

**Town of Kittery  
Planning Board Meeting  
November 9, 2017**

**Town Code Amendment – 16.2.2 Definitions, 16.3.2.15 Mixed Use Kittery Foreside Zone**

Action: Review Amendment and make recommendation to Town Council. Applicant, Wallingford Square, LLC, requests consideration of an amendment to Title 16, Land Use and Development Code, to allow as a special exception Inns with greater than 12 and no more than 30 rooms in the Mixed-Use Kittery Foreside (MU-KF) Zone. Agent Leah Rachin, Bergen & Parkinson, LLC

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Initial Planning Board Meeting	Scheduled for 6/8/2017	HELD
YES	Subsequent Planning Board Meetings	Workshop scheduled for 6/22/2017 Follow-up meeting scheduled for 7/27/17; continued to 8/24 meeting	HELD.
YES	Public Hearing (special notice requirements)	Scheduled for 9/28/2017; legal ad in Portsmouth Herald on 9/15 and 9/20	HELD
YES	Review/Approval/Recommendation to Town Council	Scheduled for 9/28, continued to 11/9/2017	PENDING

**Background**

The applicant has submitted a narrative requesting the Board to consider a code amendment to allow hotels as a permitted use in the Mixed Use Kittery Foreside Zone and a special exception use in the Shoreland Overlay and Mixed Use Kittery Foreside zones. Within this narrative, the applicant asserts a hotel would address the growing need for tourist accommodations within the Foreside, while maintaining the existing character of the zone. Further, the applicant states a small hotel is not dissimilar to an inn, currently a permitted use within the MU-KF zone.

Update 7/27: The Planning Board initially reviewed this application on 6/8/2017 and determined a workshop was warranted to seek input and discussion with interested parties. A joint workshop was held on 6/22/2017 and included: the Planning Board, the applicant and members of the Foreside Working Group, Economic Development Committee, Conservation Commission and the Comprehensive Plan Update Committee (minutes attached). During the workshop, the applicant provided supplemental material to support their application (attached) and public comment from residents and business owners of the Foreside neighborhood was permitted. The Planning Board and applicant agreed to meet again to discuss issues identified during the workshop and identify what additional information is required prior to a formal review of the application by the Planning Board.

The purpose of this review is for the Board to provide the applicant with a list of questions and/or request specific information that is needed for the board members to consider the zoning amendment.

Update 8/24:

The Board provided comments and feedback with regard to the proposed amendment at their 7/27 meeting and a list of questions was created for the applicant and finalized by staff. See attached email to applicant with finalized questions and the attached response to the questions by the applicant.

Update 9/28:

The applicant has revised the code amendment based on the feedback from the Planning Board and staff. Public notice was made per the state statute; legal advertisement in the Porstmouth Herald ran twice, once at least 12 days prior to tonight’s meeting and a second time that was at least 7 days prior.

### **Update 11/9:**

The applicant has revised the attached proposed code amendment based on feedback from the 9/28 planning board meeting.

### **Staff Review**

*The following staff review is from the 6/8, 8/24 and 9/28/2017 Planning Board meetings. Some additional Staff comments have been provided at the end of this section.*

The MU-KF zone is defined as encompassing the area between Route 1 to Wallingford Square, Walker/Main Street to the Back Channel.

The Foreside neighborhood was zoned as Local Business Zone until the revitalization efforts that began with the 1997 Revitalization strategy for the Kittery Foreside District. Within the LB zone, a motel, rooming house or apartment building was permitted as a special exception use. Hotels were defined but not permitted, and an Inn was neither defined nor appeared to be referenced within the Code.

The 1997 Revitalization Strategy was formed to focused on, what was believed to be, declining growth in the downtown neighborhood, in favor of the larger, more accessible development along Route 1. The intent of the strategy was to rediscover the downtown neighborhood and enhance the character of the existing neighborhood through redevelopment rather than demolition.

