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ITEM 4

REPORT TO PLANNING BOARD

Meeting Date: May 23, 2019
From: Planning and Code Enforcement Staff
Subject: Amendments to Title 16.2.2, 16.3.2.17, and 16.7.3.3

EXECUTIVE SUMMARY

Amendments to one definition, Shoreland Overlay Zone standards and Nonconforming structures relative to shoreland zoning setbacks are proposed in an effort to better clarify the permitting authority for review and approval of projects in the Shoreland Overlay zone.

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. These amendments will enable the Code Enforcement Officer to issue permits for dwellings as defined in each base zone section, instead of having a dwelling be a special exception requiring Planning Board approval. Dwellings, as stipulated, would only be permitted by the Code Enforcement Officer if outside the shoreland setback. The special exception use was removed, thereby eliminating the possibility of new dwellings being permitted in the shoreland setback which would violate minimum State Shoreland Zoning mandates.

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 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. 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.

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.

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 or modular home, excluding mobile home, in a single-family or duplex
13 configuration if located 100 feet or further from the normal high-water line of any
14 water bodies, or the upland edge of a wetland.

15 (b) Special exception uses.

16 ~~[1] Dwellings or modular home, excluding mobile home, in a single-family or duplex~~
17 ~~configuration;~~

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

19 (a) Permitted uses.

20 [1] Public open space recreational uses;

21 [2] Day-care facility; ~~and~~

22 [3] Elderly day-care facility; ~~and~~

23 [4] Dwellings in a multiunit residential configuration with not more than four units per
24 building and mobile homes if located 100 feet or further from the normal high-water
25 line of any water bodies, or the upland edge of a wetland.

26 (b) Special exception uses.

27 ~~[1] Dwellings in a multiunit residential configuration with not more than four units per~~
28 ~~building and mobile homes;~~

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

30 (a) Permitted uses.

31 [1] Any agricultural building or use except a sawmill, piggery or the raising of poultry for
32 commercial purposes;

33 [2] Accessory uses and buildings;

34 [3] Day-care facility; ~~and~~

35 [4] Dwellings or modular home, excluding mobile home, in a single-family or duplex
36 configuration if located 100 feet or further from the normal high-water line of any
37 water bodies, or the upland edge of a wetland.

38 (b) Special exception uses.

39 ~~[1] Dwellings or modular home, excluding mobile home, in a single-family or duplex~~
40 ~~configuration;~~

41

42 (4) Residential – Urban Zone (R-U)

43 (a) Permitted uses.

44 [1] Public open space recreational uses;

45 [2] Day-care facility; ~~and~~

46 [3] Accessory uses and buildings; ~~and~~

47 [4] Dwellings, or manufactured housing, in a single-family or duplex configuration if
48 located 100 feet or further from the normal high-water line of any water bodies, or
49 the upland edge of a wetland.

50 (b) Special exception uses.

51 ~~[1] Dwellings, or manufactured housing, in a single-family or duplex configuration;~~

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

53 (a) Permitted uses.

54 [1] Public recreation;

55 [2] Municipal, county or state building or use; ~~and~~

56 [3] Accessory buildings and structures; ~~and~~

57 [4] Dwellings or modular home, excluding mobile home, in a single-family or duplex
58 configuration if located 100 feet or further from the normal high-water line of any
59 water bodies, or the upland edge of a wetland.

60 (b) Special exception uses.

61 ~~[1] Dwellings or modular home, excluding mobile home, in a single-family or duplex~~
62 ~~configuration;~~

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

64 (a) Permitted uses.

65 [1] Public open space recreational uses;

66 [2] Any agricultural building or use except a sawmill, piggery or the raising of poultry for
67 commercial purposes;

68 [3] Accessory uses and buildings; ~~and~~

69 [4] Individual private campsite; ~~and~~

70 [5] Dwellings or modular home, excluding mobile home, in a single-family or duplex
71 configuration if located 100 feet or further from the normal high-water line of any
72 water bodies, or the upland edge of a wetland.

73 (b) Special exception uses.

74 ~~[1] Dwellings or modular home, excluding mobile home, in a single-family or duplex~~
75 ~~configuration;~~

76 (8) Business – Local Zone (B-L).

77 (a) Permitted uses.

78 [1] Public open space recreational uses; ~~and~~

79 [2] Accessory uses and buildings; ~~and~~

80 [3] Dwellings or modular home, excluding mobile home, in a single-family or duplex
81 configuration if located 100 feet or further from the normal high-water line of any
82 water bodies, or the upland edge of a wetland.

