

## *Revisions to Definitions Related to Housing – May 5, 2020 – DRAFT*

### **§16.2 Definitions**

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

Affordable Housing Unit -One dwelling unit of either affordable housing for rent or affordable housing for sale.

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

Affordable Housing For Sale - A dwelling unit that may be purchased for year-round occupancy for which the selling price does not exceed the maximum price set forth for households making up to 100% of area median income, as determined by HUD's York-Kittery-South Berwick Metro Fair Market Area (HMFA) limits. The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term if permitted by regulations, to the percentage increase in the HUD York-Kittery-South Berwick Metro Fair Market Area (HMFA) median income figures for a household of that size.

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

Dwelling Unit - A room or group of rooms forming a habitable unit for one family household, with facilities used or intended to be used for living, sleeping, cooking, eating and sanitary facilities. ~~It~~ comprises at least 650 square feet of habitable floor space, ~~except for elderly housing, an accessory dwelling unit or a temporary, intrafamily dwelling unit. The term does not include a trailer. Such~~ a unit must meet the building code standards adopted and amended from time to time by Maine's Bureau of Building Codes and Standards.

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

*Revisions to C-1 and C-3 Zones related to housing – May 5, 2020 – DRAFT*

§16.3.2.11 **Commercial (C-1, C-2, C-3).**

A. Purpose.

- (1) The purpose of the Commercial (C-1, C-2, C-3) Zones is to provide general retail sales, services and business space within the Town in locations capable of conveniently serving community-wide and/or regional trade areas and oriented primarily to ~~automobile~~ vehicular access. Additionally, in the C-1 and C-3 Zones where significant existing infrastructure, minimal existing residential development, and the presence of under-developed or under-utilized commercial lots allows, development of a range of dwelling unit types is encouraged. To reflect the differing character of various parts of the commercial areas, it is divided into three zones that are shown on the Zoning Map:

C-1	Route 1 Commercial Zone
C-2	Route 236 Commercial Zone
C-3	Bypass/Old Post Road Commercial Zone

- (2) Where the standards or requirements for the zones vary, the provisions for the zone in which the parcel is located apply.

B. Permitted and special exception uses for each of the Commercial Zones follow: ~~The following uses are permitted in the Commercial Zones:~~

(1) **C-1 permitted uses.**

- (a) Public open space recreational uses, recreational facilities and selected commercial recreation;
- (b) School (including nursery school), hospital, long-term nursing care facility, convalescent care facility, municipal or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
- (c) Accessory uses and buildings including minor or major home occupations;
- (d) Business and professional offices;
- (e) Mass transit station;
- (f) Commercial parking lot or parking garage;
- (g) Retail uses and wholesale businesses, excluding used car lots and junkyards;
- (h) Service establishments;
- (i) Public utility facilities, including substations, pumping stations and sewage treatment facilities;

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- (j) Restaurant;
- (k) Veterinary hospital;
- (l) Motel, hotel, rooming house, inn;
- (m) Art studio/gallery;
- (n) Grocery, food store, convenience store;
- (o) Day-care facility;
- (p) Business service;
- (q) Personal service;
- (r) Building materials and garden supply;
- (s) Conference center;
- (t) Repair services;
- (u) Accessory dwelling unit; ~~and~~
- (v) Specialty food and/or beverage facility; [Added 6-10-2013 by Ord. No. 13-02] and
- (w) Dwelling, two-family.

**(2) C-1 special exception uses.**

- (a) Used car lot not connected with new car sales;
- (b) Gasoline sales if: i) not located within 1,000 feet of an existing station or private residence; and ii) not located within 150 feet of an existing structure;
- (c) Funeral home;
- (d) Place of assembly, including theater;
- (e) Transportation terminal excluding truck stops;
- (f) Warehousing and storage;

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- (g) ~~Mini storage;~~
- (h) Research and development;
- (i) Manufacturing operations that conform to the provisions of §16.1.3.2.2 and Chapters 16.8 and 16.9;
- (j) Repair garages not located within 150 feet of a private dwelling or existing structure;
- (k) Buildings and structures over 40 feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than 40 actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties and which may not be less than current standards or 50% of actual height, whichever is greater;
- (l) Temporary, intrafamily dwelling unit;
- (m) New motor vehicle sales;
- (n) Mechanical services, excluding junkyard; ~~and~~
- (o) Aquaculture;
- (p) Cottage cluster;
- (q) Dwelling, attached single-family;
- (r) Dwelling, multifamily; and
- (s) Dwelling units as part of a mixed-used building.
- (3) C-2 permitted uses...** [Note to Housing Working Group and KLIC: no changes in uses proposed, section removed for brevity].
- (4) C-2 special exception uses...** [Note to Housing Working Group and KLIC: no changes in uses proposed, section removed for brevity]
- (5) C-3 permitted uses.**
  - (a) Public open space recreational uses, recreational facilities and selected commercial recreation;
  - (b) School (including nursery school), hospital, elder-care facility, long-term nursing care facility, convalescent care facility, municipal or state building or use, church or any other institution of

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- educational, religious, philanthropic, fraternal, political or social nature;
- (c) Accessory uses and buildings including minor or major home occupations;
- (d) Business and professional offices;
- (e) Mass transit station;
- (f) Commercial parking lot or parking garage;
- (g) Retail uses and wholesale businesses, excluding used car lots and junkyards;
- (h) Service establishments;
- (i) Public utility facilities, including substations, pumping stations and sewage treatment facilities;
- (j) Restaurant;
- (k) Veterinary hospital;
- (l) Motel, hotel, rooming house, inn;
- (m) Art studio/gallery;
- (n) Grocery, food store, convenience store;
- (o) Day-care facility;
- (p) Business service;
- (q) Personal service;
- (r) Building materials and garden supply;
- (s) Conference center;
- (t) Repair services;
- (u) New motor vehicle sales;
- (v) Boatyard;
- (w) Mechanical services, excluding junkyard;

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- (x) Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- (y) Aquaculture;
- (z) Accessory dwelling unit; ~~and~~
- (aa) Specialty food and/or beverage facility; :[Added 6-10-2013 by Ord. No. 13-02] and
- (bb) Dwelling, two-family.