The Kittery Foreside zone was established in 1997 with the following purpose:

1. To provide business, service and community functions within the Kittery Foreside district.
2. To provide a mix of housing opportunities in the historic urbanized center of the community.
3. To allow for use patterns which recognize the densely built-up character of the district and the limitations for providing off-street parking (LUDC, reprinted May 1998)

It was at the inception of the Kittery Foreside Zone that “Motel, rooming house or apartment building” was no longer a special exception use, and an “inn” became a defined permitted use and apartment buildings were no longer permitted, in favor of dwelling units in a single family, duplex and multi-family configuration. This appears to be an attempt to focus on the smaller scale, Town center character of the neighborhood, discouraging (or prohibiting) larger scale development.

**Boutique Hotel** *[Note, the applicant is no longer requesting the Planning Board consider the addition of “boutique hotels” to the MU-KF Zone. They are currently proposing to amend the permitted use Inn.]*

A boutique hotel is generally defined as a “small, luxury hotel offering premium services, often located in a fashionable location” (dictionary.com). While the term “boutique hotel” appears to be widely used in Maine in regards to real estate and rentals, it is difficult to find an example of a land use code that specifically defines a “boutique” or “luxury” hotel. This is possibly due to the vagueness of what classifies as a boutique hotel, as well as the potential to create confusion without modifying the definitions of other short-term accommodation facilities. For example, using the proposed definition provided by the applicant, there could be some crossover between a boutique hotel and hotel within the Town of Kittery (for example: a hotel offering 12 rooms would qualify as both a hotel and a boutique hotel).

The applicant states the proposed amendment will address the lack of short-term accommodation options within the growing Foreside neighborhood, and states the permitted inn is too restrictive in regards to the number of allowed rooms (per the definition in 16.2.2, an inn also requires a resident manager to reside onsite, see the definitions provided below). The 2015 draft comprehensive plan identifies as a primary area of economic development. However, without the presence of short-term accommodations, it may

become difficult to promote the neighborhood to regional visitors, which supports objectives 3.1 and 8.3 in the draft comprehensive plan.

A major obstacle to the proposed amendment is the availability of parking within the neighborhood. The applicant proposes a boutique hotel be subject to the same parking requirements as an inn: one space per each guest room, which is slightly less than the parking requirements for a hotel as outlined in 16.8.9.4. However, even with consideration of the reduced parking requirements, residents have expressed frustration regarding the shortage of parking within the Foreside neighborhood; therefore, it may be difficult to meet the one space per room requirement with a 35-room hotel.

In addition, the 2015 draft comprehensive plan recommends enhancing the Foreside district through the encouragement of mixed use, specifically promoting housing above retail. The Board should consider whether the inclusion of a small-scale hotel meets this objective.

If the Board determines a small, short-term accommodation facility is appropriate within the Foreside district, an alternative defining a new use would be to permit hotels, only up to a determined size. For example, the Board could discuss adding “hotels, not to exceed 15 rooms” as a permitted or special exception use within the Mixed Use – Kittery Foreside zone, similar to the restricted size of retail use as a permitted use in the Mixed Use zone (“Retail use, a single use not to exceed fifty thousand square feet in gross floor area”).

#### **Definitions of short-term accommodations in Title 16**

Currently the only use permitting short-term accommodations in the Mixed Use – Kittery Foreside zone is *Inns*. Following are the definitions of short-term accommodations that currently exist in Title 16.

