

# **Proposed Ordinance Amendments**

to be considered at a

## **November 2017 General Referendum**

### Amendment

1. Definition of Driveway
2. Route 1 Commercial Building Design Standards
3. Short Term Residential Rental (Definition and Parking Requirements)
4. Non-conforming Structural Expansion in Shoreland Zones (Clarification)
5. Amendment to the Shoreland Overlay District Map
6. Public Road Acceptance (Timing of Acceptance)
7. Harbor Ordinance
8. Shellfish Ordinance

## **Amendment #1**

### *Definition of Driveway*

**Ballot Language:** The following language would appear on the ballot:

Article X

The Town hereby ordains to amend the **Zoning Ordinance**, specifically amending: Article 2, Definitions.

Statement of Fact: The purpose of this amendment is to provide a definition of “driveway” in the zoning ordinance.

**Recommendations:**

Recommended by the Planning Board:

Recommended by the Board of Selectmen:

**Amendment:** Amend Article 2, Definitions, by adding the following definition:

**Driveway:** *A route that provides vehicular access to a lot(s) or parking area from either a public or private right-of-way. For the purpose of this definition a driveway shall not consist of an access way around a building designed for emergency use, vehicular drive-through(s) as part of a particular development design, or parking area perimeter access ways used for on-site traffic circulation.*

**Amendment #2**  
*Route 1 Commercial Building Roof Design Standards*

**Ballot Language:** The following language would appear on the ballot:

Article X

The Town hereby ordains amendment of the **Zoning Ordinance** to amend section 6.3.13.5 of Article 6 regarding performance standards for roof designs of new commercial buildings on Route 1.

Statement of Fact: The purpose of this amendment is to encourage variations in roof design for proposed commercial buildings on Route 1.

**Recommendations:**

Recommended by the Planning Board:

Recommended by the Board of Selectmen:

**Amendment:** Modify language in section 6.3.13.5 (regarding buildings and site design requirements) as follows:

6.3.13.5 All new construction shall have pitched roofs, which may include a gable roof, hip roof, mansard roof, or gambrel roof. If a gable roof or hip roof is used, the roof pitch shall be at least four feet in twelve feet. ~~No Long continuous roofs or that are uniform in height shall not be permitted and roof lines shall be broken.~~ *Roofs designed for linear buildings shall use variations in pitch and height, and utilize architectural elements to add visual interest especially when that portion of the building is visible to the street or public (generally the front and sides of a building). Variations in roof lines are recommended at least every twenty-five (25) linear feet. The use of cupolas, dormers, chimneys, and other roof projections is encouraged, provided they are designed as integral parts of the structure and do not appear arbitrary or “paste-on.”* All roofs shall be a peaked roof.

**Amendment #3**  
*Short Term Residential Rentals*  
(Definition and Parking Requirements)

**Ballot Language:** The following language would appear on the ballot:

Article X

The Town hereby ordains amendment of the **Zoning Ordinance** to define Short Term Residential Rentals and clarify parking requirements for that use.

Statement of Fact: The purpose of this ordinance is to define what a Short Term Residential Rental is and establish parking requirements for that particular use.

**Recommendations:**

Recommended by the Planning Board:

Recommended by the Board of Selectmen:

**Amendment:** Amend Article 2-Definitions with the following:

DWELLING UNIT: A dwelling unit is one or more rooms within a building for the use of one person or multiple people living as a family (as defined in Article 2), and contains living, sleeping, sanitary and kitchen facilities for the exclusive use of the unit occupants. A dwelling unit excludes: a building or space used for an artist studio within a Cultural Facility; or a building or space used for transient *occupancy* rental accommodations including a motel, hotel, inn, or similar facility *unless otherwise specified in the zoning ordinance*. (See also §8.1.4.A regarding ~~the~~ a variation of this definition within the Shoreland Overlay District.)

Transient Occupancy: A stay by the same person or group of people in overnight accommodations of a particular hotel, motel, inn, bed & breakfast, *short term residential rental* or other such place for 30 days or less per calendar year. Room or suite assignments are not relevant in determining whether or not occupancy is transient.

Short Term Residential Rental: *A dwelling unit, other than a hotel/motel, B&B, Inn, Boarding House, Tourist Home, Accessory Dwelling Unit etc., that is rented by the owner or the owner's agent for transient occupancy.*

**Amendment:** Amend Article 15- Parking, specifically section 15.1.1.2 regarding required off-street parking for specific residential and non-residential uses in town:

**15.1.1 Amount of Parking.**

15.1.1.1 Off-street parking, either by means of open air spaces or by garage space (*open or enclosed*), in addition to being a permitted use, shall be considered an

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accessory use when required or provided to serve conforming uses located in any district.

