless the
752 applicant requests and the Planning Board grants
753 extensions of time equivalent to the requirements for
754 approved plans in § 16.10.9.1E.
- 755 ii. Phasing is subject to any conditions deemed necessary to
756 assure a reasonable mixture of uses is completed within
757 each separate phase of the plan.

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- iii. Where projects are to be constructed in phases, phasing of stormwater management, water mains and streets are part of the review process.
 - iv. Portions of both the developed and undeveloped site impacted by interim infrastructure conditions such as unlooped water systems, stormwater runoff from unfinished areas onto finished areas and vice versa, dead-end streets, etc., must be clearly defined and shown on the plans.
 - v. The Planning Board may permit construction of phases out of order only when the storm drainage plan and the water plan, etc., have been reviewed, and it has been demonstrated that the impact on both the developed and undeveloped sections is negligible.

772 (3). Written Submission Requirements

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- a. Open space land cession offers. Written offers of cession to the municipality of all public open space shown on the plan, and copies of agreements or other documents showing the manner in which space(s), title to which is reserved by the subdivider, are to be maintained.
 - b. Open space land cession offers acknowledgement by Town. Written evidence that the municipal officers are satisfied with the legal sufficiency of the documents referred to in § 16.8.D.3.a. Such written evidence does not constitute an acceptance by the municipality of any public open space referred to in § 16.8.D.3.a.
 - c. Performance guaranty and Town acceptance to secure completion of all improvements required by the Planning Board, and written evidence the Town Manager is satisfied with the sufficiency of such guaranty.
 - i. Where improvements for the common use of lessees or the general public have been approved, the Planning Board must require a performance guaranty of amount sufficient to pay for said improvements as a part of the agreement.
 - ii. Process. Prior to the issue of a building permit, the applicant must, in an amount and form acceptable to the Town Manager, file with the Municipal Treasurer an instrument to cover the full cost of the required improvements. A period of one year (or such other period as the Planning Board may determine appropriate, not to exceed three years) is the guaranty time within which required improvements must be completed. The performance guaranty must include an amount required for recreation land or improvements, as specified.
 - d. Maintenance plan and agreement defining maintenance responsibilities, responsible parties, shared costs and schedule.

803 Where applicable, a maintenance agreement must be included in
804 the document of covenants, homeowners' documents and/or as
805 riders to the individual deed.

806 (4). Findings of Fact.

- 807 a. After considering all submissions, evidence and testimony in
808 accordance with the requirements of all applicable state and the
809 Town Code, the Planning Board must make a finding of facts for
810 each and every proposed phase of development, including the
811 development master plan and each subsequent development plan,
812 and take formal action as required in this title.
- 813 b. Findings of fact. Action by the Planning Board must be based upon
814 findings of fact which certify or waive compliance with all the
815 required standards of this title and which certify the development
816 meets the following requirements:
- 817 i. Development conforms to local ordinances. The proposed
818 development conforms to a duly adopted Comprehensive
819 Plan as per adopted provisions in the Town Code, zoning
820 ordinance, subdivision regulation or ordinance,
821 development plan or land use plan, if any. In making this
822 determination, the municipal reviewing authority may
823 interpret these ordinances and plans.
 - 824 ii. Freshwater wetlands identified. All freshwater wetlands
825 within the project area have been identified on any maps
826 submitted as part of the application, regardless of the size
827 of these wetlands.
 - 828 iii. River, stream or brook identified. Any river, stream or
829 brook within or abutting the proposed project area has been
830 identified on any maps submitted as part of the application.
831 For purposes of this section, "river, stream or brook" has
832 the same meaning as in 38 M.R.S. § 480-B, subsection 9.
 - 833 iv. Water supply sufficient. The proposed development has
834 sufficient water available for the reasonably foreseeable
835 needs of the development.
 - 836 v. Municipal water supply available. The proposed
837 development will not cause an unreasonable burden on an
838 existing water supply, if one is to be used.
 - 839 vi. Sewage disposal adequate. The proposed development will
840 provide for adequate sewage waste disposal and will not
841 cause an unreasonable burden on municipal services, if
842 they are utilized.
 - 843 vii. Municipal solid waste disposal available. The proposed
844 development will not cause an unreasonable burden on the
845 municipality's ability to dispose of solid waste, if municipal
846 services are to be used.

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- viii. Water body quality and shoreline protected. Whenever situated entirely or partially within 250 feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
 - ix. Groundwater protected. The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
 - x. Flood areas identified and development conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one-hundred-year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one-hundred-year flood elevation.
 - xi. Stormwater managed. The proposed development will provide for adequate stormwater management.
 - xii. Erosion controlled. The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
 - xiii. Traffic managed. The proposed development will:
 - a. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and
 - b. Provide adequate traffic circulation, both on site and off site.
 - i. Water and air pollution minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:
 - a. Elevation of the land above sea level and its relation to the floodplains;
 - b. Nature of soils and subsoils and their ability to adequately support waste disposal;
 - c. Slope of the land and its effect on effluents;

- 891 d. Availability of streams for disposal of effluents;
892 e. Applicable state and local health and water resource
893 rules and regulations; and
894 f. Safe transportation, disposal and storage of
895 hazardous materials.
- 896 xiv. Aesthetic, cultural and natural values protected. The
897 proposed development will not have an undue adverse
898 effect on the scenic or natural beauty of the area, aesthetics,
899 historic sites, significant wildlife habitat identified by the
900 Department of Inland Fisheries and Wildlife or the
901 municipality, or rare and irreplaceable natural areas, or any
902 public rights for physical or visual access to the shoreline.
- 903 xv. Developer financially and technically capable. Developer is
904 financially and technically capable to meet the standards of
905 this section.
- 906 c. In Shoreland, Resource Protection or Commercial
907 Fisheries/Maritime Use Overlay Zones, the proposed use will:
- 908 i. Maintain safe and healthful conditions;
909 ii. Not result in water pollution, erosion or sedimentation to
910 surface waters;
911 iii. Adequately provide for the disposal of all wastewater;
912 iv. Not have an adverse impact on spawning grounds, fish,
913 aquatic life, bird or other wildlife habitat;
914 v. Conserve shore cover and visual, as well as actual, points
915 of access to inland and coastal waters;
916 vi. Protect archaeological and historic resources as designated
917 in the comprehensive plan;
918 vii. Not adversely affect existing commercial fishing or
919 maritime activities in a commercial fisheries/maritime
920 activities district;
921 viii. Avoid problems associated with floodplain
922 development and use; and
923 ix. Is in conformance with the provisions of this title.
- 924 d. For a right-of-way plan. The proposed right-of-way:
- 925 i. Does not create any nonconforming lots or buildings; and
926 ii. Could reasonably permit the right of passage for an
927 automobile.
- 928 e. For special exception use – special exception use permitted. If a
929 special exception use is requested, the special exception use will:
930 [Added 9-26-2011 by Ord. No. 11-15]
- 931 i. Not prevent the orderly and reasonable use of adjacent
932 properties or of properties in adjacent use zones;

- 933 ii. Not prevent the orderly and reasonable use of permitted or
- 934 legally established uses in the zone wherein the proposed
- 935 use is to be located, or of permitted or legally established
- 936 uses in adjacent use zones; and
- 937 iii. Not adversely affect the safety, the health, and the welfare
- 938 of the Town.
- 939 iv. Be in harmony with and promote the general purposes and
- 940 intent of this title.

941 (5). Final plan approval and recording.

- 942 a. Agreement form. An approval by the Planning Board must take the
- 943 form of an agreement between the Town and the applicant,
- 944 incorporating as elements the application, the Planning Board's
- 945 findings of fact, and such conditions as the Planning Board may
- 946 impose upon approval.
- 947 a. Agreement distribution. The Planning Board must send copies of
- 948 the agreement to the Town Manager and Code Enforcement
- 949 Officer. [Amended 9-26-2011 by Ord. No. 11-15]
- 950 b. Approved final plan signing. A plan has final approval only when
- 951 the Planning Board has indicated approval by formal action and the
- 952 plan has been properly signed by a majority of the Planning Board
- 953 members or by the Chair only, if so voted by the Planning Board.
- 954 c. Approved final plan recording. An approved plan involving the
- 955 division of land, easements, or property boundary modification
- 956 must be recorded by the York County Registry of Deeds. A Mylar
- 957 copy of the recorded plan must be returned to the Town Planner.
- 958 [Amended 9-26-2011 by Ord. No. 11-15]

959 16.8.10 Performance Standards and Approval Criteria

960 A. Monuments

961 (1). Stone monuments.

- 962 a. Stone monuments must be set at all street intersections and points
- 963 of curvature, but not more than 750 feet apart along street lines
- 964 without curves or intersections.
- 965 b. Stone monuments must be set at all corners and angle points of the
- 966 development boundaries where the interior angle of the boundaries
- 967 is less than 135° or greater than 225°.
- 968 c. Stone monuments must be a minimum of four inches square at the
- 969 top and four feet in length and set in the ground at final grade
- 970 level. Drilled holes, 1/2 inch deep, are to serve to locate the point
- 971 or points described above.

972 (2). Other monumentation.

973 All other development boundary corners and angle points, as well as all lot

974 boundary corners and angle points are to be marked by suitable

975 monumentation constructed of reasonably permanent material and solidly
976 embedded in the ground. All such monumentation must be capable of
977 being detected by commonly used magnetic or electronic equipment and
978 clearly show the registration number of the registered land surveyor
979 responsible for the survey.

980 (3). Impractical placement.

981 Where the placement of a required monument at its proper location is
982 impractical, it is permissible to set a reference monument close to that
983 point on an adjacent property line.

984 B. Basic Subdivision Layout

985 (1). Calculation of Density: See “Net Residential Acreage” in 16.5 General
986 Performance Standards.

987 (2). Wherever possible, side lot lines shall be perpendicular to the street.

988 (3). The subdivision of tracts into parcels with more than twice the required
989 minimum lot size shall be laid out in such a manner as either to provide
990 for or preclude future division. Deed restrictions or notes on the plan shall
991 either prohibit future divisions of the lots or specify that any future
992 division shall constitute a revision to the plan and shall require approval
993 from the Board, subject to the criteria of the subdivision statute, the
994 standards of these regulations and conditions placed on the original
995 approval.

996 (4). If a lot on one side of a public street fails to meet the minimum
997 requirements for lot size, it may not be combined with a lot on the other
998 side of the public street to meet the minimum lot size.

999 (5). Lot Numbering. Even numbers shall be assigned to lots on one side of the
1000 street, and odd numbers on the opposite side. Where the proposed
1001 subdivision contains the extension of an existing street or street approved
1002 by the Board, but not yet constructed, the lot numbers shall correspond
1003 with the existing lot numbers. The lot numbering shall be reviewed by the
1004 E-911 Addressing Officer and the comments shall be considered by the
1005 Board.

1006 C. Water Supply

1007 (1). The development shall be provided with a system of water supply that
1008 provides each use with an adequate supply of water.

1009 (2). If the project is to be served by a public water supply, the applicant shall
1010 secure and submit a written statement from the Kittery Water District that
1011 the proposed water supply system conforms with its design and
1012 construction standards, will not result in an undue burden on the source of
1013 distribution system, and will be installed in a manner adequate to provide
1014 needed domestic and fire protection flows.

1015 (3). Service required.

1016 a. A public water supply system with fire hydrants must be installed
1017 and approved in writing by the servicing water department.

1018 b. If in the opinion of the Board service to each lot by a public water

- 1019 system is not feasible, the Board may allow individual wells or a
1020 central water supply system approved in writing by a civil engineer
1021 registered in the State of Maine.
- 1022 c. If the developer proposes a central water supply system, it must
1023 also be approved in writing by the Maine Department of Human
1024 Services.
- 1025 d. Water supply system installations are at the expense of the
1026 developer.
- 1027 e. All required approvals of a water supply system must be secured
1028 before official submission of the final plan.
- 1029 (4). Quality and pressure.
1030 [Amended 9-26-2011 by Ord. No. 11-15]
1031 The developer must demonstrate by actual test or by a signed affidavit
1032 from an authorized representative of the servicing water company that
1033 water meeting the "Maine Rules Relating to Drinking Water (10-144
1034 C.M.R. 231)" can be supplied to the development at the rate of at least 350
1035 gallons per day per dwelling unit and at an adequate pressure for
1036 firefighting purposes.
- 1037 (5). Storage.
1038 Storage must be provided as necessary to meet peak domestic demands
1039 and fire protection needs.
- 1040 (6). Adequacy.
1041 The developer must demonstrate in the form of signed affidavits from the
1042 servicing water company or by engineering reports prepared by a civil
1043 engineer registered in the State of Maine that the proposed development
1044 will not result in an undue burden on the source, treatment facilities or
1045 distribution system involved or provide adequate assurance that such
1046 source, treatment facilities or distribution system will be modified to meet
1047 the expanded needs. The cost of such improvements is to be borne by the
1048 developer.
- 1049 (7). Water main size.
1050 The minimum water main size permitted is to be as required by the Kittery
1051 Water District, installed at the expense of the developer.
- 1052 (8). Design and installation.
1053 The water supply system must be designed and installed in accordance
1054 with requirements of the Maine Department of Human Services.
- 1055 (9). Dug wells.
1056 Because they are difficult to maintain in a sanitary condition, dug wells
1057 must be prohibited by deed restriction and a note on the plan, unless
1058 permitted by the Board only if it is not economically or technically
1059 feasible to develop other groundwater sources. Such dug wells permitted
1060 must be constructed so as to prevent infiltration of surface water into the
1061 well.
- 1062 (10). Central water supplies.

