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**Land Use Amendments  
Zoning Ordinance**

**CHAPTER 15**

**SEWER**

**Article I. Sewage Ordinance.** [Originally adopted eff. 12/22/1971 under R.S.1964, T.30. §2151 & 4353; Amended eff. 3/15/1995; Amended eff. 6/7/1995, Amended eff. 12/10/2003 and Amended eff. 8/10/2007)

**Section 15-1-4. Use of Public Sewers Required.**

f. Lots Which Must Connect to the Public Sewer.

The owner of any house, building or other structure used for human occupancy, employment, recreational or other purpose which requires the disposal of sewage and which is located upon a lot eligible to connect to the public sewer as provided above, shall at the owner's expense connect its sewer facility directly to the public sewer, in accordance with the provisions of this ordinance, unless:

- (1) such house, building or other structure is located more than one hundred fifty (150) feet from the public sewer line; or
- (2) such house, building or other structure has as of the effective date of this ordinance disposed of its sewage by a private subsurface sewage disposal system, and such owner has filed with the local plumbing inspector a certification by an authorized soils evaluator that the private subsurface sewage disposal system is not malfunctioning. Such certification shall be presumed valid and accurate but shall not bind the Town or local plumbing inspector in regard to compliance with private sewage requirements set forth elsewhere in this ordinance, the State Plumbing Code, or as otherwise applicable.
- (3) such house, building, or other structure is located in the Town Center Zone as of June 7, 1995 and is in compliance with paragraph (2) above with regard to an existing private subsurface sewage disposal system. Connection to the public sewer shall not be required for a change of use or addition to an existing house, building or other structure located in the Town Center Zone, subject to compliance with the sewage requirements set forth elsewhere in this ordinance, the State Plumbing Code, or as otherwise applicable. [Amended Eff. 6/7/1995]

For the purpose of calculating the one hundred fifty (150) foot measurement set forth in Sub-paragraph 1 above, the measurement shall be made (i) from

1 the end of any stub provided by the Town, otherwise from the public sewer line, (ii) to a  
2 point on the building foundation other than the foundation for any garage or other  
3 attached accessory building unless it contains a toilet or sink, or contains other facilities  
4 regularly generating sewage, (iii) by the shortest route passing through the property in  
5 which the owner has the right to install, use and maintain a building sewer. [Added eff.  
6 9/27/1978, Revised eff. 8/13/1986]

7  
8 (4) Any subdivision lot located in the Residence B District and created  
9 after [effective date of this ordinance] shall, at the owner's expense connect its  
10 sewer facility directly to the public sewer, in accordance with the provisions of  
11 this ordinance and shall not be eligible for the exemptions provided in  
12 paragraphs 1, 2, and 3 above.  
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**CHAPTER 16  
SUBDIVISION ORDINANCE**

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**Article III. Standards**

**Sec. 16-3-1. Subdivision Review Standards.** A subdivision shall meet all of the following standards of review, as determined by the Planning Board.

**(t) Open Space Impact Fee**

- 3. Land donation. The required land donation of open space shall be calculated by multiplying the number of lots/units in the proposed subdivision by the average number of persons per household as published in the most recent U.S. Census, and then multiplying the resulting number by the Community Standard of public open space. At least twenty percent (20%) of the land donated shall be land which is not a Resource Protection Zone or buffer and has a slope not to exceed fifteen percent (15%). For subdivisions reviewed under Sec. 19-7-2, Open Space Zoning, the Open Space Impact Fee standard shall be considered satisfied when land shall be preserved as open space as required in Sec. 19-7-2.

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**CHAPTER 19**

**ZONING ORDINANCE**

**SEC. 19-1-3. DEFINITIONS**

**Multifamily:** A building containing 2 or more dwelling units (excepting accessory dwelling units), or a mixed use building containing 1 or more dwelling units. **(Effective February 12, 2005)**

**Multiplex Housing:** Multiplex housing is housing containing two (2) or more attached dwelling units, ~~each of which has independent outside access. Multiple units may be arranged in a variety of configurations including side by side and/or back to back. A multiplex should have the look of large, closely spaced, single family detached units with the essential feature being the small number of units attached in one building. Each individual building may contain no more than five (5) units with an average of not more than four (4) units per building for the entire project, except that the maximum and average number of units per building shall not apply in the Town Center District.~~ **(Revised effective December 10, 2003)**