15.1.1.2 The following minimum off-street parking requirements shall be provided and maintained for any new construction, alteration and change of use.

<u>USE</u>	<u>NUMBER OF PARKING SPACES</u>
a. Single-family dwelling and two-family dwelling	2 parking spaces for each dwelling unit
b. Multi-family dwelling	2 parking spaces per dwelling with 3 or more bedrooms and 1.5 spaces per dwelling unit with less than 3 bedrooms
c. Hotel/motel/ <i>short term residential rentals</i>	1.25 parking spaces for each rental unit accommodation <i>or each bedroom within a short term residential rental</i>
d. Tourist home, lodging home, inn and bed and breakfast	1 parking space for each rental room accommodation and 1 parking space for each employee on the work shift with the maximum number of employees, and 2 parking spaces for the owner/manager of the business
e. Boarding/Rooming House	1 parking space for each room rented and 2 parking spaces for the owner/manager of the boarding/rooming house

**Amendment #4**  
*Non-conforming Structural Expansions in Shoreland Zones*  
(Clarification)

**Ballot Language:** The following language would appear on the ballot:

Article X

The Town hereby ordains amendment of the **Zoning Ordinance** to amend section §8.3.11.4 of Article 8- Shoreland Overlay District regarding expansion of structures that do not comply with shoreland setback requirements.

Statement of Fact: The purpose of this amendment is to clarify and refer to existing language for expansions of non-conforming structures in shoreland zones.

**Recommendations:**

Recommended by the Planning Board:

Recommended by the Board of Selectmen:

**Amendment:** For clarification, add reference to existing sub-section §8.3.11.4 c-1 below for expansions of structures that do not comply with shoreland setbacks:

- a. Expansion of any portion of a principal structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high water mark of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
- b. Notwithstanding paragraph (a) above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited.
  1. The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not

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be made greater than 15 feet or the height of the existing structure, whichever is greater.

- c. All other legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section §8.3.11.4 or §8.3.11.4.a above.
1. For structures located less than 75 feet from the high water mark of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.
  2. For structures located less than the required 100 foot setback specified in section 8.3.11 or less than 100 feet from a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high water mark of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in §8.3.11.4.b.1 *and* §8.3.11.4.c.1 above.
  3. In addition to the limitations in subparagraphs 1 and 2, for structures that are legally non-conforming due to their location within the Resource Protection Overlay when located at less than 250 feet from the normal high water mark of a water body or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection Overlay was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high water mark of a water body, tributary stream, or upland edge of

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a wetland must meet the footprint and height limits in §8.3.11.4.b.1 *and* §8.3.11.4.c.1 above.

## **Amendment #5**

### *Shoreland Overlay District Map*

**Ballot Language:** The following language would appear on the ballot:

Article X

The Town hereby ordains amendment of the **Zoning Ordinance** to amend Article 3- Establishment of Zoning Districts specifically §3.8- Shoreland Overlay District and §3.8-2.a.6 Bird Habitat Areas in the Resource Protection Sub-district by repealing that classification/designation and amending the towns official Shoreland Overlay District Map(s).

Statement of Fact: The purpose of this amendment is to repeal the classification and incorporation of particular waterfowl and wading bird habitat designated areas within the Resource Protection Sub-district. Maine Department of Environment Protection does not require that classification to be incorporated within the Resource Protection Sub-district of the Shoreland Overlay District while the Town will continue to have authority to designate areas to be incorporated into the Resource Protection Sub-district. Waterfowl and wading bird habitat areas that will be removed from the Resource Protection Sub-district will be re-classified to the Limited Residential Sub-district.

**Recommendations:**

Recommended by the Planning Board:

Recommended by the Board of Selectmen:

**Amendment:** Amend §3.8 Shoreland Overlay District by changing the following map dates:

**3.8 Shoreland Overlay District**

The boundaries of this district and its sub-districts are delineated on a pair of maps entitled, “York Zoning Ordinance: Shoreland Overlay District, Northern Section),” dated ~~November 4, 2017~~ *June 29, 2017*, and “York Zoning Ordinance: Shoreland Overlay District, Southern Section” dated ~~May 29, 2009~~ *June 29, 2017*. This map is available at the Town Clerk’s Office. This district’s boundaries are based on criteria, as specified in §3.8.1, below. This Overlay District is divided into subdistricts, as specified in §3.8.2, below. Interpretation of the boundaries of this Overlay District shall be governed by §3.8.3, below, as well as other applicable sections of this Ordinance. See Article 8 for standards pertaining to this Overlay District. Also note that certain setback requirements of the Shoreland Overlay District can apply to areas outside this Overlay District (beyond 250 feet from protected resources) and this is intentional.

