



TOWN OF KITTERY
Planning and Development
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TO: Planning Board
FROM: Kathy Connor, Project Planner
SUBJECT: Working Waterfront Amendments
DATE: May 2, 2024
CC: Jason Garnham, Directory of Planning & Development

Protecting working waterfront has long been the desire of Kittery's residents and was featured as a goal in several iterations of the Town's Comprehensive Plan over the past few decades, including the most recent Plan which states:

To protect the Town's coastline, the working waterfront and ensure appropriate access and enjoyment of the water while protecting it from environmental impacts.

Within the last several years, properties that have long been part of Kittery's working waterfront have been placed on the market and the functionally water-dependent uses on these properties threatened. To protect working waterfront in the way that Kittery's residents want, it was determined that some amendments to §16.3.2 Definitions, §16.1.8 General Development and §16.4.30 Commercial Fisheries/Maritime Activities Overlay Zone were needed.

These amendments do the following:

- Define functionally water-dependent uses more narrowly, particularly as regards certain recreational marinas while introducing a special exception use.
- Strengthen the prohibitions to replacing or removing a conforming functionally water-dependent use and its structures with a non-conforming use and accompanying structures.
- Clarify the purpose, intent and uses allowed/not allowed in this overlay zone.

TITLE 16
WORKING WATERFRONT

1. AMEND 16.3.2 DEFINITIONS as follows:

AQUACULTURE

The breeding, rearing and harvesting of fish, shellfish, aquatic plants and algae in all types of water environments for the purpose of human use. The term includes all processing and storage facilities on land that may be required to engage in such water-based farming.

FUNCTIONALLY WATER-DEPENDENT USES

Those principal uses that can only occur when in, on, or adjacent to ~~require, for their primary purpose, location on submerged lands or that require direct access to, or location in,~~ coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, aquaculture, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, ~~excluding recreational boat storage buildings,~~ shipyards and boat-building facilities, marinas, navigation aids, basins and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters. as well as structures to house educational programs, apprenticeships and scientific research uses directly related to functionally water-dependent uses and/or the marine or tidal waters themselves. Recreational boat storage buildings and accessory marinas intended for recreational boats owned by residents of dwelling units located on the site, even if additional vessels may lease slips or moorings, are not functionally water-dependent uses.

2. AMEND 16.1.8 GENERAL DEVELOPMENT REQUIREMENTS as they relate to commercial fishing and working waterfront as follows:

§ 16.1.8 **General development requirements.**

A. This chapter outlines requirements for conformity; discusses nonconformance and waivers; and defines various development review thresholds and requirements to further the safe and orderly development of the Town.

B. Conformity.

(1) Conformity required. No building, structure or land may hereafter be used or occupied, and no building or structure or part thereof may hereafter be erected, constructed, expanded, moved or altered, and no new lot may be created except in conformity with all of the regulations herein specified for the zone where it is located, unless such structure or use exists as a legally nonconforming use or a variance is granted. See § **16.7.11B** and § **16.8.10D** for specific requirements related to

- 38 septic waste disposal systems.
- 39 (2) Minimums and uniformity. The regulations specified by this title for each class of
40 district are minimum requirements and apply uniformly to each class or kind of
41 structure or land.
- 42 (3) Land within street lines. Land within the lines of a street on which a lot abuts is not
43 considered as part of such lot for the purposes of meeting the area/frontage
44 requirements of Chapter **16.4**, notwithstanding the fact that the fee to such land
45 may be in the owner of such lot.
- 46 (4) Yard, parking or loading space. No part of a yard or other space or off-street parking
47 or loading space about or in connection with any building and required for the
48 purpose of complying with this title may be included as part of a yard, open space
49 or off-street parking or loading space similarly required for any other building,
50 except as authorized in § **16.7.11F**.
- 51 (5) Zone boundary line extension. Where a zoning district boundary line divides a lot,
52 the regulations applicable to either zone of such lot may extend not more than 50
53 feet into the portion in the other zone(s), except when a less restrictive portion
54 abuts the Resource Protection Zone.
- 55 (a) Before granting any such extension, the Planning Board must determine that the
56 proposed use of the extended portion will:
- 57 [1] Not prevent the orderly and reasonable use of properties in the adjacent zone;
- 58 [2] Be in harmony with the character of the adjacent zone;
- 59 [3] Not adversely affect the property values of adjacent zone's immediate
60 neighborhoods;
- 61 [4] Not create any traffic hazards or undue traffic congestion on streets in the adjacent
62 zone;
- 63 [5] Not give off obnoxious gases, odors, smoke or soot;
- 64 [6] Not cause disturbing emission of electrical discharges, dust, light, vibration or noise;
65 and
- 66 [7] Be adequately screened from the adjacent zone.
- 67 [8] Not replace, diminish or adversely impact any existing functionally water-
68 dependent uses.
- 69 (b) The Planning Board may require a study to be performed or commissioned by the
70 applicant to ensure compliance with the above requirements.
- 71 (6) Averaging building setbacks. Building setback from the street line need not be