1063 If a central water supply system is provided by the developer, location and
1064 protection of the source, and design, construction and operation of the
1065 distribution system and appurtenances and treatment facilities must
1066 conform to the recommendations included in the "Manual for Evaluating
1067 Public Drinking Water Supplies, Public Health Service No. 1180 (1969)."

1068 (11). Hydrologic analysis.

1069 The Board may require the developer to provide a detailed hydrologic
1070 analysis in accordance with the requirements of § 16.8.10.M, Water
1071 Quality and Wastewater Pollution.

1072 D. Sewage Disposal

1073 [Amended 10-14-2015 by Ord. No. 15-10]

1074 (1). Sewers.

1075 a. As per Chapter 13.1, Sewer Service System, connection to public
1076 sewer is required, provided said sewer, located within an abutting
1077 public way, is within 100 feet of the property line as measured
1078 along the said public way. Individual dwellings and structures in
1079 approved and recorded developments where public sewer becomes
1080 available as described in this subsection must connect per the
1081 requirements of Title 13, Chapter 13.1.

1082 b. Notwithstanding the provision above and Chapter 13.1, connection
1083 to public sewer is required for a commercial or industrial
1084 development or a residential subdivision, where public sewer,
1085 within an abutting public way, is within 1,000 feet of the property
1086 line as measured along said public way. In such an event, the
1087 developer shall connect to public sewer per the Town's
1088 Superintendent of Sewer Services (SSS) specifications and in
1089 accordance with Title 13. The developer shall provide written
1090 certification to the Planning Board from the SSS that the proposed
1091 addition to public sewer is within the capacity of the collection and
1092 wastewater treatment system.

1093 c. Sewer mains, service lines and related improvements must be
1094 installed at the developer's expense. Service lines must extend to
1095 each lot's boundary line. Connections to public sewer must be
1096 installed in accordance with this article and Chapter 13.1, Sewer
1097 Service System, of the Kittery Town Code.

1098 d. Proposal and construction drawings must be approved in writing
1099 by the Town's SSS. All required approvals must be secured before
1100 the start of final plan review.

1101 e. When public sewer connection pursuant to Subsection B above is
1102 not feasible as determined by the Planning Board, the Board may
1103 allow individual or common subsurface wastewater disposal
1104 systems in accordance with § 16.8.10.D.(2), below. To determine
1105 feasibility, the developer shall submit information that considers
1106 the unique physical circumstances of the property and sewer

1107 connection alternatives to conventional construction/installation
1108 techniques, such as, but not limited to, horizontal/directional
1109 boring and low-pressure sewer. The developer's information must
1110 be accompanied by findings and recommendations of the Town
1111 Peer Review Engineer. In determining feasibility, the Board may
1112 not base its decision solely on additional costs associated with a
1113 sewer connection. The intent of this subsection is not to avoid the
1114 requirements of Chapter 13.1, Sewer Service System, of the
1115 Kittery Town Code.

1116 (2). Subsurface wastewater disposal systems.

1117 a. The developer shall submit plans for subsurface wastewater
1118 disposal designed by a Maine licensed site evaluator in full
1119 compliance with the requirements of the State of Maine Plumbing
1120 Code, Subsurface Wastewater Disposal Rules, and this title.
1121 Subsurface wastewater disposal systems (SWDS) must be
1122 constructed according to the approved plan.

1123 b. All first-time subsurface wastewater disposal systems must be
1124 installed in conformance with State of Maine Subsurface
1125 Wastewater Disposal Rules and this title. The following also apply:

1126 i. The minimum setback distance for a first-time subsurface
1127 disposal system may not be reduced by variance.

1128 ii. Clearing or removal of woody vegetation necessary to site
1129 a first-time system, and any associated fill extensions may
1130 not extend closer than is allowed in the table in § 16.5.28,
1131 Minimum Setbacks from Wetlands and Water Bodies, for
1132 subsurface sewage disposal.

1133 c. Replacement of subsurface wastewater disposal systems (SWDS)
1134 for existing legal uses:

1135 i. Where no expansion is proposed, the SWDS must comply
1136 with § 16.8.10.D.(2) and Table 16.5.28 to the extent
1137 practicable and otherwise are allowed per the Maine
1138 Subsurface Wastewater Disposal Rules; or

1139 ii. Where expansion is proposed, the SWDS must comply
1140 with § 16.8.10.D.(2) and Table 16.5.28 in addition to the
1141 Maine Subsurface Wastewater Disposal Rules.

1142 NOTE: For the purposes of this subsection, “expansion” is
1143 defined in Section 9 of the Maine Subsurface Wastewater
1144 Disposal Rules.

1145 d. Subsurface wastewater disposal systems on unimproved lots
1146 created after April 26, 1990. Where public sewer connection is not
1147 feasible, the developer must submit evidence of soil suitability for
1148 subsurface wastewater disposal systems, i.e., test pit data and other
1149 information as required by the State of Maine Subsurface
1150 Wastewater Disposal Rules and this title. In addition:

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- 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 facility must contain a minimum of two water closets.
 - d. Requirements for handicapped accessibility to sanitary facilities are pursuant to applicable state standards.
- E. Stormwater and Surface Drainage
- (1). Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a

1195 management system of natural and constructed features. Where possible,
1196 existing natural runoff control features, such as berms, swales, terraces
1197 and wooded areas must be retained to reduce runoff and encourage
1198 infiltration of storm waters. Otherwise drainage may be accomplished by a
1199 management system of constructed features such as swales, culverts,
1200 underdrains and storm drains.

1201 (2). To ensure proper functioning, stormwater runoff control systems must be
1202 maintained in good working order per § 16.8.10.F. Post-construction
1203 stormwater management.

1204 (3). Where a development is traversed by a stream, river or surface water
1205 drainageway, or where the Planning Board determines that surface runoff
1206 should be controlled, easements and or drainage rights-of-way must be
1207 provided which conform substantially to the lines of existing natural
1208 drainage paths. The minimum width of the drainage easements or rights-
1209 of-way is 30 feet.

1210 a. The minimum pipe size for any storm drainage pipe must be 12
1211 inches. Maximum trench width at the pipe crown must be the
1212 outside diameter of the pipe plus two feet. The pipe must be
1213 bedded in a fine granular material, containing no stones larger than
1214 three inches, lumps of clay, or organic matter, reaching a minimum
1215 of six inches below the bottom of the pipe extending to six inches
1216 above the top of the pipe.

1217 b. Except for normal thinning and landscaping, existing vegetation
1218 must be left intact to prevent soil erosion.

1219 (4). When proposed development does not require Maine Department of
1220 Environmental (MDEP) approval under MDEP Chapters 500 and 502, the
1221 following applies:

1222 a. All components of the stormwater management system must be
1223 designed to limit peak discharge to predevelopment levels for the
1224 two-year and twenty-five-year, twenty-four-hour duration,
1225 frequencies, based on the rainfall data for Portsmouth, NH. When
1226 the development discharges directly to a major water body, peak
1227 discharge may be increased from predevelopment levels, provided
1228 downstream drainage structures are suitably sized.

1229 b. The stormwater management system must be designed to
1230 accommodate upstream drainage, taking into account existing
1231 conditions and approved or planned developments not yet built and
1232 must include a surplus design capacity factor of 25% for potential
1233 increases in upstream runoff.

1234 c. Downstream drainage requirements must be studied to determine
1235 the effect of the proposed development. The storm drainage must
1236 not overload existing or future planned storm drainage systems
1237 downstream from the development. The developer is responsible
1238 for financing any improvements to existing drainage systems
1239 required to handle the increased storm flows.

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- i. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements must be provided to the Town allowing maintenance and improvement to the system.
 - ii. All sediment and erosion control measures must be designed in accordance with MDEP's "Maine Erosion and Sediment Control BMPs," March 2003.
 - iii. Catch basins in streets and roads must be installed where necessary and located at the curblin. In parking lots and other areas, catch basins must be located where necessary to ensure proper drainage.
 - iv. Where soils require a subsurface drainage system, the drains must be installed and maintained separately from the stormwater drainage system.
 - v. Where the Board has required a stormwater management and erosion control plan and MDEP approval under Chapters 500 and 502 is not required, said plan must be endorsed by the York County Soil and Water Conservation District.
 - vi. Drainage easements for existing or proposed drainageways located outside a public way must be maintained and/or improved in accordance with § 16.8.8.2, Post-construction stormwater management.

F. Post-construction stormwater management.

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- (1). Purposes. This section is enacted to provide for the health, safety and general welfare of the citizens of Kittery through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. This section seeks to ensure that post-construction stormwater management plan are followed and stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the storm drainage system, are properly maintained and pose no threat to public safety.
 - (2). Authority. The Maine Department of Environmental Protection, through its dissemination of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of Kittery, Maine, as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 requires enactment of this section as part of the Town's stormwater management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in new development and redevelopment").

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(3). Applicability.

- a. In general. This section applies to all new development or redevelopment (any construction activity on premises already improved that alters stormwater drainage patterns) including one acre or more of disturbed area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb an area equal to or greater than one acre. [Amended 7-25-2016 by Ord. No. 16-06]
- b. Exception. This section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this section but must comply with the post-construction stormwater management plan for that approved subdivision.
- c. Post-construction stormwater management plan approval.
 - i. General requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in § 16.8.8.2C(2), Exception, no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its post-construction stormwater management plan and stormwater management facilities.
 - ii. Notice of BMP discharge to Town's MS4. At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this section is applicable, the applicant must notify the Town Planner if its post-construction stormwater management plan includes any BMP(s) that will discharge to the Town's MS4 and must include in this notification a listing of which BMP(s) will so discharge.
 - 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

1330 prevailing hourly rate for reimbursement of the Town's
1331 administrative costs. Any remaining engineering and
1332 administrative review costs owed by the applicant must be
1333 paid in full by the applicant prior to the issuance of any
1334 temporary or permanent certificate of occupancy, and any
1335 unused balance remaining at that time will be refunded to
1336 the applicant.

1337 d. Post-construction stormwater management plan compliance.