~~C. Special exception uses. The following uses are permitted as special exception uses in the Commercial Zones:~~

**(6) C-3 special exception uses.**

- (a) Used car lot not connected with new car sales;
- (b) Gasoline sales if: i) not located within 1,000 feet of an existing station or private residence; and ii) not located within 150 feet of an existing structure;
- (c) Funeral home;
- (d) Place of assembly, including theater;
- (e) Transportation terminal excluding truck stops;
- (f) Warehousing and storage;
- (g) Mini storage;
- (h) Research and development;
- (i) Manufacturing operations that conform to the provisions of §16.1.3.2.2 and Chapters 16.8 and 16.9;
- (j) Repair garages not located within 150 feet of a private dwelling or existing structure;
- (k) Buildings and structures over 40 feet that conform to the provisions of Chapters 16.8 and 16.9. Buildings and structures higher than 40 actual feet from the lowest point of grade to the highest point of the building or structure must have side, rear and front yards of sufficient depth to adequately protect the health, safety and welfare of abutting properties, and which may not be less than current standards or 50% of actual height, whichever is greater;

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- (l) Temporary, intrafamily dwelling unit;
- (m) Commercial greenhouses;
- (n) ~~Adult entertainment establishment not located within 1,000 feet of an existing private residence, school or place of worship;~~
- (o) Shops in pursuit of trade; and
- (p) Construction services.
- (q) Cottage cluster;
- (r) Dwelling, attached single-family;
- (s) Dwelling, multifamily; and
- (t) Dwelling units as part of a mixed-used building-

**DC. Standards.**

- (1) C Zone standards. All development and the use of land in the C Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met unless noted otherwise below.
- (2) The following space standards apply in the C-1, C-2 and C-3 Zones:
  - (a) Minimum lot size or density:

<u>C-1 and C-3 Zones</u>		<u>C-2 Zone</u>	
<u>Cottage Cluster;</u> <u>Dwelling, Attached</u> <u>Single-Family.</u> <u>Dwelling, Multi-</u> <u>Family, Dwelling,</u> <u>Two-Family,</u> <u>Dwelling Units as</u> <u>part of a Mixed-Use</u> <u>Building *</u>	<u>16 units per acre</u> <u>unless 25% of units</u> <u>are affordable</u> <u>housing units as</u> <u>defined by this code,</u> <u>in which case 20</u> <u>units per acre are</u> <u>allowed.*</u>	<u>All</u> <u>uses</u>	40,000 square feet
<u>All other uses</u>	40,000 square feet		

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\*NOTE: These uses are exempt from net residential acreage calculations but are subject to minimum land area per dwelling unit requirements as described in § 16.7.8.4 Exemptions to net residential acreage calculations

(b) Minimum street frontage:

<u>C-1 and C-3 Zones</u>		<u>C-2 Zone</u>	
<u>All uses</u>	<u>No minimum*</u>	<u>All uses</u>	150 feet

\*NOTE: All lots must meet the requirements of Article XVI Lots unless specifically modified by this section (16.3.2.11). Street frontage must provide sufficient vehicular and pedestrian access for the uses proposed while meeting public health and safety requirements (e.g. Fire Department, Department of Public Works). The applicant must demonstrate to the municipal permitting authority, that the street frontage and lot design meet these requirements to the extent practicable.

(c) Maximum front ~~yard~~-setback:

<u>C-1 and C-3 Zone</u>		<u>C-2 Zone</u>	
<u>All uses</u>	<u>15 feet*</u>	<u>All uses</u>	50 feet

\*NOTE: The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks or seating areas are proposed.

(d) Minimum rear and side ~~yards~~ setbacks:

<u>C-1 and C-3 Zones</u>		<u>C-2 Zone</u>	
<u>All uses</u>	<u>10 feet*</u>	<u>All uses</u>	30 feet**

\*NOTE: Except where side and/or rear setbacks of proposed new uses about a single-family use in which case a minimum of 15 feet is required.

(\*\*NOTE: Except as may be required by the buffer provisions of this title, and where the side and/or rear yards of the proposed nonresidential use about a residential zone or use; in which case a minimum of 40 feet is required.)



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(e) Maximum building height:

<u>C-1 and C-3 Zones</u>		<u>C-2 Zone</u>	
<u>Multi-Family, Dwelling, Dwelling Units as part of a Mixed-Use Building</u>	<u>50 feet, not including solar apparatus*</u>	<u>All uses</u>	40 feet
<u>All other uses</u>	40 feet		

\*NOTE: Flat roofs, proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus are screened from view and the screening is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable.

(f) ~~Maximum building and outdoor stored material coverage~~ Impervious surface:

For lots in the C-1 and C-3 zones which are currently developed and for which new multi-family, attached single-family or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, either with or without existing or new commercial uses on the same lot, the maximum impervious surface, including but not limited to driveways, buildings, sidewalks and parking areas:

[1] Is 70%; or

[2] The Planning Board may, at its discretion, allow greater than 70% if proof that all stormwater will be managed on-site, utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.

For lots in the C-3 zone which are currently vacant (no existing structure) and for which new multi-family, attached single-family, or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, the maximum impervious surface, including driveways, buildings, sidewalks and parking areas:

[1] Is 60% or

[2] The Planning Board may, at its discretion, allow greater than 60% if proof that all stormwater will be managed on-site utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.

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For lots in the C-1 or C-3 zones which are currently developed and for which redevelopment is proposed with new non-residential structures, the maximum impervious surface, including but not limited to driveways, buildings, sidewalks and parking areas:

[1] Is 70%; and all stormwater must be managed on-site, utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.

For all uses in the C-2 Zone, building and outdoor material coverage must not exceed 40%.

(g) ~~Minimum setback from water body and wetland~~ setback for functionally water-dependent uses: zero feet.

(h) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, §16.3.2.17 and Appendix A, Fee Schedules.

(i) Affordable housing requirements:

[1] All requirements in 16.X.X.X Affordable Housing must be met.