72 greater than the average of the setback distances of the buildings on the lots next
73 thereto on either side.

74 C. Nonconformance.

75 (1) Purpose. The purpose of this title is to promote land use conformities and to
76 regulate nonconforming structures, uses, and lots, and to promote the following
77 objectives.

78 (2) Prohibitions and allowances.

79 (a) Except as otherwise provided in this title, a nonconforming condition must not be
80 permitted to become more nonconforming.

81 (b) Nonconforming vacant lots of record may be developed, maintained or repaired.

82 (c) Nonconforming uses may continue, may be changed to an equal or more
83 appropriate nonconforming use, or be changed to a conforming use.

84 (3) General.

85 (a) Transfer of ownership. Legally nonconforming structures, lots, and uses may be
86 transferred, and the new owner may continue the nonconforming use or continue
87 to use the nonconforming structure and/or lot, subject to the provisions of this title.

88 (b) Repair and maintenance. This title allows the normal upkeep and maintenance of
89 nonconforming uses and structures including repairs or renovations that do not
90 involve expansion of the nonconforming use or structure that is not otherwise
91 permitted by this title, and such other changes in a nonconforming use or
92 structure as federal, state, or local building and safety codes may require.

93 (c) Nonconforming parking or loading space. A structure and/or use which is
94 nonconforming as to the requirements for off-street loading and/or parking spaces
95 may not be enlarged or added to unless off-street space is provided sufficient to
96 satisfy the requirements of this title for both the original and addition or
97 enlargement of the structure or use.

98 (4) Nonconforming structures.

99 (a) Nonconforming structure relocation. Except where otherwise permitted in this title,
100 relocation of a nonconforming structure must be approved by the Board of
101 Appeals. In cases where the structure is located in the Shoreland ~~or~~ Resource
102 Protection Overlay ~~Zone~~, or Commercial Fisheries/Maritime Activities Overlay
103 Zone(s) the relocation must be approved by the Planning Board.

104 [1] A nonconforming structure may be relocated within the boundaries of the parcel
105 on which the structure is located provided the site of relocation conforms to all
106 dimensional requirements, to the greatest practical extent, as determined by the
107 Planning Board or Board of Appeals, and provided the applicant demonstrates the

108 present subsurface sewage disposal system meets the requirements of state law
109 and the State of Maine Subsurface Wastewater Disposal Rules, or a new system can
110 be installed in compliance with the law and said rules. In no case may the
111 relocation of a structure be permitted that causes the structure to be more
112 nonconforming. See § **16.7.11B** and § **16.8.10D**, for other specific requirements
113 related to septic waste disposal systems.

114 [2] In determining whether the structure relocation meets the setback to the greatest
115 practical extent, the Planning Board or Board of Appeals must consider the
116 following conditions:

117 [a] The size of the lot;

118 [b] The slope of the land;

119 [c] The potential for soil erosion;

120 [d] The location of other structures on the property and on adjacent properties;

121 [e] The location of the septic system and other on-site soils suitable for septic systems;

122 [f] The type and amount of vegetation to be removed to accomplish the relocation.

