



TOWN OF KITTERY
Planning and Development
200 Rogers Road, Kittery, ME 03904
Telephone: 207-475-1307 Fax: 207-439-6806

TO: PLANNING BOARD
FROM: KATHY CONNOR, INTERIM TOWN PLANNER
SUBJECT: **SHORELAND ZONING-RELATED CHANGES TO TITLE 16**

DATE: JULY 19, 2018
CC: KENDRA AMARAL, TOWN MANAGER, ADAM CAUSEY, DIRECTORY OF PLANNING & DEVELOPMENT

As noted in the memo included in the Board's packet for the June 28th Planning Board meeting, in the past year or so, Staff has noted that portions of the shoreland zoning-related sections of Title 16, specifically Table 6.9 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 are being 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 will be sending the amendments to DEP for approval as required once the Board is generally satisfied with them.

At the meeting of June 28th, the Board gave staff direction on edits to 16.7.3.3.2 concerning nonconforming building expansion. Staff has provided those edits. The Board will want to discuss these changes and whether at this meeting or a future meeting, set a public hearing date for the proposed amendments. As with all public hearings on proposed zoning changes, staff must notice the public hearing in the newspaper.

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 nonconforming
4 structures located in the Shoreland or Resource Protection Overlay Zone must meet the following:

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

9
10 2. All new principal and accessory structures, excluding functionally water-dependent uses, must meet
11 the water body, tributary stream, or wetland setback requirements contained in 16.3.2.17.D.2.
12 A non-conforming structure may be added to or expanded after obtaining a permit from the same
13 permitting authority as that for a new structure, if such addition or expansion does not increase the
14 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:

15
16 3. Expansion of any portion of a structure that is located within 25 feet of the normal high-water line of
17 a water body, tributary stream, or upland edge of a coastal or freshwater wetland is prohibited **even**
18 if the expansion will not increase nonconformity with the water body, tributary stream or wetland
19 setback requirement. Expansion of an accessory structure that is located closer to the normal high-
20 water line of a water body, tributary stream, or upland edge of a coastal or freshwater wetland than
21 the principal structure is prohibited, even if the expansion will not increase nonconformity with the
22 water body, tributary stream or coastal or freshwater wetland setback requirement.

23
24 4. Notwithstanding Title 16.7.3.3.2.E.3 above, if a legally existing nonconforming principal structure is
25 entirely located less than 25 feet from the normal high-water line of a waterbody, tributary stream,
26 or upland edge of a coastal or freshwater wetland, that structure may be expanded as follows, as
27 long as all other applicable municipal land use standards are met and the expansion is not
28 prohibited by 16.7.3.3.2.E.2.

29
30 a. the maximum total footprint for the principal structure may not be expanded to a size
31 greater than 800 square feet or 30% larger than the footprint that existed on January 1,
32 1989, whichever is greater. The maximum height of the principal structure may not be made
33 greater than 15 feet or the height of the existing structure, whichever is greater. **Roof slope**
34 must not be less than an 8:12 pitch.

35
36 5. Expansion of an accessory structure that is located closer to the normal high-water line of a water
37 body, tributary stream, or upland edge of a coastal or freshwater wetland than the principal
38 structure is prohibited, even if the expansion will not increase nonconformity with the water body,
39 tributary stream or coastal or freshwater wetland setback requirement. All other legally existing
40 nonconforming principal and accessory structures that do not meet the water body, tributary
41 stream, or coastal or freshwater wetland setback requirements may be expanded or altered as

42 follows, as long as other applicable municipal land use standards are met and the expansion is not
43 prohibited by 16.7.3.3.2.E.2 or 16.7.3.3.2.E.3 above:

44
45 a. For structures located less than 100 feet from the normal high-water line of a water body,
46 tributary stream, or upland edge of a coastal or freshwater wetland, the maximum
47 combined total footprint for all structures may not be expanded to a size greater than 1,000
48 square feet, or 30% larger than the footprint that existed on January 1, 1989, whichever is
49 greater. The maximum height of any structure may not be made greater than 20 feet, or the
50 height of the existing structure, whichever is greater. Roof slope must not be less than an
51 8:12 pitch.

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

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