[2] Density incentives outlined above in (2).(a) may be applied to projects that create affordable housing units, as defined by this code. No proportional payment-in-lieu is required if the affordable dwelling unit requirements for the density incentives are met. In order to be eligible for this density incentive, the affordable housing units must remain affordable (via deed restriction or other legal instrument, a copy of which must be submitted to the Town prior to issuance of any building permits) for the longest term permitted under federal, state and local laws and ordinances, or 45 years, whichever is greater.

(j). Mixed-use buildings which include residential dwelling units must be comprised of at least 50% commercial uses on the first floor.

(k) Cottage cluster requirements:

[1] Cottage cluster dwelling units must either face the required common open space or the street.. The required open space must be held in common for use by all the cottage cluster residents and must be immediately accessible to each dwelling unit, via either the front or the back of each unit.

[2] Each cottage cluster dwelling unit must be no greater than 1,200 square feet. Spacing between units must comply with the requirements of the Fire Department and/or the State Fire Marshall's office.

[3] Shared parking areas must be connected to each dwelling unit via a sidewalk.

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- (3) C-1 Zone standards. All development and the use of land except for new multi-family, attached single-family or two-family dwellings, cottage clusters, or dwelling units as part of a mixed-use building within the C-1 Zone must meet the following standards:

[Note to Kittery Housing Working Group and KLIC: No changes are proposed, section removed for brevity].

- (4) C-1 and C-3 Zone standards for attached single-family dwellings, multi-family dwellings, two-family dwellings where more than one two-family dwelling is proposed for a single lot, cottage clusters, and dwelling units as part of a mixed-use building:
- (a) Design standards.
- [1] Sidewalks must be installed within the right-of-way to meet minimum requirements as specified in 16.8 Table 1, subject to review and approval by the Department of Public Works.
- [2] All service areas for dumpsters, compressors, generators and similar items must be screened by a fence at least six feet tall, constructed of a material similar to surrounding buildings, and must surround the service area except for the necessary ingress/egress.
- [3] Parking must be located behind multi-family dwellings and mixed-use buildings with residential dwelling units when viewed from the street. The Planning Board may allow parking to the side or front of such residential or mixed-use buildings at its discretion, but it is incumbent upon the applicant to demonstrate why rear parking is not feasible.
- [4] Lighting plans, including lighting fixture designs and photometric plans must be included at the time of application submission. All fixtures must be cut-off to prevent light trespass and meet all requirements of Chapter 16.8 Article XXIV.
- [5] A single new two-family dwelling proposed for a lot or the addition of another dwelling unit to an existing single-family residence to create a two-family dwelling is exempt from these design standards.
- (b) Open space standards.
- [1] Open space must be provided as a percentage of the total area of the lot, and may include wetlands, water bodies, streams, and setbacks. Fifteen percent (15%) of each lot must be designated as open space.
- [2] For multifamily dwellings, mixed-use buildings with residential dwelling units and attached single-family dwellings, in cases where the property does not meet the 15% requirement due to existing development, and where redevelopment will remain at the same or a lower percentage

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of the lot, the Planning Board may, at its discretion, allow a smaller percentage of open space. In granting this concession, the Board may require more intensive landscape plantings.

(c) Parking standards.

The following minimum off-street parking requirements must be provided and maintained in case of new construction, alterations, and changes of use:

- [1] Parking requirements must be met on site unless an existing building covers so much of the lot as to make the provision of parking impractical in whole or in part. If meeting the parking requirements is not practical, then the parking demand may be satisfied off site or through joint-use agreements as specified herein. Notwithstanding the off-street parking requirements in Article IX of Chapter 16.8, minimum parking requirements for the uses below are modified as specified:

[a] Dwelling units: 1 parking space per dwelling unit.

[b] For multifamily dwellings, if more than ten parking spaces are required, up to 20% of the parking may be designated for compact cars. See 16.8.9.4 Off-Street Parking Standards.

- [2] Off-site parking. Required off-street parking may be satisfied at off-site locations, provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant must present evidence of a parking location and a contractual agreement;

- [3] Joint-use parking. Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand.

[a] Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces;

[b] Determination of parking adequacy will be based on a most frequent basis, not a "worst case" scenario;

[c] Joint use parking areas must be located within 1,500 feet of the uses served, but do not need to be located on the same lot as the uses served;

[d] Ease and safety of pedestrian access to shared parking by the users served must be demonstrated, including any proposed improvements or shuttle service that may be offered and its requisite loading/unloading areas;

[e] Such joint parking areas must not be located in residential zones of the Town.

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[4] In making determinations on off-site or joint-use parking under a development plan review, the municipal permitting authority with jurisdiction to review and approve will make a final determination of the joint-use and/or off-site spaces that constitute an acceptable combination of spaces to meet the required parking demand.

[5] Electric car charging stations are allowed in parking lots but must not interfere with pedestrian movement on sidewalks.

(d) Landscaping and screening

[1] For new multi-family, attached single-family, or dwelling units as part of a mixed-use building or any new residential use that will create more than three dwelling units on a site, the following standards apply:

[a] A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion.

[b] A minimum of one street tree must be planted for each 25 feet of street frontage. Trees may be planted in groups or spaced along the frontage. However, trees must be planted to ensure survival, using silva cells, bioretention cells or tree wells. Trees are to be a minimum of 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity.

[c] Surface parking lots designed for five or more cars that will service multi-family or mixed-use buildings with dwelling units and which abut a street must provide screening in one of the following ways:

i. One tree per 25 feet of street frontage backed by a fence constructed of a material similar to surrounding buildings which must screen the parking area from the street except for necessary vehicular and pedestrian access. To ensure survival, trees must be planted using silva cells, bioretention cells or tree wells. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity.

ii. A combination of trees and shrubs including at least 50% evergreen species, all at least six feet high at time of planting, in a planting bed at least eight feet wide. Plantings must be sufficient, as determined by the Planning Board, to screen the parking area from the street except for necessary vehicular and

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pedestrian access. Planting beds may be mulched but no orange or red-dyed mulching material may be used.

