

**Town of Kittery  
Planning Board Meeting  
February 25, 2016**

**ITEM 2 – Town Code Amendments – 16.10.3 – Development Plan Review and Approval Process; 16.10.3.2 Other Development Review; 16.10.3.4 Shoreland Development Review; 16.10.10 Shoreland Development Review; 16.10.10.1.1 Permits Required; 16.10.10.1.2 Permit Application; 16.10.10.2 Procedure for Administering Permits**

Action: Hold a public hearing and recommend to Town Council for adoption. The proposed amendments address plan review procedures for development applications located in the Shoreland Overlay Zone.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
NO	Joint workshop with Planning Board and Town Council	2/1/2016	HELD
YES	Initial Planning Board Meeting	1/14/2016	HELD
NO	Secondary Planning Board Meeting		
YES	Public Hearing (special notice requirements)	Scheduled for 2/25/2016	
YES	Review/Approval/ Recommendation to Town Council		

**Background**

This group of amendments is developed to respond to the many review applications the Board receives that do not include development within the 100 or 75 foot setback in the Shoreland zone but still needs planning board approval, per 16.10.3.2 for the determination of devegetated area. Other minor changes are included for clarity and form.

**Review**

Attached for the Board’s consideration are amendments to Article XI of Title 16.10.3.2 and the definition of development in 16.2.2. Staff revised the amendment to reflect comments from the Board and Town Council raised at the February 1, 2016 workshop and subsequent 2/11/2016 Planning Board meeting.

UPDATE: Staff revised the proposed amendment to consider comments from MDEP. Specifically, made the intention clearer in 16.10.3.2 and 16.10.3.4 to what is not subject to Planning Board review (Lines 17-20 and 47-49) and the removal of timber harvesting in 16.10.3.4.B (4) since the town no longer regulates this activity within the shoreland zone (line 61), see 16.9.5.1.A.

**Recommendation**

If the Planning Board is amenable to the proposed amendments and/or along with any revisions they find is warranted, the Board can...

**...move to recommend to Town Council adoption for Town Code Amendments, Title 16.2 Definitions, Title 16.10.3.2 Other Development Review, 16.10.3.4 Shoreland Development Review and 16.10.10 Shoreland Development Review.**

1 **16.2.2 Definitions.**

2 **Development** means:

- 3 1) a change in land use involving alteration of the land, water or vegetation, or  
4 2) the addition or alteration of structures or other construction not naturally occurring.

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8 **Article III. Development Plan Review and Approval Process**

10 **16.10.3.1 General Development, Site, and Subdivision Plans Review.**

11 All proposed development including site, subdivision, business use and other development must be  
12 reviewed for conformance with the procedures, standards and requirements of this Code by the Planning  
13 Board except as provided herein, but in all cases by the Town Planner and Code Enforcement Officer and  
14 where required the Board of Appeals as provided herein.

16 **16.10.3.2 Other Development Review.**

17 ~~An applicant or applicant's authorized agent must obtain Planning Board approval in accordance with this~~  
18 ~~Code for all development except the following, unless located within the Shoreland Overlay or Resource~~  
19 ~~Protection Overlay Zones:~~ Unless subject to a Shoreland Development Plan Review per 16.10.3.4, the  
20 following does not require Planning Board approval:

21  
22 A. ~~Single and duplex family dwellings, except if within either a Shoreland or Resource Protection~~  
23 ~~Overlay Zone, in addition to other criteria specified in Article X of Chapter 16.10, applicable to the~~  
24 ~~granting of a special exception use request, the Planning Board must review and may approve a~~  
25 ~~development plan for a one to two family residential structure, provided the applicant meets all of the~~  
26 ~~applicable Design and Performance Standards.~~

27  
28 B. Expansion of existing use where the expanded use will require fewer than six additional parking  
29 spaces.

30  
31 C. Division of land into lots (i.e., two lots) which division is not otherwise subject to Planning Board  
32 review as a subdivision.

33  
34 D. Business use as provided in Section 16.4.3.5.

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37 **16.10.3.4 Shoreland Development Review.**

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39 A. All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses  
40 Overlay Zones involving the use, expansion, change or replacement of an existing use or structure, or  
41 renewal of a discontinued non-conforming use must be reviewed and approved as provided in 16.10.10  
42 and elsewhere in this Code, and tracked as a shoreland development for reporting purposes.

43  
44 B. All development in the Shoreland, Resource Protection, and Commercial Fisheries/Maritime Uses  
45 Overlay Zones must be approved by the Planning Board except for the following:

- 46  
47 1. Proposed development of principal and accessory structures in compliance with 16.3.2.17.D.2. and  
48 is not subject to Planning Board review as explicitly required elsewhere in this Title. Such proposed

49 development must be reviewed and approved by the Code Enforcement Officer (CEO) prior to issuing  
50 a building permit. The total devegetated area of the lot (that portion within the Shoreland Overlay  
51 Zone) must be calculated by the applicant and verified by the CEO and recorded in the Town's  
52 property records. Any development proposed in the Resource Protection and Stream Protection  
53 Overlay Zones must be approved by the Planning Board.

