

ARTICLE 13
AMENDMENT AND OTHER LEGAL PROVISIONS

Section 1. Amendment

- A. Amendments of this Ordinance may be initiated by the municipal officers, the Planning Board or by an individual or corporation or other entity having control of the property that is the subject of the request.
- B. All requests for amendments to the text of this Ordinance, or for changes in district boundary lines, or other proposals to change the zoning map, initiated by other than the municipal officers or Planning Board, shall be accompanied by an application fee as set by Board of Selectmen. No such request or proposal shall be referred to the planning board for public hearing unless and until the fee is paid. In addition, the applicant shall pay all notification and advertising expenses in connection with the requested change or amendment.
- C. No proposed amendments to the text of this Ordinance or proposed changes in district boundary lines or other proposed changes to the zoning map shall be referred to the municipal officers until the Planning Board has held a public hearing on the proposal, notice of which shall be provided in accordance with the following provisions:

- (1) The notice must be posted in the municipal office at least 13 days before the public hearing.
- (2) The notice must be published at least 2 times in a newspaper of general circulation in Kennebunk. The date of the first publication must be at least 12 days before the hearing and the date of the second publication must be at least 7 days before the hearing. That notice must be written in plain English, understandable by the average citizen.
- (3) Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.

For additional public hearings which are held on the proposal, notice shall be given at least seven (7) days prior to such hearing in a newspaper of general circulation in Kennebunk. Failure of any property owner to receive a notice of public hearing shall not necessitate another public hearing and shall not invalidate the public hearing. In considering the proposed amendment or change, the planning board may, without altering the meaning, intent, or substance of the proposal, put it into such language or form that is appropriate to the format of this Ordinance.

- D. All proposals for amendments or map changes shall include at a minimum as a submission to the Planning Board:
 - (1) address or exact location of the request, the exact location and dimensions of any changed district boundaries, and a location map that shows the relationship of the location to the surrounding area. Any proposed map changes shall be shown on the appropriate assessor's tax map and shall indicate tax map and lot number(s).
 - (2) name and address of property owner(s) (if the proposed amendment is a property rezoning)

- (3) name and address of the applicant
- (4) names and addresses of all property owners abutting a property to be rezoned
- (5) statement regarding existing and proposed land use
- (6) existing and proposed district classification or ordinance language
- (7) statement regarding the way in which the proposed amendment or change complies with or promotes the Town's comprehensive plan
- (8) documentation of right, title, or interest
- (9) documentation of financial ability to carry out the purpose of the amendment or change.
- (10) if proposal amends any part of the Historic Preservation Overlay District or the Historic Preservation Commission standards, then evidence that the amendment has been reviewed by the Historic Preservation Commission shall be submitted.
- (11) if the proposal involves either of the following zoning amendments, the applicant shall send notice of the proposed amendment by certified mail to all owners of property located within 500 feet of the proposed rezoned area:
 - a change in zoning district boundary
 - a new zoning district.

This notice shall be in addition to any other notice required by this section. The applicant shall provide proof of the notification by submitting the certified mail receipts as part of the application for amendment.

- E. The Planning Board, within thirty (30) days following the date of the public hearing, shall by majority vote report in writing its findings and recommendation to the municipal officers, who may conduct their own public hearing, notice of which shall be given at least seven (7) days prior in a newspaper of general circulation in Kennebunk. A representative of the Planning Board shall attend any such public hearing. The municipal officers shall, at their sole discretion, except as otherwise provided by law, send the proposed amendment or change to a Town Meeting. If the municipal officers propose substantive changes to the proposed amendment, they shall return the proposal to the Planning Board for its review and comment. A public hearing on the substantive changes shall be conducted by either the Planning Board or municipal officers prior to sending the proposed amendment to a Town Meeting.
- F. Copies of all amendments affecting the Resource Protection and/or Shoreland Overlay Districts must be submitted to the Commissioner of the Department of Environmental Protection. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. If the Commissioner of the Department of Environmental Protection fails to act on any amendment within forty-five (45) days of the Commissioner's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

Section 2. Contract or Conditional Zoning

A. Authority and Purpose

Pursuant to 30-A M.R.S.A., Section 4352, contract or conditional zoning is hereby authorized where, due to the unusual nature or unique location of the development proposed, the Town finds it necessary or appropriate to allow both flexibility for the development of the land and to be able to impose, by agreement with the property owner or otherwise, conditions or restrictions that will assure consistency with the Comprehensive Plan and that are not generally applicable to other properties similarly zoned. All rezoning under this Section shall be consistent with and complementary to existing and permitted uses within the original zones. Use of the provisions of this section shall be limited to where a rezoning is requested by the owner of the property or by an applicant with a legal interest in the property. Nothing in this section shall authorize an agreement for rezoning that is inconsistent with the Comprehensive Plan.