- [d] A minimum of 10% of any surface parking area consisting of 10 or more spaces must be landscaped with trees and vegetated islands. This requirement is in addition to the aforementioned screening and street tree requirements.
- [e] Native trees are preferred and must be drought and salt tolerant when used along streets. A diversity of tree species (three to five species per every 12 trees) is required to provide greater resiliency to threats from introduced insect pests and diseases.
- [f] Any required plantings that do not survive must be replaced within one year.
- [g] If 25% of the proposed development will be affordable dwelling units, the Planning Board may, at its discretion, modify surface parking lot landscaping and screening requirements under [c] and [d].

(e) Buffers.

- [1] Buffers are required between new residential uses and existing nonresidential uses and must be at least 10 feet wide. A buffer plan must be prepared in conjunction with the landscape plan as described in [d].[1].(a) above and consist of:
  - [a] A fence at least six feet high, constructed of material similar to surrounding buildings, with plantings of trees and shrubs at least six feet tall on the new residential side of the fence.
  - [b] Ground cover plantings must be used where appropriate.
  - [c] Plantings must be provided with irrigation to enhance survival unless they are part of a bioretention cell, rain garden or tree well.
  - [d] Any required plantings that do not survive must be replaced within one year.
  - [e] If 25% of the proposed development will be affordable housing dwelling units, the Planning Board may, at its discretion, waive or modify buffer requirements under [a] and [b].

(45) C-2 Zone standards. All development and the use of land within the C-2 Zone must meet the following standards:

[Note to Kittery Housing Working Group and KLIC: No changes are proposed, section removed for brevity].

(56) C-3 Zone standards. All development and the use of land except for new multi-family, attached single-

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family or two-family dwellings, cottage clusters or dwelling units as part of a mixed-use building,  
within the C-3 Zone must meet the following standards:

[Note to Kittery Housing Working Group and KLIC: No changes are proposed, section removed for brevity.]

**§ 16.7.8.4 Exemptions to net residential acreage calculations.**

- C. The Mixed-Use – Neighborhood Zone (MU-N) ~~zone~~ and certain residential uses in the C-1 and C-3 zones as noted in §16.3.2.11 are is exempt from § 16.7.8.2, Net residential acreage calculation, but ~~is~~ are subject to the minimum land area per dwelling unit as defined in Chapter 2, Definitions, except that 50% of all wetlands may be subtracted, rather than 100%.

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§16.3.2.8 **Business – Local B-L.**

- A. Purpose. The ~~purpose~~ intent of the Business – Local B-L Zone is to provide local sales, services, and business space as well as a variety of housing types. Much of this zone serves as a well-traveled corridor through Kittery with many buildings, including residential structures, oriented within the Town to Route 1. Other portions of the zone serve as business hubs for the neighborhoods they are situated in.
- B. Permitted uses. The following uses are permitted in the B-L Zone:
- (1) Dwellings, single-family ~~or modular homes~~, exclusive of mobile homes;
  - (2) Dwellings, two-family;
  - (3) Dwelling units as part of a mixed-use building [Note: moved from special exception uses]
  - (3) Public open space recreational uses;
  - (4) School or educational facility (including nursery schools), day-care facility, elder-care facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
  - (5) Accessory uses and buildings including minor or major home occupations;
  - (6) Retail business and service establishments, but excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under Subsection C of this section;
  - (7) Business and professional offices;
  - (8) Mass transit station;
  - (9) Commercial parking lot or parking garage;
  - (10) Restaurant;
  - (11) Art studio or gallery;
  - (12) Convenience store, food store, grocery store;
  - (13) Personal service;
  - (14) Business service;



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- (15) Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;
- (16) Garden supply;
- (17) Conference center;
- (18) Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
- (19) Aquaculture;
- (20) Accessory dwelling units; and
- (21) Specialty food and/or beverage facility; **[Added 6-10-2013 by Ord. No. 13-02]**

C. Special exception uses. The following uses are permitted as special exception uses in the B-L Zone:

- (1) Motel, hotel, inn or rooming house;
- (2) Funeral home;
- (3) Gasoline sales: (a) not located within 1,000 feet of an existing station; (b) not located within 1,000 feet of any private residence; and (c) not located within 150 feet of any existing structure;
- (4) Place of public assembly, including theater;
- (5) Public utility facilities, including substation, pumping stations and sewage treatment facilities;
- (6) Dwelling, Multi-family Apartment building;
- (7) Temporary, intrafamily dwelling unit;
- (8) Mechanical service; ~~and~~
- (9) ~~Residential Dwelling units as part of a mixed use building;~~
- (10) Dwellings, attached single-family; and
- (11) Cottage cluster.

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D. Standards.

(1) All development and the use of land in the B-L Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

(a) ~~Parking. One row of parking spaces and a related access drive may be located between the front property line and the front wall of the building extending the full width of the lot. All other parking must be located to the side and/or rear of the building. All new or revised parking must be visually screened through the use of landscaping, earthen berms and/or fencing from adjacent public streets or residential properties. (See the Design Handbook for appropriate examples.)~~ Parking requirements are to be met on site. If meeting the parking requirements is not practical, then the parking demand may be satisfied off site or through joint-use agreements as specified herein. Notwithstanding the off-street parking requirements in Article IX of Chapter 16.8, minimum parking requirements for the uses below are modified as specified:

[1] Dwelling units: 1 parking space per dwelling unit;

[2] For multifamily dwellings, if more than ten parking spaces are required, up to 20% of the parking may be designated for compact cars. See 16.8.9.4 Off-Street Parking Standards.

(b) Off-site parking. Required off-street parking may be satisfied at off-site locations, provided such parking is on other property owned by the applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served. Applicant must present evidence of a parking location and a contractual agreement prior to final approval and file the same with Planning and Code office each time the contract is renewed. Any changes to the contractual agreement must be reviewed by the Code Enforcement Officer and if the location of the off-site parking changes, will require approval from the municipal permitting authority which originally approved the off-site parking.

(c) Joint-use parking. Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand.

[1] Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces. Applicant must present evidence of the parking location and a

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contractual agreement prior to final approval and file the same with the Planning and Code office each time the contract is renewed. Any changes to the contractual agreement must be reviewed by the Code Enforcement Officer and if the municipal permitting authority which originally approved the off-site parking.