123 [g] Relocation of structures in the Commercial Fisheries/Maritime Activities Overlay
124 Zone cannot replace, diminish or adversely impact existing functionally water-
125 dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities Overlay
126 Zone.

127 [3] When it is necessary to remove vegetation within the water or wetland setback
128 area to relocate a structure, replanting of native vegetation to compensate for the
129 destroyed vegetation is required. The Planning Board or Board of Appeals may
130 restrict mowing around and pruning of the replanted native vegetation to
131 encourage a more natural state of growth. Tree removal and vegetation replanting
132 is required as follows, effective February 28, 2015:

133 [a] Prior to the commencement of on-site construction, areas to remain undisturbed
134 must be clearly marked with stakes and caution tape. All stakes, caution tape, silt
135 fences, and other materials used during construction must remain until all on-site
136 work is completed. Prior to removal, written permission to remove such materials
137 must be given by the Code Enforcement Officer.

138 [b] Trees removed to relocate a structure must be replanted with at least one native
139 tree, six feet in height, for every tree removed. If more than five trees are planted, no
140 one species of tree can be used to make up more than 50% of the number of trees
141 planted. Replaced trees must be planted no farther from the water or wetland than
142 the trees removed.

143 [c] Other woody and herbaceous vegetation and ground cover that is removed, or
144 destroyed, to relocate a structure must be reestablished. An area at least the same

- 145 size as the area where vegetation and/or ground cover was disturbed, damaged, or
146 removed must be reestablished within the setback area. The vegetation and/or
147 ground cover must consist of native vegetation and/or ground cover similar to that
148 disturbed, destroyed or removed.
- 149 [d] Where feasible, when a structure is relocated on a parcel, the original location of
150 the structure must be replanted with vegetation consisting of grasses, shrubs, trees
151 or a combination thereof.
- 152 [4] If the total footprint of the original structure can be relocated beyond the required
153 setback area, no portion of the relocated structure may be constructed at less than
154 the setback requirement for a new structure.
- 155 (b) Nonconforming structure repair and/or expansion.
- 156 [1] The Code Enforcement Officer may approve the repair and/or expansion of a
157 nonconforming structure provided the proposed expansion is not located in the
158 base zone setback of the Shoreland Overlay Zone or at any location and meets
159 either of the following criteria:
- 160 [a] A vertical expansion that follows the existing building footprint;
- 161 [b] Will not result in setbacks less than those existing.
- 162 [c] Installation or replacement of solar energy systems and energy storage systems.
- 163 [2] Except where otherwise permitted in this title, repair and/or expansion of a
164 nonconforming structure must be approved by the Board of Appeals. In cases
165 where the structure is located in the base zone setback of the Shoreland ~~Overlay~~
166 ~~or Resource Protection, or Commercial Fisheries/Maritime Activities~~ Overlay
167 Zone (s), the repair and/or expansion must be approved by the Planning Board.
- 168 [3] This subsection does not apply to any proposed vertical expansion of a patio, deck
169 or accessory structure permitted to be closer to a water body or to a principal
170 structure in accordance with Table 16.5.30, Minimum Setbacks from Wetlands and
171 Water Bodies.
- 172 [a] A nonconforming structure may be repaired or maintained and may be expanded
173 in conformity with the dimensional requirements, such as setback, height, etc., as
174 contained in this title. If the proposed expansion of a nonconforming structure
175 cannot meet the dimensional requirements of this title, the Board of Appeals or the
176 Planning Board will review such expansion application and may approve proposed
177 changes provided the changes are no more nonconforming than the existing
178 condition and the Board of Appeals or the Planning Board makes its decision per
179 § **16.2.12F(2)**.
- 180 [b] Except in the Residential - Village (R-V) Zone, minimum setbacks of residential
181 storage sheds that are less than 121 square feet, one-story residential garages that
182 are less than 577 square feet, and decks less than 251 square feet may be one-half

183 the minimum rear and side yard setbacks, providing the lots are legally
184 nonconforming.

