



KITTERY PLANNING BOARD MEETING

200 Rogers Road, Kittery, Maine 03904

Phone: 207-475-1323 - Fax: 207-439-6806 - www.kitteryme.gov

WORKSHOP MEETING AGENDA

Thursday, January 26, 2023

5:00 P.M. to 6:00 P.M

Workshop Location:

Town Hall, Council Chambers
200 Rogers Road
Kittery, ME 03903

Purpose:

To discuss the proposed amendments to Title 16 that incorporate mandated State changes to Shoreland Zoning Ordinance requirements.



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

Please bring your Title 16 Land Use Code Books or an electronic device to look at the online code for this workshop.

TO: PLANNING BOARD
FROM: KATHY CONNOR, PROJECT PLANNER
SUBJECT: SHORELAND ZONING WORKSHOP
DATE: JANUARY 26, 2023
CC: JASON GARNHAM, DIRECTORY OF PLANNING & DEVELOPMENT

Shoreland zoning as mandated by the State includes not only land that touches tidal water, rivers, or streams but also includes both freshwater and coastal wetlands. See this excerpt from the State's Shoreland Zoning Act below:

The Mandatory Shoreland Zoning Act, 38 M.R.S.A. sections 435-449, requires all municipalities to adopt, administer, and enforce ordinances which regulate land use activities within 250 feet of great ponds, rivers, freshwater and coastal wetlands, including all tidal waters; and within 75 feet of streams as defined. The Act also requires the Board of Environmental Protection to establish minimum guidelines for such ordinances. This document, adopted by the Board on February 14, 1990 and amended July 14, 1992, August 7, 1994, February 6, 1999, February 13, 2000, May 1, 2006 and January 26, 2015 contains those guidelines for municipal shoreland ordinances. The Act requires that municipalities adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines. [NOTE: Kittery, in some instances, is currently more stringent than the State which is also allowed]

For the past few years, the Planning Board has placed shoreland zoning overlays and their interpretations on the Board's action item list. This workshop is intended to be a discussion of what the Board finds challenging and/or unclear and how the Board would like the land use ordinances shaped to better serve the Town. Staff also has a few specific items to discuss.

There is a need to update the shoreland zoning to meet State standards. In 2015 as noted above, the Department of Environmental Protection (DEP) issued substantial amendments to the State's Chapter 1000 Shoreland Zoning. Over time, Kittery has amended Title 16, Kittery's Land Use Ordinance, in certain instances, to align with Chapter 1000 but has not completed the entire update. In 2019, DEP sent the Town a letter, stating that Kittery was not in compliance with Chapter 1000 and recommending the Town move towards compliance.

(continued)

Staff would like to complete the update this year and believes the results of the workshop discussion will aid the Town in moving towards a better shoreland zoning ordinance. Included with this memo is a list of sections, along with a short description of each, that must be added to our shoreland-related ordinances in order to comply with the State.

Title 16 includes language in §16.5.30 *Wetland setbacks for special situations* and a table called *Minimum Setbacks from Wetlands and Water Bodies* that was first adopted in the early 1990s and has remained much the same since then. Staff met with the Conservation Commission Chair last year to discuss Conservation Commission concerns. Staff seeks the Board's input on this section and the table as it has raised questions over the years.

The last amendment staff wants to introduce to the Board is one that was passed by the Maine legislature last year signaling that Maine municipalities will want to add it to their local ordinances. This amendment concerns property owners who wish to construct a building located in a floodplain (typically this would be a demolition of an existing building and reconstruction as building new in the floodplain is regulatorily difficult) and want to raise the building above the base flood elevation to be eligible for flood insurance. Raising the living space of the building to comply with flood insurance requirements can cause difficulties with meeting the strict height limits imposed by shoreland zoning. The amendment allows the building to be raised and the height limit to be set at the regulatorily allowed height plus the amount the building was raised. So, for instance, a building that needs to be raised two feet above base flood elevation to qualify for flood insurance would be allowed to be two feet higher than shoreland zoning regulations stipulate.

Staff believes there is plenty to discuss and looks forward to the workshop.

DEP's Shoreland Zoning Ordinance sections (Chapter 1000) that need to be addressed in Kittery's Title 16 Land Use and Development Code

Non-conforming Structures – additional criteria for reconstruction or replacement of a structure concerning any existing foundation

Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or below the Normal High-Water Line of a Water body or Within a Wetland – additional language and criteria for vegetation removal when stabilizing an eroding shoreline as permitted by the Planning Board

Campgrounds – additional requirements for individual private campsites when such lots contain another principal use.

Parking Areas – additional standards for parking area setbacks in shoreland zones

Roads and Driveways – additional standards and clarifications for road and driveway setbacks

Septic Waste Disposal – additional requirements for clearing for septic installation and types of waste water disposal

Mineral Exploration and Extraction – additional requirements for extraction operations. Kittery currently allows mineral extraction in the Residential Rural (R-RL) and Residential Suburban zones (R-S) as a special exception. There are performance standards located in §16.5.16.

Timber Harvesting – Kittery allows timber harvesting which is essentially commercial harvesting for wood and the production of wood products in the shoreland overlay in two zoning districts, the Resident Rural-Conservation (R-RC), and the Mixed-Use Zone (MU) currently. Clearing land for development is not timber harvesting, nor is the cutting of some trees by a landowner. The State's Bureau of Forestry currently does the permitting and oversight when timber harvesting takes place in those two zones. The two items of concern are:

- 1) The current language in §16.5.29 does not make it clear that the State administers all timber harvesting permits allowable in Kittery. Staff checked with the Code Enforcement Officer to verify that the State oversees permitting in both upland and shoreland of the R-RC and MU zones.
- 2) A question has been raised by the Planning Board in past discussions about whether to continue to allow timber harvesting in the shoreland and/or upland of these two districts.

Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal – a section that defines standards and requirements for the removal of trees permissible without Town approval in the shoreland zone

Exemptions to Clearing and Vegetation Removal Requirements – a section that define standards and requirements pertaining to vegetation removal in the shoreland zone

Revegetation Requirements – a section that defines standards and requirements for revegetation following a shoreland zone violation

Special Exceptions – permit criteria currently used in Findings of Fact for shoreland zoning approvals which needs a little updating.

Definitions – definitions introduced in the sections listed above that require inclusion in Title 16.