**SEC.19-5-3. PROCEDURES**

**A. Establishment and Notice of Meeting Date**

Upon receipt of any notice of administrative, variance, or sewer appeal, application for conditional use, or application for a setback reduction, the Code Enforcement Officer shall forthwith notify the Chair of the Board, who shall establish the date of the meeting at which the application will be considered based upon the submission deadlines for the regular meetings of the Board. The Code Enforcement Officer shall give notice of such public hearing in accordance with Sec. ~~16-2-1(b) 16-2-4(a)(7)~~ of the Subdivision Ordinance, except that a legal notice shall be published once in a newspaper. **(Effective August 11, 1999)**

**SEC. 19-6-1. RESIDENCE A DISTRICT (RA)**

**A. Purpose**

The Residence A District includes lands that are outside of the built-up areas of Cape Elizabeth, lands to which public sewer lines are not expected to be extended in the near future, and large tracts suitable for farming, woodland production, and wildlife habitat. The purpose of this district is to allow residential development that is compatible with the character, scenic value, and traditional uses of rural lands and that does not impose an undue burden on the provision of municipal services.

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**B. Permitted Uses**

**2. The following residential uses:**

- a. Single family dwelling
- b. Manufactured housing on an individual lot
- c. Multiplex housing
- d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards

<b>MINIMUM LOT AREA</b>	
<i>(1) Boat repair facility for commercial purposes</i>	200,000 sq. ft. (4.6 acres)
<i>(2) Multiplex housing</i>	<del>10.5</del> acres
<i>(3) Eldercare facilities</i>	10 acres
<i>(4) Golf Course (Effective February 12, 2003)</i>	150 acres <i>(Effective February 12, 2003)</i>
<i>(5) Wind energy systems (Effective. October 8, 2008)</i>	20,000sq. ft.
<i>(6) Other uses</i>	80,000 sq. ft.
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) Multiplex housing</i>	1 unit per 66,000 sq. ft. of net residential area
<i>(2) In subdivisions</i>	1 unit per 80,000 sq. ft. of net residential area
<i>(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning</i>	1 unit per 66,000 sq. ft. of net residential area
<i>(4) In eldercare facilities</i>	1 unit per 6,000 sq. ft. or 1 bed per 3,500 sq. ft. of net residential area, whichever is less
<i>(5) Other housing</i>	1 unit per 80,000 sq. ft. of gross lot area
<b>MINIMUM SETBACKS</b>	
<i>(1) All uses unless otherwise specified</i>	

(a) Side yard setback	30 ft. The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(b) Rear yard setback	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
© Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private streets	30 ft.
<b><i>(2) Multiplex housing and eldercare facilities</i></b>	
(a) From property line	75 ft.

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**(5) Open Space Zoning Subdivisions**  
*(See Sec. 19-7-2)*

- (a) Side yard setback 20 ft.
- (b) Rear yard setback 20 ft.
- (c) Front yard setback 20 ft.

**SEC. 19-6-2. RESIDENCE B DISTRICT (RB)**

**A. Purpose**

The Residence B District is differentiated from the Residence A District in that subdivisions in Residence B are required to be laid out according to the principles of

open space zoning, as described in Sec. 19-7-2, Open Space Zoning. The Residence B District includes lands outside of the built-up parts of Town where the Comprehensive Plan indicates growth can and should be accommodated as a result of soils suitable for individual or common septic systems or the extension of public sewer lines. The purpose of this district is to allow a significant portion of the Town’s anticipated residential growth to occur in these areas, in a manner that preserves the character of rural lands, promotes healthy neighborhoods, offers flexibility in design, and minimizes the costs of municipal services.

**B. Permitted Uses**

**2. The following residential uses:**

- a. Single family dwelling
- b. Manufactured housing on an individual lot
- c. Multiplex housing
- d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards

**E. Standards**

**2. The following Space and Bulk Standards shall apply:**

- a. Lots that are part of residential subdivisions approved by the Planning Board after June 4, 1997, shall comply with the terms of Sec. 19-7-2, Open Space Zoning, except that subdivisions for which completed applications have been submitted to the Planning Board prior to June 4, 1997, shall be subject to the regulations in effect at the time of their submission.