185 [c] Where the expansion of the residential use within the commercial zones involves
186 an expansion of a structure, the structure must be expanded in conformity with the
187 dimensional requirements contained in this title. If the proposed structure
188 expansion cannot meet the dimensional requirements of this title, the application
189 may be submitted to the Board of Appeals for review as a miscellaneous variation
190 request. In reviewing all such applications, the Board of Appeals must use the
191 criteria established in this section, and then may approve the proposed variations
192 to the dimensional requirements.

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

196 [e] In addition to the standards in the above § 16.1.8C(4)(b)[3][a] through [d], the
197 expansion of nonconforming and the construction of new, enlarged, or
198 replacement foundation beneath a nonconforming structure located in the
199 Shoreland or Resource Protection Overlay Zone must meet the following:

200 [i] Wherever a new, enlarged, or replacement foundation is constructed under an
201 existing nonconforming structure the structure and new foundation must be
202 placed such that setback requirements are met to the greatest practical extent as
203 determined by the Planning Board, basing its decision on the criteria specified in
204 § **16.1.8C(4)(a)**, Nonconforming structure relocation.

205 [ii] All new principal and accessory structures, excluding functionally water-dependent
206 uses, must meet the water body, tributary stream, or wetland setback
207 requirements contained in § **16.4.28E**. A nonconforming structure may be added to
208 or expanded after obtaining a permit from the same permitting authority as that
209 for a new structure, if such addition or expansion does not increase the
210 nonconformity of the structure and is in accordance with § 16.1.8C(4)(b)[3][e][iv] and
211 [v] below.

212 [iii] If a legally nonconforming principal structure is located partially within 25 feet from
213 the normal high-water line of a water body, tributary stream, or upland edge of a
214 coastal or freshwater wetland, expansion of the footprint and/or height of any
215 portion of the structure that is located within 25 feet of the normal high-water line
216 of a water body, tributary stream, or upland edge of a coastal or freshwater wetland
217 is prohibited even if the expansion will not increase nonconformity with the water
218 body, tributary stream, or wetland setback requirement. Expansion of an accessory
219 structure that is located closer to the normal high-water line of a water body,
220 tributary stream, or upland edge of a coastal or freshwater wetland than the
221 principal structure is prohibited, even if the expansion will not increase
222 nonconformity with the water body, tributary stream, or coastal or freshwater
223 wetland setback requirement.

- 224 [iv] Notwithstanding § 16.1.8C(4)(b)[3][e][ii], if a legally existing nonconforming principal
225 structure is entirely located less than 25 feet from the normal high-water line of a
226 water body, tributary stream, or upland edge of a coastal or freshwater wetland,
227 that structure may be expanded as follows, as long as all other applicable municipal
228 land use standards are met and the expansion is not prohibited by
229 § 16.1.8C(4)(b)[3][e][iii]:
- 230 [A] The maximum total footprint for the principal structure may not be expanded to a
231 size greater than 800 square feet or 30% larger than the footprint that existed on
232 January 1, 1989, whichever is greater. The maximum height of the principal
233 structure may not be made greater than 15 feet or the height of the existing
234 structure, whichever is greater.
- 235 [v] All other legally existing nonconforming principal and accessory structures that do
236 not meet the water body, tributary stream, or coastal or freshwater wetland
237 setback requirements may be expanded or altered as follows, as long as other
238 applicable municipal land use standards are met and the expansion is not
239 prohibited by § 16.1.8C(4)(b)[3][e][ii] and [iii], above:
- 240 [A] For structures located less than the base zone setback from the normal high-water
241 line of a water body, tributary stream, or upland edge of a coastal or freshwater
242 wetland, the maximum combined total footprint for all structures may not be
243 expanded to a size greater than 1,000 square feet, or 30% larger than the footprint
244 that existed on January 1, 1989, whichever is greater. The maximum height of any
245 portion of a structure that is located within the base zone setback may not be
246 made greater than 20 feet, or the height of the existing structure, whichever is
247 greater.
- 248 [B] In addition to the limitations in § 16.1.8C(4)(b)[3][e][v] above, for structures that are
249 legally nonconforming due to their location within the Resource Protection Overlay
250 Zone when located at less than 250 feet from the normal high-water line of a water
251 body or the upland edge of a coastal or freshwater wetland, the maximum
252 combined total footprint for all structures may not be expanded to a size greater
253 than 1,500 square feet, or 30% larger than the footprint that existed at the time the
254 Resource Protection Overlay Zone was established on the lot, whichever is greater.
255 The maximum height of any structure may not be greater than 25 feet, or the
256 height of the existing structure, whichever is greater, except that any portion of
257 those structures located less than the base zone setback from the normal high-
258 water line of a water body, tributary stream, or upland edge of a coastal or
259 freshwater wetland must meet the footprint and height limits in
260 § 16.1.8C(4)(b)[3][e][iv][A] and [v][A], above.
- 261 [vi] An approved plan for expansion of a nonconforming structure must be recorded by
262 the applicant with the York County Registry of Deeds within 90 days of approval.
263 The recorded plan must show the existing and proposed footprint of the
264 nonconforming structure, the existing and proposed structure height, the footprint
265 of any other structures on the parcel, the Shoreland Overlay Zone and/or the
266 Resource Protection Overlay Zone boundary and evidence of approval by the