- **Bed and Breakfast** means a home occupation in a single-family dwelling in which lodging or lodgings with meals served before noon are offered to the general public for compensation, offering nor more than six bedrooms for lodging purposes.
- **Hotel** means a building in which lodging, or boarding and lodging capabilities are provided for more than twenty persons, and offered to the public for compensation, and in which ingress and egress to and from rooms are made primarily through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public in contradistinction to a rooming house or a motel, which are separately defined in this section.
- **Inn** means a commercial place of lodging which contains a dwelling unit occupied by an owner or resident manager, which has twelve or fewer guest rooms, and may include a restaurant which also serves non-guests. Rentals to the same party for more than twelve weeks in a calendar year are prohibited.
- **Motel** means a building or group of detached or connected buildings designed, intended or used primarily to provide sleeping accommodations without cooking facilities for travelers for compensation and having a parking space adjacent to a sleeping room. An automobile court or a tourist court with more than one unit or a motor lodge is deemed to be a motel.
- **Rooming house** means a residential use in which the owner or manager of the facility resides on the premises and in which more than three persons who are not part of the owner/manager’s family, are housed in rooms for compensation with or without meals. This includes fraternities and sororities.

### **Update 8/24:**

The applicant has responded to the questions from the Board. Staff has the following additional comments.

It is clear from past discussions that the Board has apprehension in allowing the addition of a hotel use in the Mixed-Use Kittery Foreside (KF-MU) zone. Some of this comes from notion that most hotels are likely to be out-of-scale with the compact and village setting of the Foreside. Impacts to available parking and an increase of tourism from adding hotels have also been mentioned. Some Board members have stated the focus on the character of the Foreside is based it on being a residential neighborhood before a business center. The community in the late 1990's acknowledged in the *Revitalization Strategy for the Kittery Foreside* that both characteristics are not necessarily exclusive of one another and can successfully coexist, hence the recommendation from the study to create a new mixed-use zone.

Perhaps with rational and reasonable conditions on the hotel use as applied in the MU-KF zone, a cap or limitation of the associated impacts of hotels can be addressed. The following are some restrictions and limitations that can be considered if a hotel use were to be allowed in the Foreside:

1. **Special Exception Use.** Considering the hotel use has the potential to have greater impacts than other uses, it would be prudent to include the addition of a hotel use as a special exception rather than permitted use. Factors of Consideration in Title 16.6.6 would apply.
2. **Size.** 35 rooms is currently proposed by the applicant and the applicant describes how the number is derived, based on their understanding of the market conditions. This number is three times the size of the rooms an Inn is allowed to have under our land use code. Perhaps a twice the size, 25 rooms, would be more palatable for the Foreside.
3. **Parking.** In order to address the potential for the increase of parking, perhaps for hotels in the Foreside, valet parking is a requirement and a parking management plan is also required for approval by the Planning Board.
4. **Limit on location.** This type of restriction is aligned with the proposed use as a special exception and would address the potential incompatibility of a hotel located within the established residential areas within the Foreside. This could be implemented through specifying areas where in the zone hotels would be permitted or not permitted; i.e. allowed only on properties fronting Wallingford Square, Walker, Government and Wentworth streets. And/or limit the distance between hotels within the zone thereby reducing the potential for overcrowding and dispersing possible impacts, much like restrictions on gasoline stations; i.e. hotels in the MU-KF can be not be located within 500 feet of an existing hotel.
5. **Architectural Design Standards.** To ensure that redevelopment and new construction for hotels is executed in manner consistent with the character of the Foreside, perhaps specific design standards are required. Such standards can be targeted to ensure the scale, massing and architectural detailing is compatible to the adjacent buildings and appropriate to the overall character of the Foreside.

There may be other options available, however, the Board should not consider the proposed amendment as an all or nothing change to the zone and that there are options available to customize the use to fit the uniqueness of the Foreside. Currently, however, the applicant, though open to various options, has only provided the 35 room limitation on the current definition for hotel.