<b>MINIMUM LOT AREA</b>	
<i>(1) Eldercare facilities</i>	5 acres
<i>(2) Wind energy systems</i>	20,000 sq. ft. <b>(Effective October 8, 2008)</b>
<i>(3) Other uses</i>	80,000 sq. ft.
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) In eldercare facilities</i>	1 unit per 3,500 sq. ft. or 1 bed per 2,500 sq. ft. of net residential area, whichever is less
<i>(2) Other uses</i>	1 unit per 80,000 sq. ft. of gross lot area
<b>MINIMUM STREET FRONTAGE</b>	

<i>(1) All uses</i>	125 ft.
<b>MINIMUM SETBACKS</b>	
<i>(1) All uses unless otherwise specified</i>	
(a) Side yard setback	30 ft.  The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(b) Rear yard setback	30 ft.  The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(c) Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private streets	30 ft.
(d) Limit on parking within the front yard	A nonresidential use shall not locate its required off-street parking within the front yard setback
<i>(2) Multiplex housing and eldercare facilities</i>	
(a) From property line	75 ft.

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**SEC. 19-6-3. RESIDENCE C DISTRICT (RC)**

**A. Purpose**

The Residence C District includes lands that are within the built-up areas of Cape Elizabeth, are sewered or can be easily served by public sewer, are identified in the Comprehensive Plan as part of the Town’s growth areas, are not presently in agricultural



1 or woodland uses, and are not considered to be valuable, large-scale open space with  
 2 valued scenery or wildlife habitat. The purpose of the district is to provide for areas of  
 3 compact development that can foster cohesive neighborhoods that are close to  
 4 community services.

5  
 6 **B. Permitted Uses**

7  
 8 **2. The following residential uses:**

- 9  
 10 a. Single family dwelling  
 11 b. Manufactured housing on an individual lot  
 12 c. Manufactured housing park, subject to the provisions of Sec. 19-7-7,  
 13 Manufactured Housing Parks  
 14 d. Multiplex housing  
 15 e. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare  
 16 Facility Standards  
 17 f. Rooming or boarding home

18  
 19 **E. Standards**

20  
 21 **2. The following Space and Bulk Standards shall apply:**

<b>MINIMUM LOT AREA</b>	
<i>(1) Boat repair facility for commercial purposes</i>	200,000 sq. ft. (4.6 acres)
<i>(2) Multiplex housing</i>	<del>5</del> <u>3</u> acres
<i>(3) Eldercare facilities</i>	5 acres
<i>(4) Wind energy systems</i>	20,000 sq. ft. <b>(Effective October 8, 2008)</b>
<i>(5) Others</i>	20,000 sq. ft.
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) Multiplex housing</i>	1 unit per 15,000 sq. ft. of net residential area
<i>(2) In subdivisions</i>	1 unit per 20,000 sq. ft. of net residential area
<i>(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning</i>	1 unit per 15,000 sq. ft. of net residential area
<i>(4) A single-family home on a lot that is not part of a subdivision</i>	1 unit per 20,000 sq. ft. of gross lot area

<i>(5) In eldercare facilities</i>	1 unit per 2,500 sq. ft. or 1 bed per 2,100 sq. ft. of net residential area <b>(Effective May 9, 2007)</b>
<i>(6) Rooming or boarding home</i>	1 bed per 5,000 sq. ft. of gross lot area
<i>(7) Other housing</i>	1 unit per 20,000 sq. ft. of gross lot area
<b>MAXIMUM NUMBER OF BED AND BREAKFAST ROOMS</b>	
<i>Bed and Breakfast Guest Room</i>	1 room per 5,000 sq. ft of gross lot area
<b>MINIMUM STREET FRONTAGE</b>	
<i>(1) Bed and Breakfast</i>	100 ft. on Shore Road or Route 77
<i>(2) All uses</i>	100 ft.
<b>MINIMUM SETBACKS</b>	
<i>(1) All uses unless otherwise specified</i>	
(a) Side yard setback	20 ft.  The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(b) Rear yard setback	20 ft.  The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(c) Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	40 ft.
- Collector and rural connector streets	40 ft.
- Feeder street	30 ft.