83 (b) Special exception uses.

84 ~~[1] Dwellings or modular home, excluding mobile home, in a single-family or duplex~~
85 ~~configuration;~~

86 (9) Business – Local Zone (B-L1).

87 (a) Permitted uses.

88 [1] Public open space recreational uses;

89 [2] Accessory uses and buildings; ~~and~~

90 ~~[3] Aquaculture;~~ and

91 [4] Dwellings or modular home, excluding mobile home, in a single-family or duplex
92 configuration if located 100 feet or further from the normal high-water line of any
93 water bodies, or the upland edge of a wetland.

94 (b) Special exception uses.

95 ~~[1] Dwellings or modular home, excluding mobile home, in a single-family or duplex~~
96 ~~configuration;~~

97 (14) Mixed-Use Zone (MU).

98 (a) Permitted uses.

99 [1] Agricultural uses and practices, except a piggery or the raising of poultry for
100 commercial purposes;

101 [2] Art studio/gallery;

102 [3] Church or institution of religion;

103 [4] Research and development;

104 [5] Public open space or recreation;

105 [6] Municipal or state building or use;

106 [7] Institution of philanthropic, fraternal, political or social nature which is not used for
107 residential or overnight occupancy;

108 [8] Timber harvesting; ~~and~~

109 [9] Home occupations; ~~and~~

110 [10] Dwellings, limited to the following:

111 [a] Single-family dwellings on lots of record as of April 1, 2004 if located 100 feet
112 or further from the normal high-water line of any water bodies, or the
113 upland edge of a wetland.

114 [b] Dwelling units on the upper floors of a mixed-use building that is served on
115 the upper floors of a mixed-use building that is served by public sewerage if
116 located 100 feet or further from the normal high-water line of any water
117 bodies, or the upland edge of a wetland.

118 (b) Special exception uses.

119 ~~[1] Dwellings, limited to the following:~~

120 ~~[a] Single-family dwellings on lots of record as of April 1.~~

121 ~~[b] Dwelling units on the upper floors of a mixed-use building that is served on~~
122 ~~the upper floors of a mixed-use building that is served by public sewerage.~~

123 (15) Mixed-Use – Badger’s Island Zone (MU-BI).

124 (a) Permitted uses.

125 [1] Public open space recreational uses;

- 126 [2] Shuttle service and ride-sharing facilities;
- 127 [3] Aquaculture; ~~and~~
- 128 [4] Research laboratories; ~~and~~
- 129 [4] Dwellings or modular home, excluding mobile home, in a single-family or duplex
- 130 configuration if located 75 feet or further from the normal high-water line of any
- 131 water bodies, or the upland edge of a wetland.
- 132 (b) Special exception uses.
- 133 ~~[1] Dwellings including modular homes in a single family or duplex configuration,~~
- 134 ~~excluding mobile homes;~~
- 135 (16) Mixed-Use – Kittery Foreside Zone (MU-KF).
- 136 (a) Permitted uses.
- 137 [1] Public open space recreational uses; ~~and~~
- 138 [2] Dwellings in a single-family or duplex configuration, excluding mobile homes, if
- 139 located 75 feet or further from the normal high-water line of any water bodies, or
- 140 the upland edge of a wetland..
- 141 (b) Special exception uses.
- 142 ~~[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) Except where otherwise permitted in this title, repair and/or expansion of a nonconforming
4 structure must be approved by the Board of Appeals. In cases where the structure is located in the
5 [base-zone setback of the](#) Shoreland [Overlay](#) or Resource Protection Overlay Zone, the repair and/or
6 expansion must be approved by the Planning Board.
7
- 8 (2) The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming
9 structure provided the proposed expansion meets all of the following criteria:
10 (a) A vertical expansion that follows the existing building footprint;
11 (b) Will not result in setbacks less than those existing;
12 (c) Is not located in the [base-zone setback of the](#) Shoreland Overlay or Resource Protection Overlay
13 Zone.
14
- 15 (3) This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory
16 structure permitted to be closer to a water body or to a principal structure in accordance with Table
17 16.9 - Minimum Setbacks from Wetlands and Water Bodies.
18
- 19 (a) A nonconforming structure may be repaired or maintained and may be expanded in conformity
20 with the dimensional requirements, such as setback, height, etc., as contained in this title. If the
21 proposed expansion of a nonconforming structure cannot meet the dimensional requirements
22 of this title, the Board of Appeals or the Planning Board will review such expansion application
23 and may approve proposed changes provided the changes are no more nonconforming than the
24 existing condition and the Board of Appeals or the Planning Board makes its decision per
25 § 16.6.6.B.
26
- 27 (b) Except in the Residential - Village (R-V) Zone, minimum setbacks of residential storage sheds
28 that are less than 121 square feet, one-story residential garages that are less than 577 square
29 feet, and decks less than 251 square feet may be one-half the minimum rear and side yard
30 setbacks, providing the lots are legally nonconforming.
31
- 32 (c) Where the expansion of the residential use within the Commercial Zones involves an expansion
33 of a structure, the structure must be expanded in conformity with the dimensional requirements
34 contained in this title. If the proposed structure expansion cannot meet the dimensional
35 requirements of this title, the application may be submitted to the Board of Appeals for review
36 as a miscellaneous variation request. In reviewing all such applications, the Board of Appeals
37 must use the criteria established in this section, and then may approve the proposed variations
38 to the dimensional requirements.
39
- 40 (d) The addition of steps and landings, exterior to the structure does not constitute expansion. Such
41 steps are not to be considered part of the structure for such determination. Step landings may
42 not exceed three feet by three feet in size.

