

# Town of Kennebunk, Maine



## **Kennebunk Planning Board Agenda Room 301, 7:00 p.m. Monday, March 11, 2019**

**\*\*\* Please Note NO NEW BUSINESS AFTER 10:00 PM \*\*\***

- I. Open Meeting**
- II. Public Hearing**
  - A. Proposed Amendment to Zoning Ordinance Article 8, Section 10.E.(1) York Street Mixed Residential and Commercial Use District (MRCU) Space and Bulk Standards.
  - B. Proposed Amendment to Zoning Ordinance Article 10 Section 10.D.3. Multifamily Dwellings and Multifamily Lots, Perimeter Buffer.
  - C. Proposed Amendments to Subdivision Regulations. Article 6.3, 7.3, and 8.3 Submission Requirements.
- III. Old Business**
  - A. Conservation Commission: Proposed Wetlands Mitigation Ordinance
- IV. Other/Information Items**
- V. Approval of Minutes**
  - A. February 25, 2019 Meeting Minutes
- VI. Adjournment**



John Stoll  
Town Planner

# Town of Kennebunk Community Development Department

## *Proposed Amendment to Zoning Ordinance* Cover Sheet

---

<b>Planning Board Public Hearing Date:</b>	February 11, 2019 March 11, 2019
<b>Article to be Amended:</b>	Article 8 Section 10.E.(1) York Street Mixed Residential and Commercial Use District (MCRU) Space and Bulk Standards.
<b>Summary:</b>	Reduce Minimum net lot area where sewer is located Reduce Minimum net lot area per dwelling unit with sewer. Eliminate commercial specific space & bulk requirements for mixed use.  Provide impervious lot coverage bonus options when Low Impact Development (LID) is utilized
<b>Planning Board Action:</b>	TBD

Section 10: York Street Mixed Residential and Commercial Use District

- 5-10 Inns
- 5-11 Personal services
- 5-12 Rental of equipment, provided there is no outdoor storage or display
- 5-13 Retail sales containing a maximum of 4,000 square feet of gross floor area per use
- 5-14 Studios of artisans
- 5-15 Veterinary clinics
  
- 6. The following recreation and marine uses:
  - 6-1 Outdoor recreation
  - 6-2 Fully enclosed places of recreation, except video arcades
  
- 7. The following industrial uses:
  - 7-1 Tradesmen's shops, provided there is no outdoor storage
  
- 8. The following utility uses:
  - 8-1 Essential services
  
- 9. The following accessory uses:
  - 9-1 Accessory buildings and uses
  - 9-2 Home occupations
  - 9-3 Renting of rooms, not to exceed eight rented rooms

**C. Special Exceptions**

The following uses may be permitted only upon approval as special exceptions in accordance with Article 7 of this Ordinance:

- 1. The following utility uses:
  - 1-1 Public utilities

**D. Prohibited Uses**

Uses not allowed as permitted uses or special exceptions are prohibited within this district.

**E. Standards**

(1) Space and Bulk Standards

The following space and bulk standards shall apply in the Mixed Residential and Commercial Use District:

Minimum net lot area	<u>Sewer</u>	<u>No Sewer</u>
Hotels and motels	<u>40,000 sf</u> <del>80,000 sq. ft.</del>	<u>Not Permitted</u>
Multifamily dwellings	<u>10,000 sq. ft</u> <del>40,000 sq. ft.</del>	<u>40,000 sq. ft</u>
<u>Mixed Use</u>	<u>10,000 sq. ft</u>	<u>20,000 sq. ft.</u>

Section 10: York Street Mixed Residential and Commercial Use District

Other uses	<del>10,000 sq. ft</del> <del>20,000 sq. ft.</del>	<u>20,000 sq. ft</u>
Minimum net lot area per dwelling unit	<u>Sewer</u>	<u>No Sewer</u>
Single family detached dwellings and two-family dwellings	<u>5,000 sq. ft</u>	20,000 sq. ft. <del>provided that accessory apartments shall not require an increase in the minimum net lot area.</del>
Multifamily dwellings	<u>5,000 sq. ft</u>	<u>20,000</u> sq. ft.
<del>Multifamily Lots</del>	<del>20,000 sq. ft.</del>	
Elderly congregate	2,000 sq. ft.	
Minimum net lot area per dwelling unit on a mixed use lot		
Mixed use with single family detached dwelling	<del>20,000 square feet per dwelling plus 20,000 square feet for commercial use</del> <u>5,000 sq ft</u>	<u>20,000 sq ft</u>
Mixed use with multifamily dwellings	<del>10,000 square feet per dwelling unit plus 20,000 square feet for commercial use</del> <u>5,000 sq ft</u>	<u>20,000 sq ft.</u>
Minimum lot width (see also paragraph E(2)(a) below)		
Single family detached dwellings and two-family dwellings	100 feet	
Multifamily dwellings/lots	200 feet	
Hotels and motels	200 feet	
Other uses	150 feet	
Shoreland area	Per Article 8, Section 16	
Minimum setbacks		
Front yard		
Multifamily dwellings	<u>25</u> <del>40</del> feet	
Hotels and motels	<u>25</u> <del>40</del> feet	
Other uses	25 feet	
Side yards		
Multifamily dwellings	<u>20</u> <del>40</del> feet	
Hotels and motels	<u>20</u> <del>40</del> feet	
Other uses	20 feet	

Rear yard	
Multifamily dwellings	<del>25</del> 40 feet
Hotels and motels	<del>25</del> 40 feet
Other uses	25 feet
Shoreland area	Per Article 8, Section 16
Maximum height	35 feet
Maximum lot coverage	25 percent
Total impervious surface of buildings, parking areas, driveways and all walk ways, <del>except walk ways no wider than 10 feet made of brick, cobble stone, flag stone or granite blocks set in sand or other porous material</del>	5 <del>5</del> 0 percent of the lot.  <b><u>Total impervious surface may be increased up to 75% when the additional impervious surface, in excess of 50%, is developed utilizing the Low Impact Development (LID) techniques described in the Maine Department of Environmental Protection Storm water Best Management Practices (BMP) manual Volume III, Chapter 10.</u></b>
Minimum width of green perimeter strip	Except where the standards below are more stringent, all lots will have a strip a minimum of 10 feet wide, exclusive of area for a sidewalk, along the front property line that shall be maintained in plants (grass, flowers, shrubs and/or trees) and shall not be used for off-street parking. Further, the green perimeter area for any lot, unless it contains only a single family residence, whose side or rear yard borders a residential district shall provide landscaping and/or a fence to create an opaque screen at least six feet high in that side or rear yard.
Multifamily dwellings	20 feet
Hotels and motels	20 feet
Other uses	10 feet

(2) Performance Standards

Uses within the Mixed Residential and Commercial Use District shall conform to all applicable performance standards of this Ordinance, including but not limited to the following:

- (a) Shared access  
Any lot with a use that shares its sole access to Route One with at least one other lot or that gains its access from a public way other than Route One may reduce its minimum lot width to 75 feet.
- (b) Conceptual plan required

## Section 10: York Street Mixed Residential and Commercial Use District

- (i) Any application for new development on or subdivision of a lot of two or more acres in existence as of the effective date of this Ordinance shall, if the proposal does not involve the entire site, be accompanied by a conceptual plan for the use of the remainder of the site. The conceptual plan shall show, at a minimum, natural constraints, such as wetlands, that exist on the rest of the site, the potential locations of other lots or development on the site, the way in which roads, driveways, and pedestrian ways will serve the future lots or development, and the way in which all proposed development will relate to and potentially connect with adjacent lands.
- (ii) To the greatest extent possible, the conceptual plan shall demonstrate that future lots created from the site and development on the site will share access to and minimize curb cuts along Route One, that provision has been made for convenient, direct connections between all lots or developments, and that provision has been made to avoid wetlands and other significant natural resources.
- (c) **Sight distance**  
Commercial uses, including home occupations, may not block sidewalks or obstruct sight distances of entering or exiting traffic with exterior storage or merchandise or displays.
- (d) **Operating hours**  
Business hours shall begin no earlier than 6 a.m. and end no later than 1 a.m. Lodging offices in hotels, motels, and renting of rooms are excluded.
- (e) **Mixed residential-and-commercial uses**  
Mixed residential-and-commercial uses shall comply with the space and bulk standards of the York Street Mixed Residential and Commercial Use District. **Mixed use minimum net lot area shall be calculated by the sum of the minimum net lot area per residential dwelling unit, and will not be less than 10,000 sq ft. total minimum net lot area. No additional lot area is required for the commercial use.**
- However, Mixed uses are allowable on a lot that is legally nonconforming as to one or more space and bulk standards if (1) they are located wholly within a residential structure or a structure accessory thereto in existence as of the effective date of this ordinance, (2) the residential appearance of the structure is preserved without substantial alteration, and (3) the nonconforming aspect of the lot is not worsened.**
- (f) Off-street parking shall conform to the performance standards in Article 10, Section 9. In addition, parking shall be arranged so it is not necessary for vehicles to back into the street. New parking lots shall not be created between York Street and the principal structure on the lot bordering York Street.
- (g) Soils Article 10, Section 2
- (h) Private outdoor lighting Article 10, Section 6
- (i) Signs Article 10, Section 7
- (j) Multifamily dwellings Article 10, Section 10

- |     |                            |                        |
|-----|----------------------------|------------------------|
| (k) | Elderly congregate housing | Article 10, Section 11 |
| (l) | Home occupations           | Article 10, Section 14 |
| (m) | Accessory apartments       | Article 10, Section 15 |
| (n) | Motels, hotels, and inns   | Article 10, Section 17 |

**A Hotel or motel proposed for construction on a lot that abuts a residential zoning district shall provide a 50 foot side or rear setback between the structure and the residential zoning district boundary.**

**F. Overlay Districts**

- (1) Any lot or use within the Shoreland Overlay District shall additionally comply with the provisions of Article 8, Section 16, and of Article 10, Section 3 of this Ordinance.
- (2) Any lot or use within the Historic Preservation Overlay District shall additionally comply with the provisions of Article 8, Section 17, and of Article 12 of this Ordinance.

**G. Flood Plains**

Any construction or development within a flood plain, as defined by the Kennebunk Flood Plain Management Ordinance, shall additionally comply with the terms of that ordinance.

**H. Site Plan Review**

Any proposals as described in Article 11 (Site Plan Review), Section 3 of this Ordinance shall be subject to site plan review and approval prior to receipt of a building permit or plumbing permit.

## Chapter 10- Low Impact Development Practices

Low impact development (LID) is a process of developing land that mimic the natural hydrologic regime. LID begins at the design phase of a new development, incorporating planning techniques that minimize site clearing and impervious surfaces to reduce impact and stormwater runoff generated from the site. By reducing the volume of water leaving a site, the pollutant loading is also reduced. Other techniques that will reduce the volume and peak flow rates of runoff from the development are then incorporated throughout the site. LID is an effective tool that reduces pollutant loading, thermal impacts, stream flows, and minimizes stream channel erosion. More information is available in Volume I of this manual on LID measures.

### IMPORTANT:

Maine DEP strongly encourages the use of LID measures. LID is not a rigid set of standards or a one size fits all approach and has many benefits:

- **Benefits to the Developer:** The owner and developer will see reduced costs for land clearing and grading, infrastructure and stormwater management while seeing an increased aesthetic value in the development.
- **Benefits to the Municipality:** The local government and community will benefit from reduced infrastructure maintenance costs and reduces property damage from flooding while having more open space, protected natural resources and better quality drinking water.
- **Benefits to the Environment:** The hydrologic cycle is preserved; streams are less prone to erosion; and stream flows are maintained while benefiting fish and wildlife.