1338 i. General requirements. Any person owning, operating,
1339 leasing or having control over stormwater management
1340 facilities required by a post-construction stormwater
1341 management plan approved under the Town's subdivision,
1342 site plan or other zoning, planning or other land use
1343 ordinances must demonstrate compliance with that plan as
1344 follows:

1345 a. That person or a qualified post-construction
1346 stormwater inspector hired by that person must, at
1347 least annually, inspect the stormwater management
1348 facilities in accordance with all municipal and state
1349 inspection, cleaning and maintenance requirements
1350 of the approved post-construction stormwater
1351 management plan;

1352 b. If the stormwater management facilities require
1353 maintenance to function as intended by the
1354 approved post-construction stormwater
1355 management plan, that person must take corrective
1356 action(s) to address the deficiency or deficiencies;
1357 and

1358 c. That person or a qualified post-construction
1359 stormwater inspector hired by that person must, on
1360 or by July 1 of each year, provide a completed and
1361 signed certification to the Code Enforcement
1362 Officer in a form provided by the Town, certifying
1363 that the person has inspected the stormwater
1364 management facilities and that they are adequately
1365 maintained and functioning as intended by the
1366 approved post-construction stormwater
1367 management plan or that they require maintenance
1368 or repair, describing any required maintenance and
1369 any deficiencies found during inspection of the
1370 stormwater management facilities, and if the
1371 stormwater management facilities require
1372 maintenance or repair of deficiencies in order to
1373 function as intended by the approved post-
1374 construction stormwater management plan, the

- 1375 person must provide a record of the required
1376 maintenance or deficiency and corrective action(s)
1377 taken.
- 1378 ii. Right of entry. In order to determine compliance with this
1379 section and with the post-construction stormwater
1380 management plan, the Code Enforcement Officer may enter
1381 upon property at reasonable hours with the consent of the
1382 owner, occupant or agent to inspect the stormwater
1383 management facilities.
- 1384 e. Annual report. Beginning July 1, 2009, and each year thereafter,
1385 the Town must include the following in its annual report to the
1386 Maine Department of Environmental Protection:
- 1387 i. Cumulative number of sites that have stormwater
1388 management facilities discharging into its MS4;
- 1389 ii. Summary of the number of sites that have stormwater
1390 management facilities discharging into its MS4 that were
1391 reported to the Town;
- 1392 iii. Number of sites with documented functioning stormwater
1393 management facilities; and
- 1394 iv. Number of sites that require routine maintenance in order
1395 to continue the original line and grade, the hydraulic
1396 capacity, and the original purpose of improvements; or
1397 remedial action to ensure that stormwater management
1398 facilities are functioning as intended.
- 1399 f. Enforcement. It is the duty of the Code Enforcement Officer to
1400 enforce the provisions of this section and take appropriate actions
1401 to seek the correction of violations. Enforcement of the post-
1402 construction stormwater management regulations are conducted in
1403 accordance with Chapter 16.4.
- 1404 (4). Storm drainage construction standards.
- 1405 a. Materials:
- 1406 i. Reinforced concrete pipe must meet the requirements of
1407 ASTM Designation C-76 (AASHTO M170). Pipe classes
1408 are required to meet the soil and traffic loads with a safety
1409 factor of 1.2 on the 0.01 inch crack strength with Class B
1410 bedding. Joints are to be of the rubber gasket type, meeting
1411 ASTM Designation C443-70, or of an approved performed
1412 plastic jointing material such as "Ramnek." Perforated
1413 concrete pipe must conform to the requirements of
1414 AASHTO M175 for the appropriate diameters.
- 1415 ii. Corrugated metal pipe must be bituminous-coated, meeting
1416 the requirements of AASHTO Designation M190 Type C
1417 for an iron or steel pipe or AASHTO Designation M196 for
1418 aluminum alloy pipe for sectional dimensions and type of

- 1419 bituminous coating. Pipe gauge is to be as required to meet
1420 the soil and traffic loads with a deflection of not more than
1421 5%.
- 1422 iii. SDR-35 plastic pipe installed in conformance with
1423 AASHTO bedding requirements.
- 1424 iv. Aluminized steel (AASHTO M274) and aluminum pipe
1425 (AASHTO M46).
- 1426 v. Catch basins are to be precast concrete truncated cone
1427 section construction, meeting the requirements of ASTM
1428 Designation C478, or precast concrete manhole block
1429 construction, meeting the requirements of ASTM C139,
1430 radial type. Castings are to be square cast iron sized for the
1431 particular inlet condition with the gratings perpendicular to
1432 the curbline. Bases may be cast-in-place 3,000 psi twenty-
1433 eight-day strength concrete or may be of precast concrete,
1434 placed on a compacted foundation of uniform density.
1435 Metal frames and traps must be set in a full mortar bed with
1436 tops and are to conform to the requirements of AASHTO
1437 M103 for carbon steel casings, AASHTO M105, Class 30
1438 for gray iron castings or AASHTO M183 (ASTM A283,
1439 Grade B or better) for structure steel.
- 1440 b. Drain inlet alignment is to be straight in both vertical and
1441 horizontal alignment unless specific approval for curvilinear drain
1442 is obtained in writing from the Commissioner of Public Works.
- 1443 c. Manholes are to be provided at all changes in vertical or horizontal
1444 alignment and at all junctions. On straight runs, manholes are to be
1445 placed at a maximum of three-hundred-foot intervals.
- 1446 d. Upon completion, each catch basin or manhole must be cleared of
1447 all accumulation of silt, debris or other foreign matter and kept
1448 clean until final acceptance.

1449 G. Vehicular Traffic

- 1450 (1). Adequacy of Road System. Vehicular access to the site shall be on roads
1451 which have adequate capacity to accommodate the additional traffic
1452 generated by the development. Intersections on arterial streets within a
1453 half (0.5) mile of any entrance road which are functioning at a Level of
1454 Service of D or better prior to the development shall function at a
1455 minimum at Level of Service D after development. If any such
1456 intersection is functioning at a Level of Service E or lower prior to the
1457 development, the project shall not reduce the current level of service. This
1458 requirement may be waived by the Planning Board if the project is located
1459 within a growth area designated in the Town's adopted Comprehensive
1460 Plan and the Board determines that the project will not have an
1461 unnecessary adverse impact on traffic flow or safety.
- 1462 a. A development not meeting this requirement may be approved if
1463 the applicant demonstrates that:

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- i. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard, or
 - ii. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality.
- 1472 (2). Traffic Impact Study. When required by the Planning Board or Staff
1473 Review Committee, a Traffic Impact Study will include the following
1474 elements related to the project and surrounding street network.
- 1475 a. An executive summary outlining the study findings and
1476 recommendations.
 - 1477 b. A physical description of the project site and study area
1478 encompassed by the report with a diagram of the site and its
1479 relationship to existing and proposed development sites within the
1480 study area.
 - 1481 c. A complete description of the proposed uses for the project site (in
1482 cases where specific uses have not been identified, the highest
1483 traffic generators within the category best fitting the proposed
1484 development must be used to estimate traffic generators).
 - 1485 d. Existing land uses and zone(s) in the vicinity of the site must be
1486 described. Any proposals for the development of vacant parcels or
1487 redevelopment of parcels within the study area of which the
1488 municipality makes the applicant aware, must be included in the
1489 description.
 - 1490 e. Street geometry and existing traffic control devices on all major
1491 streets and intersections affected by the anticipated traffic
1492 generated.
 - 1493 f. Trip generation must be calculated for the proposed project and
1494 other proposed new projects and redevelopment projects within the
1495 study area using the most recent data available from the Institute of
1496 Transportation Engineers' (ITE) Trip Generation Guide, and/or
1497 actual field data collected from a comparable trip generator (i.e.,
1498 comparable in size, location and setting). This data will be
1499 presented in a summary table such that assumptions on trip
1500 generation and rates arrived at by the engineer are fully
1501 understandable to the Planning Board.
 - 1502 g. The anticipated trip distribution of vehicles entering and exiting
1503 the proposed site during the appropriate peak hour(s) must be
1504 described and diagrammed.
 - 1505 h. Trip assignment, the anticipated utilization of study area streets by
1506 traffic generated by the proposed project, must be described and
1507 diagrammed.

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- i. Existing traffic conditions in the study area will be identified and analyzed based upon actual field counts and/or recent available machine counts.
 - j. 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.
 - k. 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 factors (CRF).
 - l. Future traffic conditions on the street system will be estimated based on existing volumes, projected traffic growth in the general study area, projected traffic from approved development, and traffic generated by the proposed project, specifically AADT traffic, appropriate peak hour(s) traffic volumes, street and intersection capacity, street and intersection levels of service will be analyzed. When other projects are being proposed within the impact area of the project, the Planning Board may require these projects to be incorporated into the analysis.
 - m. When the analysis of the proposed project's impact on traffic indicates unsatisfactory CRF, levels of service or operating capacity on study area streets and intersections, a description of proposed improvements to remedy identified deficiencies must be included.
 - n. The base data collected and analyzed during the course of the traffic impact study.
 - o. If a development that requires a traffic impact study is within 500 feet of York or Eliot, Maine, or if the study identifies impacts on segments of Route 1 or Route 236 or on their intersections located in York or Eliot, Maine, the applicant must provide evidence that a copy of the impact study has been given to the impacted municipality's chief administrative officer;
- (3). Access to the Site. Vehicular access to and from the development shall be safe and convenient.
- a. Any driveway or proposed street shall be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards.
 - b. Points of access and egress shall be located to avoid hazardous conflicts with existing turning movements and traffic flows.
 - c. The grade of any proposed drive shall be not more than $\pm 3\%$ for a minimum of fifty (50) feet, from the intersection.
 - d. The intersection of any access/egress drive or proposed street shall function: (a) at a Level of Service of D following development if the project will generate one thousand (1,000) or more vehicle trips

- 1552 per twenty-four (24) hour period.
- 1553 e. Where a lot has frontage on two (2) or more streets, the primary
- 1554 access to and egress from the lot shall be provided from the street
- 1555 where there is less potential for traffic congestion and for traffic
- 1556 and pedestrians hazards. Access from other streets may be allowed
- 1557 if it is safe and does not promote shortcutting through the site.
- 1558 f. Where it is necessary to safeguard against hazards to traffic and
- 1559 pedestrians and/or to avoid traffic congestion, the applicant shall
- 1560 be responsible for providing turning lanes, traffic directional
- 1561 islands, and traffic controls within public streets.
- 1562 g. Accessways shall be designed and have sufficient capacity to avoid
- 1563 queuing of entering vehicles on any public street.
- 1564 h. The following criteria shall be used to limit the number of
- 1565 driveways serving a proposed project:
- 1566 i. No use which generates less than one hundred (100)
- 1567 vehicle trips per day shall have more than one (1) two-way
- 1568 driveway onto a single roadway. Such driveway shall be no
- 1569 greater than forty (40) feet wide.
- 1570 ii. No use which generates one hundred (100) or more vehicle
- 1571 trips per day shall have more than two (2) points of entry
- 1572 from and two (2) points of egress to a single roadway. The
- 1573 combined width of all accessways shall not exceed sixty
- 1574 (60) feet.
- 1575 iii. The Planning Board or Development Review Committee
- 1576 may limit a development to one (1) point of ingress/egress
- 1577 onto Routes 302, 35 and 115.
- 1578 (4). Accessway Location and Spacing. Accessways shall meet the following
- 1579 standards:
- 1580 a. Private entrances/exits shall be located at least fifty (50) feet from
- 1581 the closest unsignalized intersection and one hundred fifty (150)
- 1582 feet from the closest signalized intersection, as measured from the
- 1583 point of tangency for the corner to the point of tangency for the
- 1584 accessway. This requirement may be reduced if the shape of the
- 1585 site does not allow conformance with this standard.
- 1586 b. Private accessways in or out of a development shall be separated
- 1587 by a minimum of seventy-five (75) feet where possible.
- 1588 c. Accessways shall be aligned with accessways on the opposite side
- 1589 of a public street to the greatest extent possible.
- 1590 (5). Internal Vehicular Circulation. The layout of the site shall provide for the
- 1591 safe movement of passenger, service, and emergency vehicles through the
- 1592 site.
- 1593 a. Nonresidential projects that will be served by delivery vehicles
- 1594 shall provide a clear route for such vehicles with appropriate
- 1595 geometric design to allow turning and backing for a minimum of

- 1596 SU-30 vehicles.
- 1597 i. If the project is to be served by “tractor-trailer” delivery
1598 vehicles, a clear route for such vehicles with appropriate
1599 geometric design shall allow for turning and backing for a
1600 minimum of WB-50 vehicles.
- 1601 b. Clear routes of access shall be provided and maintained for
1602 emergency vehicles to and around buildings and shall be posted
1603 with appropriate signage (fire lane - no parking).
- 1604 c. The layout and design of parking areas shall provide for safe and
1605 convenient circulation of vehicles throughout the lot.
- 1606 d. All roadways shall be designed as follows:
- 1607 i. To harmonize with the topographic and natural features of
1608 the site insofar as practical by minimizing filling, grading,
1609 excavation, or other similar activities which result in
1610 unstable soil conditions and soil erosion,
- 1611 ii. By fitting the development to the natural contour of the
1612 land and avoiding substantial areas of excessive grade and
1613 tree removal, and by retaining existing vegetation during
1614 construction,
- 1615 iii. The road network shall provide for vehicular, pedestrian,
1616 and cyclist safety, all season emergency access, snow
1617 storage, and delivery and collection services.
- 1618 e. Nonresidential projects that include drive-through services shall be
1619 designed and have sufficient stacking capacity to avoid the
1620 queuing of vehicles on any public street.

1621 H. Cluster Residential Development

1622 [Amended 9-26-2011 by Ord. No. 11-15; 9-24-2012 by Ord. No. 12-09]

1623 (1). Purpose.

1624 To implement adopted Comprehensive Plan policies regarding the Town's
1625 natural, scenic, marine, cultural and historic resources, land use patterns
1626 and recreation and open space, this article is intended to encourage and
1627 allow new concepts and innovative approaches to housing/commercial
1628 development and environmental design so development will be a
1629 permanent and long-term asset to the Town, while in harmony with the
1630 natural features of the land, water and surrounding development.