- Local and private streets	20 ft.
<b>(2) Multiplex housing and eldercare facilities</b>	
(a) From property line	75 ft.

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**(5) Open Space Zoning Subdivisions**  
*(See Sec. 19-7-2)*

- (a) Side yard setback 15 ft.
- (b) Rear yard setback 15 ft.
- (c) Front yard setback 20 ft.

**SEC. 19-6-4. TOWN CENTER DISTRICT (TC)**

**A. Purpose**

The purpose of this district is to encourage an identifiable Town Center that includes a village feeling, mixed retail and residential uses to serve residents, an environment inviting to pedestrians, a common meeting place, visual cohesiveness and enrichment and linkages to the Town's open space and nearby school campus. The Town Center District boundaries reflect the prevalence of public buildings and commercial uses and the historic compactness of development. The Town Center District requirements are tailored to the unique characteristics of the Cape Elizabeth Town Center.

In the center of the Town Center District, there exists a unique compactness of development exemplified by smaller lot sizes and existing structures with compatible space and bulk massing and architectural features. This area shall be designated the Town Center Core Subdistrict. All the requirements of the Town Center District shall apply in the core subdistrict, except where standards specific to the Town Center Core Subdistrict are established.

**B. Permitted Uses**

**2. The following residential uses:**

- a. Single family dwelling
- b. Bed and breakfast
- c. Multifamily dwelling unit
- d. Congregate housing, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
- e. Rooming or boarding home

**D. Standards**

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2. The following Space and Bulk Standards shall apply:

<b>MINIMUM LOT AREA</b>	
<i>(1a) Single family dwelling unit</i>	80,000 sq. ft.
<i>(1b) Single family dwelling unit in the Town Center Core Subdistrict</i>	10,000 sq. ft.
<i>(2) Multifamily dwelling unit</i>	7,500 sq. ft.
<i>(3) Wind energy systems</i>	20,000 sq. ft <b>(Effective October 8, 2008)</b>
<i>(4) Other uses</i>	None
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) Multifamily housing in a mixed use building</i>	1 unit per 3,000 sq. ft. of gross lot area
<i>(2) Rooming or boarding home</i>	1 bed per 5,000 sq. ft. of gross lot area

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**SEC. 19-6-5. BUSINESS DISTRICT A (BA)**

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**A. Purpose**

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9 The Business A District is comprised of neighborhood business districts in which the  
10 business uses are geared to the needs of nearby residents rather than a large scale,  
11 regional destination center. The district requirements seek to promote (i) business  
12 vitality, (ii) pedestrian connectivity between the business district and the adjacent  
13 residential areas, (iii) a mix of commercial and housing uses, (iv) high quality design that  
14 is pedestrian friendly, compatible with, and protects the integrity of the adjacent  
15 residential neighborhood, and (v) an efficient use of the land within the district for  
16 business uses. The Business A district regulations recognize that the BA District in the  
17 Sore Road area and the BA District in the Ocean House Road area are individually  
18 distinctive and may require different treatments, which are specified herein. **(Effective**  
19 **July 8, 2009)**

20

**B. Permitted Uses**

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2. The following residential uses:

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- a. Single family detached dwelling existing as of April 1, 2008 **(Effective July 8, 2009)**

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- 1 a. Multifamily dwelling units (**Effective July 8, 2009**)
- 2 b. Congregate housing, subject to the provisions of Sec. 19-7-6. Eldercare
- 3 Facility Standards (**Effective July 8, 2009**)
- 4 d. Rooming or boarding home
- 5

<b>MINIMUM LOT AREA</b>	
<i>(1) Single family dwelling unit</i> i. adjacent to the RA District ii. adjacent to the RC District	80,000 sq. ft.  20,000 sq. ft. <b>(Effective July 8, 2009)</b>
<i>(2) Multifamily dwelling unit</i>	15,000 sq. ft.
<i>(3) Wind energy systems</i>	20,000sq. ft. <b>(Effective October 8, 2008)</b>
<i>(4) Other uses</i>	None
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) Multifamily housing in a mixed use building or multiplex housing</i>	1 unit per 7,500 sq. ft. of net residential area <b>(Effective July 8, 2009)</b>
<i>(2) Rooming or boarding home</i>	1 bed per 5,000 sq. ft. of gross lot area

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7 **SEC. 19-6-9. RESOURCE PROTECTION DISTRICTS**  
8 (RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F)

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10 **D. Prohibited Uses**

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12 Uses shown as prohibited uses on Table 19-6-9 and any other use not specifically listed  
13 as a permitted use or a use permitted with a resource protection permit shall be prohibited  
14 in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F Districts.