- [2] Determination of parking adequacy will be based on a most frequent basis, not a "worst case" scenario;
  - [3] Joint use parking areas must be located within 1,500 feet to the use served, but do not need to be located on the same lot as the uses served;
  - [4] Ease and safety of pedestrian access to shared parking by the users served must be demonstrated, including any proposed improvements or shuttle service that may be offered and its requisite loading/unloading areas;
  - [5] Such joint parking areas must not be located in residential zones of the Town.
- (d) In making determinations on off-site or joint-use parking under a development plan review, the municipal permitting authority with jurisdiction to review and approve will make a final determination of the joint-use and/or off-site spaces that constitute an acceptable combination of spaces to meet the required parking demand.
- (e) Special parking and access situations.

[1] Access drives. In instances where one row of parking spaces and/or a related access drive is located between the front property line and the front wall of the building extending the full width of the lot and was utilized in accordance with previous permits or approvals, for parking, display, storage, building or necessary vehicle circulation, the Planning Board may allow such improvements to remain provided all other parking meets the location requirements and provided that a landscaping plan for the property frontage is reviewed and approved by the Planning Board. .

(f) Parking design.

[1] Parking must be located ~~on~~ to the side or ~~back~~ rear of the building ~~yard~~. If all parking cannot be located to the rear or side, at the Planning Board's discretion, limited parking may be located in front of the building. It is incumbent upon the applicant to demonstrate why parking in front should be allowed.

[2] Shared parking access between buildings and/or lots must be provided where feasible.

[3] Screening through the use of plantings and/or fencing is required for all new or revised parking adjacent to public streets. Such screening does not require that the parking lot and vehicles within it be completely obscured from view, rather the screening must provide visual interest and distraction from the parking area beyond. If plantings are

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used, the landscaped area must be at least eight feet wide. Planting beds may be mulched but no orange or red-dyed mulching material may be used. A landscape plan showing screening and other landscaping requirements prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion. Any required plantings that do not survive must be replaced within one year.

[a] Surface parking lots designed for five or more cars and which abut a street must provide screening in one of the following ways:

- i. Any combination of shrubs, tall ornamental grasses or perennial plants in a planting bed at least eight feet wide. Plantings must be sufficient, as determined by the Planning Board, to screen the parking area from the street except for necessary vehicular and pedestrian access. Planting beds may be mulched but no orange or red-dyed mulching material may be used.
- ii. One tree per 25 feet of street frontage within a planting bed at least 10 feet wide which will include other plantings such as perennials. Plantings must be sufficient to screen the parking area from the street except for necessary vehicular and pedestrian access. To ensure survival, trees must be planted using silva cells, bioretention cells or tree wells. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity. Native trees are preferred and must be drought and salt tolerant when used along streets. Planting beds may be mulched but no orange or red-dyed mulching material may be used.

[b] A minimum of 10% of any surface parking area consisting of 10 or more spaces must be landscaped with trees and vegetated islands. This requirement is in addition to other required landscaping and street tree requirements.

[c] If 15% or more of the proposed development will be affordable dwelling units, the Planning Board may, at its discretion, modify surface parking lot landscaping and screening requirements under [a] and [b].

- (f) 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 with the front of the building facing the street on which the building is located. 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

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Handbook for examples of acceptable materials and designs.) 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:

- [1] 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.
  - [2] ~~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 such as are gabled, gambrel, and hipped roofs are preferred. ~~Flat roofs, shed roofs and roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms unless demonstrated to the Planning Board's satisfaction that another design is not practicable, except as provided above.~~ Flat roofs proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus are screened from view and the screening is designed as an integral part of the building to aid both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable. 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.)
  - [3] 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.
  - [4] Lighting plans, including lighting fixture designs and photometric plans, must be included at the time of application submission. All lighting fixtures must be cutoff (dark sky compliant).
- (g) Landscaping standards. A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion. To achieve attractive and environmentally sound site design and appropriate screening of parking areas, in addition to the landscaping standards contained in Chapters 16.8 and 16.9 the following landscaping requirements apply

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to new and modified existing developments:

- [1] Landscape plantering strip. A vegetated landscape plantering strip must be provided a minimum of ~~10~~15 feet in depth adjacent to the right-of-way of all public roads or the sidewalk if it already exists. If a sidewalk does not yet exist but sidewalks do exist on adjacent properties, the planting strip must be located so that it does not interfere with connectivity to existing sidewalks. The Planning Board may reduce the required depth of the landscape plantering 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 and/or seating area. The landscape plantering strip must include the following landscape elements:
  - [a] ~~Ground cover~~ Plantings. The entire landscape plantering strip must be vegetated with a combination of shrubs, perennials, and ornamental grasses except for approved driveways, walkways, bikeways and screened utility equipment. Planting beds may be mulched but no orange or red-dyed mulching material may be used. Street trees required below may be included in this planting strip.
  - [b] 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~~ 2.5-inch caliper and be at least 12 feet high at the time of planting. Trees must be planted to ensure survival, using silva cells, bioretention cells or tree wells. The species must be selected from the A list of approved street-side trees can be found in the Design Handbook. Native trees are preferred and must be drought and salt tolerant when used along streets. A diversity of tree species (three to five species per every 12 trees) is required to provide greater resiliency to threats from introduced insect pests and diseases. Existing large healthy trees must be preserved if practical and will count toward this requirement. Trees located within the right-of-way must not exceed 20 feet in height at maturity. **[Amended 9-26-2011 by Ord. No. 11-15]**
  - [c] Any required plantings that do not survive must be replaced within one year.
  - [d] Special situations.
    - [i] Expansions of less than 1,000 square feet to existing uses including single-family or two-family dwellings 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

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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 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 planting strip or other developed areas of the site to be substituted for the planting of new trees.

[2] Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. ~~Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See Design Handbook for examples of appropriate buffering.)~~ All service areas for dumpsters, compressors, generators and similar items must be screened by a fence at least six feet tall, constructed of a material similar to surrounding buildings, and must surround the service area except for the necessary ingress/egress.

- (h) Traffic and circulation standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)
- (i) Open space standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams and setbacks. A minimum of fifteen percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as "open space." The open space must be located to ~~create an attractive environment on the site,~~ minimize environmental impacts, protect significant natural features or resources on the site and maintain wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be included in the

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open space. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties. The required amount of designated open space is reduced to 10% of each lot that is less than 40,000 square feet in size.