1631 Objectives include:

- 1632 a. Efficient use of the land and water, with small networks of utilities
1633 and streets;
- 1634 a. Preservation of open space and creation of recreation areas;
- 1635 b. Maintenance of rural character, preserving farmland, forests and
1636 rural viewsapes;
- 1637 c. Preservation of areas with the highest ecological value;
- 1638 d. Location of buildings and structures on those portions of the site

- 1639 most appropriate for development;
- 1640 e. Creation of a network of contiguous open spaces or "greenways"
- 1641 by linking the common open spaces within the site and to open
- 1642 space on adjoining lands wherever possible;
- 1643 f. Reduction of impacts on water resources by minimizing land
- 1644 disturbance and the creation of impervious surfaces and
- 1645 stormwater runoff;
- 1646 g. Preservation of historic, archaeological, and cultural features; and
- 1647 h. Minimization of residential development impact on the
- 1648 municipality, neighboring properties and the natural environment.
- 1649 (2). Permitted zones.
- 1650 a. Cluster residential development is permitted in various zones as
- 1651 indicated in Chapter 16.4, Land Use Zone Regulations.
- 1652 (3). Dimension standards modifications.
- 1653 Notwithstanding other provisions of this title relating to dimensional
- 1654 standards, the Planning Board, in reviewing and approving proposed
- 1655 residential development under this article, may modify said dimensional
- 1656 standards to permit flexibility in approaches to site design in accordance
- 1657 with the standards of this title. The Board may allow subdivision or site
- 1658 development with modified dimensional standards where the Board
- 1659 determines the benefit of a cluster development is consistent with this title.
- 1660 Such modifications may not be construed as granting variances to relieve
- 1661 hardship.
- 1662 (4). Property ownership.
- 1663 Tracts or parcels of land involved in a development proposed under this
- 1664 article must be in single ownership; or must be the subject of an
- 1665 application filed jointly by the owners of all properties included; or must
- 1666 have an applicant with vested interest in all property included. Pursuant to
- 1667 the requirements of this article, mobile home parks or mobile homes on
- 1668 individual lots are not eligible for cluster residential development.
- 1669 (5). Application procedure.
- 1670 All development reviewed under this article is subject to the application
- 1671 procedures in §16.8, Subdivision Review, and the following:
- 1672 a. In addition to the requirements of § 16.8, Subdivision Review, the
- 1673 following are required at submittal of the sketch plan:
- 1674 i. Calculations and maps to illustrate:
- 1675 a. Proposed dimensional modifications and the
- 1676 dimensional standards required in the zone in which
- 1677 the development will be located;
- 1678 b. All land area identified in § 16.5.17, Net Residential
- 1679 Acreage; [Amended 9-28-2015 by Ord. No. 15-05]
- 1680 c. Net residential density; and [Amended 9-28-2015
- 1681 by Ord. No. 15-05]

- 1682 d. Open space as defined in § 16.8.10.H.(6).e, of this
1683 article.
- 1684 ii. A map showing constraints to development, such as, but
1685 not limited to, wetlands, resource protection zones,
1686 shoreland zones, deer wintering areas, side slopes in excess
1687 of 33%, easements, rights-of-way, existing roads, driveway
1688 entrances and intersections, existing structures, and existing
1689 utilities.
- 1690 iii. A written statement describing the ways the proposed
1691 development furthers the purpose and objectives of this
1692 article, including natural features which will be preserved
1693 or enhanced. Natural features include, but are not limited
1694 to, moderate-to-high-value wildlife and waterfowl habitats,
1695 important agricultural soils, moderate-to-high-yield
1696 aquifers and important natural or historic sites worthy of
1697 preservation.
- 1698 iv. The location of each of the proposed building envelopes.
1699 Only developments having a total subdivision or site plan
1700 with building envelopes will be considered.
- 1701 b. An applicant with a project that includes proposed public open
1702 space must obtain Town Council acceptance for the public land or
1703 easement following preliminary plan approval. Town Council
1704 acceptance is contingent upon receipt of final plan approval by the
1705 Planning Board.
- 1706 (6). Standards.
- 1707 a. The purpose and intent of this title must be upheld for any reviews
1708 conducted under this article.
- 1709 b. A cluster residential development must meet all requirements for a
1710 subdivision (and site plan where applicable) and all other
1711 applicable federal, state and local ordinances, except as modified
1712 by action of the Planning Board, where authorized.
- 1713 c. Public or privately shared sewer and water must be provided unless
1714 it is demonstrated to the Planning Board's satisfaction that
1715 alternative methods used result in a development that is compatible
1716 with this Article XI.
- 1717 d. Unless a public or shared sewer collection and treatment system is
1718 provided, no lot may be smaller than 20,000 square feet per single-
1719 family residence and 8,000 square feet per bedroom per
1720 multifamily residence as outlined in the Maine Minimum Lot Size
1721 Law, 12 M.R.S. § 4807-A.
- 1722 e. Open space requirements.
- 1723 i. Open space must contain at least 50% of the total area of
1724 the property and no less than 30% of the total net
1725 residential acreage, as defined.

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- ii. Total calculated open space must be designated as follows (see open space definitions in Chapter 16.2):
 - a. Open space, reserved;
 - b. Open space, common; and/or
 - c. Open space, public.
 - iii. The use of any open space may be further limited or controlled by the Planning Board at the time of final approval, where necessary, to protect adjacent properties or uses.
 - iv. Open space must be deeded in perpetuity for the recreational amenity and environmental enhancement of the development and be recorded as such. Such deed provisions may include deed/plan restrictions, private covenants, or arrangements to preserve the integrity of open spaces and their use as approved by the Planning Board.
 - v. Open space must also be for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover as identified in the applicant's written statement. In the **Business Park (BP) Zone**, open space may be both man-made and natural. Man-made open space must be for the development of recreational areas, pedestrianways and aesthetics that serve to interconnect and unify the built and natural environments.
 - vi. Open space should be in a contiguous form of unfragmented land to protect natural resources, including plant and wildlife habitats.
 - vii. A portion of the open space should be in close proximity to other open spaces used for recreation (e.g., a common green, multipurpose athletic field, gardens, and playgrounds).
 - f. **In the Business Park (BP) Zone**, the maximum building height is 40 feet. If the Planning Board finds that provisions for firesafety are adequate to allow buildings of greater height, then the Board may allow a building height of up to 60 feet as a part of the development plan review and approval process.
 - g. In cluster residential developments, no individual lot or dwelling unit may have direct vehicular access onto a public road existing at the time of development.
 - h. Where cluster residential development abuts a body of water, stream, or a significant wetland, then a usable portion of the shoreline, as well as reasonable access to such body, stream or wetland, must be a part of the commonly held land.
 - i. The developer must take into consideration the following points,

1770 and illustrate the treatment of buildings, structures, spaces, paths,
1771 roads, service and parking areas, recreational facilities, and any
1772 other features determined by the Planning Board to be a part of the
1773 proposed development.

1774 i. Orientation. Buildings, view corridors and other
1775 improvements are to be designed so scenic vistas and
1776 natural features are integrated into the development.
1777 Buildings should be sited to consider natural light and
1778 ventilation.

1779 ii. Utility installation. All utilities are to be installed
1780 underground, wherever possible. The Planning Board must
1781 require the developer to adopt a prudent avoidance
1782 approach when permitting aboveground electrical service
1783 installations. Transformer boxes, pumping stations and
1784 meters must be located so as not to be unsightly or
1785 hazardous to the public.

1786 iii. Recreation. Facilities must be provided consistent with the
1787 development proposal. Active recreation requiring
1788 permanent equipment and/or modification of the site may
1789 not be located within the wetland setback areas or
1790 contiguous reserved open space areas.

1791 iv. Buffering. Planting, landscaping, form and siting of
1792 buildings and other improvements, or fencing and
1793 screening must be used to integrate the proposed
1794 development with the landscape and the character of any
1795 surrounding development.

1796 v. Development setbacks. Setbacks from wetlands and water
1797 bodies must demonstrate compliance to Table 16.9 of
1798 Chapter 16.9. These setbacks must be permanently
1799 maintained as "no cut, no disturb" buffer areas. If the
1800 setback areas are not of substantial vegetation to provide a
1801 sufficient buffer, the Planning Board may require additional
1802 plantings.

1803 j. The location of subsurface wastewater disposal systems and a
1804 reserve area, if required, must be shown on the plan. The reserve
1805 areas must be restricted so as not to be built upon. The report of a
1806 site evaluator, licensed by the State of Maine, must accompany the
1807 plan. If the subsurface disposal system is an engineered system,
1808 approval from the Maine Department of Human Services, Division
1809 of Health Engineering, and the Municipal Plumbing Inspector must
1810 be obtained prior to Planning Board approval.

1811 (7). Open space dedication and maintenance.

1812 a. Prior to approval of the final plan by the Planning Board,
1813 documents for open space must be submitted to the Town for
1814 review by legal counsel. Subsequent to approval, there may be no

1815 further division of the open space; however, tracts or easements
1816 dedicated for public utilities, public access or structures accessory
1817 to noncommercial recreation, agriculture or conservation may be
1818 permitted within the open space.

1819 b. The open space(s) must be shown on the development plan with
1820 appropriate notation on the face thereof to indicate that:

1821 i. The open space must not be used for future building lots;
1822 and

1823 ii. A part or all of the open space may be dedicated for
1824 acceptance by the Town.

1825 c. If any, or all, of the open space is to be reserved for ownership by
1826 the residents and/or by commercial entities, the bylaws of the
1827 proposed homeowners' or similar governing association for
1828 commercial owners (in the Business Park Zone) and/or the
1829 recorded covenants must specify maintenance responsibilities and
1830 be submitted to the Planning Board prior to approval. See
1831 Subsection A above.

1832 d. Association responsibilities.

1833 i. Maintenance. The homeowners' association or similar
1834 association for commercial owners is responsible for the
1835 maintenance of open space(s) and other common facilities
1836 unless and until accepted by the Town. The stormwater
1837 management system must be maintained in accordance
1838 with § 16.10.8.F, Post-construction stormwater
1839 management. Associations must maintain adequate funds to
1840 defray these expenses. The Planning Board shall require an
1841 initial capital fund for associations to be paid by the
1842 developer to cover these expenses.

1843 ii. Inspection. Annually, by June 30, the developer or
1844 association must complete and submit to the Code
1845 Enforcement Officer a maintenance compliance report, on a
1846 form prepared by the Code Enforcement Officer, certifying
1847 compliance with any open space use and protection
1848 requirements. Said report must be completed by a Maine
1849 licensed civil engineer or certified soil scientist.

1850 e. Transition of responsibility. The developer must maintain control
1851 of such open space(s) and be responsible for maintenance until
1852 development, sufficient to support any and all associations,
1853 residential or commercial, has taken place. Responsibility and
1854 authority must be clearly defined and described in the recorded
1855 covenants, and such information must be distributed to any and all
1856 associations in a timely manner so the transition of responsibilities
1857 is seamless.

1858 (8). Predevelopment requirements.

1859 Prior to the beginning of site work, the applicant must file with the Town

1860 Planning Department all required performance guarantees and inspection
1861 escrows in forms acceptable to the Town Manager in accordance with
1862 § 16.10.8.2B.

1863 I. Utilities

1864 (1). Approval.

1865 The size, type and location of public utilities, such as streetlights,
1866 electricity, telephone, cable television, natural gas lines, fire hydrants,
1867 water and sewer lines, etc., must be approved by the Board and installed in
1868 accordance with accepted engineering practice.

1869 (2). Underground installation.

1870 Utilities, where feasible, are to be installed underground. The Board must
1871 require the developer to adopt a prudent avoidance approach when
1872 aboveground electrical installations are approved.

1873 J. Subdivision Noise Pollution Buffer

1874 (1). Green strip.

1875 Subdivision design must minimize the possibility of noise pollution either
1876 from within or without the development (from highway or industrial
1877 sources) by providing and maintaining a green strip at least 20 feet wide
1878 between the abutting properties that are so endangered.

1879 K. Prevention of erosion

1880 [Amended 9-26-2011 by Ord. No. 11-15; 10-26-2015 by Ord. No. 15-12]

1881 (1). No person may perform any act or use the land in a manner which would
1882 cause substantial or avoidable erosion, create a nuisance, or alter existing
1883 patterns of natural water flow in the Town. This does not affect any
1884 extractive operations complying with the standards of performance
1885 specified elsewhere in this title.