267 municipal review authority.

268 [f] Expansion or changes in structures in the Commercial Fisheries/Maritime Activities
269 Overlay Zone cannot replace, diminish or adversely impact existing functionally
270 water-dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities
271 Overlay Zone.

272 (c) Nonconforming structure reconstruction.

273 [1] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming
274 structure which is located less than the required setback from a water body,
275 tributary stream, or coastal or freshwater wetland and which is removed, damaged
276 or destroyed, by any cause, by more than 50% of the assessed value of the structure
277 before such damage, destruction or removal, may be reconstructed or replaced,
278 provided that a permit is obtained within 18 months of the date of said damage,
279 destruction, or removal, and provided that such reconstruction or replacement is in
280 compliance with the water body, tributary stream or coastal or freshwater wetland
281 setback requirement to the greatest practical extent as determined by the
282 Planning Board. In determining whether the structure reconstruction meets the
283 setback to the greatest practical extent the Planning Board must consider, in
284 addition to the criteria in § **16.1.8C(4)(a)**, Nonconforming structure relocation, the
285 physical condition and type of foundation present, if any.

286 [2] In the Shoreland or Resource Protection Overlay Zone(s), any nonconforming
287 structure which is located less than the required setback from a water body,
288 tributary stream, or coastal or freshwater wetland and removed, damaged or
289 destroyed by any cause by 50% or less of the assessed value of the structure before
290 such damage, destruction or removal, may be reconstructed in place if a permit is
291 obtained from the Code Enforcement Officer within 12 months of the established
292 date of damage or destruction.

293 [3] Outside of the Shoreland or Resource Protection Overlay Zone(s), any
294 nonconforming structure which is removed, damaged or destroyed by any cause
295 may be restored or reconstructed in place if a permit is obtained from the Code
296 Enforcement Officer within 18 months of the date of said removal, damage or
297 destruction. Such restoration or reconstruction must not make the structure more
298 nonconforming than the prior nonconforming structure.

299 [4] Nothing in this section prevents the demolition of the remains of any structure
300 damaged or destroyed. Application for a demolition permit for any structure that
301 has been partially damaged or destroyed must be made to the Code Enforcement
302 Officer.

303 [5] In the Shoreland or Resource Protection Overlay Zone(s), if the total footprint of the
304 original structure can be reconstructed beyond the required setback area, no
305 portion of the reconstructed structure may be reconstructed at less than the
306 setback requirement for a new structure. If the reconstructed or replacement
307 structure is less than the required setback, it may not be any larger than the

