



TOWN OF KITTERY
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ITEM 1

MEMORANDUM TO PLANNING BOARD

Meeting Date: June 27, 2019
From: Jessa Kellogg, Interim Code Enforcement Officer
Subject: Amendments to Title 16.2.2, 16.3.2.17, 16.7.3.3 and 16.8.28.1

EXECUTIVE SUMMARY

Amendments to one definition, Shoreland Overlay Zone standards, nonconforming structures relative to shoreland zoning setbacks, and single and duplex-family dwellings in Resource Protection and Shoreland Overlay Zones are proposed in an effort to better clarify the permitting authority for review and approval of specific projects.

TITLE 16.2.2 DEFINITIONS

In 2017 the Town amended the nonconforming structure repair/expansion ordinance to remove “floor area and volume” and replace with the State recommended “footprint” calculation for expansions. Inadvertently, the definition of EXPANSION OF STRUCTURE was not modified, so this amendment eliminates confusion for applicants and permitting authorities.

TITLE 16.3.2.17 SHORELAND OVERLAY ZONE

The Town previously amended a few areas of Title 16 to permit the Code Enforcement Officer to issue permits in the Shoreland Overlay zone that were outside the shoreland setback for that base zone, however this section of the Code was not amended to reflect that, which has caused confusion and conflict in interpreting the code. These amendments will enable the Code Enforcement Officer to issue permits for dwellings outside shoreland setbacks as defined in each base zone section. The special exception use was removed, thereby eliminating the possibility of new dwellings being permitted in the base zone shoreland setback which would violate minimum State Shoreland Zoning mandates. Additionally, mobile homes are no longer excluded in any zone per State law.

TITLE 16.7.3.3

Amendments to this section of the Code include adding the language “base zone setback” to accomplish two goals. First, this will enable the Code Enforcement Officer more clearly to permit repairs and expansions to nonconforming structures outside of the base zone shoreland setback, and second, to give clarity on what that setback is. The majority of base zones have a 100 foot

setback, however MU-KF, MU-BI and MU-N have a 75 foot setback from water resources. By adding this language, it eliminates confusion for these three zones for what setback they are held to. This also helps clarify projects that may require Board of Appeals review. For base zones MU-KF, MU-BI and MU-N, the special exception use for a dwelling is removed as no new structures are permitted by state law to be closer than 75 feet to the water resource. The Planning Board will review a special exception use request for dwellings proposed between 75 feet and 100 feet from a water resource in all other base zones.

A second amendment in this section is to clarify what expansion of a structure means for nonconforming structures that straddle the 25 foot setback line. In a few projects reviewed by the Planning Board in the last year there was confusion on what was permitted and after clarification with DEP, staff wanted to explicitly clarify that the portion of the structure within 25 feet could not be expanded in either footprint or height.

TITLE 16.8.28.1

Amendments to this section of the Code include giving the Code Enforcement Officer authority to issue permits for a dwelling outside of the base zone setback in the Shoreland Overlay Zone only. New dwellings anywhere within the Resource Protection Overlay Zone will still require Planning Board approval, as well as for dwellings located within the base zone setback for all base zones except MU-KF, MU-BI and MU-N which have the state minimum 75 foot setback requirement.

1 **16.2.2 Definitions**

- 2 EXPANSION OF STRUCTURE – An increase in the ~~floor area or volume~~ footprint of a structure, including
3 all extensions, such as, but not limited to, piers or attached decks, garages, porches and greenhouses.

1 **16.3.2.17 Shoreland Overlay Zone OZ-SL**

2 B. Permitted and special exception land use. The following uses in this section are allowed in accordance
3 with the land use standards established in the underlying base zone in this chapter and land uses
4 identified by the Mandatory Shoreland Zoning Act, 38 M.R.S. §§ 435 to 449.

5 (1) Residential – Rural Zone (R-RL).

6 (a) Permitted uses.

7 [1] Public open space recreational uses;

8 [2] Any agricultural building or use except a sawmill, piggery or the raising of poultry for
9 commercial purposes;

10 [3] Accessory uses and buildings; ~~and~~

11 [4] Individual private campsite-; ~~and~~

12 [5] Dwellings in a single-family or duplex configuration if located further than 100 feet
13 from the normal high-water line of any water bodies, or the upland edge of a
14 wetland.