### IMPORTANT:

LID goals and objectives should be incorporated into the site planning process as early as possible. The following steps serve as a guideline to use in the planning stage:

- Identify and preserve sensitive areas that will affect the hydrology of the site. Features that should be protected are highly permeable soils.
- Minimize site disturbance and impervious areas with an alternative layout for the development.
- Minimize the impervious surfaces directly connected to drainage conveyance systems to reduce the time of concentration.
- Break the site into smaller drainage areas that can be handled through basic LID practices

## PLANNING FOR LID

**Minimize Site Clearing:** Development typically involves new impervious surfaces such as roads and buildings and landscaped areas for lawns. Avoid developing high-permeable soils by protecting areas that are less sensitive to disturbance and that will sustain groundwater recharge and reduce runoff. For example, developing a vegetated, tight clay soil area will have less impact on stormwater runoff than developing a forested area on sandy soils. Once the sensitive areas have been identified, the layout of the development should be aligned with the conservation of these areas.

**Minimize Impervious Areas:** The traffic distribution network (roadways, sidewalks, driveways, and parking areas) is generally the greatest source of site imperviousness and these should be the focus for reducing impervious area.



- ***Alternative Roadway Layout:*** Alternative road layouts can be used to reduce total pavement, while allowing for the same amount of development. Clustering will decrease imperviousness.
- ***Narrow Road Sections:*** The width of pavement can be reduced by including the primary driving surface, a pervious base for the shoulders, and ditch drainage swale in place of curb and gutter.
- ***Sidewalks:*** Sidewalks should be reduced to one side of the road or be eliminated.
- ***On-Street Parking:*** Reduction to one side or elimination of on-street parking can potentially reduce overall site imperviousness by 25 to 30 percent.
- ***Rooftops:*** The number and size of buildings dictates the impervious area associated with rooftops and vertical construction is preferred over horizontal construction.
- ***Driveways:*** Minimizing paved driveway area can be accomplished through narrower driveways or length reduction. Shared driveways will also reduce imperviousness. In addition, pervious materials would minimize runoff.

**Minimize Connected Impervious Areas:** The impacts from impervious surfaces can be minimized by disconnecting these areas from piped drainage networks and by treating these at the sources.

- Paved driveways and roads should be directed to stabilized, vegetated areas.
- Flows from large paved surfaces should be broken up and for on-site treatment of smaller flows. Breaking flows up allows the flows to be directed to vegetation as sheet flow.
- LID techniques should be dispersed throughout the development, such as at individual house lots to obtain the most benefit. They can be incorporated into the landscaping of the property to provide a natural treatment system.

**Maintain Time of Concentration:** When development occurs, the time of concentration ( $T_c$ ) is often shortened due from the impervious area, causing greater flows over a shorter period of time. LID practices can maintain the pre-development  $T_c$  by:

- Minimizing land disturbance,
- Detaining flows on site,
- Increasing the flow length,
- Increasing the surface roughness of the flow path,
- Creating flatter slopes, or
- Disconnecting impervious areas, which will decrease their travel rates.

**Manage Stormwater at the Source:** The impact from a development should be mitigated at the source by reestablishing a more natural hydrologic cycle that sustains a clean stream base flow. Typically, the most economical and simplistic stormwater management strategy is achieved by controlling runoff at the source with a variety of small treatment structures that will result in the reduction of stormwater discharge and more flexibility in the site design.

### **Soil Considerations:**

- ***Minimize Compaction:*** Compaction reduces the natural infiltrating ability of soils; and disturbance from heavy equipment should be avoided. If possible, impervious surfaces and development disturbances should be directed towards the more impermeable soils of a site, leaving the pervious soils to continue infiltrating runoff.
- ***Increase Organic Content of Soils:*** When constructing many of the LID vegetated techniques, a quality topsoil is necessary to optimize pollutant removal. The soil bed should consist of at least 20-30% organic material and 30% planting or topsoil. This highly organic layer traps contaminants, absorbs more runoff and provides a medium for biological activity that helps break down pollutants. Planting soil provides a healthy growing medium for vegetation by encouraging strong root growth. In addition, microbes found in healthy soils transform nutrients for plant growth. Compost or other organic amendments can be added at the site preparation level, typically by the truckload. It is also available for little or no cost from many community leaf compost programs. For rain gardens and

bioretention areas, compost addition is also valuable in absorbing and retaining moisture for plant life, filtering pollutants and providing an active layer for microorganisms to reside and reproduce. A healthy microorganism population is key to the decomposition of many pollutants, whether in the home rain garden or in a parking lot.

- *Avoid Pesticides/Herbicides:* Healthy soil is alive with microorganisms that decompose and inactivate pollutants, but these may be killed by excessive chemicals. Although the soil microorganisms are not typically the target of these chemicals, many of them may fall victim to the use of pesticides. Additionally, insect species that prey on pests are also killed by pesticides. Since the predatory species tend to have slower reproduction than the pest species, a natural defense against insect pests may be lost.

## LID TECHNIQUES

Many of the LID techniques rely on infiltration, retention, and evapotranspiration of stormwater to reduce runoff. When infiltration is not a possibility, the initial planning techniques described above should be the primary focus, followed by the use of small disconnected underdrained systems that rely on soil and vegetation to retain runoff. Examples of LID design standards and techniques are shown on Table 11.1 and Table 11.2.

- *Filters (Bioretention Cells and Rain gardens):* Bioretention areas or rain gardens are built with a specific soil filter media (containing organic material and planted with vegetation that can handle wet and dry conditions) that will reduce the volume of runoff through absorption and evapotranspiration. A slight depression allows the ponding of stormwater as it infiltrates through the soil media and into the groundwater or to an underdrain for surface discharge. Refer to Chapter 7.2 and 7.3 of this manual for further information on the performance and design of bioretention practices.
- *Infiltration:* Infiltration reduces runoff and mimics the natural hydrologic cycle by redirecting water into the ground rather than to a piped system. It is best to use many smaller infiltration basins that fit into the natural landscape. The design information in Chapter 6.0 should be followed for any infiltration practice.
- *Buffers:* Vegetated buffer use soils and vegetation to remove pollutants from stormwater. Buffers can be used as a stormwater BMP for small developments by minimizing the amount of runoff generated through infiltration and evapotranspiration. Filter strips are typically used as pretreatment devices for bioretention cells and other infiltration practices. Refer to Chapter 5.0 for information on the performance and design of vegetated buffers.
- *Collection Cisterns:* In a commercial setting, the collection of rain runoff can be put to use in the building to off-set the cost of their water supply. Cisterns can be located either above or below ground, and in out-of-the-way places that can easily be incorporated into a site design. Commercially available systems are typically constructed of high-density plastics and can include pumps and filtration devices. Rain barrels are inexpensive, effective, and easily maintainable when used in residential applications to capture roof runoff for later watering of lawns and gardens.
- *Vegetated Rooftops:* Vegetated rooftops provide three primary benefits: attenuation of stormwater runoff and peak flows, reductions of the heat island effects with an increase in building insulation, and a longer life expectancy for the base roof material. The stormwater benefit is the smaller more common storm events are absorbed, minimizing peak runoff and the net volume of runoff typically produced by roofs. Refer to Chapter 7.6 for further information on the performance of rooftop greening.
- *Porous Pavement:* Porous pavement is a permeable surface (pervious asphalt, concrete or pavers), a granular base, and subbase materials which allow the penetration of runoff into the underlying soils. The efficiency of pavement alternative systems depends on whether the pavement is designed to store and infiltrate most runoff, or only limited volumes of runoff (e.g., "first-flush") with the remainder discharged to a storm drainage system or overland flow. Maintenance is essential for long-term use and effectiveness. Pavement alternatives vary in load bearing capacities but are generally appropriate for low traffic areas such as sidewalks, parking lots, overflow parking and residential

roads. It is important to choose a material appropriate for the desired use (light, moderate or heavy use). Refer to Chapter 7.7 for further information on the performance of porous pavement and other manmade pervious surfaces.

- *Other Techniques:* As previously stated, LID is about creativity. Multiple practices can be implemented and adapted into various sites and situations. However, they are mostly dependent upon the layout of the development and the disconnection of its individual elements.

**Table 10.1 – LID Measures and Techniques**

LID Measure	Technique	Design
Protect natural drainage system	<ul style="list-style-type: none"> <li>• Maintain a minimum 25 foot buffer on all natural water resources including intermittent channels</li> <li>• Do not divert stormwater from its natural sub-watershed</li> </ul>	<p>Design practices developed at the planning phase that will help mitigate environmental impacts. Ideally, these are cost-effective and environmentally friendly.</p>
Minimize the decrease in time of concentration	<ul style="list-style-type: none"> <li>• Break up or disconnect the flow of runoff over impervious surfaces</li> <li>• Sheet flow over pavement that is less than 100 feet</li> </ul>	
Minimize impervious area or the effect of impervious area	<ul style="list-style-type: none"> <li>• Go vertical with multi story buildings and parking garages</li> <li>• More than 25% of pavement area (overflow) in pervious pavement All pedestrian walkways are pavers or pervious pavement</li> <li>• Infiltrate as much roof runoff as standards allow</li> </ul>	
Minimize soil compaction	<ul style="list-style-type: none"> <li>• Minimize the construction window</li> <li>• Rototilling all areas to be revegetated</li> </ul>	
Minimize lawns and maximize landscaping that encourages runoff retention	<ul style="list-style-type: none"> <li>• Low maintenance Maine native plants</li> <li>• No invasive plants</li> <li>• No pesticides</li> <li>• Fertilizer application only during initial planting and repair of damaged areas</li> </ul>	
Provide vegetated open-channel conveyance systems	<ul style="list-style-type: none"> <li>• No curb/gutters and no roof gutters</li> <li>• Level spreaders to buffers where possible</li> <li>• Underdrained swales</li> </ul>	
Rain Collection Cisterns	Rainwater is stored for later reuse for the building or landscape	
Buffers	<p>Design, size, install and maintain per the Maine recommended guidelines found in this manual.</p>	Chapter 5
Infiltration (basins, trenches, dry wells, etc.)		Chapter 6
Underdrained grass filters		Chapter 7.1
Underdrained filter bioretention		Chapter 7.2
Roofline filtration		Chapter 7.5
Roof Greening		<b>Chapter 7.5</b>
Pervious Pavement		<b>Chapter 7.7</b>