### **Update 9/28/2017:**

The revised proposed amendment (attached) provides the following changes:

1. The definition for Inn is changed to remove the owner/manager residency requirement and increases guest rooms from 12 to 30. (lines 6-7)
2. The permitted use *Inn* is limited to fewer than 12 guest rooms (line 30)
3. The *Inn* is added to the special exception uses limited to 12 and no more than 30 guest rooms (line 46)
4. Under the special parking standards for the MU-KF zone, parking standards specific to Inns, including requiring a parking management plan is added (lines 120-133)
5. In the MU-KF zone specific requirements for Inns as a special exception are added which includes location requirements (lines 138-151)

If the Board is amenable to the proposed amendment, additional amendments to address the other zones that currently allow Inns may need to be prepared by staff. If the Board determines inns with greater than 12 guest rooms needs to be a special exception in these zones or not, this can be accomplished by simply replacing *Inn* with the *Inn - containing fewer than twelve (12) guest rooms*; in those particular zones. They include: as permitted; B-L1, B-P, C-1, C-2, C-3, MU, and MU-BI; and as a special exception; R-U, B-L, and OZ-SL. This can be accomplished in a separate proposed code amendment.

### **Update 11/9/2017:**

The revised proposed amendment appears to include what the Board had discussed at the 9/28 meeting. The minutes for that meeting need to be revised, see attached email, and the Board may decide to address that during this item or during Board items.

The changes to the proposed amendment are as follows:

- 1) 24/7 on-call manager added to the definition of Inn (line 6)
- 2) Clarification of the number of guest rooms by adding “at least twelve...but no more than thirty...” (line 7)
- 3) Adding a new restriction on parking lots where the creation of surface parking is prohibited when it displaces existing buildings along identified streets in the Foreside, regardless if it is a principal or accessory use. (lines 121-124)
- 4) The word “reasonably” was removed in 6.a of the Parking Management Plan for Inns (line 131)
- 5) The word “and” was added to “or” in describing the methods of providing parking in section 6.b (line 135)
- 6) The removal of the proposed provision to restrict the location of inns with greater than 12 guest rooms based on distance from existing inns along identified streets. (lines 153-157)

In addition to reviewing the applicant’s proposed amendment, the Board may want to determine now if a separate code amendment needs to be made to address unintended consequences of the definition change of Inn in other zones in town. Staff commented on this for the 9/28 meeting (above). If this is the case, staff should be directed to prepare an amendment for the next meeting.

### **Recommendation**

The Board was interested in the draft recommendations of the Foreside Study prior to a final deliberation on the proposed code amendment. The Board may want to discuss what pertinent information they heard at the workshop with the Working Group and the consultant.

If the Board is satisfied with the proposed amendment provided by the applicant or with changes the Board determines necessary, they may vote on a recommendation to the Town Council for adoption, suggested motion below.

The motion is a suggestion only, however, should remain in the affirmative even if a majority of the Board is not in favor the adoption of the amendment. The Board may want to identify reservations and/or specific issues with the proposed amendment so that the Town Council has a clear understanding of what the Board's determination is based on.

*<suggested motion>*

***Move to recommend to Town Council the adoption of the proposed amendments to Title 16 regarding Inns within sections: 16.2.2 Definitions and 16.3.2.15 Mixed Use Kittery Foreside Zone, as presented at the November 9, 2017 Planning Board meeting.***

**Proposed Amendments to Chapter 16 of the Code of the Town of Kittery**

**Part 1: Amending Section 16.2.2 – Definitions at Page 25, Lines 1-2:**

Inn means a commercial place of lodging ~~which contains a dwelling unit occupied by an owner or resident manager,~~ with a manager on call 24 hours per day/7 days per week, which has at least twelve (12) but no more than thirty (30) or fewer guest rooms, and may include a restaurant which also serves non-guests. Rentals to the same party for more than twelve (12) weeks in a calendar year are prohibited.