15 (b) Special exception uses.

16 [1] Dwellings or modular home, ~~excluding mobile home~~, in a single-family or duplex
17 configuration if located between 75 and 100 feet from the normal high-water line of
18 any water bodies, or the upland edge of a wetland.

19 (2) Residential – Suburban Zone (R-S).

20 (a) Permitted uses.

21 [1] Public open space recreational uses;

22 [2] Day-care facility; ~~and~~

23 [3] Elderly day-care facility-; ~~and~~

24 [4] Dwellings in a single-family, duplex and multiunit residential configuration with not
25 more than four units per building if located further than 100 feet from the normal
26 high-water line of any water bodies, or the upland edge of a wetland.

27 (b) Special exception uses.

28 [1] Dwellings in a multiunit residential configuration with not more than four units per
29 building ~~and mobile homes~~ if located between 75 feet and 100 feet from the normal
30 high-water line of any water bodies, or the upland edge of a wetland.

31 (3) Residential – Kittery Point Village (R-KPV)

32 (a) Permitted uses.

33 [1] Any agricultural building or use except a sawmill, piggery or the raising of poultry for
34 commercial purposes;

35 [2] Accessory uses and buildings;

36 [3] Day-care facility-; ~~and~~

37 [4] Dwellings in a single-family or duplex configuration if located further than 100 feet
38 from the normal high-water line of any water bodies, or the upland edge of a
39 wetland.

40 (b) Special exception uses.

41 [1] Dwellings or modular home, ~~excluding mobile home~~, in a single-family or duplex

42 configuration if located between 75 feet and 100 feet from the normal high-water
43 line of any water bodies, or the upland edge of a wetland.

44 (4) Residential – Urban Zone (R-U)

45 (a) Permitted uses.

46 [1] Public open space recreational uses;

47 [2] Day-care facility; ~~and~~

48 [3] Accessory uses and buildings; ~~and~~

49 [4] Dwellings in a single-family or duplex configuration if located further than 100 feet
50 from the normal high-water line of any water bodies, or the upland edge of a
51 wetland.

52 (b) Special exception uses.

53 [1] Dwellings, or manufactured housing, in a single-family or duplex configuration if
54 located between 75 feet and 100 feet from the normal high-water line of any water
55 bodies, or the upland edge of a wetland.

56 (5) Residential – Village Zone (R-V)

57 (a) Permitted uses.

58 [1] Public recreation;

59 [2] Municipal, county or state building or use; ~~and~~

60 [3] Accessory buildings and structures; ~~and~~

61 [4] Dwellings in a single-family or duplex configuration if located further than 100 feet
62 from the normal high-water line of any water bodies, or the upland edge of a
63 wetland.

64 (b) Special exception uses.

65 [1] Dwellings or modular home, ~~excluding mobile home,~~ in a single-family or duplex
66 configuration if located between 75 feet and 100 feet from the normal high-water
67 line of any water bodies, or the upland edge of a wetland.

68 (6) Residential – Rural Conservation Zone (R-RC)

69 (a) Permitted uses.

70 [1] Public open space recreational uses;

71 [2] Any agricultural building or use except a sawmill, piggery or the raising of poultry for
72 commercial purposes;

73 [3] Accessory uses and buildings; ~~and~~

74 [4] Individual private campsite; ~~and~~

75 [5] Dwellings in a single-family or duplex configuration if located further than 100 feet
76 from the normal high-water line of any water bodies, or the upland edge of a
77 wetland.

78 (b) Special exception uses.

79 [1] Dwellings or modular home, ~~excluding mobile home,~~ in a single-family or duplex
80 configuration if located between 75 feet and 100 feet from the normal high-water
81 line of any water bodies, or the upland edge of a wetland.

82 (8) Business – Local Zone (B-L).

83 (a) Permitted uses.