(2) The following space and dimensional standards apply:

(a) Minimum land area per dwelling unit ~~when all floors are residential:~~

[1] If served by on-site sewage disposal: 20,000 square feet;

[2]-If served by the public sewerage system and:

[i] All floors are residential: 3,500 square feet;

[ii] The entire first floor is in nonresidential use: 2,500 square feet;

[iii] At minimum, the front half of the first floor of a building facing State Road is nonresidential uses: 3,000 square feet; or

[iv] 25% or more of the dwelling units will be affordable housing units as defined by this code: 2,000 square feet

(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or single-family use; in which case a minimum of 15 feet or 50% of the building height is required.

(b) Minimum lot size: none. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

(c) Minimum street frontage: none. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

(d) ~~Minimum~~ ~~Maximum~~-front yard: 30 feet. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)

(e) Maximum front setback of the principal building: 40 ~~60~~ feet.

(f) Minimum rear and side yards: 10 feet. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or 50% of the building height is required.)



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- (g) Maximum building height: 40 feet. Solar apparatus is excluded from height determinations.  
(NOTE: Except that ~~space~~ height standards for single- and two-family residential uses are the same as for those of the Urban Residential District.)
- (j) ~~Maximum building and outdoor stored material coverage: none, except that side, rear and front yards must be maintained.~~ Impervious surface: No maximum allowable, but all open space, landscaping, setbacks, yard, buffer and street tree requirements apply. For development that is proposing 75% or more impervious surface, the stormwater requirements in (k) below may not be waived.
- (k) Stormwater: All new development must use LID (Low Impact Development) and BMP (Best Management Practices) to manage 100% of the stormwater generated post development on-site. In cases where this requirement cannot be met, a request for a modification may be submitted to the Planning Board but it is incumbent on the applicant to prove that such a modification is necessary. The Town reserves the right to submit such modification requests for independent engineering review at the applicant's expense. The Board may require additional landscaping when considering such waiver requests.
- (l) Minimum setback from functionally water body and wetland ~~water-dependent~~ uses: zero feet.
- (m) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, §16.3.2.17 and Appendix A, Fee Schedules.
- (3) Cottage cluster requirements:
  - (a) Cottage cluster dwelling units must either face the required common open space or the street. Cottage clusters designed such that each dwelling unit sits on its own lot are not exempt from this requirement. The required open space must be held in common for use by all the cottage cluster residents and must be immediately accessible to each dwelling unit, via either the front or the back of each unit.
  - (b) Each cottage cluster dwelling unit must be between 650 and 1,200 square feet. Spacing between units must comply with the requirements of the Fire Department and/or the State Fire Marshall's office.
  - (c) Shared parking areas must be connected to each dwelling unit via a sidewalk.
- (4) Affordable housing requirements:
  - (a) All requirements in 16.X.X.X Affordable Housing must be met.

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- (b) Density incentives outlined above in 16.3.2.8.D.(2).(a).[2].[iv] may be applied to projects that create affordable housing units, as defined by this code. No proportional payment-in-lieu is required if the affordable dwelling unit requirements for the density incentives are met. In order to be eligible for this density incentive, the affordable housing units must remain affordable (via deed restriction or other legal instrument, a copy of which must be submitted to the Town prior to issuance of any building permits) for the longest term permitted under federal, state and local laws and ordinances, or 45 years, whichever is greater.

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§16.3.2.9 **Business – Local 1 B-L1.**

- A. Purpose. The purpose of the Business – Local 1 B-L1 Zone is to encourage a smart growth/urban design pattern that will serve as a focal point for the provision of local sales, urban residences, services and business space. The goal of this section is to create an attractive, functional and vibrant pedestrian-scaled neighborhood supporting a mix of commercial and residential uses. ~~This type of development reflects a traditional New England pattern of building, where commercial uses are located on the first floor and housing on the upper floors.~~
- B. Permitted uses. The following uses are permitted in the B-L1 Zone:
- (1) Dwellings, single-family ~~or modular homes~~, exclusive of mobile homes;
  - (2) Dwellings, two-family;
  - (3) ~~Apartments~~; Dwellings, Multi-family;
  - (4) Public open space recreational uses;
  - (5) Inn;
  - (6) School or educational facility (including nursery schools), day-care facility, elder-care facility, hospital, long-term nursing care facility, convalescent care facility, municipal, county or state building or use, church or any other institution of educational, religious, philanthropic, fraternal, political or social nature;
  - (7) Accessory uses and buildings including minor or major home occupations;
  - (8) Retail business and service establishments, excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under Subsection C of this section;
  - (9) Business and professional offices;
  - (10) Mass transit station;
  - (11) Commercial parking lot or parking garage;
  - (12) Restaurant;

- (13) Art studio or gallery;
- (14) Convenience store, food store, grocery store;
- (15) Personal service;
- (16) Business service;
- (17) Building materials, but excluding those of which the principal activity entails outdoor sales and/or storage;
- (18) Garden supply;
- (19) Conference center;
- (20) Accessory dwelling units; ~~and~~
- (21) Specialty food and/or beverage facility; [**Added 6-10-2013 by Ord. No. 13-02**]
- (22) Dwellings, attached single-family;
- (23) Cottage cluster; and
- (24) Dwelling units as part of a mixed-use building.

C. Special exception uses. The following uses are permitted as special exception uses in the B-L1 Zone:

- (1) Motel, hotel, rooming house;
- (2) Funeral home;
- (3) Gasoline sales: (a) not located within 1,000 feet of an existing station; (b) not located within 1,000 feet of any private residence; and (c) not located within 150 feet of any existing structure;
- (4) Place of public assembly, including theater;
- (5) Public utility facilities, including substation, pumping stations and sewage treatment facilities;
- (6) Farmer's market;
- (7) Temporary, intrafamily dwelling unit; and

(8) Mechanical service.

D. Standards. All development and the use of land in the B-L1 Zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

(1) The following space standards apply:

(a) Minimum land area per dwelling unit:

[1] When all floors are residential: 83,500 square feet.

[2] When the entire first floor is in nonresidential use: 2,5000 square feet.