**Table 10.2 - LID Minimum Design Standards**

<b><i>Each standard should be addressed</i></b>	<b>Residential Subdivisions</b>	<b>Commercial, Industrial, or Institutional Developments</b>
Protect as much undisturbed land as possible to maintain pre-development hydrology and allow rainfall infiltration	<ul style="list-style-type: none"> <li>Clustered development with remaining land protected by deed restriction</li> </ul>	<ul style="list-style-type: none"> <li>Clustered development with protected land by deed restriction</li> <li>Maximum 1000 ft road per 10 lots or with buffers only</li> </ul>
Protect natural drainage systems such as wetlands, watercourses, ponds and vernal pools to the maximum extent practicable	<ul style="list-style-type: none"> <li>25 ft wooded buffer on all natural resources, including intermittent channels</li> <li>Wetland impact no greater than 4300 sqft and is limited to crossings</li> <li>No diversion of stormwater from its natural subwatershed</li> </ul>	
Minimize land disturbance including clearing and drainage to the extent practicable	<ul style="list-style-type: none"> <li>10000 sq.ft maximum development for house lots (house/driveway/lawn/septic)</li> </ul>	<ul style="list-style-type: none"> <li>25 feet max. disturbance around buildings and pavement (or be rototilled, revegetated and maintained as meadow grass)</li> </ul>
Minimize the decrease in the time of concentration from pre-construction to post-construction to the extent practicable	<ul style="list-style-type: none"> <li>Raingardens for pretreatment (18 inches of filter media, no underdrain, with 6 inch ponding and an overflow), or</li> <li>Buffers only for treatment</li> </ul>	<ul style="list-style-type: none"> <li>1 acre or less per stormwater management structure (buffer, filter, infiltration)</li> <li>Maximize sheet flow</li> <li>Rain collection for reuse in building</li> </ul>
Minimize soil compaction to the extent practicable	<ul style="list-style-type: none"> <li>Rototilling all areas to be revegetated</li> </ul>	<ul style="list-style-type: none"> <li>A construction window that is no more than 25 feet around structures</li> <li>Rototilling all compacted areas to be revegetated</li> </ul>
Utilize low-maintenance landscaping that encourages the retention and planting of native vegetation, and minimizes the use of lawns, fertilizers and pesticides	<ul style="list-style-type: none"> <li>Maine native plants, no invasive</li> <li>No pesticides/fertilizers/herbicides except during initial planting and repair of damaged areas</li> <li>Mulch all landscape with wood waste</li> </ul>	
Minimize impervious surfaces and break up or disconnect the flow of runoff over impervious surfaces to the extent practicable	<ul style="list-style-type: none"> <li>Road width that is 18 feet or less</li> </ul>	<ul style="list-style-type: none"> <li>Multi-story buildings and, if feasible, parking garages</li> <li>1 acre or less per stormwater structure (filter, infiltration)</li> <li>Sheet flow over pavement that is less than 100 feet or intercepted by and underdrained vegetated depression island</li> <li>Parking lots must have 25% of area (overflow) in pervious pavement or grass</li> <li>All pedestrian walkways are pavers or pervious pavement</li> </ul>
Provide vegetated open-channel conveyance systems discharging into and through stable vegetated areas	<ul style="list-style-type: none"> <li>No curb/gutters or roof gutters</li> <li>Level spreaders to buffers</li> <li>Underdrained swales</li> <li>No direct connection (piped discharge) to a resource</li> </ul>	
Provide other source controls to prevent or minimize the use or exposure of pollutants at the site in order to prevent or minimize the release of those pollutants into stormwater runoff	<ul style="list-style-type: none"> <li>No salt use</li> </ul>	<ul style="list-style-type: none"> <li>No development with 'dirty' outdoor practices (fueling stations, car washing/maintenance, etc.)</li> <li>Good housekeeping practices according to Multi-sector program</li> <li>No salt use</li> </ul>



John Stoll  
Town Planner

# Town of Kennebunk Community Development Department

## *Proposed Amendment to Zoning Ordinance* Cover Sheet

---

<b>Planning Board Public Hearing Date:</b>	February 11, 2019 March 11, 2019
<b>Article to be Amended:</b>	Article 10 Section 10.D.3 Multifamily dwellings and Multifamily Lots, Perimeter Buffer
<b>Summary:</b>	Provides the Planning Board the option to allow the reduction of the required 50 foot landscaped buffer on multifamily development where practical, but not less than 20 feet.
<b>Planning Board Action:</b>	TBD

development shall be constructed to the Town of Kennebunk Street Design and Construction Standards Ordinance.

D. Open Space, Recreation, Landscaping

1. At least 25 percent of the site's gross area shall be devoted to unpaved, non-vehicular open space which is usable for passive recreational purposes.
2. Adequate landscaping and screening shall be provided to minimize the visual, noise, lighting, and other impacts of the development on surrounding properties. A landscape plan shall be provided that shows that existing vegetation is to be preserved wherever possible.
3. **Perimeter Buffer**  
Except for the area needed to allow access to the site, a 50-foot landscaped buffer shall be provided around the perimeter of the site as part of the required landscape plan. Generally, outdoor lighting shall not be allowed in the perimeter buffer. **Where the applicant can demonstrate to the Planning Board that a site is not able to provide a 50-foot landscaped buffer around its entire perimeter due to its lot size, topography or other limiting natural feature, a lesser buffer shall be provided, but in no event shall less than 20 feet of buffer be provided in any area of the site.**
4. For any part of permitted multifamily projects that is a rehabilitation and reuse of a building, the standards of paragraphs C(1), D(1), D(2), and D(3) above shall not apply; however, the plans for such projects shall address the intent of those standards to the greatest practical extent.

**Section 11. Elderly Congregate Housing**

A. Purpose

Elderly congregate housing is a form of residential housing that consists of not just private apartment and/or residential care units, but also a variety of common areas and support services which permit the elderly to live independently, but with the knowledge that assistance is nearby.

B. Standards

All proposed elderly congregate housing developments shall be reviewed by the Planning Board as Subdivisions and shall meet the following standards as well as all applicable subdivision review standards:

1. Permitted Districts

Elderly congregate housing shall be allowed only in the following districts:

- a. Downtown Business
- b. Lower Village Business
- c. Village Residential
- d. Suburban Commercial
- e. York Street Mixed Residential and Commercial Use

2. Deed Restriction and Required Plan Notation

Proposals shall be accompanied by a written covenant that restricts occupancy to the



John Stoll  
Town Planner

Town of Kennebunk  
Community Development Department  
*Proposed Amendment to Subdivision Regulations*  
Cover Sheet

---

<b>Planning Board Public Hearing Date:</b>	February 11, 2019 March 11, 2019
<b>Article to be Amended:</b>	Articles 6.3, 7.2, 8.2 Subdivision Submission Requirements
<b>Summary:</b>	Clarifies and Reorganizes the submission requirements sections for Minor Subdivision applications, Preliminary Major Subdivision applications, and Final Major Subdivision applications.  Requires the applicant to provide an electronic submission at the time of application.  Requires the applicant to provide a GIS file to the Town for incorporation into the assessing database
<b>Planning Board Action:</b>	TBD

### 6.3 Submissions

The Final Plan submission for a minor subdivision shall consist of the following:

- A. ***Application and Fees.*** Two (2) copies of the completed application form and required fee paid in full at the time of submission.
- B. ***Right, Title, and Interest.*** Documentation of right, title, and interest in the property.
- C. ***Submission Requirements.*** Ten (10) hard copies, and one (1) digital copy of each of the maps, plans or drawings and the following supporting documents and information are required at a minimum for each minor subdivision application unless otherwise specified:
  - 1) ***Deed Information.*** A copy of the deed upon which the survey was based and a copy of all deed restrictions, easements, right-of-way, or other encumbrances existing and proposed.
  - 2) ***Sewage.*** Indication of the type of sewage disposal to be used in the subdivision:
    - a) When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Sewer District stating the district has the capacity to collect and treat the waste-water shall be provided.
    - b) When sewage disposal is to be accomplished by subsurface waste-water disposal systems, test pit analysis and septic design prepared by a Licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
  - 3) ***Hydrogeologic Assessment.*** A hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer, when the subdivision is not served by public sewer and when:
    - a) Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled “Hydrogeologic Data for Significant Sand and Gravel Aquifers,” by the Maine Geological Survey, 1985, or
    - b) The subdivision has an average density of less than one (1) acre per dwelling unit.



When a hydrogeologic assessment is submitted the assessment shall contain at least the following information:

- 1) A map showing the basic soil types
  - 2) The depth of the water table at representative points throughout the subdivision.
  - 3) Data on the existing ground water quality
  - 4) An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential developments, the evaluation shall, at a minimum, include the following:
    - (a) A projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, at the subdivision boundaries and at a distance of one thousand (1000) feet from potential contamination sources, whichever is a shorter distance.
    - (b) For subdivisions within the watershed of a lake, projections of the subdivision's impact on ground water phosphate concentrations shall also be provided.
  - 5) A map showing the location of any subsurface waste-water disposal systems and drinking water wells within the subdivision and within two hundred (200) feet of the subdivision boundaries.
- 4) *Water Supply.* Indication of the type of water supply system(s) to be used in the subdivision.
- a) When water is to be supplied by Kennebunk, Kennebunk Port, and Wells Water District (KK & W), a written statement from the servicing water district shall be submitted indicating there is adequate supply and pressure for the subdivision and approving the plans for extensions where necessary. Where the district's supply line is to be extended, a written statement from the district approving the design of the extension shall be submitted.

- b) When water is to be supplied by private wells, evidence of adequate groundwater supply and quality, shall be submitted from a well driller or a hydrogeologist familiar with the area.
  - 5) *Vehicular Traffic.* An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours.
  - 6) *Traffic Impact Analysis.* For subdivisions involving forty (40) or more parking spaces or projected to generate more than four hundred (400) vehicle trips per day, a traffic impact analysis, prepared by a Registered Professional Engineer shall be submitted. The analysis shall indicate the following at minimum:
    - a) the expected average daily vehicular trips,
    - b) peak-hour volumes,
    - c) access conditions at the site,
    - d) distribution of traffic,
    - e) types of vehicles expected,
    - f) effect upon the level of service of the street giving access to the site and neighboring streets which may be affected,
    - g) recommended improvements to maintain the desired level of service on the affected streets.
    - h) Trip generation rates used shall be the mean value reported in the most recent edition of the Institute of Transportation Engineers – Trip Generation Manual. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.
  - 7) *Soils Evaluation.* A copy of the medium intensity soil survey covering the site. If on-site inspection or test pit logs indicate the likelihood of poorly or very poorly drained soils on the site, the Planning Board may request that a high intensity soil survey be completed for the project site.
- D. ***Plan Requirements.*** All plans shall not exceed a scale of more than one hundred (100) feet to the inch, with the exception of an overall context plan to show the full extent of a large land tract. The size of the plan sheets submitted for review shall be no larger than twenty four (24) by thirty six (36) inches. Space shall be

provided for Planning Board endorsement, as well as the following, unless otherwise specified:

- 1) *Title Block:*
  - a) Title of the plan
  - b) Applicant and owner's name and address.
  - c) Date the plan was prepared and subsequent revisions
  - d) Name, address, seal and signature of the licensed professional who prepared the plan.
- 2) Names and addresses of all abutting property owners.
- 3) True North arrow and graphic scale
- 4) *Contiguous Property.* Boundaries of all contiguous property under the same ownership.
- 5) *Licensed Land Surveyor.* A standard boundary survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor and the plan shall indicate the type of to be set or found at each lot corner.
- 6) *Topography.* Contour lines at 2' intervals unless otherwise specified by the Planning Board, and showing elevations referenced to NAVD 88.
- 7) *Drainage.* The direction of drainage within and off the site.
- 8) *Tabulations.* Square footage and/or acreage for: proposed subdivision, lots, lot size allowed within applicable zoning district.
- 9) *Open Space.* For subdivisions located near (within 500 feet) of any Open Space Plan Priority Areas, the plan shall:
  - a) Identify the location and the type of Open Space Plan Priority Area,
  - b) Demonstrate how the priority area(s) have been incorporated into the plan's designated open space,
  - c) Show the layout of existing trails and potential connections to future streets, sidewalks, trails, open space areas, and;

- d) Show open space lot lines and/or easement lines and provide details for maintenance and ownership of such open space, including any provisions for public access to such areas.
- 10) *Dimensions*: The dimensions and bearings of all existing property lines and new property lines to be created. Property lines to be removed must be clearly distinguished from all new and remaining property lines.
- 11) *Natural Features*. The location of all significant natural features including, but not limited to:
- a) Water bodies, wetlands, and existing vegetative cover, and significant wildlife habitat.
  - b) On wooded sites, the plan shall indicate the area where clearing for lawns, open areas, parking areas and buildings are proposed.
  - c) Other significant natural features, including those adjacent to the proposed subdivision, as determined necessary by the Planning Board.
- 12) *Structures*. The location of all existing and proposed buildings in the subject area as well as all structures and driveways located within 200 feet of the subject area.
- 13) *Flood Hazard Areas*. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan, and shall include plan note per Article 1, Section 1.1M.
- 14) Any variances, waivers, conditions of approval, and the dates granted shall be noted on the face of the subdivision plan.
- 15) *Multi-Family and Non-Residential Subdivision*. For multi-family and non-residential subdivisions:
- a) The location, dimensions and ground floor elevations of all existing and proposed buildings on the site.
  - b) The location of all building setbacks, green buffers, and landscaped areas as required by the zoning ordinance.
  - c) The location and dimensions of driveways, parking, loading areas and walkways, fire lanes, and the construction materials to be used.