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16 **TABLE 19-6-9**

Use, Activity, Structure	RP1-CW and RP1-CW Buffer Overlay	RP2-WP	RP3-F
36. Multi-unit residential	No	RPP	No

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20 **SEC. 19-7-2. OPEN SPACE ZONING**

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22 **A. Applicability**

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**1. Residence B District**

The provisions of this section shall be mandatory for residential subdivisions in the Residence B District.

**2. Other Districts**

In the Residence A District and Residence C District, the provisions of this section shall be optional. In such districts, notwithstanding other provisions of this Ordinance, the Planning Board in reviewing and approving proposed residential subdivisions may modify provisions relating to space and bulk, including but not limited to increasing setbacks, to permit innovative approaches to housing and environmental design in accordance with the standards of this Article. Such modifications of Space and Bulk Standards shall not be construed as granting variances to relieve hardship. **(Revised effective December 10, 2003)**

**C. Dimensional Standards**

The average size of the individual lots shall be smaller than that required in the district in which the cluster development is located and the balance of the required area shall be reserved as open space. The lots and open space shall conform to the following Space and Bulk Standards:

**1. Density**

The overall density of the subdivision shall not exceed the density requirements of the district in which it is located as shown in the chart below. In the event that a subdivision is located in more than one zoning district, the overall density of the subdivision shall not exceed the combination of the density requirements of the districts in which the subdivision is located. For example, if a subdivision has 660,000 square feet of net residential area in the RA District and 150,000 square feet in the RC District (with public sewerage) then the overall density shall not exceed 20 units. **(Effective February 12, 2003)**

District	Maximum Density of Residential Development	
	Single Family	Multiplex
RA	1 unit per 66,000 sq. ft. of net residential area	1 unit per 66,000 sq. ft. of net residential area
RB	1 unit per 60,000 sq. ft. of net residential area with on-site sewerage disposal	1 unit per 60,000 sq. ft. of net residential area with on-site sewerage disposal

	1 unit per <del>30,000</del> <u>20,000</u> sq. ft. of net residential area with public sewerage	1 unit per <del>30,000</del> <u>20,000</u> sq. ft. of net residential area with public sewerage
RC	1 unit per 15,000 sq. ft. of net residential area	1 unit per 15,000 sq. ft. of net residential area

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**2. Minimum Lot Size**

Each lot within the subdivision shall contain at least the following area:

Minimum Lot Size		
	With On-site Sewage Disposal	With Public Sewerage
RA	30,000 sq. ft. of net residential area	30,000 sq. ft. of net residential area
RB	20,000 sq. ft. of net residential area	10,000 sq. ft. of net residential area
RC	NA	7,500 sq. ft. of net residential area

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**3. Average Lot Size**

Lots and/or dwelling units shall be laid out so that the average lot size is not more than sixty percent (60%) of the maximum density set forth in Sec. 19-7-2.C.1 above in the RA and RC Districts and not more than fifty percent (50%) of the maximum density in the RB District.

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**4. Open Space**

At least forty percent (40%) of the gross acreage shall remain as open space outside of the lots and not otherwise assigned to individual dwelling units. In the RB District, where the development will be served by public sewer, at least forty-five (45%) of the gross acreage shall remain as open space outside of the lots and not otherwise assigned to individual dwelling units. At least one third of this required open space shall be land that is usable as determined by applying the criteria of the net residential area definition. [For example, if a parcel consists of one hundred twenty (120) acres, at least forty-eight (48) acres shall be kept as open space. Of this forty-eight (48) acres, at least sixteen (16) acres shall be usable applying the criteria of the net residential area definition.]