43 (e) In addition to the standards in the above § 16.7.3.3B(3)(a) through (d), the expansion of a
44 nonconforming structure and the construction of new, enlarged, or replacement foundation
45 beneath a nonconforming structure located in the Shoreland or Resource Protection Overlay
46 Zone must meet the following:

47 [1] Wherever a new, enlarged, or replacement foundation is constructed under a
48 nonconforming structure the structure and new foundation must be placed such that setback
49 requirements are met to the greatest practical extent as determined by the Planning Board,
50 basing its decision on the criteria specified in § 16.7.3.3A(2), Nonconforming structure
51 relocation.

52 [2] All new principal and accessory structures, excluding functionally water-dependent uses,
53 must meet the water body, tributary stream, or wetland setback requirements contained in §
54 16.3.2.17.D(2). A nonconforming structure may be added to or expanded after obtaining a
55 permit from the same permitting authority as that for a new structure, if such addition or
56 expansion does not increase the nonconformity of the structure and is in accordance with §
57 16.7.3.3.B(3)(e)[4] and [5] below.

58
59 [3] If a legally existing nonconforming principal structure is located partially within 25 feet from
60 the normal high-water line of a waterbody, tributary stream, or upland edge of a coastal or
61 freshwater wetland, Expansion of the footprint and/or height of any portion of a the
62 structure that is located within 25 feet of the normal high-water line of a water body,
63 tributary stream, or upland edge of a coastal or freshwater wetland is prohibited even if the
64 expansion will not increase nonconformity with the water body, tributary stream, or wetland
65 setback requirement. Expansion of an accessory structure that is located closer to the normal
66 high-water line of a water body, tributary stream, or upland edge of a coastal or freshwater
67 wetland than the principal structure is prohibited, even if the expansion will not increase
68 nonconformity with the water body, tributary stream, or coastal or freshwater wetland
69 setback requirement.

70
71 [4] Notwithstanding § 16.7.3.3B(3)(e)[2] above, if a legally existing nonconforming principal
72 structure is entirely located less than 25 feet from the normal high-water line of a
73 waterbody, tributary stream, or upland edge of a coastal or freshwater wetland, that
74 structure may be expanded as follows, as long as all other applicable municipal land use
75 standards are met and the expansion is not prohibited by § 16.7.3.3.B(3)(e)[2]:

76 [a] The maximum total footprint for the principal structure may not be expanded to a size
77 greater than 800 square feet or 30% larger than the footprint that existed on January 1,
78 1989, whichever is greater. The maximum height of the principal structure may not be
79 made greater than 15 feet or the height of the existing structure, whichever is greater.

80 [5] All other legally existing nonconforming principal and accessory structures that do not meet
81 the water body, tributary stream, or coastal or freshwater wetland setback requirements
82 may be expanded or altered as follows, as long as all other applicable municipal land use
83 standards are met and the expansion is not prohibited by § 16.7.3.3.B(3)(e)[2] or [3] above:

84 [a] For structures located less than ~~100 feet~~ the base-zone setback from the normal high-
85 water line of a water body, tributary stream, or upland edge of a coastal or freshwater

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

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