**Part 2: Amending Section 16.3.2.15.B – Mixed Use – Kittery Foreside, Permitted Uses, at Page 107, Line 26:**

**B. Permitted Uses.**

1. Dwelling units in single-family, duplex, and multifamily configurations and units in a mixed-use building up to twelve (12) dwelling units per lot, but excluding mobile homes;
2. Public open space recreational uses;
3. School (including nursery school), hospital, eldercare facility, 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.;
4. Accessory uses including home occupation and church rectory;
5. Retail business and service establishments excluding those where the principal activity entails outdoor sales and/or storage;
6. Business and professional offices, including financial institutions;
7. Shuttle service and ride sharing facilities;
8. Restaurant, coffee shop, bakery, cafes and similar food service operations but excluding drive-in facilities;
9. Art studio or gallery;
10. Grocery store, food store;
11. Personal and/or business service;
12. Inn containing fewer than twelve (12) guest rooms;
13. Commercial or private parking lots;
14. Marinas;
15. Commercial boating and fishing uses and facilities, provided only incidental cleaning and cooking of seafood occur at the site;
16. Place of assembly, including theater;
17. Temporary, intra-family dwelling unit;
18. Accessory dwelling units; and
19. Specialty food and/or beverage facility

**Part 3: Amending Section 16.3.2.15.C Mixed Use – Kittery Foreside, Special Exception Uses, at Page 107, Lines 38-39:**

**C. Special Exception Uses.**

1. Research and development;
2. Public utility facilities, including substations, pumping stations, and sewage treatment facilities.;
3. Inn containing twelve (12) but no more than thirty (30) guest rooms.

**Part 4: Amending Section 16.3.2.15.E. Mixed Use – Kittery Foreside, Special Parking Standards, at Pages 111-112, Lines 11-33:**

**E. Special Parking Standards.**

The Kittery Foreside zone is already largely built up and many buildings either completely or almost completely cover the lot on which they are located. Therefore, it is not possible to comply with parking standards which would otherwise be required for open land. To encourage the reuse of existing structures as far as practical, the Town establishes special parking standards and conditions within the zone.

57  
58 1. Revised Off-Street Parking Standards.

59 Insofar as practical, parking requirements are to be met on-site unless an existing building covers so much of the lot as to  
60 make the provision of parking impractical in whole or in part. If meeting the parking requirements is not practical, then the  
61 parking demand may be satisfied off-site or through joint use agreements as specified herein.

62  
63 Notwithstanding the off-street parking requirements in Article IX of Chapter 16.8, minimum parking requirements for the uses  
64 below are modified as specified herein:

65  
66 a. Dwelling units in buildings that existed as of April 1, 2005 including the replacement of units destroyed by accidental or  
67 natural causes regardless of how configured: one parking space per dwelling unit;

68  
69 b. Dwelling units in new buildings including the replacement of existing buildings other than the replacement of units destroyed  
70 by accidental or natural causes: one and one-half parking spaces per dwelling unit;

71  
72 c. Retail, business office, or bank facilities: one parking space for each four hundred (400) square feet of gross floor area;

73  
74 d. Professional office: one parking space for each three hundred (300) square feet of gross floor area;

75  
76 e. Inn: one parking space for each guest room;

77  
78 f. Church: None required, if primary use occurs on weekends;

79  
80 g. Restaurants: one parking space for each one hundred (100) square feet of gross floor area used by the public.

81  
82 **NOTE:** For each use in the zone, the total parking demand is calculated using the standards above or in Section 16.8.9.4 if  
83 not modified above. Then each nonresidential use is exempt from providing off-street parking for the first three required  
84 spaces. For uses requiring a demand of greater than three, then the off-street parking is to be provided on-site and/or in  
85 accordance with subsections (E)(2) and (3) of this Section.

86  
87 2. Maximum Parking on New Impervious Surface.

88 Not more than one and one-half parking spaces per dwelling unit may be created on new impervious surface in conjunction  
89 with the construction of a new or replacement building. This restriction does not apply to parking spaces located within the  
90 same building with the dwelling units, to spaces located on pre-existing impervious surface, or to spaces located on a  
91 pervious surface such as parking pavers designed to allow infiltration of precipitation.

92  
93 3. Off-Site Parking.

94 Required off-street parking may be satisfied at off-site locations provided such parking is on other property owned by the  
95 applicant or is under the terms of a contractual agreement that will ensure such parking remains available for the uses served.  
96 Applicant must present evidence of a parking location and a contractual agreement to the Town Board or officer with  
97 jurisdiction to review and approve.