- d) Location of outside storage areas, dumpsters, and snow storage areas.
  - e) Location and type of exterior lighting.
- 16) *Easements.* The location, width, and metes and bounds description of all existing and proposed easements and rights-of-way.
- 17) *Zoning.* Zoning district boundary lines, including overlay districts, with labels.
- 18) *Wetlands.* Wetlands shall be delineated by a certified wetlands scientist.
- E. *Post Approval Submission Requirements.* Once final approval has been granted by the Planning Board the applicant shall submit one (1) mylar to be signed by the Planning Board, along with two (2) paper copies of the final plan.
- 1) *Electronic Submission.* Prior to the recording of the plat, digital information from the plat shall be provided to the Town Planner for incorporation into the Town of Kennebunk Geographic Information System (GIS) and tax maps. The digital information shall be submitted in a format and media conforming to standards implemented by the Town Planner. The following layers shall be submitted referencing Maine State Plane Grid Coordinates:
    - a) Property lines with bearings and dimensions.
    - b) Right-of-Way lines with bearings and dimensions.
    - c) Water bodies and wetlands.
  - 2) *Plan Notation.* The final plan submitted for recording at the York County Registry of Deeds shall contain the following information:
    - a) A note stating “all plans and documents used to approve this subdivision are made part of and are a condition of plan approval.
    - b) A note that references, by title and date, all plan sheets included with the submission as part of the approval process.

## 7.2 Submissions

The preliminary plan submission for a major subdivision shall consist of the following:

- A. **Preliminary Plan Submission Requirements.** The preliminary plan application submission shall be submitted in ten (10) hard copies, and one (1) digital copy.

The preliminary plan shall be drawn to a scale of not more than one hundred (100) feet to the inch and the size of the plan sheets shall be twenty-four (24) by thirty-six (36) inches. All dimensions shall be shown in feet or decimals of a foot.

The following information shall either be shown on the preliminary plan or accompany the application for preliminary approval:

- 1) All items as set forth in Article 6.3 Submissions, unless otherwise specified.
- 2) *Location Map* – A location map adequate to show the relationship of the proposed subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the Town. The location map shall show:
  - a) Existing subdivisions located within one thousand (1000) feet of the proposed subdivision.
  - b) Locations and names of existing and proposed streets.
  - c) Boundaries and designations of zoning districts.
  - d) An outline of the proposed subdivision and any remaining portion of the owner's property if the preliminary plan submitted covers only a portion of the owner's entire contiguous holding.
  - e) Proximity of the proposed site to Open Space Plan Priority Area(s).
- 3) *Storm water.* A storm water drainage and erosions control plan prepared by a professional engineer or landscape architect licensed in the State of Maine and designed in accordance with the standards of the Soil and Water Conservation District's Environmental Quality Handbook showing:
  - a) The existing and proposed method of handling storm water run-off.
  - b) The direction of flow of the run-off through the use of arrows.

- c) The locations, elevations, invert elevations, and sizes of all existing and proposed catch basins, dry wells, drainage ditches, swales, culverts, retention basins, and storm sewers.
  - d) Engineering calculations used to determine drainage requirements based upon a 25-year, 24-hour storm frequency.
  - e) Methods of controlling erosion and sedimentation during and after construction, including a written description of these methods and a schedule for implementing both temporary and permanent erosion control measures.
- 4) *Infrastructure.* The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
  - 5) The location, names, and present widths of existing and proposed streets, highways, easements, building lines, parks and other open spaces on or adjacent to the subdivision.
  - 6) *Public Improvements.* The width and location of any streets or public improvements within the subdivision or in the Comprehensive Plan, if any.
  - 7) *Dedication of Land.* All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
  - 8) *Soils.* When on-site septic or on-site wells are proposed a soils report and high intensity soils survey prepared and signed by a soils scientist, registered in the State of Maine identifying the soils names, soils boundaries and the characteristics of soils in the proposed development.
- B. Mobile Home Park Development. Include all items listed in Section 7.2A. above, as well as the additional submissions listed in Article 10, Part C, Section 13.D (3) of the Zoning Ordinance.
- C. Multi-Family and Non-Residential Subdivisions. Include all items listed in Section 7.2.A. above, as well as those listed in Article 11, Section 6A and 6B of the Zoning Ordinance as applicable, with the following exceptions:
- 1) Applicant should use subdivision application form and fee.
  - 2) Ten (10) copies of plans and submissions.

- 3) All references to site plan review shall be changed to Planning Board review.
- 4) Project shall be classified “minor” or “major” based upon the Site Plan classification standards of Article 11, Section 4.A and 4.B of the Zoning Ordinance.
- 5) Applicant shall provide a location map which shall:
  - a) Identify any Open Space Plan Priority Areas including priority areas located on adjoining lands;
  - b) Demonstrate how the priority area(s) have been incorporated into the designated open space
  - c) Lay out trails and connections to create internal and/or potential future streets, sidewalks, trails, open space areas; and
  - d) Show open space lot liens or easement liens and provide details for maintenance and ownership of such open space and include any provisions for public access to such areas, if proposed.



## 8.2 Submissions

The final plan application shall include the following information:

- A. All items as set forth in Article 6.3 and Article 7.2 except as otherwise specified.
- B. Four (4) complete hard copy sets of one (1) or more maps or drawings, one (1) original mylar of the filing plan, plus ten (10) hard copies of any changed plans, and one (1) digital copy of all required submission items.

All plans shall be drawn at a scale of one hundred (100) feet to the inch. Plans shall be twenty four (24) by thirty six (36) inches in size and shall have space reserved for Planning Board signatures.

- C. *Licensed Land Surveyor.* The name, registration number, seal and signature of the land surveyor, architect, engineer and/or consultant who prepared the plans. A licensed land surveyor shall sign and seal all final plans.
- D. *Tabulation.* The final counts on the total and net acreage of the site and of each proposed lot, as well as the per lot deductions made for each of the following: wetlands, steep slopes, easements and right-of-ways.
- E. *Sewer.* A current approval letter from the Sewer District if connection to the public sewer is proposed.
- F. *Landscaping.* A licensed landscape architect shall prepare a landscape and buffer plan showing what vegetation will remain and what will be planted, including botanical and common names of plants and trees, dimensions, approximate planting time and maintenance schedule.
- G. *Performance Guarantee.* A performance bond or letter of credit meeting the standards of Section 8.7 of the Street Ordinance to secure completion of all improvements required by the Board and written approval from the Town Manager that he is satisfied with the sufficiency of such performance guarantee. If a conditional approval (per Section 12.2.4 of these regulations) is being requested, then a list of improvements to be covered by the future guarantee shall be submitted.
- H. Completed Inspection Schedule Application.
- I. Written evidence of all required State and Federal approvals.
- J. Any legal documents which are required to be submitted and reviewed as part of this subdivision review.

- K. Clear notation on the filing plan of the proposed use(s) of all land, buildings, easements and right-of-ways shown on the plan, including the identification of all parking, loading and storage spaces.
- L. The location, names, and present widths of existing and proposed streets, highways, easements, building lines for multi-family and non-residential subdivisions and building windows if required for other subdivisions, parks and other open spaces on or adjacent to the subdivision. The plan shall contain sufficient data to allow the location, bearing and length of every street line, lot line, and boundary line to be readily determined and be reproduced upon the ground. These lines shall be tied to reference points previously established. The length of all straight lines, the deflection angles radii, length of curves and central angles of curves, tangent distances and tangent bearings for each street shall be included.
- M. *Public Dedication.* All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers of cession to the Town of all public open spaces shown on the plan, and copies of agreements and other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the Town, written evidence that the Board of Selectmen are satisfied with the legal sufficiency of the written offer of cession shall be included.
- N. A note on the plan shall state “all plans and documents used to approve this subdivision are made part of and are a condition of plan approval.
- O. *Post Approval Submission Requirements.* Once final approval has been granted by the Planning Board the applicant shall submit one (1) mylar to be signed by the Planning Board, along with two (2) paper copies of the final plan.
- 1) *Electronic Submission.* Prior to the recording of the plat, digital information from the plat shall be provided to the Town Planner for incorporation into the Town of Kennebunk Geographic Information System (GIS) and tax maps. The digital information shall be submitted in a format and media conforming to standards implemented by the Town Planner. The following layers shall be submitted referencing Maine State Plane Grid Coordinates:
    - a) Property lines with bearings and dimensions.
    - b) Right-of-Way lines with bearings and dimensions.
    - c) Water bodies and wetlands.
  - 2) *Plan Notation.* The final plan submitted for recording at the York County Registry of Deeds shall contain the following information:

- a) A note stating “all plans and documents used to approve this subdivision are made part of and are a condition of plan approval.
- b) A note that references, by title and date, all plan sheets included with the submission as part of the approval process.

# Wetlands Mitigation Ordinance Overview

## Background

Currently, Kennebunk regulates any fill or alteration of wetlands over an acre in size. Any developer or property owner proposing to do either of these must meet the standard of “no feasible alternative” and ensure that they minimize any wetlands effects. This ordinance proposes to add a second step for any wetlands fill or alteration greater than 500 square feet (with some exceptions noted in the proposed ordinance). This second step would require that when there is no feasible alternative to filling or altering a wetland, the property owner submit a compensation project plan that would preserve, restore, or enhance or create wetlands either on the property, on lots adjacent to the property, or elsewhere in Kennebunk. If such a plan is not possible, the property owner may pay into a wetlands compensation fund.

Any alteration under 500 feet would require the property owner to fulfill only the first step – meet the standard of no feasible alternative. Alterations greater than 20,000 square feet would continue to fall under state NRPA jurisdiction.

## Objective

The Conservation Commission is pursuing a timeline that would put the ordinance on the November 2019 ballot.

The Conservation Commission plans on working with our BOS liaison, Shiloh Schulte to finalize the ordinance, but would like Planning Board input before doing so.

## Status of proposed ordinance

The attached proposed ordinance is based on a [model developed by Beginning with Habitat](#). It was last revised in 2007, at which time it was reviewed by the town attorney. Her comments and edits are in the attached ordinance.

The Conservation Commission has reviewed the proposed ordinance. The attached includes our markup and comments.

## Moving Forward

There remain two large questions:

- The lower limit of fill or alteration that sparks the requirement for a compensation project plan or payment. The Conservation Commission proposes 500 sq ft, which is in line with other towns.
- The determination of the amount to be paid into the compensation fund. The proposal as it stood in 2007 called for using an average of the price of an acre in the town. The Conservation Commission currently recommends either the fair market value of buildable land in comparable properties or to use a formula similar to that developed for the Special Areas Management Plan for Vernal Pools in Maine: “a fee equal to 40% of the difference between the appraised value of the property as currently impacted by the existing vernal pool(s) with a 250’ buffer that can be developed no more than 25% and the value under the hypothetical condition that the property is no longer impacted by the vernal pool(s).”

There are also minor questions and suggested changes throughout the document. The Conservation Commission welcomes Planning Board input on those items as well as the two larger questions mentioned above.