- 84 [1] Public open space recreational uses; ~~and~~
85 [2] Accessory uses and buildings; ~~and~~
86 [3] Dwellings in a single-family or duplex configuration if located further than 100 feet
87 from the normal high-water line of any water bodies, or the upland edge of a
88 wetland.
- 89 (b) Special exception uses.
90 [1] Dwellings or modular home, ~~excluding mobile home,~~ in a single-family or duplex
91 configuration if located between 75 feet and 100 feet from the normal high-water
92 line of any water bodies, or the upland edge of a wetland.
- 93 (9) Business – Local Zone (B-L1).
94 (a) Permitted uses.
95 [1] Public open space recreational uses;
96 [2] Accessory uses and buildings; ~~and~~
97 [3] Aquaculture; and
98 [4] Dwellings in a single-family or duplex configuration if located further than 100 feet
99 from the normal high-water line of any water bodies, or the upland edge of a
100 wetland.
- 101 (b) Special exception uses.
102 [1] Dwellings or modular home, ~~excluding mobile home,~~ in a single-family or duplex
103 configuration if located between 75 feet and 100 feet from the normal high-water
104 line of any water bodies, or the upland edge of a wetland.
- 105 (14) Mixed-Use Zone (MU).
106 (a) Permitted uses.
107 [1] Agricultural uses and practices, except a piggery or the raising of poultry for
108 commercial purposes;
109 [2] Art studio/gallery;
110 [3] Church or institution of religion;
111 [4] Research and development;
112 [5] Public open space or recreation;
113 [6] Municipal or state building or use;
114 [7] Institution of philanthropic, fraternal, political or social nature which is not used for
115 residential or overnight occupancy;
116 [8] Timber harvesting; ~~and~~
117 [9] Home occupations; ~~and~~
118 [10] Dwellings, limited to the following:
119 [a] Single-family dwellings on lots of record as of April 1, 2004 if located further
120 than 100 feet from the normal high-water line of any water bodies, or the
121 upland edge of a wetland.
122 [b] Dwelling units on the upper floors of a mixed-use building that is served on
123 the upper floors of a mixed-use building that is served by public sewerage if
124 located further than 100 feet from the normal high-water line of any water
125 bodies, or the upland edge of a wetland.
- 126 (b) Special exception uses.

- 127 [1] Dwellings, limited to the following:
- 128 [a] Single-family dwellings on lots of record as of April 1, 2004 if located
- 129 between 75 feet and 100 feet from the normal high-water line of any water
- 130 bodies, or the upland edge of a wetland.
- 131 [b] Dwelling units on the upper floors of a mixed-use building that is served by
- 132 public sewerage if located between 75 feet and 100 feet from the normal
- 133 high-water line of any water bodies, or the upland edge of a wetland.
- 134 (15) Mixed-Use – Badger’s Island Zone (MU-BI).
- 135 (a) Permitted uses.
- 136 [1] Public open space recreational uses;
- 137 [2] Shuttle service and ride-sharing facilities;
- 138 [3] Aquaculture; ~~and~~
- 139 [4] Research laboratories; and
- 140 [4] Dwellings in a single-family or duplex configuration if located 75 feet or further
- 141 from the normal high-water line of any water bodies, or the upland edge of a
- 142 wetland.
- 143 (b) Special exception uses.
- 144 ~~[1] Dwellings including modular homes in a single-family or duplex configuration,~~
- 145 ~~excluding mobile homes.~~
- 146 (16) Mixed-Use – Kittery Foreside Zone (MU-KF).
- 147 (a) Permitted uses.
- 148 [1] Public open space recreational uses; and
- 149 [2] Dwellings in a single-family or duplex configuration if located 75 feet or further
- 150 from the normal high-water line of any water bodies, or the upland edge of a
- 151 wetland.
- 152 (b) Special exception uses.
- 153 ~~[1] Dwellings in a single-family or duplex configuration, excluding mobile homes.~~

1 **16.7.3.3 Nonconforming structures**

2 B. Nonconforming structure repair and/or expansion.

3 ~~(1) (2)~~ The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming
4 structure provided the proposed expansion is not located in the base zone setback of the Shoreland
5 Overlay Zone or in the Resource Protection Overlay Zone and meets ~~all~~ either of the following
6 criteria:

- 7 (a) A vertical expansion that follows the existing building footprint;
- 8 (b) Will not result in setbacks less than those existing;
- 9 ~~(c) Is not located in the Shoreland Overlay or Resource Protection Overlay Zone.~~

10 (2) ~~(1)~~ Except where otherwise permitted in this title, repair and/or expansion of a nonconforming
11 structure must be approved by the Board of Appeals. In cases where the structure is located in the
12 base zone setback of the Shoreland Overlay or Resource Protection Overlay Zone, the repair and/or
13 expansion must be approved by the Planning Board.