**Amendment:** Amend §3.8-2.a.6 by repealing Bird Habitat Areas from the Resource Protection Sub-district as follows:

2. **Subdistricts.** The district is comprised of sub-districts as follows:
  - a. **Resource Protection Sub-district.** This sub-district shall include all areas that meet the criteria that follow. This designation shall supersede the classification of Limited Residential or Mixed-Use sub-district designations.
    1. Coastal Wetlands. The wetland area itself.
    2. Inland Wetlands. The wetland area itself for inland wetlands with a contiguous area of 4 or more acres, or that are contiguous to coastal wetlands.
    3. Map-Designated Areas. All areas so designated on the Shoreland Overlay District Map.
    4. Steep Slopes. Within the Limited Residential or Mixed-Use subdistrict, areas of 2 or more contiguous acres with sustained slopes of 20% or greater, as shown on the Shoreland Overlay District Map. The area of steep slopes may extend beyond the boundaries of the Shoreland Overlay District, but only that portion of the steep area that lies within the Shoreland Overlay District shall be designated as resource protection.
    5. 100-Year Floodplain. Any Shoreland area included within the Velocity Zone on FEMA's Flood Insurance Rate Maps shall be classified as Resource Protection. Along the tidal reaches of the Cape Neddick River, York River and Brave Boat Harbor, any Shoreland area included in the 100-year floodplain on FEMA's Flood Insurance Rate Maps shall be classified as Resource Protection. Because the majority of these areas are narrow slivers of land which would not display legibly on the Shoreland Overlay District Map, these designations shall be determined on a case-by-case basis.
    - ~~6. Bird Habitat Areas. The Resource Protection Subdistrict shall include upland areas adjacent to wetlands which are rated "moderate" or "high" value waterfowl and wading bird habitat by the Maine Department of Inland Fisheries and Wildlife, as shown on the Shoreland Overlay District Map.~~
    - 7.6. Unstable Bluffs. The Resource Protection Subdistrict shall include the face of any unstable or highly unstable coastal bluff along tidal waters, as shown on the Shoreland Overlay District map. These areas are designated because they are subject to severe erosion or mass movement. The source of the data is mapping by the Maine Geological Survey.

## **Amendment #6**

### *Public Road Acceptance Ordinance*

**Ballot Language:** The following language would appear on the ballot:

**Article X**

The Town hereby ordains amendment of the Public Road Acceptance Ordinance to require a fiscal note be provided to the voters any time a private road is offered for Town acceptance.

**Statement of Fact:** The purpose of this amendment is to help inform the voters about the anticipated ongoing costs associated with accepting roads. Since 1970 approximately 27 miles of roads have been accepted by the voters, and using an average cost per mile for summer and winter maintenance, maintenance of these same roads costs about \$500,000 annually.

**Recommendations:**

Recommended by the Board of Selectmen:

**Amendment:** Amend §3.G as follows:

G. The ballot question presented to the voters shall include a recommendation for or against passage from both the Superintendent of Public Works and the Board of Selectmen. *The ballot question shall also include a fiscal note that informs the voters of anticipated costs associated with ongoing maintenance of the road or road segment being considered.*

## **Amendment #7** *Harbor Ordinance*

**Ballot Language:** The following language would appear on the ballot:

### Article X

The Town hereby ordains amendment of the Harbor Ordinance to prohibit berthing of houseboats within the harbors, river systems, and near beaches of York. Also, the added verbiage in Section 4- Mooring Space Assignments, para. C-1 would allow new mooring space assignees more time to find and purchase a boat that meets their needs.

Statement of Fact: The purpose of this amendment is to prevent the addition of another vessel use. Houseboats could create additional burdens on fire departments, law enforcement, the school system, the environment, and much more. This resource is already in great demand by over 400 mooring holders within the recreational and commercial sectors, with waiting lists as long as 10 years. This amendment also seeks to provide more flexibility with Mooring Space Assignments.