Revised 07.03.2007 by JB  
Revised 07.23.2007 by JB

## **Proposed Zoning Amendment**

### **10.3.P. Shoreland/Wetland Mitigation and Compensation Standards – (Outline)**

1. Purpose
2. Applicability
3. Definitions
4. Exemptions
5. Application and Review Procedures
  - a. Application
  - b. Process
  - c. Review Standards
    - Minor
    - Major
6. Wetland Compensation Projects
7. Appeals
8. Wetland Compensation Fees
9. Expiration of Permits
10. Amendments to the Permits

Formatted: Right: 0.25"

**P. Shoreland/Wetland Mitigation Plan**

1. **Purpose**-The Town of Kennebunk's Shorelands and Wetlands are indispensable and fragile resources that provide many public benefits including:

- Maintenance of surface and groundwater quality through nutrient cycling, sediment trapping, and serving as biological and chemical oxidation basins;
- Flood and storm water runoff control through temporary water storage, slow release, and ground water recharge;
- Open space and passive outdoor recreation areas; and
- Habitat for fish and wildlife, and rare, threatened or endangered wildlife and plant species.

In recognition of the cumulative effect that frequent minor Shoreland/wetland alterations may have on the environment of the Town, as well as the less frequent larger alterations, these mitigation/compensation standards require that all proposed wetland alterations and/or development ~~proposed be reviewed by the Conservation Commission and~~ receive Shoreland/wetland mitigation plan approval by the Planning Board (or Site Plan Review Board if shoreland/wetland alteration is part of a site plan application) prior to receiving any permits from the Code Enforcement Officer.

2. **Applicability** – No person shall engage in the following wetland alteration activities without first obtaining a Wetlands Permit from the Town of Kennebunk permitting authority (Planning Board of Site Plan Review Board) pursuant to this Ordinance, unless the activity is explicitly exempted:

- Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- Draining or otherwise dewatering;
- Filling; or
- Construction, repair or alteration of any permanent structure where such activity will result in the alteration of a wetland.

3. **Definitions** – As used in this Ordinance, the following words and phrases shall have the following meaning as noted below:

**A. Alteration.** Dredging, bulldozing; removing or displacing soil, sand, vegetation or other materials; draining or dewatering; filling; or any construction, repair or alteration of any permanent structure. (What if construction, repair or alteration of a permanent structure does not result in the alteration of a wetland? This is not clear.)

Exemptions under this definition include:

- (1) An activity disturbing very little soil such as installing a fence post or planting shrubs by hand;
- (2) The addition of a minor feature to an existing structure such as a bench or hand rail; and
- (3) The construction, repair or alteration of a small structure with minimal impact such as a nesting box, pasture fence, or staff gauge. (The exemptions should be clarified).

Formatted: Right: 0.25"

**B. Compensation.** Replacement of a lost or degraded wetland function with a function of equal or greater value.

**C. Enhancement.** An activity increasing the net value of a wetland.

**D. Fill.** ~~a-~~(verb) To put into or upon, supply to, or allow to enter a wetland or water body any earth, rock, gravel, sand, silt, clay, peat or debris; b. (noun) material, other than structures, placed adjacent to a wetland or water body; material placed in a wetland or water body with the result of a change in the bottom elevation or character or boundaries of the wetland or water body. This term also includes roads, paths and other projects consisting of uncontained material regardless of how long the material remains in the wetland or water body.

**E. Functions.** The roles ~~of~~ wetlands serve which are of value to society or the environment including, but not limited to, flood water storage, flood water conveyance, ground water recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.

**F. Mitigation.** Actions taken to off-set potential adverse environmental impact. Such actions include the following:

- (1) Avoiding an impact altogether by not taking a certain action or parts of an action resulting in the impact;
- (2) Minimizing an impact by limiting the magnitude or duration of an activity, or by controlling the timing of an activity;
- (3) Rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; and
- (5) Compensating for an impact by replacing affected resources or environments.

**G. Wetlands ~~of~~ Special Significance.** All coastal wetlands and great ponds are considered wetlands of special significance. In addition, certain freshwater wetlands are considered wetlands of special significance.

**Freshwater Wetlands of Special Significance.** A freshwater wetland of special significance has one or more of the following characteristics.

1. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled (S1) or imperiled (S2) as defined by the Natural Areas Program. (Need to refer to the source for this program).
2. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.A. § 480-B(10).
3. Location near coastal wetland. The freshwater wetland area is located within 250 feet of a coastal wetland.
4. Location near GPA great pond. The freshwater wetland area is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 M.R.S.A. § 465-A.

Formatted: Right: 0.25"



5. Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial ponds or impoundment.
6. Wetlands subject to flooding. The freshwater wetland area is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.
7. Peat lands. The freshwater wetland is or contains peat lands, except that the department may determine that a previously mined peat land, or portion thereof, is not a wetland of special significance.
8. River, stream or brook. The freshwater wetland area is located within 25 feet of a river, stream or brook.

**4. Exemptions** – A Shoreland / Wetlands Permit is not required under this section for:

- Alterations in a wetland for a public road, rail or emergency repair of a utility line crossing or a river, stream or brook for a distance of up to 100 feet from the normal high water line on both sides, measured perpendicular to the bank of the river, stream or brook, and provided the total project affects 500 square feet or less of the channel;
- Walkways/Access structures. A wetland alteration consisting of a walkway or access structure for public purposes or that is necessary to comply with the Americans with Disabilities Act; or
- Wetland alteration activities required to perform compensation as a condition of a Natural Resources Protection Act (NRPA) permit by the Maine Department of Environmental Protection (MDEP) pursuant to the MDEP Wetlands and Water-bodies Protection Rules

Formatted: Indent: Left: 0.27", First line: 0", Tab stops: 0.33", List tab + Not at 0.75"

Comment [JS1]: CC comment: this exemption is too liberal. Additional wording is ours.

**5. Application and Review Procedures** –

- A. **Application** – The applicant shall submit ~~ten~~ **eleven (11)** copies of the application to the Town Planner's Office in order to be scheduled for the next available Planning Board or Site Plan Review Board agenda (as applicable). The following submissions are required as part of a complete application: (Question-as written, do these provisions establish a requirement for some activities that otherwise do not require a permit, such as some repairs?)

Formatted: Indent: Hanging: 0.43"

Comment [JS2]: CC should get one copy

Formatted: Highlight

- (1) Application fee (as set by order of the Board of Selectmen). In addition, the applicant shall be responsible for and will be billed for any professional review costs generated by the review.

- (2) A Mitigation Plan prepared by a qualified wetlands biologist ~~2~~ Which:

Comment [JS3]: CC comment: This term should be defined

- Delineates and evaluates the functions and values of the wetland/Shoreland site being impacted by the proposed development,
- Address the impacts to the aquatic resource, and
- Proposes a plan for replacing the loss of the aquatic resource and/or buffer area by creating, restoring, and/or enhancing similar aquatic resource functions and values, either within the development site or on a site nearby per as set forth in the Wetland Compensation Project Standards in Subsection ~~Section 3.P.(5)~~ 6 of this Section below.

Formatted: Right: 0.25"

- (3) ~~A document transferring the burden of the mitigation project in the case that the property is transferred to another owner. This isn't necessary. A land use permit runs with the land, unless amended~~ A document transferring the burden of the mitigation project to other person/entity, if the property is transferred to another owner.

- 1-(4) ~~An agreement that the property deed shall stipulate that no further alteration to the wetland area is permitted after completion of the mitigation work specified in the plan. An agreement that the property deed shall stipulate that no further alteration to the wetland area is permitted after the completion of the mitigation work specified in the plan. See above. Also, if the regulations change and allow work not currently permitted, the deed restriction would still prohibit it. This kind of permanent restriction in a deed could be viewed as a taking. Finally, the Town can't enforce deed restrictions, but it can enforce the actual approvals. This will be like shoreland zoning expansion limits and those are kept track of by the Town, not through deed restrictions.~~

- 2-(5) A list of the names and addresses of owners of abutting property. The applicant shall be responsible for sending a ~~certified~~ notice to abutters by certified mail at least seven (7) days prior to any public hearing scheduled on the application by the review authority. (Should the notice provisions be the same as for other permits, which provide for service by regular mail?)

All applications shall be signed and dated by the owner(s) of the property or their authorized representative (authorization shall be submitted in writing), certifying that the information in the application is complete and correct. The ~~Kennebunk permitting authority~~ Town staff shall note ~~the date received~~ upon each application the date that it is received. (In some cases, the permitting authority may be a Board, which won't actually see the application until it holds a hearing.)

- The receipt of the application shall constitute permission from the owner(s) of property involved in the application for the permitting authority, or the Town's authorized agent, as appropriate, to conduct an on-site inspection after appropriate notice to the property owner.
- The notice to abutters concerning the project will note the location and size of the wetland area proposed to be filled. dates of site walks and information on what the development is.

## B. Review Process –

- (1) Within two (2) weeks of receipt of a complete application/plan submission, the Planning Board or the Site Plan Review Board, (as applicable), shall schedule the request for the next available agenda.
- (2) The Board and Conservation Commission shall ~~may~~ conduct an on-site inspection of the proposed project site after the first meeting at which the application is considered, and may request the participation of a qualified, independent Wetland Consultant, or other technical consultant as may be deemed necessary to evaluate the proposal.
- (3) A public hearing may be scheduled by the reviewing board with certified abutter notices to be sent provided by the applicant.
- (4) The Board may consult with technical experts, including but not limited to a wetlands consultant, during the course of its review of the project to ensure that proposed methods of compensation are adequate.
- (5) The Board shall complete its review and shall issue its decision on the application submitted

Formatted: Numbered + Level: 1 +  
Numbering Style: 1, 2, 3, ... + Start at: 1 +  
Alignment: Left + Aligned at: 1" + Tab after:  
1.25" + Indent at: 1.25", Tab stops: 1.25",  
Left

Comment [JS4]: CC Comment: Remove this  
item

Formatted: Highlight

Comment [JS5]: CC addition

Formatted: Right: 0.25"

under this Ordinance within thirty five (35) days of their determination of receipt of a complete mitigation plan application (or public hearing date if one is held), except as mutually agreed to by the applicant and the Board. The permitting authority shall make written findings of fact establishing that the proposed activity or project does or does not meet the approval criteria of this Ordinance.

**C. Review and Approval Criteria** – The Planning Board (or Site Plan Review Board in the case of Site Plan Application) may permit minor wetland fills and/or development within the Shoreland setback area upon a positive finding that each of the following criteria has been met:

(1) For projects that fill from \_\_\_\_\_ to \_\_\_\_\_ square feet of wWetland and/or disturb less than an acre within the Shoreland Zone setback area, the applicant has made a clear showing that:

- (a) No reasonable alternative exists and that no greater setback from the Shoreland/wetland area can be achieved. ~~in making a determination on this criterion,~~ The applicant shall provide evidence that the following alternatives are not feasible:
- 1) Utilizing, managing or expanding one or more other sites that would avoid or reduce the wetland impact,
  - 2) Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact, and
  - 3) Developing alternative project designs, such as cluster development, that avoids or lessens the wetland impact;

(b) the project meets all applicable Federal and State permit requirements, and the applicant provides evidence that those agencies have reviewed (approved?) the application;

- (c) the proposed use will not result in:
- a measurable increase in the discharge of surface waters to the Shoreland/wetland,
  - a measurable reduction in the Shoreland/wetland’s capacity for retention and absorption of silt, organic matter, nutrients and pollutants,
  - a measurable reduction in the Shoreland/wetland’s existing capacity to absorb, store and slowly release storm water runoff,
  - a measurable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life and/or
  - A measurable increase in the existing seasonal temperature of surface waters in or discharge to the Shoreland/wetland.

(2) In addition to meeting the criteria in C.(1) above, for projects filling or disturbing from \_\_\_\_\_ 500 to 20,000 \_\_\_\_\_ square feet of wetland and/or Shoreland setback area, or as otherwise required by the Board, the applicant shall submit a wetland compensation plan showing proposed compensation measures (as set forth in subsection 6 of this Section per P.5 below) to be taken to offset potential adverse environmental impacts to the resource. Mitigation includes the preservation of upland adjacent to the affected wetland, and compensating for an impact by replacing or restoring affected resources.