- 308 original structure, except as allowed in § **16.1.8C(4)(b)**, Nonconforming structure
309 repair and expansion.
- 310 [6] When it is necessary to remove vegetation to reconstruct a structure, vegetation
311 must be replanted in accordance with § **16.1.8C(4)(a)[3]**, Nonconforming structure
312 relocation.
- 313 [7] Except where expressly permitted in this title, in no case may a structure be
314 reconstructed or replaced so as to increase its nonconformity.
- 315 [\[8\] Reconstruction of structures in the Commercial Fisheries/Maritime Activities
316 Overlay Zone cannot replace, diminish or adversely impact existing functionally
317 water-dependent uses. See §16.4.30, Commercial Fisheries/Maritime Activities
318 Overlay Zone.](#)
- 319 (5) Nonconforming uses.
- 320 (a) Nonconforming use continuance. The use of land, or structure, lawful at the time
321 such use began, may continue although such use may not meet the provisions of
322 this title.
- 323 (b) Resumption of discontinued use prohibited. A nonconforming use discontinued for
324 a period exceeding one year, or which is superseded by a conforming use, loses its
325 status as a permitted nonconforming use. The uses of the land or structure must
326 thereafter meet the provisions of this title. This provision does not apply to the
327 resumption of a use of a residential structure where it can be demonstrated that
328 the structure has been used or maintained for residential occupancy during the
329 preceding five-year period.
- 330 (c) Nonconforming use expansion. Expansion of nonconforming uses is prohibited,
331 except nonconforming residential uses may be expanded within existing
332 residential structures. Where the expansion of a nonconforming residential use
333 involves the expansion of a structure, the structure must be expanded in
334 conformity with all requirements as outlined in § **16.1.8C(4)**, Nonconforming
335 structures.
- 336 [\[1\] Expansion or changes in uses, including any pertinent structures, in the
337 Commercial Fisheries/Maritime Activities Overlay Zone cannot replace, diminish or
338 adversely impact existing functionally water-dependent uses. See §16.4.30,
339 Commercial Fisheries/Maritime Activities Overlay Zone.](#)
- 340 (d) Nonconforming use change: review authority and evaluations. The reviewing
341 authority may require evaluations be prepared by a person certified and/or
342 qualified to perform the required evaluation. It is the burden and responsibility of
343 the applicant to bear the costs for such evaluations. In the event there are existing
344 official maps, data and/or reports for general use, the applicant is encouraged to
345 submit copies of these documents to the reviewing authority. In determining that
346 no greater adverse impact will occur, the applicant may be required to submit an

347 evaluation in writing regarding the probable effects on public health and safety,
348 erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover,
349 visual and actual points of public access to waters, natural beauty, floodplain
350 management, archaeological and historic resources, and commercial fishing and
351 maritime activities, and other functionally water-dependent uses.

352 [1] The Town Planner and the Code Enforcement Officer may approve the change of
353 use of a nonconforming structure where it can be deemed the proposed use is a
354 conforming use and the proposed use does not impact a water body, tributary
355 stream, or wetland.

356 [2] Outside the areas regulated by Shoreland Overlay Zone or Resource Protection
357 Overlay Zone, an existing nonconforming use may be changed to another
358 nonconforming use with approval of the Board of Appeals.

359 [3] Within areas regulated by Shoreland Overlay, ~~Zone or~~ Resource Protection, or
360 Commercial Fisheries/Maritime Activities Overlay Zone(s), an existing
361 nonconforming use may be changed to another nonconforming use with the
362 approval of the Planning Board.

363 **3. AMEND 16.4.30 COMMERCIAL FISHERIES/MARITIME ACTIVITIES OVERLAY ZONE**
364 **as follows:**

365 § 16.4.30 **Commercial Fisheries/Maritime Activities Overlay Zone (OZ-CFMU).**

366 A. Purpose. The purpose of the Commercial Fisheries/Maritime Uses Overlay Zone is
367 to provide the protection and/or expansion of existing for the development and
368 expansion of functionally water-dependent commercial fisheries/maritime
369 activities uses while encouraging additional development of working waterfront
370 associated with functionally water-dependent uses. The Commercial-Commercial
371 fisheries Fisheries/maritime-Maritime activities-Activities Zone and other includes
372 both areas where the existing pattern of development is consistent with uses
373 described in §16.4.30 D and other areas suitable for functionally water-dependent
374 uses, taking the following factors into considerations:

- 375 (1) Shelter from prevailing winds and waves;
- 376 (2) Slope of the land within 250 feet, horizontal distance, of the normal high-water line;
- 377 (3) Depth of the water within 150 feet, horizontal distance, of the shoreline;
- 378 (4) Available support facilities, including utilities and transportation facilities; and
- 379 (5) Compatibility with adjacent upland uses.