[3] When at minimum, the front half of the first floor of a building facing State Road or Shapleigh Road is nonresidential uses: 3,000 square feet.

[4] When 15% or more of the dwelling units will be affordable housing units as defined by this code, the minimum land area per dwelling unit is: 2,000 square feet.

(b) Minimum parking spaces per dwelling unit: 1.5.

[1] If affordable housing as defined by this code is proposed, the parking requirements may be reduced to one parking space per dwelling unit at the Planning Board's discretion.

[2] For multifamily dwellings, if more than ten parking spaces are required, up to 20% of the parking may be designated for compact cars. See 16.8.9.4 Off-Street Parking Standards.

(c) Minimum lot size: 20,000 square feet.

(d) Minimum street frontage per ~~building~~ lot: 50 feet.

(e) Maximum front yard: 30 feet. (NOTE: This area must be designed to promote a pedestrian public space, which includes, but is not limited to, landscaping, sidewalks and sitting areas. Parking and outdoor storage are prohibited anywhere in the front yard of the structure, except for seasonal sales items.)

(f) Minimum rear and side yards: 10 feet. (NOTE: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear yards abut a residential zone or use; in which case a minimum of 15 feet or 50% of the building height, whichever is greater, is required.) **[Amended 9-26-2011 by Ord. No. 11-15]**

- (g) Maximum building height: 40 feet.
- (h) Maximum building and outdoor stored material coverage: 50%. For lots which are currently developed and for which new multi-family, attached single-family or two-family dwellings, cottage clusters, or dwelling units as part of mixed-use building are proposed, either with or without existing or new commercial uses on the same lot, the maximum impervious surface, including but not limited to driveways, buildings, sidewalks and parking areas:

The maximum impervious surface is:

[1] 75%; or

[2] The Planning Board may, at its discretion, allow greater than 75% if proof that all stormwater will be managed on-site, utilizing LID (Low Impact Development) and BMP (Best Management Practice) systems. The stormwater report and plan demonstrating that this requirement is met must be included with the application at the time of submission.

- (i) Minimum area dedicated to landscaped area: 15%.

[1] For multifamily dwellings, mixed-use buildings with residential dwelling units and attached single-family dwellings, in cases where the property does not meet the 15% requirement due to existing development (including parking areas), and where redevelopment will remain at the same or a lower percentage of the lot, the Planning Board may, at its discretion, allow a smaller percentage of landscaped area. In granting this concession, the Board may require more intensive landscape plantings.

- (j) Hours of operation must be noted on the final site plan and are determined by the Planning Board on a case-by-case basis. All lighting other than designated security lighting must be extinguished outside of noted hours of operation.
- (k) Minimum setback from water body/~~and~~ wetland for functionally water-dependent uses: zero feet.
- (l) Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, §16.3.2.17 and Appendix A, Fee Schedules.

(2) Parking Design.

- (a) Parking must be located on to the side or back rear of the building yard; If all parking cannot be located to the rear or side, at the Planning Board's discretion, limited parking may be located in front of the building. It is incumbent upon the applicant to demonstrate why parking in front should be allowed.
- (b) Shared access between buildings and/or lots must be provided where feasible; and
- (c) Landscaping is required for new or revised parking adjacent to public streets. The screening described below does not require that the parking lot and vehicles within it be completely obscured from view, rather the screening must provide visual interest and distraction from the parking area beyond. 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.) A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion. Any required plantings that do not survive must be replaced within one year.

[1] Surface parking lots designed for five or more cars that will service multi-family or mixed-use buildings with dwelling units and which abut a street must provide screening in one of the following ways:

- i. Any combination of shrubs, tall ornamental grasses or perennial plants in a planting bed at least eight feet wide. Plantings must be sufficient, as determined by the Planning Board, to screen the parking area from the street except for necessary vehicular and pedestrian access. Planting beds may be mulched but no orange or red-dyed mulching material may be used.
- ii. One tree per 25 feet of street frontage within a planting bed at least 10 feet wide which will include other plantings such as perennials. Plantings must be sufficient to screen the parking area from the street except for necessary vehicular and pedestrian access. To ensure survival, trees must be planted using silva cells, bioretention cells or tree wells. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the right-of-way must remain under 20 feet tall at maturity. Native trees are preferred and must be drought and salt tolerant when used along streets. Planting beds may be mulched but no orange or red-dyed mulching material may be used.

- (d) Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can show that parking demand is nonconflicting and will reasonably provide adequate parking for the multiple uses without parking overflowing into undesignated areas. Nonconflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekends or seasonal variation in parking demand.
  - i. Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that ensures such parking remains available to all users of the shared parking spaces.
  - ii. Determination of parking adequacy will be based on a most frequent basis, not a "worst case" scenario.

(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 proposed to locate heating, cooling, or other such mechanical or electrical apparatus off the ground, are acceptable provided that such apparatus are screened from view and the screening is designed as an integral part of the building to aid



both aesthetics and noise attenuation. Flat roofs proposed for the purpose of solar array installations are also acceptable. 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 must be screened from view from adjacent properties in residential use.
- (4) Landscaping/site improvements. A landscape plan prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board's discretion. To achieve attractive and environmentally sound site design ~~and appropriate screening of parking areas~~, in addition to the landscaping standards contained in Chapters 16.8 and 16.9, the following landscaping requirements apply to new and modified existing developments:
- (a) Fifteen percent of site area must be landscaped unless otherwise provided above;
  - (b) Outdoor spaces must be created to reinforce commercial activities and pedestrian-friendly access. Outdoor spaces are encouraged throughout the site with special attention along the sidewalk and street. Architectural features such as decorative pavers, planters and benches are encouraged in the creation of these spaces;
  - (c) The space between the roadway and any buildings must be attractively landscaped using trees, flowers, perennials, ornamental grasses, shrubs, fencing or stone walls to reinforce the site's unique character and building design;
  - (d) A buffer between commercial and residential zones must be established and be landscaped with a visually pleasing mixed planting type;
  - (e) Solid fencing, berms and/or stone walls must be used to prevent headlights from shining on abutting residential property. Incorporating flowering vines and other plantings on fences and blank exterior walls is encouraged;
  - (f) Provide street trees in a pattern reflecting the existing streetscape. For new buildings, a minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site. (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch

caliper and be at least 12 feet high at the time of planting. The species 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. Trees located within the right-of-way must not exceed 20 feet at maturity.