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**D. Open Space Design Standards**

In addition to other standards of this Ordinance and of the Town's Subdivision Ordinance, the following ~~design~~ standards shall apply. ~~to developments under this section.~~

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2 *1e. Open Space Layout*  
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4 The land within the subdivision to be preserved as open space shall be designed in  
5 accordance with the following standards.  
6

7 Contiguous land. To the greatest extent possible, open space shall be conserved in  
8 large, contiguous blocks. Narrow strips shall not included in the open space  
9 design unless they provide public access connectors to nearby public open space,  
10 wildlife corridors or links to neighborhoods that would benefit from use of the  
11 open space to be preserved. Narrow strips primarily intended as buffering to  
12 separate abutters from the proposed development should not be included to meet  
13 the open space preservation requirement.  
14

15 Connectivity. Where public open space abuts the property, open space shall be  
16 laid out to concentrate land to be preserved adjacent to existing public open space.  
17 Access for lots/units in the development shall be provided to land to be preserved  
18 as open space. Greenbelt trail connections to existing public open space and land  
19 to be preserved shall also be provided where appropriate. ~~in a manner that~~  
20 ~~maximizes the amount of contiguous, usable area for agriculture or woodlot~~  
21 ~~production, and outdoor recreation included as part of the required open space~~  
22

23 ~~f. in a manner that each house lot has direct access to the open space~~  
24 ~~without having to cross another's house lot.~~  
25

26 *2f. Priorities for Location of Lots and Open Space Preservation Priorities*  
27

28 The land within the subdivision to be preserved as open space shall be determined  
29 using the following priorities, in the order that they appear. When the amount of  
30 land that qualifies as a priority exceeds the amount required to be preserved under  
31 Sec. 19-7-2 (C)(4), Open Space, the lowest priority open space lands may be  
32 included in the developed portion of the property. ~~The Planning Board shall find~~  
33 ~~that individual building lots or building locations are laid out to achieve the~~  
34 ~~following objectives, as applicable. Where the Planning Board finds that~~  
35 ~~objectives conflict, the objectives shall be achieved in the order listed:~~  
36

37 a. ~~on soils suitable for subsurface wastewater disposal where on site~~  
38 ~~wastewater disposal is to be used~~  
39

40 b. Wetlands/environmentally sensitive areas/wildlife habitat. in a manner that  
41 preserves as part of the required open space environmentally sensitive  
42 areas, such as wetlands, steep slopes (as included in the computation of net  
43 residential area), flood plains, and wildlife habitat rated by the Maine  
44 Department of Inland Fisheries and Wildlife as high value, ~~and unique~~  
45 natural features  
46



1 b. Agriculture. in a manner that preserves active agricultural fields as  
2 identified in the Future Open Space Preservation (FOSP) report, and as  
3 subsequently amended by the Town Council.

4  
5 c. Greenbelt and Recreation area. in a manner that preserves and promotes  
6 connectivity of the Cape Elizabeth greenbelt townwide.

7  
8 de. Scenic character. in a manner that preserves visual resources identified in  
9 An Assessment of the Visual Resources of Cape Elizabeth, Maine  
10 (February 19, 1989), a copy of which is on file with the Town Clerk

11  
12 ~~d. in a manner that preserves or allows the establishment of a vegetated~~  
13 ~~buffer to serve as an effective visual screen from adjacent properties~~

14  
15  
16 **3-2. Permanent Common Open Space Preservation**

17  
18 The land in the subdivision to be preserved as open space shall be permanently  
19 restricted using one or more of the following legal instruments.

20  
21 a. Restricted activities. The open space must be dedicated to the recreational  
22 amenity and environmental enhancement of the development, must protect  
23 natural resources, and must be recorded as such. For the purpose of these  
24 provisions, open space means an area that:

- 25  
26 (1) is not encumbered in any way by a principal structure;  
27  
28 (2) is not devoted to use as a roadway, road right-of-way, parking lot,  
29 or sidewalk;  
30  
31 (3) is left in its natural or undisturbed state, except for cutting of trails  
32 for walking or jogging, or is landscaped for ballfields, play fields,  
33 picnic areas, or similar activities, unless the land will be managed  
34 for forestry or used for agriculture;  
35  
36 (4) is capable of being used and enjoyed for the purpose of informal  
37 and unstructured recreation and relaxation; and  
38  
39 (5) is legally and practicably accessible to all residents of lots in the  
40 cluster development out of which the open space is taken.