54  
55 2. Piers, docks, wharfs, bridges and other structures and uses extending over or below the Highest  
56 Annual Tide (HAT) elevation, subject to review and approval by the Port Authority as outlined in Title  
57 16.11 Marine related development.

58  
59 3. Division of a conforming parcel that is not subject to subdivision as defined in 16.2.2,

60  
61 4. Clearing of vegetation for activities other than timber harvesting. These are subject to review and  
62 approval by the Shoreland Resource Officer or Code Enforcement Officer.  
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66 **Article X. Shoreland Development Review**

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68 **16.10.10.1 General.**

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70 **16.10.10.1.1 Permits Required.**

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72 A. After the effective date of this code, no person may, without first obtaining a permit, engage in any  
73 activity or use of land or structure requiring a permit in the shoreland or resource protection overlay zones  
74 in which such activity or use would occur, or expand, change or replace an existing use or structure, or  
75 renew a discontinued nonconforming use.

76  
77 B. When replacing an existing culvert, the watercourse must be protected so that the crossing does not  
78 block fish passage, and adequate erosion control measures must be taken to prevent sedimentation of  
79 the water in the watercourse.

80  
81 C. A permit is not required for the replacement of an existing road culvert provided the replacement  
82 culvert is not:

- 83  
84 1. More than one standard culvert size larger in diameter than the culvert being replaced,  
85  
86 2. More than twenty-five (25) percent longer than the culvert being replaced, and  
87  
88 3. Longer than seventy-five (75) feet.

89  
90 D. A permit is not required for an archaeological excavation provided the excavation is conducted by an  
91 archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and  
92 unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and  
93 permanent stabilization measures.

94  
95 E. Any permit required by this Section is in addition to any other permit required by other law or  
96 ordinance.

97  
98  
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**16.10.10.1.2 Permit Application.**

100 A. Every applicant for a Shoreland Development Review permit must ~~complete and~~ submit a completed  
101 ~~Kittery~~ application form and a site plan drawn to scale as indicated in Section 16.10.5.2B, to the Code  
102 Enforcement Officer ~~appropriate official as indicated in Section 16.10.5.2B~~.

103

104 B. All applications must be signed by the owner, ~~owners or lessee of the property or other person~~  
105 ~~authorizing the work, certifying that the information in the application is complete and correct. If the~~  
106 ~~person signing the application is not the owner or lessee of the property then that person must submit a~~  
107 ~~letter of authorization from the owner or lessee.~~ or a person or agent with written authorization from the  
108 owner, to apply for a permit hereunder, certifying that the information in the application is complete and  
109 correct.

110

111 C. All applications must be dated, and the Code Enforcement Officer, ~~Town Planner, Town Clerk or~~  
112 ~~Kittery Port Authority, as appropriate~~ or designee, must note upon each application the date and time of  
113 its receipt ~~by each~~.

114

115 D. Whenever the nature of the proposed structure requires the installation of a subsurface sewage  
116 disposal system, a completed application for a subsurface wastewater disposal permit must be submitted.  
117 The application must include a site evaluation approved by the Plumbing Inspector.

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**16.10.10.2 Procedure for Administering Permits.**

120 Within thirty five (35) days of the receipt of a written application, the Town Planner for Planning Board  
121 review or Code Enforcement Officer for all other review, and as indicated in Section 16.10.5.2B3,4, must  
122 notify the applicant in writing that the application is or is not complete. If the application is incomplete, the  
123 written notification must specify the additional material required to complete the application.

124

125 A. The Code Enforcement Officer is required to approve, approve with conditions or deny all permit  
126 applications in writing within thirty-five (35) days of receiving a completed application.

127

128 B. If the Planning Board has a waiting list of applications, a decision on the application will occur within  
129 thirty-five (35) days after the first available date on the Planning Board's agenda following receipt of the  
130 completed application, or within thirty-five (35) days of the public hearing, if one is held.

131

132 C. Permits will be approved if the proposed use or structure is found to be in conformance with the  
133 purposes and provisions of this section.

134 The applicant is required to demonstrate, to the satisfaction of the reviewing authority, that the proposed  
135 land use activity is in conformance with the purposes and provisions of this Code.

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137 D. An application will be approved or approved with conditions if the reviewing authority makes a  
138 positive finding based on the information presented. It must be demonstrated that the proposed use will:

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- 140 1. maintain safe and healthful conditions;
- 141 2. not result in water pollution, erosion or sedimentation to surface waters;
- 142 3. adequately provide for the disposal of all wastewater;
- 143 4. not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- 144 5. conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

- 145 6. protect archaeological and historic resources;
- 146 7. not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/  
147 maritime activities district;
- 148 8. avoid problems associated with floodplain development and use
- 149 9. is in conformance with the provisions of this Code; and
- 150 10. recorded with the York County Registry of Deeds.