1886 a. When an excavation contractor, as defined in § 16.2.2, performs an
1887 activity that requires or results in more than one cubic yard of soil
1888 disturbance within the Shoreland or Resource Protection Overlay
1889 Zones, there must be a person responsible for management of
1890 erosion and sedimentation control practices on site, and that person
1891 must be certified in erosion control practices by the Maine
1892 Department of Environmental Protection. This person must be
1893 present at the site each day earthmoving activity occurs for a
1894 duration that is sufficient to ensure that proper erosion and
1895 sedimentation control practices are followed. This is required until
1896 erosion and sedimentation control measures have been installed,
1897 which will either stay in place permanently or stay in place until
1898 the area is sufficiently covered with vegetation necessary to
1899 prevent soil erosion. The name and certification number of the
1900 person who will oversee the activity causing or resulting in soil
1901 disturbance must be included on the permit application. Excavation
1902 contractors will have one year from the date of the adoption of this
1903 subsection to comply with certification requirements.

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- a. The above requirement of § 16.8.10.K.(1).a does not apply to a property owner performing work themselves, or a person or firm engaged in agriculture or timber harvesting when best management practices for erosion and sedimentation control are used.
 - b. The above requirement of § 16.8.10.K.(1).a only applies to regulated activities requiring local, state or federal permits and/or Planning Board approval.
- (2). All development must generally comply with the provisions of the "Environmental Quality Handbook, Erosion and Sediment Control," published by the Maine Soil and Water Conservation Commission.
- a. The developer must:
 - i. Select a site with the right soil properties, including natural drainage and topography, for the intended use;
 - ii. Utilize for open space uses those areas with soil unsuitable for construction;
 - iii. Preserve trees and other vegetation wherever possible;
 - iv. Hold lot grading to a minimum by fitting the development to the natural contour of the land; avoid substantial areas of excessive grade;
 - v. Spread jute matting, straw or other suitable material during construction in critical areas subject to erosion;
 - vi. Construct sediment basins to trap sediment from runoff waters during development; expose as small an area of subsoil as possible at any one time during development and for as short a period as possible;
 - vii. Provide for disposing of increased runoff caused by changed land formation, paving and construction, and for avoiding sedimentation of runoff channels on or off the site;
 - viii. Plant permanent and, where applicable, indigenous, vegetation and install structures as soon as possible for the purpose of soil stabilization and revegetation;
 - b. All logging or woodlot roads must be located, constructed and maintained in conformance with the erosion prevention provisions of "Permanent Logging Roads for Better Woodlot Management," published by the United States Department of Agriculture.
- (3). Where the Board has required a stormwater management and erosion control plan, said plan must be endorsed by the York County Soil and Water Conservation District or found satisfactory by the Town's Engineering Peer Reviewer.
- (4). All activities which involve filling, grading, excavation or other similar activities that potentially may result in unstable soil conditions, and which require a permit, must be made known in a written soil erosion and

- 1947 sedimentation control plan in accordance with the "Maine Erosion and
1948 Sediment Control Practices Field Guide for Contractors," 2015, and as
1949 amended. The plan must be submitted to the permitting authority for
1950 approval and must include, where applicable, provisions for:
- 1951 a. Mulching and revegetation of disturbed soil;
 - 1952 b. Temporary runoff control features, such as straw bales, silt
1953 fencing, filter socks or diversion ditches;
 - 1954 c. Permanent stabilization structures, such as retaining walls or
1955 riprap.
- 1956 (5). To create the least potential for erosion, development must be designed to
1957 fit with the topography and soil of the site. Areas of steep slopes where
1958 high cuts and fills may be required are to be avoided wherever possible,
1959 and natural contours must be followed as closely as possible.
- 1960 (6). Erosion and sedimentation control measures apply to all aspects of the
1961 proposed project involving land disturbance and must be in operation
1962 during all stages of the activity. The amount of exposed soil at every phase
1963 of construction must be minimized to reduce the potential for erosion.
- 1964 (7). Any exposed ground area must be temporarily or permanently stabilized in
1965 accordance with the "Maine Erosion and Sediment Control Practices
1966 Field Guide for Contractors," 2015, and as amended. All erosion control
1967 measures that are no longer necessary as determined by the CEO or
1968 Shoreland Resource Officer must be removed at the owner's expense.
- 1969 (8). Natural and man-made drainageways and drainage outlets must be
1970 protected from erosion from water flowing through them. Drainageways
1971 must be designed and constructed in order to carry water from a twenty-
1972 five-year storm or greater and be stabilized with vegetation or lined with
1973 riprap.
- 1974 L. Soil suitability
- 1975 [Amended 9-28-2015 by Ord. No. 15-07]
- 1976 (1). The requirements and standards of the State of Maine Department of
1977 Environmental Protection, Department of Health and Welfare, the latest
1978 edition of the State Plumbing Code and this title must be met.
 - 1979 (2). All land uses must be located on soils upon which the proposed uses or
1980 structures can be established or maintained without causing adverse
1981 environmental effects, including, but not limited to, severe erosion, mass
1982 soil movement, improper drainage, and water pollution to surface water
1983 and groundwater, whether during or after construction.
 - 1984 (3). Any proposed development requires a soil report based on information
1985 from the Maine Natural Resources Conservation Service (NRCS). Where
1986 subsurface wastewater disposal is required and the Soil Survey for York
1987 County or information from the Maine NRCS shows soils with severe
1988 restrictions for development, a Class A (high-intensity) soil survey must
1989 be provided by a soil scientist certified in the State of Maine. The survey

1990 must be based on the Maine Association of Professional Soil Scientists
1991 Standards for Soil Survey, revised 3/2009, or subsequent revision. In
1992 addition to evaluating soil properties, the soil scientist shall analyze and
1993 document characteristics of surrounding land and water areas, maximum
1994 groundwater elevation, presence of ledge, drainage conditions and any
1995 other data deemed appropriate by the soil scientist or required by the
1996 Planning Board. The soil scientist shall include recommendations for the
1997 proposed use to counteract soil limitations where any exist. A Class A soil
1998 survey must include a written soil narrative report accompanied by a soil
1999 map that depicts soil delineations and symbols identified in the report. The
2000 soil map must be prepared at the same scale as that of the development
2001 plan, with wetlands and floodplain depicted on both.

(4). When constructing a new dwelling unit on soils identified with severe
2002 restrictions, requiring subsurface wastewater disposal and on a lot not
2003 subject to subdivision regulation, a Class A (high-intensity) soil survey is
2004 not required. However, the site's soil suitability must be assessed and
2005 documented in a soil report by a Maine-certified soil scientist, a Maine-
2006 certified geologist, or a Maine-licensed site evaluator. Prior to the issuance
2007 of a building permit, the soil report must be submitted to the Code
2008 Enforcement Officer (CEO) for review and assessment of compliance with
2009 this title.

(5). Cluster residential, commercial or industrial development and similar
2011 intensive land uses require a Class A (high-intensity) soil survey by a
2012 Maine-certified soil scientist.

(6). Where nonclustered development is limited in scale and intensity, the
2014 developer may request the Class A (high-intensity) soil survey required by
2015 § 16.9.1.4E above be waived by the Planning Board. The Board may grant
2016 said waiver only after consideration by the Town's Peer Review Engineer
2017 of the developer's explanation as to why a Class A soil survey is not
2018 warranted. In the event a Class A soil survey is not required, the site's soil
2019 suitability must be sufficiently assessed for compliance with this title.

2021 M. Water quality and wastewater pollution.

(1). No activity is allowed to deposit on or into the ground or discharge to any
2022 river, stream or brook, pond, or wetland any pollutant that, by itself or in
2023 combination with other activities or substances, will impair designated
2024 uses or the water classification of the water body.

(2). Wastewater to be discharged into Kittery Sewer Department sewers,
2026 should they be available, must be in such quantities and/or of such quality
2027 as to be compatible with standards established by the municipality or the
2028 Sewer Department.

(3). To meet those standards, the municipality or Sewer Department may
2030 require that such wastes undergo pretreatment or full treatment at the site
2031 in order to render them acceptable for the treatment processes.

(4). The disposal of wastewater by means other than a public system must
2033 comply with the laws of the State of Maine and the Town concerning
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2035 water pollution. Where a public sanitary sewer system is located within
2036 200 feet of the property line as measured along a public way, the Town
2037 requires individual entrance into said sewer.
2038 (5). Discharge of sanitary wastes to any water body is subject to the issuance
2039 of Maine State Department of Environmental Protection licenses, but no
2040 such off-site discharge will be allowed unless same is buried or not visible
2041 to a point below normal low water and is secured against damage and
2042 uncovering by the tides, erosion or other foreseeable action.

2043 N. Floodplain areas.

2044 [Amended 9-26-2011 by Ord. No. 11-15]

2045 (1). Land along rivers, streams and ponds which is subject to flooding through
2046 storm or seasonal action, called floodplain areas, may be used for
2047 woodland, grassland, agricultural or outdoor recreational use. The Code
2048 Enforcement Officer shall maintain a map showing the latest updated
2049 federal and state information of the known floodplain areas, and no
2050 building shall be constructed therein when there are undue flooding
2051 hazards, unless it can meet all requirements of § 16.5.10, Floodplain
2052 Management, relating to flood hazard permit and review procedure, of this
2053 title. Floodplain areas shall be considered as those areas within the one-
2054 hundred-year frequency floodplain, as identified by an authorized federal
2055 or state agency, or where such identification is not available, are located
2056 on floodplain soils identified as described in the York County Soil Survey
2057 to comprise the following soil types: Alluvial-Ondawa fsl; Podunk fsl;
2058 Rumney fsl; Saco sl.

2059 O. Retention of Open Spaces and Natural or Historic Features

- 2060 (1). Tree clearing.
2061 Proposed development plans must, by notes on the final plan and deed
2062 restrictions, limit the clearing of trees to those areas designated on the
2063 plans.
- 2064 (2). Clearing or removal of vegetation for uses other than timber harvesting in
2065 Resource Protection or Shoreland Overlay Zone.
- 2066 a. In a Resource Protection or Shoreland Overlay Zone, cutting of
2067 vegetation is prohibited within the strip of land extending 100 feet,
2068 horizontal distance, inland from the normal high-water line, except
2069 to remove safety hazards. Elsewhere in a Resource Protection or
2070 Shoreland Overlay Zone, the cutting or removal of vegetation is
2071 limited to that which is necessary for uses expressly authorized in
2072 the Resource Protection or Shoreland Overlay Zone.
 - 2073 b. Except in areas as described in § 16.8.10.O.(1) and
2074 § 16.8.10.O.(2).a, above and 100 feet, horizontal distance, from
2075 any other water body, tributary stream or the upland edge of a
2076 wetland, a buffer strip of vegetation must be preserved as follows:
 - 2077 i. Clearance of an opening greater than 250 square feet in the
2078 forest canopy, or other existing woody vegetation if a

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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

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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-

2116 foot rectangle area. If five saplings do not exist, no woody
2117 stems less than two inches in diameter may be removed
2118 until five saplings have been recruited into the plot.

2119 iv. Notwithstanding the above provisions, no more than 40%
2120 of the total volume of trees four inches or more in diameter,
2121 measured at 4 1/2 feet above ground level, may be removed
2122 in any ten-year period.

2123 a. To protect water quality and wildlife habitat,
2124 existing vegetation under three feet in height and
2125 other ground cover, including leaf litter and the
2126 forest duff layer, must remain uncut, uncovered or
2127 undisturbed, except to provide for a footpath or
2128 other permitted uses as described in
2129 § 16.8.10.O.(2).ii above.

2130 a. Pruning of tree branches on the bottom 1/3 of the
2131 tree is allowed.

2132 b. To maintain a buffer strip of vegetation, when the
2133 removal of storm-damaged, diseased, unsafe or
2134 dead trees results in the creation of cleared
2135 openings, these openings must be replanted with
2136 tree species that are suitable to Kittery's growing
2137 conditions unless existing new tree growth is
2138 present. See Design Handbook Kittery Maine,
2139 approved by the Kittery Planning Board, August 11,
2140 2005, pages 13 and 14, for the listing of approved
2141 plant materials.

2142 c. Article II of this chapter does not apply to those
2143 portions of public recreational facilities adjacent to
2144 public swimming areas as long as cleared areas are
2145 limited to the minimum area necessary.

2146 c. At distances greater than 100 feet, horizontal distance, from the
2147 normal high-water line of any other water body, tributary stream,
2148 or the upland edge of a coastal wetland, and 100 feet, horizontal
2149 distance, from the normal high-water line of any other water body,
2150 tributary stream, or the upland edge of a wetland, there will be
2151 allowed on any lot, in any ten-year period, selective cutting of not
2152 more than 40% of the volume of trees four inches or more in
2153 diameter, measured 4 1/2 feet above ground level. Tree removal in
2154 conjunction with the development of permitted uses must be
2155 included in the forty-percent calculation. For the purposes of these
2156 standards, volume may be considered to be equivalent to basal
2157 area.