- (g) 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 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 developed areas of the site to be substituted for the planting of new trees; **[Amended 9-26-2011 by Ord. No. 11-15]**
  - (h) Service and storage areas must be located to the rear of the building and be shielded using plantings and/or fencing. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping and/or other treatments (see Design Handbook for examples of appropriate buffering);
  - (i) No storage may be in front of buildings except seasonal sales items;
  - (j) Lighting and landscape plans must be provided and approved as a part of final plan; and
  - (k) Lighting along the street must be of a pedestrian scale using a full cutoff architectural fixture in an architectural style appropriate to the neighborhood.
  - (l) Any required plantings that do not survive must be replaced within one year.
  - (m) If 15% of the proposed development will be affordable dwelling units, the Planning Board may, at its discretion, modify surface parking lot landscaping and screening requirements under [c] and [d].
- (5) Traffic and circulation standards. Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate examples.)

(6) Cottage cluster requirements:

- (a) Cottage cluster dwelling units must either face the required common open space or the street.. The required open space must be held in common for use by all the cottage cluster residents and must be immediately accessible to each dwelling unit, via either the front or the back of each unit.
- (b) Each cottage cluster dwelling unit must be no greater than 1,200 square feet. Spacing between units must comply with the requirements of the Fire Department and/or the State Fire Marshall's office.
- (c) Shared parking areas must be connected to each dwelling unit via a sidewalk.

**16.X.X.X Affordable Housing**

A. Purpose

Recognizing that the market alone will not provide the range and diversity of housing types needed for a vibrant community, the Town of Kittery desires to encourage affordable housing for households of modest means and for all ages. The purpose of this ordinance is to offer incentives to developers to include affordable housing, either for rent or sale, particularly in those zones that offer utilities and/or services, and to mitigate the impacts of market-rate housing development on the limited supply of land available for suitable housing. The Town looks to its comprehensive plan and finds that this ordinance will assist in meeting housing goals and in promoting the public health, safety and welfare of its residents.

B. Applicability

Affordable housing regulations are applicable to the following:

- 1) All development in the C-1, C-3, B-L, and B-L1 zones involving three or more new dwelling units except those to be created via subdivision and for which one single-family dwelling is proposed for each lot. Single-family attached dwelling units, even if proposed as a subdivision, are not exempt. The proposed dwelling units may be new construction, created through a change of use or created through a renovation, rehabilitation or remodel. Projects may not be phased or segmented to avoid compliance with these requirements.
- 2) All major subdivisions, including those planned in phases, in all zones that create 5 or more lots. Minor subdivisions are exempt.
- 3) All developments as described in 1) and 2) above whether the dwelling units proposed are intended for sale or for rent.

Affordable housing regulations do not apply to hotels, motels, rooming houses, inns, bed and breakfasts, residential care facilities or elder care facilities.

C. Requirements

- 1) For projects proposing ten (10) or more dwelling units, at least 10% of the units, rounded down to the nearest whole number, must be affordable dwelling units, as defined by this code. Any fractional unit obligation left after the rounding results in a proportional payment-in-lieu (see 3) below). For example, if 15 units are proposed, then one affordable unit is required plus 50% of a payment-in-lieu. If an additional affordable unit is offered for the fractional unit obligation, no payment-in-lieu is required.

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- 2) The affordable housing units must remain affordable (via deed restriction or other legal instrument, a copy of which must be submitted to the Town prior to issuance of any building permits) for the longest term permitted under federal, state and local laws and ordinances, or 45 years, whichever is greater.
- 3) If the developer prefers to provide a payment-in-lieu instead of the required affordable housing units, that proportional payment will be calculated based on the number of affordable housing units that are required plus any fractional unit obligation. Using the example above, if 15 units are proposed, the developer would provide 1.5 times the current rate set by the Town.

### D. Location

- 1) Required affordable housing may be located either on-site with any market rate dwelling units or off-site. For development proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable housing must be located within one of those zones.
- 2) Off-site affordable housing may be new construction, a rehabilitation, remodel or renovation of an existing structure, or a change of use from non-residential to residential.

### E. Incentives

- 1) Zoning districts C-1, C-3, B-L and B-L1 each have density incentives which can be reviewed under the pertinent zone in 16.3.
- 2) The Town will reduce the permitting costs for developments including affordable housing as follows:
  - a. For developments comprised of 10% – 15% affordable housing units: 10% off total permitting costs except for sewer connections.
  - b. For developments comprised of 16% – 24% affordable housing units: 15% off total permitting costs except for sewer connections.
  - c. For developments comprised of 25% and over affordable housing units: 20% off total permitting costs except for sewer connections.

### F. Standards

- 1) Affordable housing units must be built in reasonable accordance with any market-rate units such that at minimum, for every 10 market rate units built, one affordable unit must be completed. All affordable housing units in a development must have received a certificate of occupancy before the final market rate unit receives such. If a development

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is proposed for ten dwelling units including one affordable unit, that affordable unit must be completed before the last market rate unit receives its certificate of occupancy.

- 2) When affordable housing units are part of a development which also includes market rate housing units, the outside appearance of affordable units must be similar to the market rate units and any affordable units must be integrated into the development as a whole. Affordable units cannot be confined to one building of a multiple building development except in the cases of cottage clusters, accessory dwelling units or two-family residences.
- 3) Affordable housing units need not be the same size as market rate housing units but the number of bedrooms in each such dwelling unit may not be less than 10% of the total number of market rate bedrooms in the development, rounded up when the fractional portion is .5 or more. For example, a 10-unit multi-family dwelling with 9 market rate housing units of 2 bedrooms each would be required to provide one affordable housing unit with two bedrooms.
  - a. Studio dwelling units will be counted as a one-bedroom unit. In cases where a development is providing only studio apartments and one-bedroom apartments, the Planning Board has the authority to decide whether each required affordable dwelling unit will be a studio or one-bedroom unit.