41  
42 b. Permanent legal protection. The common open space shall be controlled  
43 by one (1) or more of the following methods:

- 44 (1) dedication to the Town as public open space subject to acceptance  
45 by the Town;  
46

- 1 (2) common ownership by the owners of the units within the project
- 2 with a conservation easement granted to the Town, subject to
- 3 acceptance by the Town, or recognized conservation organization;
- 4
- 5 (3) common ownership by the owners of units within the project;
- 6
- 7 (4) transfer, with permanent restrictions, to a land trust or other
- 8 recognized conservation organization; and/or
- 9
- 10 (5) ownership by a private party for agricultural or other natural
- 11 resource use provided that permanent restrictions are in place to
- 12 provide for its continued use for this purpose.
- 13

14 c. Maintenance: Any subdivision proposed under this section shall specify |  
 15 the ownership, use, management, and person responsible for maintenance  
 16 of all common areas and facilities. The Planning Board shall approve the  
 17 arrangements for the ownership, control, and maintenance of the common  
 18 open space in accordance with the standards of subsections a. and b. above  
 19 as part of the approval of a final subdivision plan. No changes in the use  
 20 or management of common open space not owned by the Town shall be  
 21 made without Planning Board approval and a note shall be provided on the  
 22 approved subdivision plan to this effect.

23  
 24 ~~d.~~ Any common open space or facility not retained by a private owner shall |  
 25 be maintained by a developer or homeowners’ association unless and until  
 26 it is transferred in its entirety to the Town or a recognized conservation  
 27 organization, and until the transfer actually is completed. The formation  
 28 and incorporation by the developer of a homeowners’ association, if one is  
 29 proposed, shall be accomplished prior to final subdivision approval.  
 30 Covenants for mandatory membership in the association shall be approved  
 31 by the Planning Board and included in the deed restrictions for each lot or  
 32 unit. The association’s documents shall specify that:

- 34 (1) The association shall have the responsibility of maintaining the
- 35 common open space and other private facilities dedicated to the
- 36 use in common by the development’s residents;
- 37
- 38 (2) The association shall levy annual charges against all property
- 39 owners to defray the expenses, if any, connected with maintenance
- 40 of the common open spaces and facilities; and
- 41

42 ~~(3) —The developer shall maintain control of common open spaces and facilities and be~~ |  
 43 ~~responsible for their maintenance until at least fifty-one percent (51%) of the~~  
 44 ~~development’s lots or units have been completed and sold, with evidence of such~~  
 45 ~~completion and sales submitted to and approved by the Planning Board.~~

1 **SEC. 19-7-8. OFF-STREET PARKING (Revised effective May 12, 2002)**

2  
3 a. Residential

4  
5 (1) Single Family Dwellings, 2 spaces per dwelling unit  
6 including manufactured  
7 housing

8  
9 (2) Two-Family Dwellings 2 spaces per dwelling unit

10  
11  
12 (3) Multiplex housing or 1.5 spaces per dwelling unit  
13 with  
14 multifamily dwellings one bedroom, 1.75 spaces for  
15 unit with two bedrooms, and  
16 2 spaces per unit with three  
17 or more bedrooms  
18

19 **SEC. 19-7-11. MULTIPLE PRINCIPAL BUILDINGS ON A LOT**

20  
21 If more than one (1) principal building is located on a lot, the lot size and location  
22 of each building shall be such that a separate lot conforming to the provisions of  
23 this Ordinance could be created for each building. The potential creation of a  
24 separate lot shall be demonstrated by submitting a plan to the Code Enforcement  
25 Officer showing how the land could be divided to create conforming lots.  
26

27 **SEC. 19-8-3. RESOURCE PROTECTION PERFORMANCE**  
28 **STANDARDS**

29  
30 All activities in the Resource Protection Districts shall comply with the following  
31 performance standards as applicable:  
32

33 **A. Resource Protection Permit Procedures**

34  
35 *1. Review*

36  
37 c. The Planning Board in its review of an application may require a "peer  
38 review" by a professional engineer, a botanist or other relevant expert. The cost of  
39 all such reviews, including the cost of review by the Town Engineer, shall be  
40 taken from the application's Review Escrow Account. If a Review Escrow  
41 Account has not been established pursuant to the provisions of other ordinances  
42 governing an aspect of the applicant's proposed activity, the Planning Board shall  
43 be authorized to require an applicant for a Resource Protection permit to establish  
44 a Review Escrow Account under the terms of Sec. 16-2-1(c) ~~16-2-4 (a)(1)~~ of the  
45 Subdivision Ordinance. Any funds not disbursed from the Review Escrow