2158 d. It is not permissible to clear openings for any purpose, including
2159 but not limited to principal and accessory structures, driveways,
2160 lawns and sewage disposal areas, exceeding in the aggregate 25%

2161 of the lot area within the Resource Protection or Shoreland Overlay
2162 Zone or 10,000 square feet, whichever is greater, including land
2163 previously cleared. This provision does not apply to the
2164 Commercial Fisheries/Maritime Activities Zones.

2165 e. Legally existing nonconforming cleared openings may be
2166 maintained, but must not be enlarged, except as allowed by this
2167 title.

2168 f. Fields and other cleared openings which have reverted to primarily
2169 shrubs, trees or other woody vegetation will be regulated under the
2170 provisions of this chapter.

2171 (3). Land dedication.
2172 Reserved land acceptable to the Planning Board and applicant may be
2173 gifted to the municipality as a condition of approval, only when Council
2174 has agreed to the gifting.

2175 (4). Landscape plan for preservation of natural and historic features.
2176 a. The applicant is required to submit a proposed development design
2177 plan(s) that includes a landscape plan showing:
2178 i. Preservation of existing trees 10 inches or more caliper at
2179 breast height;
2180 ii. Replacement of trees and vegetation;
2181 iii. Graded contours;
2182 iv. Streams, wetlands and water bodies; and
2183 v. Preservation of scenic, historic or environmentally
2184 significant areas.

2185 b. Cutting of trees on the northerly borders of lots should be avoided
2186 as far as possible to provide a natural wind buffer.

2187 c. Unless the applicant can demonstrate it is impracticable, street and
2188 lot layout must be adapted to the topography. Extensive grading
2189 and filling must be avoided as much as possible.

2190 (5). Archaeological or historic sites.
2191 a. When the proposed development contains any identified
2192 archaeological or historic sites or any areas identified by the Maine
2193 Critical Areas Program as rare and irreplaceable natural areas,
2194 these areas must be included in a development plan's open space,
2195 and suitably protected by appropriate covenants and management
2196 plans.

2197 a. Any proposed land use activity involving structural development
2198 or soil disturbance on or adjacent to sites listed on or eligible to be
2199 listed on the National Register of Historic Places must be
2200 submitted by the applicant to the Maine Historic Preservation
2201 Commission for review and comment at least 20 days prior to
2202 action being taken by the Town Planner and/or the Planning Board.
2203 The development Review Authority will consider comments

2204 received from the Commission prior to rendering a decision on the
2205 application.

2206 b. In Shoreland, Resource Protection or Commercial
2207 Fisheries/Maritime Uses Overlay Zones, a permit is not required
2208 for an archaeological excavation, provided the excavation is
2209 conducted by an archaeologist listed on the State Historic
2210 Preservation Officer's Level 1 or Level 2 approved list, and
2211 unreasonable erosion and sedimentation is prevented by means of
2212 adequate and timely temporary and permanent stabilization
2213 measures.

2214 P. Technical and Financial Capacity

2215 (1). Financial Capacity.

2216 a. The applicant shall have adequate financial resources to construct
2217 the proposed improvements and meet the criteria of the standards
2218 of these regulations. In making its determination the Planning
2219 Board shall consider all relevant evidence to the effect that the
2220 developer has the financial capacity to construct, operate, and
2221 maintain all aspects of the development. The Board shall also
2222 consider the proposed time frame for construction and the effects
2223 of inflation.

2224 (2). Technical Ability

2225 a. (The applicant shall retain qualified contractors and consultants to
2226 supervise, construct and inspect the required improvements in the
2227 proposed subdivision.

2228 a. In determining the applicant's technical ability the Board shall
2229 consider the applicant's previous experience, the experience and
2230 training of the applicant's consultants and contractors, and the
2231 existence of violations of previous approvals granted to the
2232 applicant.

2233 16.8.11 Post-Approval

2234 A. Approved final plan.

2235 (1). No subdivision plan shall be released for recording at the Registry of
2236 Deeds until the required performance guarantee has been posted. If an
2237 approved plan is not recorded in the Registry of Deeds within one (1) year
2238 of the original approval, it shall become null and void. The Planning
2239 Board may grant an extension as particular circumstances dictate, which
2240 may not exceed an additional ninety day period. Where applicable, the
2241 stormwater and erosion control maintenance agreement that must be
2242 included in the document of covenants, homeowners' documents and/or as
2243 riders to the individual deed must be recorded with the York County
2244 Registry of Deeds.

2245 B. Subdivision plan filing, recording. Prior to recording a subdivision plan in the

2246 York County Registry of Deeds, a subdivider must have acquired Planning Board
2247 approval in accordance with this title.

2248 C. Subdivision land conveyance.

2249 (1). No person, firm, corporation, or other legal entity may convey, offer, or
2250 agree to convey any land in a subdivision which has not been approved by
2251 the Planning Board, recorded in the York County Registry of Deeds and
2252 shown on the final plan as a separate lot.

2253 (2). Subdivision frontage street completion. No lot in a subdivision may be
2254 sold, leased or otherwise conveyed before the street upon which such lot
2255 has frontage is completed to rough grade standard up to and including the
2256 entire frontage of the lot. Prior to the issuance of certificates of occupancy
2257 by the CEO, the street from which the unit is accessed must be completed
2258 in accordance with § 16.5.25, Streets and Pedestrianways/Sidewalks Site
2259 Design Standards.

2260 D. Approved plan expiration. [Amended 1-28-2015 by Ord. No. 15-01]

2261 (1). A subdivision plan's approval will expire if work has not commenced
2262 within one year from the Planning Board date of approval. Where work
2263 has commenced within one year of such approval, the approval will expire
2264 unless work is complete within three years of the original date of Planning
2265 Board approval.

2266 (2). Prior to expiration, the Planning Board may, on a case-by-case basis, grant
2267 extensions to an approved plan expiration date upon written request by the
2268 developer for an inclusive period from the original approval date, not to
2269 exceed five years for a subdivision plan and three years for all other
2270 development plans.

2271 (3). When a plan's approval expires, the applicant may reapply subject to the
2272 Town Code current at the time of reapplication.

2273 E. Approval not acceptance of property. The approval by the Planning Board of a
2274 plan, a master site development plan or any other subsequent development plan
2275 does not constitute, nor is it evidence of, any acceptance by the municipality of
2276 any street, easement or other open space shown on the plan. When a park,
2277 playground or other recreation area is shown on the plan, approval of the plan
2278 does not constitute an acceptance by the municipality of such areas. The Planning
2279 Board must require the plan to be endorsed with appropriate notes to this effect.
2280 The Planning Board may also require the filing of a written agreement between
2281 the applicant and the municipal officials covering future deed and title, dedication
2282 and provision for the cost of grading, development, equipment and maintenance
2283 of any such recreation area.

2284 F. Performance Guarantees

2285 (1). Types of Guarantees. The applicant shall provide one of the following
2286 performance guarantees for an amount adequate to cover 100% of the total
2287 construction costs of all required improvements, plus an additional 10% as
2288 contingency. A performance guarantee shall not expire between October

- 2289 31 and Aril 15 the following year.
- 2290 a. Certified check payable to the municipality or a savings account or
- 2291 certificate of deposit naming the municipality as owner, for the
- 2292 establishment of an escrow account;
- 2293 i. For any account opened by the applicant, the Town of
- 2294 Windham shall be named as owner or co-owner, and the
- 2295 consent of the Town shall be required for a withdrawal.
- 2296 b. An irrevocable letter of credit, from a financial institution
- 2297 approved by the Town Manager, establishing funding for the
- 2298 construction of the subdivision, from which the municipality may
- 2299 draw if construction is inadequate.
- 2300 i. The letter of credit shall use the template established by the
- 2301 Town of Kittery.
- 2302 (2). Contents of guarantee. The performance guarantee shall contain the
- 2303 following:
- 2304 a. Construction schedule;
- 2305 b. Itemized construction cost estimates for roadways, curbing,
- 2306 esplanades, sidewalks, sanitary sewerage systems, storm drainage
- 2307 systems, utilities, street lighting, tree planting, erosion and
- 2308 sedimentation control measures, and other public improvements
- 2309 for each major phase of construction, taking into account inflation;
- 2310 c. Provisions for inspections of each phase of construction;
- 2311 d. Provisions for the release of part or all of the performance
- 2312 guarantee to the developer; and
- 2313 e. A date after which the applicant will be in default and the
- 2314 municipality shall have access to the funds to finish construction.
- 2315 (3). Release of Guarantee. Prior to the release of any part of the performance
- 2316 guarantee, the Town Manager shall determine to his/her satisfaction, in
- 2317 part based upon the report of the Town's Engineer or other qualified
- 2318 individual retained by the municipality and any other agencies and
- 2319 departments who may be involved, that the proposed improvements meet
- 2320 or exceed the design and construction requirements for that portion of
- 2321 phase of the subdivision for which the release is requested.
- 2322 a. Performance guarantees may be reduced periodically, but in no
- 2323 event more than one (1) time per month. In no case shall the
- 2324 performance guarantee be reduced by less than ten thousand
- 2325 dollars (\$10,000) at one time or in any line item where
- 2326 improvements remain to be completed.
- 2327 b. No performance guarantee shall be reduced to less than the ten
- 2328 (10) percent contingency until all work is complete.
- 2329 c. The Town shall retain the 10% performance guarantee contingency
- 2330 for a period of one (1) year from the date of final paving for any
- 2331 street to be offered for public acceptance. The guarantee shall

2332 ensure the workmanship and the durability of all materials used in
2333 the construction of public improvements within the right-of-way
2334 that may become defective within that one (1) year period, as
2335 determined by the Director of Public Works.

2336 (4). Default. If upon investigation, the town's consulting engineer or other
2337 qualified individual retained by the Town finds that any of the required
2338 improvements have not been constructed in general conformance with the
2339 plans and specifications filed as part of the application, he or she shall so
2340 report in writing to the Code Enforcement Officer, the Town Manager, the
2341 Planner and the applicant or builder. The Town Manager, or his or her
2342 designee, shall take any steps necessary to preserve the municipalities
2343 rights.

2344 G. Inspection of required improvements. [Amended 9-28-2015 by Ord. No. 15-08]

2345 (1). Prior to the commencement of any work associated with development
2346 approved in accordance with this title, the developer or duly authorized
2347 representative must provide a schedule of expected construction activities
2348 by phase to the inspecting official, which may be the Code Enforcement
2349 Officer (CEO) or their representative or, when applicable, the Town's Peer
2350 Review Engineer, and coordinate a preconstruction meeting. Attendance at
2351 said meeting must at a minimum include authorized representation from
2352 the Town, the developer and their general contractor. Meeting minutes
2353 must be prepared by the Town's representative and distributed to all
2354 attendees and the Town Planner.

2355 (2). The developer or general contractor shall coordinate inspections with the
2356 inspecting official and provide written notice at least seven days prior to
2357 commencing each major phase of construction as outlined in the
2358 construction schedule. When all phases of work are complete, the general
2359 contractor shall request a final inspection from the inspecting official, who
2360 shall prepare a punch list of any outstanding items to be completed, within
2361 seven days of the final inspection. Once all outstanding items have been
2362 completed, the developer or the general contractor shall coordinate a final
2363 walk-through where the inspecting official determines if the construction
2364 has been completed in accordance with the approved plans. The inspecting
2365 official shall provide, in writing, to the developer or the general contractor
2366 within seven days of the final walk-through what, if any, construction is
2367 not complete or confirm that the development is complete and has been
2368 constructed according to the approved plans.

2369 (3). If the inspecting official finds, upon inspection of the required
2370 improvements, that any of the required improvements have not been
2371 constructed in accordance with the approved plans and specifications, the
2372 inspecting official must report, in writing, to the Town Planner, the
2373 developer or duly authorized representative of the developer, and, when
2374 applicable, the CEO. The Town Planner shall inform the Planning Board
2375 of any issues identified by the inspections. The Town shall take any steps
2376 necessary to preserve the municipality's rights.

2377 (4). Where applicable and in advance of any construction, the developer must
2378 deposit sufficient funds for said inspections in an applicant's service
2379 account per Chapter 3.3. The amount is based on a scope of services and
2380 fee prepared by the Town's Peer Review Engineer after review of the
2381 developer's construction estimate prepared by a professional engineer or a
2382 qualified contractor.

2383 (5). Stormwater and erosion control inspection.
2384 a. During October to November of each year in which construction
2385 for grading, paving and landscaping occurs on a development site,
2386 the Town will, at the expense of the developer, cause the site to be
2387 inspected by a qualified individual. By December 1, the inspector
2388 must submit a site report to the Town Planner that describes the
2389 inspection findings and indicates whether stormwater and erosion
2390 control measures (both temporary and permanent) are in place and
2391 properly installed. The report must include a discussion and
2392 recommendation on any and all problem areas encountered.