14 (3) This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory
15 structure permitted to be closer to a water body or to a principal structure in accordance with Table
16 16.9 - Minimum Setbacks from Wetlands and Water Bodies.

17
18 (a) A nonconforming structure may be repaired or maintained and may be expanded in conformity
19 with the dimensional requirements, such as setback, height, etc., as contained in this title. If the
20 proposed expansion of a nonconforming structure cannot meet the dimensional requirements
21 of this title, the Board of Appeals or the Planning Board will review such expansion application
22 and may approve proposed changes provided the changes are no more nonconforming than the
23 existing condition and the Board of Appeals or the Planning Board makes its decision per
24 § 16.6.6.B.

25
26 (b) Except in the Residential - Village (R-V) Zone, minimum setbacks of residential storage sheds
27 that are less than 121 square feet, one-story residential garages that are less than 577 square
28 feet, and decks less than 251 square feet may be one-half the minimum rear and side yard
29 setbacks, providing the lots are legally nonconforming.

30
31 (c) Where the expansion of the residential use within the Commercial Zones involves an expansion
32 of a structure, the structure must be expanded in conformity with the dimensional requirements
33 contained in this title. If the proposed structure expansion cannot meet the dimensional
34 requirements of this title, the application may be submitted to the Board of Appeals for review
35 as a miscellaneous variation request. In reviewing all such applications, the Board of Appeals
36 must use the criteria established in this section, and then may approve the proposed variations
37 to the dimensional requirements.

38
39 (d) The addition of steps and landings, exterior to the structure does not constitute expansion. Such
40 steps are not to be considered part of the structure for such determination. Step landings may
41 not exceed three feet by three feet in size.

- 42 (e) In addition to the standards in the above § 16.7.3.3B(3)(a) through (d), the expansion of a
43 nonconforming structure and the construction of new, enlarged, or replacement foundation
44 beneath a nonconforming structure located in the Shoreland or Resource Protection Overlay
45 Zone must meet the following:
- 46 [1] Wherever a new, enlarged, or replacement foundation is constructed under a
47 nonconforming structure the structure and new foundation must be placed such that setback
48 requirements are met to the greatest practical extent as determined by the Planning Board,
49 basing its decision on the criteria specified in § 16.7.3.3A(2), Nonconforming structure
50 relocation.
- 51 [2] All new principal and accessory structures, excluding functionally water-dependent uses,
52 must meet the water body, tributary stream, or wetland setback requirements contained in §
53 16.3.2.17.D(2). A nonconforming structure may be added to or expanded after obtaining a
54 permit from the same permitting authority as that for a new structure, if such addition or
55 expansion does not increase the nonconformity of the structure and is in accordance with §
56 16.7.3.3.B(3)(e)[4] and [5] below.
- 57
- 58 [3] If a legally existing nonconforming principal structure is located partially within 25 feet from
59 the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or
60 freshwater wetland, ~~E~~expansion of the footprint and/or height of any portion of a the
61 structure that is located within 25 feet of the normal high-water line of a water body,
62 tributary stream, or upland edge of a coastal or freshwater wetland is prohibited even if the
63 expansion will not increase nonconformity with the water body, tributary stream, or wetland
64 setback requirement. Expansion of an accessory structure that is located closer to the normal
65 high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater
66 wetland than the principal structure is prohibited, even if the expansion will not increase
67 nonconformity with the water body, tributary stream, or coastal or freshwater wetland
68 setback requirement.
- 69
- 70 [4] Notwithstanding § 16.7.3.3B(3)(e)[2] above, if a legally existing nonconforming principal
71 structure is entirely located less than 25 feet from the normal high-water line of a
72 waterbody, tributary stream, or upland edge of a coastal or freshwater wetland, that
73 structure may be expanded as follows, as long as all other applicable municipal land use
74 standards are met and the expansion is not prohibited by § 16.7.3.3.B(3)(e)[2]:
- 75 [a] The maximum total footprint for the principal structure may not be expanded to a size
76 greater than 800 square feet or 30% larger than the footprint that existed on January 1,
77 1989, whichever is greater. The maximum height of the principal structure may not be
78 made greater than 15 feet or the height of the existing structure, whichever is greater.
- 79 [5] All other legally existing nonconforming principal and accessory structures that do not meet
80 the water body, tributary stream, or coastal or freshwater wetland setback requirements
81 may be expanded or altered as follows, as long as all other applicable municipal land use
82 standards are met and the expansion is not prohibited by § 16.7.3.3.B(3)(e)[2] or [3] above:
- 83 [a] For structures located less than 100 feet the base zone setback from the normal high-
84 water line of a water body, tributary stream, or upland edge of a coastal or freshwater