**6. Compensation Project Plans**

**Comment [JS6]:** Two thoughts that were brought up: 1) public should be included in this process; 2) getting around these criteria would require a waiver, which would be treated the same as a zoning variance (i.e., would have to be voted upon).

**Comment [JS7]:**

**Comment [JS8]:** Does this need to be defined?

**Comment [JS9]:** Need to determine what this is

**Comment [JS10]:** CC Comment: Need to include climate-related issues such as SLR/marsh migration?

**Comment [JS11]:** 500 sq. ft. lower limit is CC suggestion

**Comment [JS12]:** To take into account that some wetland disruption may be smaller than the square footage indicated here, but have an outside impact.

**Formatted:** Indent: Hanging: 0.48"

**Formatted:** Right: 0.25"

- A. **Additional Plan Information:** Any plan which includes a compensation project will include the information required in Part II. Of the NRPA Application; except that any deed restrictions or conservation easements shall ~~authorize the~~ grant a right of enforcement to the Town of Kennebunk ~~to act as an enforcing agent.~~
- B. **Types of Compensation Projects:** More than one type of compensation project may be allowed on a single project. Compensation project may include:
1. **Preservation:** Preservation of existing wetlands and/or adjacent uplands where the site to be preserved provides significant wetland functions and values that might otherwise be degraded by unregulated activity;
  2. **Restoration:** Restoration of previously degraded wetlands, including but not limited to, removal or invasive non-native wetland plants; or
  3. **Enhancement:** For the purposes of this Ordinance, enhancement shall be limited to the enhancement of the upland areas adjacent to wetlands. (It's not clear from this what qualifies as "enhancement.")
  4. **Creation:** For the purpose of compensation, is defined as an activity bringing a wetland into existence at a site where it did not formerly occur.
- C. **Compensation amounts** – The following ratios indicate the acreage ~~or monetary value~~ needed in a compensation project relative to the acreage altered by the proposed project or activity.
- 8:1 for preservation projects. At the discretion of the permitting authority, upland areas adjacent to a wetland may be included in a preservation project;
  - 2:1 for restoration, enhancement, or creation to compensate for impacts in wetlands of Special Significance;
  - 1:1 for restoration, enhancement, or creation to compensate for impacts in wetlands not of Special Significance.
  - 10:1 for creation projects.

**Comment [JS13]:** CC Comment: Defined above as "anything that increases the net value of the wetland." How does that relate to enhancement of upland areas adjacent to wetlands here?

**Comment [JS14]:** CC Comment: Removed based on town attorney comment below.

**Formatted:** Strikethrough

(As defined at the beginning of the Ordinance, compensation is a "replacement" rather than a payment. As such, it seems that "monetary value" is not relevant to this section; if a contribution to an organization is an acceptable method for meeting this requirement, there needs to be more information on how value is established, what kind of projects are acceptable, how and when payments must be made).

**D. Location of Compensation Projects** – The mitigation project shall take place in a location:

1. On or close to the project site as possible; preference shall be given to restoration projects that will off-set lost functions and values within, or in close proximity to, the affected wetland.
2. If approved by the permitting authority, compensation may occur in an off-site location within Kennebunk where it will satisfy local wetland protection priorities; ~~or, in a location outside of the municipality if the enhanced wetland functions and values achieved by the project contribute to the enhancement of the environmental benefits broadly serving the communities of the region in which the project is located, through enhancement of regional fisheries or wildlife values, enhancement or protection of the regional hydrologic system that supports wetlands in the community, or enhancement of other regional wetland functions and values that directly or indirectly contribute to public values in the community. (The last phrase is vague; could it just be deleted?)~~

**Formatted:** Strikethrough

**Comment [JS15]:** CC Comment: Removed. Location outside municipality should not be allowed.

**Formatted:** Right: 0.25"

**E. Standards for Compensation Projects** – Where a compensation project is required, the following standards shall apply:

- **Financial and Technical Capability:** The applicant shall demonstrate sufficient financial resources to complete the proposed compensation work, including subsequent monitoring and corrective actions, if applicable. The applicant shall also demonstrate, for restoration or enhancement projects, sufficient scientific expertise to carry out the proposed compensation work
- **Monitoring** - For restoration or enhancement projects, the applicant set forth a plan for annual reporting and remediation measures during monitoring of the restored wetland or enhancement over a minimum of five (5) years, which shall include contingency plans for replanting or other corrections if the project fails to meet project goals during that time. The annual report will be addressed to the Kennebunk Town Planner, with a copy sent to the Conservation Commission.
- **Maintenance** - For restoration, enhancement, or creation projects, the permit holder may be required to conduct activities to assure the accomplishment of compensation goals, after the implementation phase of a compensation project has been completed.
- **Persistence** - For restoration, enhancement, and creation projects, on the basis of an updated functional assessment, a minimum of 85% of the compensation area must successfully replace the altered wetland's functions and values after a period of three years unless otherwise approved by the permitting authority. If this level is not achieved, or if evidence exists that the compensation site is becoming less effective, the ~~permitting authority- Town~~ may require additional monitoring and corrective action, or additional wetland restoration in order to achieve the compensation ratio as originally approved. (The Boards do not have enforcement authority; although the Code Enforcement Officer could consult with the appropriate Board before taking action under this; I would recommend that this requirement be included as a specific plan note or condition of approval on every plan approved under this section so that there will not be a later question about enforceability).
- **Protection** - A compensation project involving restoration or preservation of wetlands and/or preservation or enhancement of upland areas adjacent to wetlands shall ensure that the wetlands will remain wetlands in perpetuity, and any upland areas will remain undeveloped in perpetuity, through a covenant and restriction in the deed, or a conservation easement conveyed to a local or state conservation group or the Town of Kennebunk, and approved by the permitting authority. Any easement or deed restriction shall list the Town of Kennebunk as an enforcing agent. The scope of permitted land management practices to be included in the easement or covenant and deed restriction shall be subject to approval by the permitting authority.
- **Completion** – The Compensation Plan will be required to be completed prior to, or concurrent with, the permitted alteration, unless otherwise approved by the permitting authority.

Formatted: Right: 0.25"

## 7. Appeals

- (A.) **Administrative Appeals to the Kennebunk Board of Appeals.** Appeal of any actions taken, or failure to act, by the Planning Board, Site Plan Review Board, or the [Code Enforcement Officer under this Section](#) shall be filed with the Town of Kennebunk within 30 days of the date of the action being appealed. The Board of Appeals may reverse the decision upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance. [\(You may want a specific reference to this section in the appeals section so that there won't be any inconsistency between that provision and this one\).](#)

## 8. Wetland Compensation Fees

- (A.) **Wetland Compensation:** Where a wetland area of 500 square feet or greater will be unavoidably impacted by a proposed activity or development, a fee shall be assessed and payment shall be submitted per subsection (B) below, payable to the Town of Kennebunk, prior to issuance of a permit. [In lieu of payment of a compensation fee, an applicant may propose and must receive approval of a wetland compensation project consistent with this Ordinance, and shall submit information required for compensation projects as provided in Part II- of the NRPA Permit Application. A wetland compensation project must be approved by the permitting authority. \(Does this mean a fee has to be paid even when there will be a mitigation/compensation plan? Requiring both could be a problem since it appears to require more than 100% "replacement." If this is an alternative in whole or in part to the required work, the Ordinance needs to be clarified\).](#)

**Comment [JS16]:** CC Comment: Propose that instead of "in lieu of," payment should be final consideration and allowed only if compensation project is not feasible.

### (B.) Wetland Compensation Fees

1. **Compensation fee amounts.** [Compensation fees shall be computed as the acreage of wetland altered multiplied by the average assessed per acre value of land in the Town of Kennebunk. If wetlands of Special Significance as defined by MDEP \(Chapter 310 Wetlands Water Protection Act\) are affected, then the factor will be two times the average assessed per acre value of land in the Town of Kennebunk. Any compensation fee shall be paid to the Town of Kennebunk which shall deposit it into a Wetlands Compensation Fund.](#)

**Comment [JS17]:** CC Comment: Suggest instead of average in all of Kennebunk it should be market value of buildable acreage for comparable properties. Another possibility is to use the SAMP formula. (See accompanying overview document.)

### (C.) Wetland Compensation Fund

1. **Establishment.** The municipal officers shall establish a Wetland Compensation Fund on or before the effective date of this Ordinance.
2. **Purposes and Uses.** The Fund shall be permanently and exclusively dedicated to payment of costs and related expenses of wetland compensation projects as defined in this Ordinance, which are approved by the Town's permitting authority and the Board of Selectmen. Costs for administering the fund may be charged to the fund, but shall not exceed five percent of the fees collected or deposited pursuant to this Ordinance.
3. **Payments to the Fund.** Compensation fees collected pursuant to this Ordinance shall be deposited into the Fund. The Town of Kennebunk may accept payments into the Wetland

**Formatted:** Right: 0.25"

Compensation Fund for compensation required by the state or federal governments for permits issued by those authorities for wetland alterations.

#### 4. Administration.

- (1.) The Town of Kennebunk may make payments from the fund consistent with the purposes and uses of the fund ~~as stated in 8(C)(2).~~
- (2.) Income received under this subsection may be invested as provided by law. Interest on these investments must be credited to the Wetlands Compensation Fund.
- (3.) The Town of Kennebunk may enter into an enforceable, written agreement with a public, quasi-public, or private non-profit organization dedicated to the protection of wetlands and other natural areas for the purposes of administering the Wetlands Compensation Fund and ensuring that compensation projects are implemented consistent with the standards and provisions for compensation projects set forth in this Ordinance. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report to the Town of Kennebunk. If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the Town of Kennebunk may revoke the organization's authority to conduct activities in accordance with this subsection. If an organization's authorization is revoked, any funds provided to it must be returned to the Compensation Fund.
- (4.) Any compensation fee deposited into the Fund for a permit issued pursuant to this Ordinance that is not committed to a specific wetland compensation project within ten years of deposit into the Fund shall be transferred to the Kennebunk Conservation Land Purchase Account

Comment [JS18]: CC addition for clarification.

#### 9. Expiration of Permits

A Shoreland / Wetlands Permit issued pursuant to this Ordinance shall remain effective for as long as the accompanying NRPA permit is valid, and may be renewed for up to 1 year.

#### 10. Amendments to the Permit

Wetlands Permits are dependent upon and limited to the wetland mitigation proposals contained in the permit application and supporting documents submitted and affirmed by the applicant. Any variation from the wetland mitigation plans, proposals, and supporting documents, except minor changes that do not affect approval standards or alter the essential nature of the compensation proposal and which have been endorsed in writing on the permit by the Code Enforcement Officer, is subject to review and approval by the ~~permitting authority~~ Board that granted the original approval.

Formatted: Right: 0.25"

**Town of Kennebunk**  
**Planning Board**  
**Meeting Minutes**  
**Monday, February 25<sup>th</sup>, 2019**

**Present:** Richard B. Smith—Vice Chair; Janice Vance; Robert Metcalf; Edward Trainer—Alt.

**Absent:** Chris MacClinchy—Chair; David Smith—Secretary

**Also Attending:** John Stoll—Town Planner

**1. Open Meeting**

R. Smith opened the meeting at approximately 6:59 PM. Today is Monday, February 25<sup>th</sup>, 2019.

**2. Agenda Items (I)**

R. Smith states that the first item [on the agenda] is [the applicant] Coughlan, [with a] waterfront access [application].

J. Stoll notes that applicant is requesting to have a private dock at 11 Lords Point Road, which is the resource protection district. He states that the Planning Board had a site walk on February 9<sup>th</sup> [2019] and that “tonight” is the public hearing.