2393 b. After major construction activities have been completed on a
2394 development site, the developer must, on or by July 1 of each year,
2395 provide a completed and signed certification to the Code
2396 Enforcement Officer per § 16.8.10.F, Post-construction stormwater
2397 management.

2398 c. Erosion control debris. The owner or occupant of any land in any
2399 zone must not allow erosion control materials, such as plastic
2400 erosion control fences and related stakes or other materials, to
2401 remain on the site but must remove the same within six months of
2402 the date such erosion control materials were installed, or the date
2403 when no longer required, whichever is later. When a violation is
2404 discovered, the Code Enforcement Officer will order compliance
2405 by written notice of violation to the owner of any land in any zone
2406 requesting removal of such violation within 30 days of the date of
2407 written notice. An extension of time to correct may be made by the
2408 Code Enforcement Officer for good and sufficient reason.

2409 H. Plan revisions after approval. No changes, erasures, modifications or revisions
2410 may be made to any Planning Board approved final plan, unless in accordance
2411 with the Planner's and CEO's powers and duties as found in Chapter 16.4, or
2412 unless the plan has been resubmitted and the Planning Board specifically
2413 approves such modifications. In the event a final plan is recorded without
2414 complying with this requirement, the same is null and void, and the Planning
2415 Board must institute proceedings to have the plan stricken from Town records and
2416 the York County Registry of Deeds. [Amended 9-26-2011 by Ord. No. 11-15]

2417 (1). Field changes. [Amended 9-24-2012 by Ord. No. 12-11]
2418 a. If at any time before or during the construction of the required
2419 improvements it appears to be necessary or desirable to modify the
2420 required improvements, the Code Enforcement Officer and Town
2421 Planner are authorized to approve minor plan amendments due to

2422 unforeseen field circumstances, such as encountering hidden
2423 outcrops of bedrock, natural springs, etc. The Code Enforcement
2424 Officer and Town Planner must issue any approval under this
2425 subsection in writing and transmit a copy of the approval to the
2426 Planning Board. Revised plans must be filed with the Town and
2427 recorded, where appropriate. The developer must provide the
2428 revised plan to the Town Planner, and it shall be recorded in the
2429 York County Register of Deeds when applicable.

2430 (2). Modifications to approved plan.

2431 a. Minor modifications. Modifications to a Planning Board approved
2432 plan that do not require Planning Board review per § 16.10.3.2
2433 may be approved by the Code Enforcement Officer and Town
2434 Planner. Such approvals must be issued in writing to the developer
2435 with a copy to the Planning Board. The developer must provide the
2436 revised plan to the Town Planner, and it shall be recorded in the
2437 York County Register of Deeds, when applicable. [Amended 9-24-
2438 2012 by Ord. No. 12-11]

2439 b. Major modifications. Major modifications (e.g., relocations of
2440 principal structures, rights-of-way or property boundaries; changes
2441 of grade by more than 1%) require Planning Board approval.

2442 I. Maintenance of improvements. The developer, or owner, is required to maintain
2443 all improvements and provide for snow removal on streets and
2444 pedestrianways/sidewalks unless and until the improvement has been accepted by
2445 the Town Council. Acceptance of Streets and Ways

2446 (1). Conditions. A street or way constructed on private lands by the owner(s)
2447 thereof and not dedicated for public travel prior to the enactment of this
2448 title must be laid out and accepted as a public street or way by the Town
2449 Council only upon the following conditions:

2450 a. The owners must give the Town a deed to the property within the
2451 boundaries of the street at the time of acceptance by the Town.

2452 b. A plan of said street or way must be recorded in the York County
2453 Registry of Deeds at the time of its acceptance.

2454 c. A petition for laying out and acceptance of said street or way must
2455 be submitted to the Town Council upon a form prescribed by the
2456 Commissioner of Public Works. Said petition must be
2457 accompanied by a plan, profile and cross section of said street as
2458 follows:

2459 i. A plan drawn, when practical, to a scale of 40 feet to one
2460 inch and to be on one or more sheets of paper not
2461 exceeding 24 inches by 36 inches in size. Said plan must
2462 show the North point; the location and ownership of all
2463 adjoining lots of land; rights-of-way and easements;
2464 streetlights and electric lines; boundary monuments;
2465 waterways, topography and natural drainage courses with

- 2466 contour at not greater than two-foot intervals; all angles,
2467 bearings and radii necessary for the plotting of said street
2468 and lots and their reproduction on the ground; the distance
2469 to the nearest established street or way, together with the
2470 stations of their side lines;
- 2471 ii. A profile of said street or way drawn to a horizontal scale
2472 of 40 feet to one inch and a vertical scale of four feet to one
2473 inch. Said profile must show the profile of the side lines
2474 and center line of said street or way and the proposed
2475 grades thereof. Any buildings abutting the street or way
2476 must be shown on said profile;
- 2477 iii. A cross section of said street or way drawn to a horizontal
2478 scale of five feet to one inch and a vertical scale of one foot
2479 to one inch; and
- 2480 iv. The location and size of water and sewer mains and surface
2481 water drainage systems, as installed.
- 2482 (2). Such street or way must have been previously constructed in accordance
2483 with the standards and criteria established in § 16.5, General Performance
2484 Standards and § 16.8, Subdivision Review.
- 2485 (3). Acceptance of streets and ways required in public interest.
- 2486 a. Notwithstanding the provisions of any other section hereof, the
2487 Town may at any time lay out and accept any street or way in the
2488 Town as a public street or way of said Town whenever the general
2489 public interest so requires. The cost of said street or way may be
2490 borne by the Town.
- 2491 (4). Easements.
- 2492 a. The Board may require easements for sewerage, other utilities,
2493 drainage and stream protection. In general, easements may not be
2494 less than 20 feet in width. Wider easements may be required.
- 2495 (5). No street or way to be accepted until after report.
- 2496 a. Street acceptance as Town way. Upon completion of construction
2497 of any street/road intended for proposal for acceptance as a Town
2498 way, a written certification that such way meets or exceeds the
2499 design and construction standards of this title, signed by a
2500 professional engineer registered by the State of Maine, prepared at
2501 the developer's expense, must be submitted to the Board. If
2502 underground utilities are laid in such way, the developer must also
2503 provide written certification from the servicing utility(ies), that
2504 such installation was in a manner acceptable to the utility. The
2505 Board is to review the proposal and forward a recommendation to
2506 the Town Council regarding acceptance.
- 2507 b. No street or way may be laid out and accepted by the Town
2508 Council until the Planning Board and the Public Works
2509 Commissioner have made a careful investigation thereof and

2510 reported to the Town Council their recommendations in writing
2511 with respect thereto.

2512 J. Recordkeeping in Shoreland and Resource Protection Overlay Zones. The Code
2513 Enforcement Officer is to keep a complete record of all essential transactions of
2514 development in the Shoreland and Resource Protection Overlay Zones, including
2515 applications submitted, permits granted or denied, variances granted or denied,
2516 revocation actions, revocation of permits, appeals, court actions, violations
2517 investigated, violations found, and fees collected. On a biennial basis, a summary
2518 of this record must be submitted to the Director of the Bureau of Land and Water
2519 Quality within the Department of Environmental Protection.

2520 K. Subdivision lot monumentation prior to sale. Prior to the sale of any approved
2521 subdivision lot, the subdivider must provide the Planner with a letter from a
2522 registered land surveyor, stating all monumentation shown on the plan has been
2523 installed.

2524 L. Utility service. Prior to the installation of any public utility to a site, the developer
2525 must have obtained all necessary approvals from the appropriate local, state or
2526 federal authority.

2527 M. Grading/construction final plan required. Grading or construction of roads,
2528 grading of land or lots, or construction of buildings which require a final plan as
2529 provided in this title, until such time as the final plan has been duly prepared,
2530 submitted, reviewed, approved and endorsed as provided in this title, is prohibited
2531 until the original copy of the final plan so approved and endorsed has been duly
2532 recorded in the York County Registry of Deeds.

2533 N. Nonstormwater discharge. No person, except where exempted in § 16.5.18,
2534 Nonstormwater Discharge may create, initiate, originate, or maintain a
2535 nonstormwater discharge to the storm drainage system. Such nonstormwater
2536 discharges are prohibited notwithstanding the fact that the municipality may have
2537 approved the connections, drains or conveyances by which a person discharges
2538 unallowable nonstormwater discharges to the storm drainage system. [Amended
2539 5-22-2017 by Ord. No. 17-06; 5-30-2018 by Ord. No. 04-18]

2540 O. Nuisances. Any violation of this title is deemed to be a nuisance.

2541 P. Erosion control debris. The owner or occupant of any land in any zone must not
2542 allow erosion control materials, such as plastic erosion control fences and related
2543 stakes or other materials, to remain on the site but must remove the same within
2544 six months of the date such erosion control materials were installed, or the date
2545 when no longer required, whichever is later. When a violation is discovered, the
2546 Code Enforcement Officer will order compliance by written notice of violation to
2547 the owner of any land in any zone requesting removal of such violation within 30
2548 days of the date of written notice. An extension of time to correct may be made by
2549 the Code Enforcement Officer for good and sufficient reason.

2550

1 **16.9 Other Plan Development Review**

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8 **16.9.1**

9 **16.9.2 Maritime and Shoreland Related Development**

10 A. General. The purpose of maritime and shoreland development reviews function
 11 as 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
 14 resource.

15 B. Applicability

16 (1). Kittery Port Authority. The Kittery Port Authority’s (“Port Authority”)
 17 jurisdiction extends to applications proposing any development from the
 18 navigable tidal waters to the mean high-water line or upland edge of a
 19 coastal wetland. The Port Authority, through its established Rules and
 20 Regulations, reviews and approves applications for piers, wharves,
 21 landings, floats, bridges, other water-dependent structures 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 normal high-water line of any water bodies or upland edge of a costal
 25 or 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 Planning and Development Department shall review the
- 39 application for compliance with this title.
- 40 c. Where the Planning Board must review and approve a
- 41 development plan involving a pier, ramp, flotation system or
- 42 principal marine structure, and prior to Planning Board approval,
- 43 the Port Authority must comment on the plan's conformance with
- 44 Port Authority rules and regulations and navigational aspects of
- 45 any proposed pier, ramp and float system or principal marine
- 46 structure.
- 47 d. All required local approvals (excluding Town building permits),
- 48 federal and state approvals and/or permits shall be received by the
- 49 Code Enforcement Officer, prior to the issuance of a building
- 50 permit.
- 51 e. Prior to the commencement of construction on any pier, dock,
- 52 wharf, marina or any other proposed use that projects into a water
- 53 body, the owner and/or developer shall apply for, and obtain, a
- 54 building permit from the Code Enforcement Officer.

55 (2). Notification.

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

67 **16.9.3 Port Authority Shoreland Development Review**

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

- 79 system. Maps and plans are to include:
- 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 normal high-water mark
- 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 normal high-water line
- 111 due to the adverse environmental impact; therefore, new boathouses must
- 112 be 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 normal high-water line.
- 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 normal high-water line of a water
125 body or within a wetland unless the structure requires direct access to the
126 water 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 normal high-water line of a water
129 body or within a wetland may be converted to residential dwelling units in
130 any 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 normal high-water line 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 Authorities
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 **16.9.4 Planning Board Shoreland Development Review**

181 A. Review process

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

194 B. Waivers

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

198 C. Submission requirements

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

- 203 (2). All applications shall be dated, and the Town Planner or designee shall
204 note upon each application the date and time of its receipt.
- 205 (3). Whenever the nature of the proposed structure requires the installation of a
206 subsurface sewage disposal system, a complete application for a
207 subsurface wastewater disposal permit shall be submitted. The application
208 shall include a site evaluation approved by the Plumbing Inspector.