98  
99 4. Joint Use Parking.

100 Required off-street parking may also be satisfied by the joint use of parking space by two or more uses if the applicant can  
101 show that parking demand is non-conflicting and will reasonably provide adequate parking for the multiple uses without  
102 parking overflowing into undesignated areas. Non-conflicting periods may consist of day time as opposed to evening hours of  
103 operation or weekday as opposed to weekends or seasonal variation in parking demand. In making this determination under  
104 development plan review, the Planning Board is to consider the following factors:

105  
106 a. Such joint parking areas must be held under ownership of the applicant or under terms of a contractual agreement that  
107 ensures such parking remains available to all users of the shared parking spaces;

108  
109 b. Analysis is to be based on a most frequent basis, not a "worst case" scenario;

110  
111 c. Joint use parking areas must be located within reasonable distance to the use served, but do not need to be located on the  
112 same lot as the uses served;

113  
114 d. Ease and safety of pedestrian access to shared parking by the users served, including any improvements or shuttle service  
115 necessary;



116  
117 e. Such joint parking areas must not be located in residential zones of the Town.  
118 The Planning Board must make a final determination of the joint use and/or off-site parking spaces that constitute an  
119 acceptable combination of spaces to meet the required parking demand.

120  
121 **5. Commercial and Private Parking Lots.**

122 The creation of a surface parking lot as a principal use is prohibited where an existing building is displaced on a property that  
123 fronts along the following streets: Walker, Government, Wallingford Square and Wentworth. The prohibition includes  
124 accessory parking for use on another lot.

125  
126 **6. Parking Management Plan for Inns.**

127 In an effort to promote flexibility in existing parking regulations within the Kittery Foreside zone, each proposed inn must  
128 submit a parking management plan, to be reviewed and approved by the reviewing authority in accordance with the following  
129 standards:

130  
131 a. Each parking management plan shall demonstrate the applicant's ability to reasonably provide adequate parking for the  
132 needs of the proposed inn.

133  
134 b. An applicant must propose a method(s) for providing adequate parking, including but not limited to the provision of on-site  
135 parking, off-site parking, joint-use parking, valet service, and/or shuttle service. The provision of off-site and joint-use parking  
136 shall be reviewed pursuant to Sections 16.3.2.15.E.3 and 16.3.2.15.E.4, respectively.

137  
138 c. An applicant may request the Board of Appeals for a decrease in the required number of provided parking spaces,  
139 pursuant to Section 16.8.9.4.L and Section 16.6.4.3 Miscellaneous Variation Request.

140  
141 **Part 5: Adding Section 16.3.2.15.F Mixed Use – Kittery Foreside, Special Exception Standards for Inns**  
142 **Containing Twelve (12) But No More Than Thirty (30) Guest Rooms, at Page 112:**

143  
144 **F. Special Exception Conditions for Inns Containing Twelve (12) and No More Than Thirty (30) Guest Rooms.**

145 It is the intent of this Section to impose standards on inns containing twelve (12) but no more than thirty (30) guest rooms  
146 within the Kittery Foreside Zone and to allow for the provision of additional accommodation options while preserving to the  
147 greatest extent possible the existing residential and cultural aspects of the neighborhoods in which such inns may be placed.

148  
149 **1. Submittal of Parking Plan Required.**

150 Each applicant for an inn containing twelve (12) but no more than thirty (30) guest rooms must submit a parking management  
151 plan to be reviewed and approved by the reviewing authority, pursuant to Section 16.3.2.15.E.5.

152  
153 **2. Limit on Location and Number.**

154 Inns containing twelve (12) but no more than thirty (30) guest rooms may only be permitted on properties fronting: Wallingford  
155 Square, Walker Street, Government Street, and Wentworth Street. No inn containing twelve (12) but no more than thirty (30)  
156 guest rooms may be located within 1,000 feet of an existing inn containing twelve (12) but no more than thirty (30) guest  
157 rooms.

158