



TOWN OF KITTEERY
Planning and Development
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TO: PLANNING BOARD
FROM: JAMIE STEFFEN, TOWN PLANNER
SUBJECT: **SHORELAND ZONING-RELATED CHANGES TO TITLE 16**

DATE: AUGUST 16, 2018
CC: KENDRA AMARAL, TOWN MANAGER
ADAM CAUSEY, DIRECTOR OF PLANNING AND DEVELOPMENT

As noted in the memo included in the Board's packets for the June 28th and July 26th Planning Board meetings, in the past year or so, Staff has noted that portions of the shoreland zoning-related sections of Title 16, specifically Table 16.9 as concerns drainage structures and Section 16.7.3.3.2 on nonconforming structure expansions have caused problems for applicants and for the Planning Board. Addressing the problems seemed fairly straight-forward and fairly contained so amendments have been proposed. The recodification will cover all of Title 16 but these small fixes will help in the meantime.

To summarize: the 16.9 wetland setback table changes will make it clear what the Town expects for drainage structures (and what the Town defines as a drainage structure) within and outside of properties containing shoreland zoned land. The changes to 16.7.3.3.2 will remove the roof pitch language which, as an unintended consequence, prevents rooftop decks that would otherwise be (and in the past were) permissible. It will also align the nonconforming building expansion section more closely with DEP's while clarifying what is and is not allowable in the shoreland zone setbacks.

Staff sent the amendments to Mike Morse, Shoreland Zoning Coordinator for Maine DEP, for approval following the July 26th meeting and he was generally satisfied with the amendments. The green highlighted portions of the draft amendments are DEP's suggestions to become compliant with state minimum shoreland zoning standards, the yellow highlighted portions the Board reviewed at the June 28th and July 26th meetings this year. At the July 26th meeting the Board moved to schedule a public hearing on these amendments for August 23rd.

As with all public hearings on proposed zoning changes, staff properly noticed the public hearing in the newspaper and on the Town's website. Following the public hearing tonight the Board will want to review DEP's green highlighted amendments and vote whether to recommend the proposed amendments to Town Council for approval.

1 **16.7.3.3.2 Nonconforming Structure Repair and/or Expansion.(Ordained 9-26-11; Effective 6-28-11)**

2 **Note: No changes proposed for Subsections for A-D.**

3 E. In addition to the standards in the above subsections 16.7.3.3.2.A-D, the expansion of a
4 nonconforming structures **and the construction of new, enlarged, or replacement foundation beneath a**
5 **nonconforming structure** located in the Shoreland or Resource Protection Overlay Zone must meet the
6 following:

7 1. Wherever a new, enlarged, or replacement foundation is constructed under a nonconforming
8 structure the structure and new foundation must be placed such that setback requirements are met
9 to the greatest practical extent as determined by the Planning Board, basing its decision on the
10 criteria specified in Title 16.7.3.3.1.B, Nonconforming Structure Relocation.

11
12 2. **All new principal and accessory structures, excluding functionally water-dependent uses, must meet**
13 **the water body, tributary stream, or wetland setback requirements contained in 16.3.2.17.D.2.**
14 **A non-conforming structure may be added to or expanded after obtaining a permit from the same**
15 **permitting authority as that for a new structure, if such addition or expansion does not increase the**
16 **non-conformity of the structure and is in accordance with 16.7.3.3.2.E.3 and 16.7.3.3.2.E.4 below:**

17
18 3. **Expansion of any portion of a structure that is located within 25 feet of the normal high-water line of**
19 **a water body, tributary stream, or upland edge of a coastal or freshwater wetland is prohibited, even**
20 **if the expansion will not increase nonconformity with the water body, tributary stream or wetland**
21 **setback requirement. Expansion of an accessory structure that is located closer to the normal high-**
22 **water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland than**
23 **the principal structure is prohibited, even if the expansion will not increase nonconformity with the**
24 **water body, tributary stream or coastal or freshwater wetland setback requirement.**

25
26 4. Notwithstanding Title 16.7.3.3.2.E.3 above, if a legally existing nonconforming principal structure is
27 entirely located less than 25 feet from the normal high-water line of a waterbody, tributary stream,
28 or upland edge of a coastal or freshwater wetland, that structure may be expanded as follows, **as**
29 **long as all other applicable municipal land use standards are met and the expansion is not**
30 **prohibited by 16.7.3.3.2.E.2.**

31
32 a. **the maximum total footprint for the principal structure may not be expanded to a size**
33 **greater than 800 square feet or 30% larger than the footprint that existed on January 1,**
34 **1989, whichever is greater. The maximum height of the principal structure may not be made**
35 **greater than 15 feet or the height of the existing structure, whichever is greater. Roof slope**
36 **must not be less than an 8:12 pitch.**