Barney Baker introduces himself as a Civil Engineer who worked on this project for “quite a while.” He notes that the applicant desires to put in a “seasonal dock facility” in front of their property on Lord’s Point [Road]. He states that there are “several other facilities” that are similar to what [the applicant] is proposing. He notes that the project has State and federal permits. He notes that it has Army Corp [permits] and DEP [permits]. He notes that it is a gangway and seasonal float extending from the seawall on the property and has a dock or a float that dries out in low water. He states that it provides tidal access to the resource. He states that it is a project that the Planning Board had a site visit for “2-weeks ago.” He notes that Lord’s Point extends out into the Gulf of Maine and is protected on the West side by a group of rocks and on the East side it is very open to the Gulf. He notes that there are no “dock facilities” on the East, and that they are all on the West. He states that the wave FEMA flood plain designation for Lord’s Point is in the “A-zone,” but that the “V-zone” is where the wave heights extend higher than 3-feet. He notes that this project was “held off for months” because the ordinance didn’t allow docks in the V-zone. He states that this ruling wasn’t “entirely reinforced over the years,” but that it “came up with this project.” He notes that the project was tabled and the ordinance [was changed through Town vote] so that docks are allowed in the V-zone. He states that the application is special exception and he has gone through and listed the criteria.



R. Smith states that he is not sure [B. Baker needs to read all the criteria]. He states that if B. Baker has “high points” that “would be good.” He states to list them [is what the Board] will do, [so it would be] redundant.

B. Baker states that the Planning Board has been for an initial site walk. He notes that there is concern about cutting through the sea wall to create an opening for the facility. He states that there is a section “here” which shows the cut through the wall. He notes that the elevation that is being cut through is above the flood elevation. He states that the wall is elevation 14 and the flood is elevation 12. He states that in a 100-year recurrence interval the water won’t reach as high as that opening. He notes that he feels confident that cutting through the wall won’t reduce the integrity of the property. He states that it is an appropriate thing to do. He notes that by cutting through the wall, they are reducing the vertical height of the gangway to travel to the dock and are making the gradient much more accessible. He states that the other concern was that [his application] referred to the construction window being “last summer.” He notes that it should be “this summer.” He states that other than those two comments, he [doesn’t know of] any concerns that have not been discussed through [prior] discussion.

R. Smith asks the Board if they have any questions.

J. Vance states that when [the Planning Board was on their site walk for the application], she believes that the Code Enforcement Officer made a suggestion that [the applicant] consider the Winter months and put something to fill the space [in the seawall]. She notes this would be similar to battens across a driveway. She states that she knows B. Baker states that he is within a “good zone height,” [but that she thinks] it would be wise to put a little extra bit of protection.

B. Baker states that they have a gate to prevent people from falling through the opening. He notes that he could put [material] in the wall, if that is the “pleasure of the Board,” [but that] he doesn’t think it is required. He states that boards could be slid into the slots in the wall.

R. Metcalf wonders what type of security gate [is being proposed]. B. Baker states that it is a garden gate. R. Metcalf wonders if that would be secured to the wall of part of the ramp platform. B. Barney states that it is a “permanent fixture.” R. Metcalf wonders if it will be mounted with the wall or on the face of the wall. B. Baker states that it will be within the structure.

R. Metcalf states that, given the elevations, he is not concerned about the flood coming “in there.” He notes that under the house is a section of wall that are lower opening. B. Barney states, “yes.”

R. Metcalf states that he does not see the need for putting in “that section of wall” but [does agree with] putting in the gate.

E. Trainer notes that, in the winter, having protection from a storm might make the neighbors more comfortable.

R. Smith states that his comment is on the batten boards. He notes that they could become projectiles in a big storm if “it comes up that high.” He notes it would be a detriment instead of safety. He wonders if the gate is for a child’s safety so no one will fall in. B. Baker confirms this.

R. Smith states that [the Planning Board] should address if they want to go ahead with J. Vance’s recommendation of [batten] boards. He notes that he agrees with R. Metcalf that they would be superfluous and wouldn’t be necessary.

E. Trainer notes that he doesn’t think it could be required [as] there is nothing that says [an applicant] has to [install these].

J. Vance notes that she thought everyone brought valid points. She notes that a projectile could happen, if it is a bad storm.

R. Smith states that he sees no need to require it unless someone feels that [the Board] really should.

R. Smith opens the public hearing.

Grace Cain from the [Town of Kennebunk] Conservation Commission wonders what the timber piles [in the project] are made of and if they have a preservative.

B. Baker states that he piles are pressured and are treated timber piles. He notes that they have preservative of 2.5 pounds of [copper arsenate]. He notes that they are designed to be in marine growth. He states that if untreated is put [into the marine growth]—like oak piles—they don’t last “very long” because of the marine growth. He notes that [this preservative] is approved by the EPA.

G. Cain notes that the zoning in piers, docks, and wharves on 11 of plan number 1, that there might be lands leased from public lands, if applicable.

B. Barney states that Maine has property that extends beyond the low water mark. He notes that, in this case, it extends out from the property. He notes that in Maine there are exceptions on property owners owning out to the low water mark.

G. Cain states that, since this is one of the first docks that would be approved in the V-zone, she wonders if [the Board] feels that the standards for the piers, docks, and wharves are appropriate or [if there should be] different standards.

R. Metcalf states that what happened was B. Baker point it out that Kennebunk and Kennebunkport were the only [places] that excluded docks in the V-zone. He notes that it was meant for permanent structures not seasonal docks, plus [this application is for] a protected side of Lord’s Point. He states that [this application] complies [with the standards].

R. Smith closes the public hearing.

J. Stoll states that he included two conditions of approval, one being that no lighting shall be on the proposed dock and the other that floats and ramps will be removed by October 15<sup>th</sup> and installed no later than April 15<sup>th</sup>.

B. Baker states that both seem appropriate.

R. Smith wonders if the Board members feel comfortable going through the Findings of Fact and issuing a ruling.

J. Vance states that she would like to make the stipulation that during construction that if it is done on site that the dust is removed and does not end up in the resource, because it is toxic.

B. Baker states that the only cutting that will occur is when the piles are driven "to refusal." He notes that then they are cut off at elevation. He states that the top of the pile will be cut off and that is done with a chainsaw. He notes that it is difficult to collect all the material that comes off the cut but that he can put in requirements to do the best that [the workers] can. He notes that it is not a requirement for state or federal permits. He states that it is difficult to pre-cut to the correct elevation. He states that the chain saw will spread the saw dust.

R. Metcalf wonders how many piles. B. Baker states that they are installing 2. R. Metcalf states that the cutting won't be an issue.

B. Baker states that the fabrication will be done off-site.

R. Smith begins reading the Findings of Fact form:



John Stoll  
Town Planner

## Town of Kennebunk Community Development Department

### Planning Board

February 25, 2019

Project Summary – Special Exception Application  
Findings of Fact, Conditions of Approval, and Conclusions of Law

---

Project: Coughlan Waterfront Access  
Project # #02-19  
Property Owners: Elizabeth Coughlin  
Address: 11 Lords Point  
Map/Block/Lot: Map 97, Lot 47

#### **Determination of Completeness:**

Consider voting the application complete this evening.

#### **Project Description:**

The applicant is requesting permission to locate a private recreational dock at 11 Lord's Point Road.

#### **Project Details:**

Zoning: Coastal Residential (CR); Resource Protection District (RP)  
Existing Use: Single Family Residential

#### **1. General Comments**

- 1.1 The following comments pertain to shoreland/special exception plan set for Elizabeth Coughlin and dated August 11, 2017
- 1.2 In November of 2018 the Kennebunk Zoning Ordinance was amended to permit docks within Velocity (VE) Zones.
- 1.3 The Board held a site walk on February 9, 2019.
- 1.4 The Board held a public hearing on February 25, 2019.

#### **2. Article 7.1.A. Special Exception Approval Standards**

- 2.1 Hazards to vehicular or pedestrian traffic Met X; Not Met   ; Not Applicable

#### **Fact(s)**

- The proposed dock is intended for private use and is not expected to increase the volume of traffic at this location.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles.

2.2 Water pollution Met X; Not Met   ; Not Applicable   

**Fact(s)**

- A seasonal gangway and float will be connected to the existing concrete retaining wall. Disturbance to existing grade or structures is minimal and will not cause erosions or sedimentation on the site.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous aesthetically unpleasant, or unhealthy condition may result.

2.3 Unhealthful conditions Met X; Not Met   ; Not Applicable   

**Fact(s)**

- This proposed dock is not expected to generate smoke, dust, or other airborne contaminants.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants.

2.4 Nuisances to neighboring properties Met X; Not Met   ; Not Applicable   

**Fact(s)**

- The proposed seasonal dock is for private recreational use.

**Condition of Approval:** No lighting shall be installed on the proposed dock

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.

2.5 Peculiar physical characteristics Met X; Not Met   ; Not Applicable   

**Fact(s)**

- There are no known peculiar physical characteristics that will create or aggravate adverse environmental impacts on the applicant's or surrounding properties.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties.

2.6 Depreciation of economic value Met X; Not Met   ; Not Applicable   

**Fact(s)**

- The proposed use is for a private dock. There are other private docks currently located within the area.

**Conclusion:** Based upon this fact and those in the record the Planning Board finds that the proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties; and

2.7 Shoreland Overlay District Met X; Not Met   ; Not Applicable   

**Fact(s)**

- MDEP and Army Corps of Engineers have reviewed this project and have not identified any concerns regarding fisheries, aquatic life, bird, and other wildlife habitat.
- The pier portion of the dock will be elevated with a 1:1 for height to width to conserve shoreland vegetation.
- There are no public facilities within the project location
- There is no public access within the project site.
- The project location has been identified on the Town of Kennebunk Open Space Map.
- There are no known archaeological or historic sites at the project site. The Maine Historic Preservation Office and Maine Indian Tribes were notified of the proposed project and did not identify any concerns.

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that the proposed use will not result in damage to spawning grounds; will conserve shoreland vegetation and visual points of access to waters as viewed from public facilities along with access to waters. The proposed use will conserve the Town's Open Space Plan priority areas; will avoid problems associated with flood plain development; will protect archaeological and historic resources; and will not have an adverse impact on wildlife habitat.

2.8 Resource Protection District Met X; Not Met   ; Not Applicable   

**Fact(s)**

- This lot existed prior to June 15, 1994.
- See Comments 1.2 and 1.3 of this report.
- The applicant has stated that given the project goals and existing setback requirements that the proposed location of the dock is the most appropriate.

**Conclusion:** Based upon these facts and those in the record the Planning Board finds that there is no other proposed location; the lot on which the structure is proposed was established and recorded prior to June 15, 1994; there is only one dwelling on this lot. Additionally, all proposed buildings, sewage disposal systems and other improvements are located on natural ground slopes less than twenty percent; and located outside the floodway of the 100-year floodplain. The total ground floor area of the structure has been limited to a maximum of 1,500 square feet; and all structures are set back from the normal high-water line to the greatest practical extent.

3. **Article 10. A. Section 3E. Piers, Docks, Wharves etc.** Met X; Not Met   ; Not Applicable

3.1 New structure extending over or below normal high water line of a water body or wetland.

**Fact(s)**

- This proposal has been reviewed by the DEP, ACOE and permits have been provided by the applicant

**Conclusion:** Based upon this/these facts and those in the record the Planning Board finds that this use will obtain all applicable permits from MDEP as well as all other applicable Federal and state approval as required.