209 D. Exempt and non-exempt uses.

- 210 (1). Exempt uses and development not requiring shoreland development
211 review by the Planning Board
- 212 a. Proposed development of principal and accessory structures in
213 compliance with §16.4.11.5.b, when not subject to Planning Board
214 review as explicitly required elsewhere in this title, shall be
215 reviewed and approved by the Code Enforcement Officer (CEO)
216 prior to issuing a building permit, subject to, but not limited to the
217 following requirement:
218
- 219 † The total devegetated area of the lot (that portion within the
220 Shoreland Overlay Zone) shall be calculated by the
221 applicant and verified by the CEO and recorded in the
222 Town's property records.
- 223
- 224 (2). Clearing of vegetation for activities other than timber harvesting. These
225 are subject to review and approval by the Shoreland Resource Officer or
226 Code Enforcement Officer.
- 227 (3). Division of a conforming parcel that is not subject to subdivision as
228 defined in §16.3.2.
- 229 (4). A permit is not required for the replacement of an existing road culvert,
230 provided the replacement culvert is not:
231
- 232 a. More than one standard culvert size larger in diameter than the
233 culvert being replaced;
- 234 b. More than 25% longer than the culvert being replaced; and
235 c. Longer than 75 feet.
- 236 (5). When replacing an existing culvert, the watercourse must be protected so
237 that the crossing does not block fish passage, and adequate erosion control
238 measures must be taken to prevent sedimentation of the water in the
239 watercourse.
- 240 (6). A permit is not required for an archaeological excavation, provided the
241 excavation is conducted by an archaeologist listed on the State Historic
242 Preservation Officer's Level 1 or Level 2 approved list and unreasonable
243 erosion and sedimentation is prevented by means of adequate and timely
244 temporary and permanent stabilization measure

245 E. Non-exempt uses requiring shoreland development review

- 246 (1). After the effective date of this title, no person may, without first obtaining
247 a permit, engage in any activity or use of land or structure requiring a
248 permit in the Shoreland or Resource Protection Overlay Zones in which
249 such activity or use would occur, or expand, change or replace an existing
250 use or structure, or renew a discontinued nonconforming use.
- 251 (2). Any development proposed in the Resource Protection (OZ-RP) and
252 Shoreland - Stream Protection Area (OZ-SL-75) Overlay Zones must be
253 approved by the Planning Board.
- 254 (3). Any permit required by this section is in addition to any other permit
255 required by other law or ordinance.

256 F. Findings of fact.

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

278 G. Final plan approval and recording.

- 279 (1). An approval by the Planning Board must take the form of an agreement
280 between the Town and the applicant, incorporating as elements the
281 application, the Planning Board's findings of fact, and such conditions as
282 the Planning Board may impose upon approval.
- 283 (2). The Planning Board must send copies of the agreement to Code
284 Enforcement Officer.
- 285 (3). A plan has final approval only when the Planning Board has indicated
286 approval by formal action and the plan has been properly signed by a

287 majority of the Planning Board members or by the Chair only, if so voted
288 by the Planning Board.

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

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

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

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

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

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

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

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

314 C. §16.3.2. 19— Resource Protection Overlay Zone OP-RP

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

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

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

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

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

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

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

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

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

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16.9.5 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.

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

418 d. Findings of Fact

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

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

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

427 b. Can reasonably permit vehicular passage.

428 e. Street naming

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

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

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

436 f. Final Plan approval and recording

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

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

449 g. Performance guaranty

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

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

Zoning District	Minimum Land Area/dwelling unit		Minimum Lot Size		Minimum Street Frontage	Minimum Front Yard	Minimum Rear Yard	Minimum Side Yard	Maximum Building Height	Maximum Building Coverage
Rural (R-RL)	40,000 s.f.		40,000 s.f.		150 ft.	40 ft.	20 ft.	20 ft.	35 ft.	15%
Suburban (R-S)	on-site sewerage	public sewerage	on-site sewerage	public sewerage						
	40,000 s.f.	30,000 s.f.	40,000 s.f.	30,000 s.f.	150 ft.	40 ft.	15 ft.	15 ft.	35 ft.	20%
Kittery Point Village (R-KPV)	40,000 s.f.		40,000 s.f.		150 ft.	40 ft.	15 ft.	15 ft.	35 ft.	20%
Urban (R-U)	20,000 s.f.		20,000 s.f.		100 ft.	30 ft.	15 ft.	15 ft.	35 ft.	20%
Village (R-V)	4,000 s.f.		6,000 s.f.		50 ft.	15 ft.	15 ft.	10 ft.	35 ft.	20% (40% structure)
Rural Conservation (R-RC)	80,000 s.f.		80,000 s.f.		200 ft.	40 ft.	20 ft.	20 ft.	35 ft.	6%
Conservation (CON)	N/A		none		N/A	40 ft.	20 ft.	20 ft.	35 ft.	6%
Local (B-L)	on-site sewerage	public sewerage								
	20,000 s.f. (residential)	8,000 s.f. (residential)	none	none	15 ft. (60 ft. max)	10 ft.*	10 ft.*	40 ft.	N/A	
20,000 s.f. (mix)	4,000 s.f. (mix)									
Local 1 (B-L1)	8,000 s.f. (residential)	3,500 s.f. (mix)	20,000 s.f.	50 ft./bldg.	none (30 ft. max)	10 ft.*	10 ft.*	40 ft.	50%	
Mixed Use Neighborhood (MU-N)	Mixed use building	Multiunit residential								
	4,000 s.f. for 1st DU, + 3,000 s.f. each add'l	4,000 s.f. 1st DU + 2,500 s.f. each add'l	20,000 s.f.	75 ft.	30 ft. = Rt. 236 50 ft. = Dennett Rd. 100 ft. = Marin Rd. 20 ft. = all others	20 ft.	20ft.	50 ft.	70%	
Commercial 1 (C-1)	N/A		40,000 s.f.		150 ft.	50 ft.	30 ft.**	30 ft.**	40 ft.	40%
Commercial 2 (C-2)	N/A		40,000 s.f.		150 ft.	50 ft.	30 ft.**	30 ft.**	40 ft.	40%
Commercial 3 (C-3)	N/A		40,000 s.f.		150 ft.	50 ft.	30 ft.**	30 ft.**	40 ft.	40%
Industrial (IND)	N/A		none		none	none	30 ft.***	30 ft.***	none	none
Mixed Use (MU)	See Note 3, below		on Route 1	all others	150 ft.****	30 ft.	30 ft.	30 ft.	40 ft.	none
			200,000 s.f.	80,000 s.f.						
Mixed Use - Badgers Island (MU-BI)	3,000 s.f.	6,000 s.f. - 1st 2 units	6,000 s.f.	50 ft.	5 ft.	10 ft.	10 ft.	40 ft.	none	
Mixed Use - Kittery Foreside (MU-KF)	5,000 s.f. (See Note 3, below)		5,000 s.f.	0 ft.	10 ft., except 0 ft. on Wallingford Sq. & Government & Walker	10 ft.	10 ft.	40 ft.	60%	

Notes:

1. Minimum setback from waterbody and wetland water-dependent uses = 0 feet

2. Minimum setback from streams, waterbodies and wetlands = see **Table 16.9**

3. Smaller areas/unit are detailed within the ordinance for elderly housing and nursing care and convalescent care units

* = Except where buffer provisions apply OR where side and/or rear yards abut a residential district or use = 15 feet or 50% of the building height

** = Except where buffer provisions apply OR where side and/or rear yards abut a residential district or use = 40 ft.

*** = Except where buffer provisions apply OR where side and/or rear yards abut a residential zone or use = 50 ft. or 50% of building or material height

**** = Except on Route 1, Haley Road, Lewis Road, or Cutts Road = 250 ft.

v5 09-16-2020	Base Zones																
LAND USE	R-RL	R-S	R-KPV	R-U	R-V	R-RC	CON	B-L	B-L1	C-1	C-2	C-3	IND	MU	MU-BI	MU-KF	MU-N
Dwellings																	
Accessory Dwelling Unit	P	P	P	P	P	P		P	P	P	P	P		P	P	P	
Age-Restricted Housing				SE													
Cluster Residential Development	P	P	P	P		P											
Dwelling, Attached Single-Family		P	P	P	P			P	P						P	P	P
Dwelling, Manufactured Housing	P			P	P	P		P	P						P		
Dwelling, Multi-Family	P	P1	P1	P				P	P					P3	P	P8	P
Dwelling, Single-Family	P	P	P	P	P	P		P	P					P4	P	P	
Dwelling, Two-Family	P	P	P	P	P	P		P	P							P	
Mobile Home Park	SE																
Group Living & Residential Care Facilities																	
Convalescent Care Facility	P	P*		P				P	P	P	P	P		P		P	P
Nursing Care Facility, Long-term	P	P*		P				P	P	P	P	P		P		P	P
Residential Care Facility		P*						P	P			P		P		P	P
Accessory Uses & Buildings																	
Accessory Use & Building	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Home Occupation, Major	SE	SE	SE	SE	SE	SE		P	P	P	P	P	P	P	P	P	P
Home Occupation, Minor	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P
Lodging																	
Campground	SE													SE			
Hotel								SE	SE	P	P	P		SE			P
Individual Private Campsite	P																
Inn				SE				SE	P	P	P	P		P	P	P	P
Motel								SE	SE	P	P	P		SE			
Recreational Vehicle Park	SE													SE			
Rooming House	SE	SE	SE	SE				SE	SE	P	P	P					
Community, Cultural & Educational Uses																	
Day Care Facility	P	P	P	P	P2	SE		P	P	P	P	P		P	P		P
Elderly Day Care Facility		P															P
Hospital	P	P*		P				P	P	P	P	P		P		P	P
Nursery School		P*	P*	P	P2			P	P	P	P					P	
Private Assembly	P	P*	P*	P		SE		P	P	P	P	P		P5	P	P	
Public Facility	P	P*	P*	P	P	SE	SE	P	P	P	P	P	SE	P	P	P	
Public or Private School	P	P*	P*	P		SE		P	P	P	P	P		P5	P	P	
Public Utility Facility	SE	SE	SE	SE	SE	SE		SE	SE	P	P	P	SE	SE	SE	SE	P
Religious Use	P	P*	P*	P		SE		P	P	P	P	P			P	P	
Recreation & Open Space																	
Open Space, Reserved							P										
Recreation, Commercial Indoor	SE			SE	SE					P	P	P		P	SE		P9
Recreation, Commercial Outdoor	SE			SE	SE					P	P	P		P	SE		P9
Recreation, Passive																	P
Recreation, Public Facility				SE	P	P	P			P	P	P					
Recreation, Public Open Space	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P
Agriculture & Animal Care Uses																	
Agriculture	P	P	P			P								P			
Agriculture, Piggery	SE																
Agriculture, Poultry Facility																	
Aquaculture								P		SE	P	P			P		

Commercial Fisheries/Maritime Activities									P			P	P			P	P	
Commercial Greenhouse												SE	SE		SE			
Commercial Kennel	SE														SE			SE
Commercial School	P	P*	P*	P		SE			P	P	P	P	P		PS	P	P	
Sawmill, Permanent	SE																	
Sawmill, Temporary	SE																	
Timber Harvesting						P									P			
Veterinary Hospital	SE										P	P	P		P			P
Commercial Uses & Services																		
Adult Entertainment Establishment												SE	SE					
Art Studio or Gallery				SE					P	P	P	P	P		P	P	P	P
Business & Professional Offices				SE					P	P	P	P	P		P	P	P	P
Business Services									P	P	P	P	P				P	P
Cemetery	SE	SE	SE			SE												
Conference Center				P					P	P	P	P	P			P		P
Construction Services												SE	SE		SE			SE
Drive-through Facility																		
Farmers Market											SE							
Funeral Homes				SE					SE	SE	SE	SE	SE		P			
Mini Storage											SE	SE	SE					
Museum																		
Personal Services									P	P	P	P	P		P	P	P	P
Public Assembly Area									SE	SE	SE	SE	SE			SE	P	
Repair Service											P	P	P		P			P
Research & Development											SE	SE	SE	P	P		SE	P
Restaurant									P	P	P	P	P		P	P7	P	P
Retail Sales									P	P	P	P	P		P*	P	P	P10
Retail Sales, Building Materials & Garden Supply									P	P	P	P	P		P			
Retail Sales, Convenience Store			SE	SE					P	P	P	P	P		P			P
Shops in Pursuit of Trade	SE											SE	SE		SE			P
Specialty Food and/or Beverage Facility									P	P	P	P	P		P	P	P	P
Theater									SE	SE	SE	SE	SE		P	SE	P	P
Theater, Drive-in															SE			
Marijuana Uses																		
Marijuana Medical Use																		
Marijuana Retail Use																		
Medical Marijuana Cultivation Facility																		
Medical Marijuana Dispensary																		
Medical Marijuana Testing Facility																		
Transportation & Vehicle-Related Uses																		
Boat Yard												P	P		P	P		
Gasoline Service Station									SE	SE	SE	SE	SE		SE			SE
Junkyard	SE																	
Marina																P	P	
Mass Transit Station									P	P	P	P	P		P	P	P	SE
Mechanical Service									SE	SE	SE	P	P		SE	P		SE
New Motor Vehicle Sales											SE	P	P		SE			SE
Parking Area									P	P	P	P	P		P		P	SE
Repair Garage											SE	SE	SE		SE			SE
Transportation Terminal											SE	SE	SE		SE			
Used Car Lot											SE	SE	SE					SE
Industrial Uses																		