85 wetland, the maximum combined total footprint for all structures may not be expanded
86 to a size greater than 1,000 square feet, or 30% larger than the footprint that existed on
87 January 1, 1989, whichever is greater. The maximum height of any structure may not be
88 made greater than 20 feet, or the height of the existing structure, whichever is greater.

89 [b] In addition to the limitations in § 16.7.3.3.B(3)(e)[5](a) above, for structures that are
90 legally nonconforming due to their location within the Resource Protection Overlay
91 Zone when located at less than 250 feet from the normal high-water line of a water
92 body or the upland edge of a coastal or freshwater wetland, the maximum combined
93 total footprint for all structures may not be expanded to a size greater than 1,500
94 square feet, or 30% larger than the footprint that existed at the time the Resource
95 Protection Overlay Zone was established on the lot, whichever is greater. The maximum
96 height of any structure may not be greater than 25 feet, or the height of the existing
97 structure, whichever is greater, except that any portion of those structures located less
98 than ~~100 feet~~ the base zone setback from the normal high-water line of a waterbody,
99 tributary stream, or upland edge of a coastal or freshwater wetland must meet the
100 footprint and height limits in § 16.7.3.3B(3)(e)[4][a], and [5](a) above.

1 **16.8.28.1 Single- and duplex-family dwellings in Resource Protection and Shoreland Overlay Zones.**

2 The Code Enforcement Officer may issue a permit for a new dwelling outside the base zone setback in
3 the Shoreland Overlay Zone only provided the structure is conforming with all base zone standards. In
4 addition to the criteria specified in §§ 16.6.6 and 16.10.8.3.D, applicable to the granting of a special
5 exception use request, the Planning Board may approve an application for a single- or duplex-family
6 dwelling special exception use request within the base zone setback, where applicable, provided the
7 applicant demonstrates all of the following conditions are met:

8 A. There is no location on the property, other than a location within the base zone setback of the
9 Shoreland Overlay or any location within the Resource Protection Overlay Zones, where a single-family
10 dwelling can be built, or similarly for a duplex in the Shoreland Overlay Zone.

11 B. The lot on which the structure is proposed is undeveloped and was established and recorded in the
12 York County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

13 C. All proposed buildings, sewage disposal systems, other than municipal sewer, and other
14 improvements are located:

15 (1) On natural ground slopes of less than 20%;

16 (2) Outside the floodway of the one-hundred-year floodplain along rivers; and

17 (3) Outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and
18 as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps
19 and Flood Insurance Rate Maps.

20 D. The lowest floor elevation or openings of all buildings and structures, including basements, must be
21 elevated at least one foot above the elevation of the one-hundred-year flood, the flood of record or, in
22 the absence of these, the flood as defined by soil types identified as recent floodplain soils.

23 E. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be
24 1/2 the width of the one-hundred-year floodplain.

25 F. The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal
26 and accessory structures is limited to a maximum of 1,500 square feet. This limitation may not be
27 altered by variance.

28 G. All structures, except functionally water-dependent structures, are set back from the normal high-
29 water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent
30 but not less than 75 feet horizontal distance. In determining the greatest practical extent, the Planning
31 Board must consider the depth of the lot, the slope of the land, the potential for soil erosion, the type
32 and amount of vegetation to be removed, the proposed building site's elevation in regard to the
33 floodplain and its proximity to the wetlands.