3.2 Additional Standards Met X; Not Met   ; Not Applicable   

**Fact(s)**

- No endangered or threatened species habitat is identified within this project area.
- The proposed area of the float is less than 200 square feet (8'x16').
- This property has a minimum of 60 feet of frontage (150' of frontage)
- The float system is located more than 25 feet from the property line in either direction.
- The gangway will come off of the existing seawall, which has capacity to support the gangway load. Piles will be installed with a barge crane. Pile driving equipment will be operated by a marine contractor experienced in marine construction.
- No paints, stains, and waterproofing shall be applied (COA)
- No beach area impacted by proposed dock.

- The gangway width is 3' 6", width of float is 8 ft with two piles to support laterally.
- No lighting has been proposed for inclusion at this location.
- No permanent pier has been proposed.
- The length of the structure from seawall to end of float is 50' 2" and does not extend more than 1/5 of the way across a body of water.
- Gangways and floats will be removed and stored at Spang Builders Yard during the off season, and will be removed during a severe storm or hurricane.

**Condition of Approval:**

- Floats and ramps will be removed by October 15<sup>th</sup> and installed no later than April 15<sup>th</sup>.

**Conclusion:** Based upon this/these facts and those in the record the Planning Board finds that this application makes sufficient efforts to protect the habitat of species considered endangered or threatened by Maine IF&W and/or US Fish and Wildlife service, and is not located within a flood hazard zone.

**4. Decisions.**

4.1 The Board could potentially vote to grant the request by Elizabeth Coughlin to install a private dock at 11 Lord's Point Rd subject to the following condition(s) of approval:

- (a) No lighting shall be installed on the proposed dock.
- (b) The floats and ramp will be removed by October 15<sup>th</sup> and installed no earlier than April 15<sup>th</sup>.

Prepared by: JCS



R. Metcalf makes a motion that the Planning Board approve the Findings of Fact, Conditions of Approval and Conclusions, project Coughlan waterfront access, project number 02-19, property owner Elizabeth Coughlan, the address is 11 Lords Point Road, map 97, lot 47, and the application is approved as conditioned.

J. Vance seconds the motion.

All in favor, none opposed. The motion passes 5/0.

### **3. Agenda Items (II)**

R. Smith states that the next item is 3 Shoreline Way.

J. Stoll states that the applicants have requested [to move their application meeting date to another date], as they have “work they need to do.”

R. Smith wonders if they have already done this “twice.”

J. Stoll states that they have been informed that they need to have representation and will wait another meeting to have a public hearing.

R. Smith states that it is tabled.

### **4. Agenda Items (III)**

R. Smith states that the next item is “new business,” a special exception application proposed dock, for Port View Condo Association, 148 Port Road.

J. Stoll states that the application is for a [recreational] dock at 148 Port Road, coastal residential and resource protection, single-family residential use. He notes that the application has [a permit with the] Maine DEP and Army Corp [of Engineers]. He notes that [the application] is through the process. He states that [the applicant] is advised in what they need. He states that his advice would be to listen and determine the site walk and “set that up.”

Marsha Curtis introduces herself as the secretary for the Port View Condo Association. Ashley Griffiths introduces herself as a member of the Landscape Committee for the Port View Condo Association. M. Curtis states that Port View is set by the condos on the left, if you are standing on the bridge going from Lower Village to Kennebunkport. She notes that [the condos] have 720-feet of frontage on the river basin and in the 40-years that she has been there, they have never had a dock. She states that she thinks it is “about time.” She notes that they have applied dot put in and install a temporary seasonal dock; a modest sized one on the North end [of the property]. She notes that currently there is a “small platform” with steps that go down to marsh grass where people have for 40-years launched kayaks and canoes and sailboats. She notes that what they are “getting too old” to “do that.” She states that they need a “small dock” and ramp and float. She states that the float is 8x8, the dock length out is approximately 20-feet from the shore. She notes

that there will be 3-pieces; a 12-foot ramp, a 16-foot flexible ramp down to the float that will rise and fall with the tide, and an 8x8 float at the end. She notes that this will be done by Great Northern Docks of Sebago [Maine]. She notes that they have been through the process with the DEP who gave them sanction because it is a seasonal dock. She states that they have a permit from the Army Corp [of Engineers]. She notes that the work they have done has been very helpful because their initial intention had been to connect the ramp to the [permanent] platform. She states that they were told by the DEP that [by connecting it to the permanent platform] it would make the dock permanent. She notes so they would move it to the side and have it “completely free” and adjacent but not touching. She notes that the Army Corp of Engineers [stated] that because of the grass that shows at the low tide, [the Condo Association] would need a 4-foot wide ramp to have it 4-feet above the marsh grass. She notes that this allowed them to raise the entire ramp. She states that their intention is the place the ramp over the small platform so that they don’t have to take up more space on the shoreline. She notes that it won’t touch it or be attached to it. She states that it was also recommended by Great Northern Docks that they use poly-form and a fiberglass ramp that has 46% light area and water permeable so that they could preserve the grass underneath. She notes that they have only one neighbor along the water line, [the neighbor is] Ralph Smith next door. She states that she thought they have 45-feet but it turns out they have 65-feet. She notes that they are in a good space from “the Smith’s” who also have a dock. She states that [the Condo Association’s] is the smallest dock on the river basin. A. Griffiths states that there are 21 owners that would share it and would be “very happy.” M. Curtis states that there was a 100% “yes” vote.

E. Trainer states that he has no questions and is looking forward to seeing it. He notes that he stands on that bridge and has wondered about water access for many years.

R. Metcalf states that he has looked at what was submitted. He states that there are questions for Great Northern Dock. He wonders what type of materials are to be used to secure the dock, ramp, and float, and how it will be anchored to the shoreline.

M. Curtis states that she “thinks they have some of that.”

R. Metcalf states that what [the Planning Board] received didn’t have that “level of detail.” He wonders where it will be stored in the off-season.

M. Curtis states that it be stored on their lawn space. She notes that they store their kayaks and canoes about 30-feet from the water. She notes that they have more feet “behind that.” She states that this will be stored on the property to the Northern end anywhere from 30-40 feet [from the water line].

A. Griffiths notes that when they were “visited” by Great Northern [Docks], they showed them temporary anchors. She states that if they get the information about how the docks would be attached, they would email it to [the Board].

R. Metcalf states that they would need to see an “actual document.” He [wants to know] what type of pile [will be used], as far as an anchor.

M. Curtis notes that she has published materials. R. Metcalf states that it needs to be specific to their use. A. Griffiths notes that they can email a copy of the specifics to J. Stoll about the anchor and the materials that will be attached.

J. Vance states that, when they mentioned they would like to “move it up a hill” to get the dock from the resource, she wonders how they will move [the dock].

A. Griffiths states that there is a “flat area” on the lawn. M. Curtis notes that there is a drop-off of 3-feet, then the marsh grass, and [then] the “actual shore]. She notes that then it is level.

J. Vance wonders when [the dock] is moved for Winter, by what means will it be moved. M. Curtis notes that the materials for the dock will be aluminum, aside from the cedar float but the rest will be light-weight. A. Griffiths notes that the abutter R. Smith and [his daughter] “Kathy” have a dock that they take in “every Winter” and [Kathy] told them that they could all work tougher and make sure the docks come in.

R. Smith states that the concern is protecting the banking and the marsh grass.

M. Curtis states that it should be lifted, and the permanent platform will “come in handy.”

R. Smith states that he thinks [the Board] should have a site walk. R. Metcalf states that [the Board] needs to. R. Smith states that [the Board] needs the location marked where [the dock] will be put, and to make sure that [the Board members] can get “down to it.” He notes that someone that is “familiar” with the project needs to meet [the Board at the location]. He wonders if [the Board] is available “this Saturday.”

E. Trainer is available. J. Vance is available. R. Metcalf is available.

M. Curtis notes that [the Board] can drive down and park “to the far left” of “building 1.” She states that [the dock will be] right behind building 1.

R. Smith states that [the site walk will be] 8AM on Saturday the 2<sup>nd</sup> [of March, 2019].

R. Metcalf states that if [the Board] could have some of [the information they asked for] before the site walk that would help answer some questions.

A. Griffiths wonders if they could have the deadlines and specifics [of what is required]. She notes this would be “really helpful.” R. Smith states that [the Board] will “try to do that.”

## **5. Agenda Items (IV)**

R. Smith notes that the next [item on the agenda] is Lake Brook Farms subdivision amendment.

J. Stoll states that this application [is a] proposal to amend a major subdivision by splitting 7.9 acres of the approved lot with 7.26 acres being sold to an abutting property and 0.64 acres being donated to the Kennebunk Land Trust. He states that this [application] was previously approved by the Board in January of 2018. He notes that the “biggest thing” was to determine the level of review of the minor finals and not the lot line adjustment.

David McCoullough introduced himself from Woody Creek Development, LLC. He states that in January of 2018, [the applicant] was approved for a subdivision. He notes that he is [at the Planning Board] to propose a conveyance of lot 3 which is currently 12.5 acres. He notes that they propose to convey parcels which total 8. He states that one [goes to] an abutter on Montgomery Court. He notes that 7.26-acres were conveyed to the last abutter on Montgomery Court. He states that the lot would be merged with [the new] lot to create a larger lot. He states that it will not be 2 lots of record, it will be one lot. He states that it would be an acre and a half lot. He states that [the abutter] will be a 9-acre lot and the other [portion of the lot will go to] the Kennebunk Land Trust which abuts Lake Brook and gives them approximately 213-feet of frontage and that will abut a parcel we granted to them last year of about 3.79-acres. He notes that this will abut the parcel that was granted “to them” of about 7.9-acres to give “them” about 4.5 acres to merge with the 40-acres that they already have. He notes that there is no infrastructure planned. He states that there are no roads, easements [or anything]. He states that he is doing a lot line adjustment to both the abutters.

R. Metcalf states that it “seems pretty straight forward” [as a] conveyance to one single abutter.

D. McCoullough notes that they have one house as the primary residence.

R. Metcalf states that this was a subdivision. He notes that if the land owner [wanted to] create 2 lots, they would have to come back to the Planning Board. He notes that other than that, it seems “straight forward.”

J. Vance and E. Trainer have no questions.

R. Smith states that he looked at the plan and wondered what a line of occupation [was] in front of lot 77.2. R. Metcalf states that it is a fence that the abutters have encroached on [the neighboring] property and have been using it. He notes that it doesn’t mean that they “own it.” He states that [the neighbor] owns it.

R. Smith wonders if [the Board] needs to have a site walk.

R. Metcalf states that he doesn’t think so. R. Smith agrees.

R. Smith wonders if [the Board needs to hold] a public hearing. J. Stoll states that [the Board] does [need to hold a public hearing].

R. Smith states that there is “nothing that needs to be planned for.” J. Stoll adds [that] just a plan with an added note [needs to be done].

D. McCoullough states that he could show up to the public hearing with the note if that is the only addition. R. Metcalf states to have J. Stoll confirm [the note] before D. McCoullough prints [the note].

R. Smith states that they want to make sure [the land] will be incorporated in “that lot” and not “as a separate lot.” R. Metcalf suggests [the applicant] talk with J. Stoll.

R. Smith wonders if they should set [a date for the] public hearing. R. Metcalf notes that it would have to be the second meeting. J. Stoll states [it could be] March 25<sup>th</sup>, [2019].

### **3. Approval of Minutes of Previous Meeting**

R. Smith begins the approval of the [previous] meeting’s minutes.

J. Vance makes a motion to accept the Town of Kennebunk Planning Board meeting minutes for Monday, February 11<sup>th</sup>, 2019, as corrected.

R. Metcalf seconds the motion.

All are in favor, none opposed. The motion passes 5/0.

### **4. Adjourn**

E. Trainer makes a motion to adjourn.

J. Vance seconds the motion.

All are in favor, none opposed. The motion passes 5/0.

The meeting adjourned at approximately 8:12 PM.

Respectfully submitted by Megan Hall.

**Signature Page:**

---

---

---

---

---

**Signature Date:**