B. Conditions and Restrictions

1. Conditions and restrictions imposed under the authority of this section shall relate only to the physical development and operation of the property and may include, by way of example:
 - (a) Limitations on the number and types of uses permitted;
 - (b) Restrictions on space and bulk standards and on the scale and density of the development;
 - (c) Specifications for the design and layout of buildings and other improvements;
 - (d) Schedules for commencement and completion of construction;
 - (e) Preservation of open space and buffers, provisions for public access to shorelines, and protection of natural areas and historic sites;
 - (f) Contributions toward the provision of municipal services required by the development;
 - (g) Performance guarantees securing completion and maintenance of improvements;
 - (h) Provision for enforcement and remedies for breach of any condition or restriction.
2. Any rezoning pursuant to this Section that affects a shoreland area, as identified by this Ordinance, shall demonstrate that it will provide substantially the same level of protection as in the original zone.

C. Approval and Process

1. All applications for rezoning under this section shall be subject to approval by a vote of Town Meeting.

2. An application for rezoning under this Section shall be accompanied by, in addition to the information required by this Article 13, 14 copies of a drawing at a scale of not more than 50 feet to the inch that shows all information required of a minor site plan, pursuant to Article 11, Site Plan Review, Section 6A. The Planning Board may modify or waive any of these required pieces of information when it determines that, because of the type or size of the project or circumstances of the site, such requirements would not be applicable or would be unnecessary for a complete understanding of the request for rezoning. An application for re-zoning under this section which consists of a “Telecommunications Facility” shall submit plans to the Planning board which meet the requirements of Article 7, Section 4.F. of this Ordinance.
3. The format of the rezoning language itself shall be as follows:
 - a. Statement of purpose
 - b. List of permitted uses in the proposed contract or conditional zone
 - c. Space and bulk standards that will apply in the rezoning
 - d. A description of other conditions and restrictions that will apply

Upon adoption by a vote of Town Meeting, the language of the contract or conditional zone shall be incorporated into Article 8, District Regulations, of this Ordinance. In addition, the rezoning may consist of covenants and agreements, the details of which are not incorporated into the Ordinance itself but that are nevertheless conditions of the rezoning. Any such covenants and agreements shall be in a form that is recordable in the Registry of Deeds.

4. When the Planning Board and the applicant have reached tentative agreement on the wording and conditions attached to the contract or conditional rezoning, the public hearing procedure described in paragraph 5 below shall commence. Lacking agreement between the Planning Board and the applicant, the Planning Board shall schedule a public hearing on the applicant's proposal within 120 days of the date of submission of a complete rezoning application. This time period may be extended by mutual agreement of the Planning Board and applicant. If any material changes are made to the proposal as a result of or following the public hearing, another public hearing shall be held consistent with the deadlines described in paragraph C(5) below.

5. Notice and Hearing

The planning board shall conduct a public hearing prior to any property being rezoned under this section. Notice of this hearing shall be posted in the town clerk's office at least 13 days prior to the public hearing and shall be published in a newspaper of general circulation within the Town at least two times. The date of first publication shall be at least seven days prior to the hearing. The applicant also shall mail, by certified mail, at least 13 days prior to the public hearing notice to the owners of the property to be rezoned and to the owners of all property within 500 feet of the affected lot(s) or parcel(s). This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned. Evidence of the mailing shall be presented to the Town.

6. The rezoning application and review process shall otherwise proceed according to the terms of this Article 13.
7. If the applicant fails to begin construction in a substantial manner and in accordance with an approved plan within 5 years of the effective date of the rezoning, the Planning Board may initiate rezoning to the original zoning classification.

Section 3. Lots

A. Lot Divided by Town Boundary

When a lot is situated in part in the Town and in part in an adjacent municipality, the provisions of this Ordinance shall be applied to the portion of the lot that lies in the Town in the same manner as if the entire lot were situated in Kennebunk.

B. Land Within Street Lines

Land within the lines of a street on which a lot abuts shall not be counted as part of the lot for the purposes of meeting the space and bulk requirements of this Ordinance, even though the fee simple title to such land may be held by the owner of the lot.

C. Land Taken by Eminent Domain

Any land taken by eminent domain, or conveyed for a public purpose for which the land could have been taken by eminent domain, shall not be deemed to be transferred in violation of the area, width and yard space provisions of this Ordinance.

D. Access to Lots

Every lot must either have direct access to a public way or access to a public way by a deeded right of way not less than ten feet in width. No existing lot shall be divided into two or more lots unless there is a contiguous right of way serving all lots created or unless the lot is in a subdivision recorded in the York County Registry of Deeds prior to June 17, 1963.

Section 4. Conflict with other Ordinances

This Ordinance is complementary to other Town ordinances and regulations affecting the use, height, area, and location of buildings and land. Where this Ordinance is in conflict with any other ordinance, the provisions of the ordinance which imposes the greater restriction shall prevail.

Section 5. Validity and Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance. Should any zoning district be declared invalid, the area so invalidated shall automatically become part of the zone from which it was originally extracted.

Section 6. Effective Date

The effective date of this Ordinance shall be immediately upon passage by Town meeting.