37
38 5. **Expansion of an accessory structure that is located closer to the normal high water line of a water**
39 **body, tributary stream, or upland edge of a coastal or freshwater wetland than the principal**
40 **structure is prohibited, even if the expansion will not increase nonconformity with the water body,**
41 **tributary stream or coastal or freshwater wetland setback requirement. All other legally existing**
42 **nonconforming principal and accessory structures that do not meet the water body, tributary**

43 stream, or coastal or freshwater wetland setback requirements may be expanded or altered as
44 follows, as long as other applicable municipal land use standards are met and the expansion is not
45 prohibited by 16.7.3.3.2.E.2 or 16.7.3.3.2.E.3 above:

46
47 a. For structures located less than 100 feet from the normal high-water line of a water body,
48 tributary stream, or upland edge of a coastal or freshwater wetland, the maximum
49 combined total footprint for all structures may not be expanded to a size greater than 1,000
50 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is
51 greater. The maximum height of any structure may not be made greater than 20 feet, or the
52 height of the existing structure, whichever is greater. Roof slope must not be less than an
53 8:12 pitch.

54 b. In addition to the limitations in Title 16.7.3.3.2.E.5.a above, for structures that are legally
55 nonconforming due to their location within~~For structures that are located within~~ the
56 Resource Protection Overlay Zone when located at less than 250 feet from the normal high-
57 water line of a water body or the upland edge of a coastal or freshwater wetland, the
58 maximum combined total footprint for all structures may not be expanded to a size greater
59 than 1,500 square feet, or 30% larger than the footprint that existed at the time the
60 Resource Protection Overlay Zone was established on the lot, whichever is greater. The
61 maximum height of any structure may not be greater than 25 feet, or the height of the
62 existing structure, whichever is greater, except that any portion of those structures located
63 less than 100 feet from the normal high water line of a water body, tributary stream, or
64 upland edge of a coastal or freshwater wetland must meet the footprint, roof pitch and
65 height limits in 16.7.3.3.2.E.4.a and 16.7.3.3.2.E.5.a, above.

66 F. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with
67 the York County Registry of Deeds within 90 days of approval. The recorded plan must show the existing
68 and proposed footprint of the non-conforming structure, the existing and proposed structure height, the
69 footprint of any other structures on the parcel, the Shoreland Overlay zone and/or Resource Protection
70 Overlay zone boundary and evidence of approval by the municipal review authority.

Chapter 16.9 Definitions and Chapter 16.9, Article IV, Table 16.9

Chapter 16.2 DEFINITIONS

Drainage structure means any stormwater run-off control system designed to manage stormwater on a site, including but not limited to underdrain soil filter (USF) ponds, stormwater detention ponds, bioretention cells or other similar engineered systems.

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT

Table 16.9 - Minimum Setbacks from Wetlands and Water Bodies*			
STRUCTURE/ACTIVITY	TOTAL SIZE OF WETLAND AND/OR WATER BODY		
	< 501 square feet	501 square feet – 1 acre and Intermittent Streams	> 1 acre
Local distribution utility pole, fence, flagpole, or signs or drainage structure	0	0	0
Drainage structure outside OZ-SL-250	10 feet	10 feet	10 feet
Drainage structure within OZ-SL-250, OZ-RP, wetlands of special significance and OZ-SP-75	75 feet	75 feet	100 feet
Functionally water-dependent uses	0	0	0
Roads and Driveways			
Traveled way of road or driveway of 18 feet or less in width ¹	0	10 feet from Toe of slope	10 feet from Toe of slope
Traveled way of road or driveway greater than 18 feet in width ¹	0	30 feet or 10 feet from Toe of slope whichever is greater	30 feet or 10 feet from Toe of slope whichever is greater
Parking Areas			
Parking areas for one- and two-family residential uses	0	10 feet	20 feet
1—5 stall parking area	0	30 feet	50 feet
6—20 stall parking area incorporating BMPs for stormwater management ²	0	40 feet	75 feet

DRAFT proposed amendments Title 16 - Design and Performance Standards –Natural Environment
 Wetland Setbacks for Special Situations – June 19th, 2018

6—20 stall parking area without incorporating BMPs for stormwater management. ²	0	75 feet	100 feet
21+ stall parking area ³ incorporating BMPs for stormwater management	0	50 feet	75 feet

* All vernal pools, including those having an area less than 501 square feet, are regulated by MDEP 06-096 Chapter 335.9.

¹ The street setback does not serve to negate a wetland crossing project for which a wetlands permit has been approved by the Planning Board.

² Written endorsement by the York County Soil and Water Conservation District (YCSWCD) or the Town's peer review consultant that Best Management Practices (BMPs) for protecting water quality by minimizing pollutants leaving the site in the stormwater runoff are incorporated to the maximum extent practicable is required to satisfy this condition. The Planning Board may waive the requirement for written endorsement by the YCSWCD or the Town's peer review consultant when it finds a drainage plan has adequately protected the wetland from adverse impacts.

³ 21+ stall parking areas must incorporate BMPs.