### **Recommendations:**

Recommended by the Board of Selectmen:

**Amendment:** Amend Section 1- Definitions to include the following definition of Houseboat:

*Houseboat: A vessel designed for use primarily as a dwelling or domicile for human occupancy in protected waters, whether self-propelled or not. Offshore safety and navigational related features such as, but not limited to hydrodynamics, freeboard, and seaworthiness would be secondary or even non-existent. Final determination to be made by the Harbor Master and the Harbor Board.*

**Amendment:** Amend Section 3- Harbor Use Regulations, specifically subsection C- Personal Watercraft with the following:

### **C. Personal Watercraft and Houseboats**

It shall be unlawful to operate a personal watercraft, *as well as anchor or moor a houseboat* upon the tidal waters within the Town within an area encompassed by the mouth and the source of the York River; and upon the Cape Neddick River and all its tributaries within the Town within an area encompassed by a speed marker buoy 200 yards east of the Shore Road Bridge and the source of the Cape Neddick River; within Brave Boat Harbor; and within any bathing area at a defined beach.

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**Amendment:** Amend Section 4- Mooring Space Assignments, specifically subsection C- Mooring Space Application with the following:

C. **Mooring Space Application:** Any person seeking a mooring space shall file an application with the Office of the Harbor Board. Upon payment of an application fee, the applicant's name shall be added to the waiting list maintained by the Harbor Master in the order the application fee was received. All applicants are responsible for giving notice of any change of address. An annual fee for each mooring application will be billed on December 1<sup>st</sup> and be due by January 2<sup>nd</sup> of the following year. Failure to pay the annual fee will result in applicant's name being purged from their respective lists.

1. Applicants will indicate a range of vessel size, provided that when they receive a space assignment they must utilize it for a vessel of the size and type indicated on the mooring permit by the end of the first full boating season after receipt of the space assignment, and in no case shall ever utilize it for a vessel of different size class than approved for the space assignment without written approval of the Harbor Master. *If the applicant cannot utilize the assigned mooring space within the first full boating season, the applicant may offer the space to the Harbor Master for the Temporary (One Season) Waiting List before May 31<sup>st</sup> to retain the space assignment for one season.*

## **Amendment #8**

### *Shellfish Conservation Ordinance*

**Ballot Language:** The following language would appear on the ballot:

Article X

The Town hereby ordains amendment of the Shellfish Conservation Ordinance.

Statement of Fact: The purpose of this amendment is to incorporate ordinance revisions that the Maine Department of Marine Resources (DMR) is requiring the Town of York include or remove within the Shellfish Conservation Ordinance.

**Recommendations:**

Recommended by the Board of Selectmen:

**Amendment:** Repeal the Town's Shellfish Committee's requirement regarding surveying clam producing areas at least once every three years:

1. SHELLFISH CONSERVATION COMMITTEE: The Shellfish Conservation Program for the Town of York will be administered by the Shellfish Conservation Committee consisting of five (5) members to be appointed by the Selectmen for terms of three (3) years. The Committee's responsibilities include:
  - A. Establishing annually in conjunction with the Department of Marine Resources the number of shellfish digging licenses to be issued;
  - ~~B. Surveying each clam producing area at least once every three years to establish size, distribution and density and annually estimating the status of the Town's shellfish resources;~~
  - ~~C. B.~~ Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation;
  - ~~D. C.~~ Keeping this ordinance under review and making recommendations for its amendments;
  - ~~E. D.~~ Securing and maintaining records of shellfish harvest from the town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources;

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- F. E. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologists of the Department of Marine Resources;
- G. F. Submitting an annual report to the Municipality and the Department of Marine Resources covering the above topics and all other committee activities.

**Amendment:** Add clarification and clam type to the definition of “Shellfish, Clams and Intertidal Shellfish Resources” with the following:

## 2. DEFINITIONS:

### C. SHELLFISH, CLAMS AND INTERTIDAL SHELLFISH RESOURCES:

When used in the context of this ordinance, the words "shellfish", "clams", and “intertidal shellfish resources” means soft-shell clams, *Mya arenaria*, quahog, ~~and~~ (cherry stones), and *Mercenaria mercenaria*.

**Amendment:** Change the timeframe for when the Town’s Shellfish Conservation Committee will establish the number of noncommercial licenses to be permitted by repealing and adding the following:

**LIMITATION OF DIGGERS:** Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of diggers must be controlled. This number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:

1. ~~Prior to July 1<sup>st</sup>~~ *Annually*, the Town Shellfish Conservation Committee, with the approval of the Commissioner of Marine Resources, will establish the number of noncommercial licenses to be permitted following the requirements of 12 M.R.S.A. § 6671 (3).