380 B. Authority. These provisions have been prepared in accordance with the provisions
381 of 38 M.R.S.A. §§ 435 to 449.

382 C. Applicability and boundaries. The provisions of this section apply to all uses, lots
383 and structures within applicable areas as shown on the Zoning Map where:

- 384 ~~(1) where~~The existing predominant pattern of development on the property is
385 consistent with the allowed uses for this overlay zone,
- 386 ~~(2) where consistent~~The uses, lots and structures are consistent with dimensional
387 requirements of the underlying base zone, and
- 388 ~~(3) where~~The active use of lands, ~~buildings~~structures, wharves, piers, floats or
389 landings ~~with the principal intent of such activity is~~are principally intended for the
390 production of income by an individual or legal business entity through the
391 operation of a vessel(s) ~~as shown on the Zoning Map~~. The activity may be either a
392 principal or accessory use, as defined in this title.
- 393 D. Permitted uses. Functionally water-dependent ~~commercial fisheries/marine~~
394 ~~activities~~ uses as defined in §16.3.2.
- 395 E. Special exception uses: Facilities to house educational programs, scientific research
396 or apprenticeships directly related to functionally water-dependent use(s) or to
397 marine or tidal waters.
- 398 (1) The applicant seeking approval for such facilities must demonstrate to the
399 Planning Board's satisfaction that the use and any proposed structures are directly
400 related to functionally water-dependent uses or to the marine or tidal waters. If the
401 use is located on the same property as a functionally water-dependent use, the
402 applicant must also demonstrate to the Planning Board's satisfaction that any
403 impacts to the functionally water-dependent use will be minimized. ~~none~~
- 404 F. Standards. Dimensional standards of the underlying base and overlay zone(s).
- 405 G. Prohibited uses. ~~All permitted uses in the base zones, including R-KPV, R-U, R-S,~~
406 ~~IND and MU-KF, except as permitted herein.~~A use that is not functionally water-
407 dependent as defined in §16.3.2 is considered non-conforming and is prohibited.
408 Such a non-conforming use, along with any requisite structures, cannot replace a
409 functionally water-dependent use on a lot in this overlay zone, either as a new use
410 or as a change of use.
- 411 (1) Any additional use(s) and/or structure(s) that is not functionally water-dependent
412 proposed on the same lot as the functionally water-dependent use, must be
413 located outside the Commercial Fisheries/Maritime Activities Overlay Zone on the
414 lot. In addition, it is incumbent upon the applicant proposing such a use(s) and/or
415 structure(s) to demonstrate to the Planning Board's satisfaction that any adverse
416 impacts to the existing functionally water-dependent use will be minimized. The
417 Planning Board may seek professional opinion(s) when making such a
418 determination and such fees as may be incurred must be paid by the applicant.
- 419 (2) Expansions of non-functionally water-dependent uses or structures in the
420 Commercial Fisheries/Maritime Activities Overlay Zone are prohibited except as
421 allowed in §16.1.8.C (4)(b).

423 H. Lots in two or more overlay zones. In cases where the Commercial
424 Fisheries/Maritime Activities Overlay Zone is one of two or more overlay zones pertinent
425 to a lot, this overlay zone's requirements and standards are not subordinate to
426 Shoreland and/or Resource Protection Overlay Zone's requirements. No changes of use
427 from functionally water-dependent uses to non-functionally water-dependent uses on
428 a lot within the Commercial Fisheries/Maritime Activities Overlay Zone are allowed
429 except as described in §16.4.30.G (I) above.

430 I. Submerged Lands. All appropriate permits and approvals must be issued and
431 submitted prior to Planning Board approval.

432 J. Any structures, including but not limited to docks, wharves, or piers, proposed
433 beyond the highest annual tide (HAT) must receive approval from the Kittery Port
434 Authority (KPA) prior to being heard by the Planning Board.