1 Account shall be promptly returned to the applicant upon final disposition of his  
2 or her application.  
3

4 **SEC. 19-8-5. EARTH MATERIALS REMOVAL STANDARDS**

5  
6 **C. Permit Procedures (Amended effective February 14, 2002)**

7  
8 3. The Planning Board in its review of an application may require a “peer  
9 review” by a professional engineer or other relevant expert. The cost of all  
10 such review, including the cost of review by the Town Engineer, shall be  
11 taken from the application’s Review Escrow Account. If a Review Escrow  
12 Account has not been established pursuant to the provisions of other  
13 ordinances governing an aspect of the applicant’s proposed activity, the  
14 Planning Board shall be authorized to require an applicant for an earth  
15 materials permit to establish a Review Escrow Account under the terms of  
16 Sec. ~~16-2-4(a)(1)~~16-2-1(c) of the Subdivision Ordinance. Any funds not  
17 disbursed from the Review Escrow Account shall be promptly returned to the  
18 applicant upon final disposition of his or her application.  
19

20 4. Within thirty-five (35) days following the public hearing, or such longer  
21 period as may be mutually agreeable to the Planning Board and the applicant,  
22 the Planning Board shall render its decision to approve, to approve with  
23 conditions or to disapprove in writing, specifying the reasons therefore.  
24 Notwithstanding other provisions of this Ordinance, the applicant, or any  
25 property owner entitled to notice of the public hearing, who is aggrieved by a  
26 decision of the Planning Board under this ordinance, may appeal to the  
27 Superior Court as provided by the Maine Rules of Civil Procedure.  
28

29 5. The Planning Board may require the applicant furnish to the Town, before the  
30 issuance of a permit, a performance guarantee in accordance with Section ~~16-~~  
31 ~~2-6(c)~~16-2-4(e)(7)(A) of the Subdivision Ordinance. The amount and the  
32 conditions shall be consistent with the purposes of this Ordinance and shall  
33 secure the proper performance of the alteration work. The amount shall be  
34 based upon the estimated cost of completing or correcting any work necessary  
35 to satisfy the conditions of the permit and the criteria of this Ordinance plus  
36 the estimated costs of preventing or correcting any damage to the subject or  
37 other property which the Planning Board considers probable or of sufficient  
38 gravity to justify the expected expense of such guarantee.  
39

40 **SEC. 19-8-12. TOWER AND ANTENNA PERFORMANCE**  
41 **STANDARDS (Effective April 15, 2000)**

42  
43 2. *Performance Standards*  
44

- j. Performance Guarantee. No building permit may be issued until the applicant has provided a performance guarantee to the town in accordance with Sec. ~~16-2-6(c)~~~~16-2-4(e)(7)(a)~~, Subdivision Ordinance.

**ARTICLE IX. SITE PLAN REVIEW**

**SEC. 19-9-4. REVIEW PROCEDURES**

**B. Application Review Procedures**

- 1. After an application has been submitted with the requisite fees, including establishment of a Review Escrow Account under the terms of Sec. ~~16-2-1(c)~~~~16-2-4(a)(1)~~ of the Subdivision Ordinance, and after any required Zoning Board of Appeals approval has been obtained, the Town Planner shall issue a dated receipt to the applicant.
- 2. Upon certification by the Planning Board that an application is complete, the Planning Board, at its discretion, may hold a public hearing. If the Planning Board determines to hold a public hearing, it shall hold the hearing within thirty-five (35) days of the date that the application is deemed complete and shall provide public notice in accordance with Sec. ~~16-2-1(b)~~~~16-2-4(a)(7)~~ of the Subdivision Ordinance.
- 3. The Planning Board, at its discretion, may require that a performance guarantee be established with the Town for the cost of site improvements. Each performance guarantee shall comply with Sec. ~~16-2-6(c)~~~~16-2-4(e)(6) and (7)(A)~~ of the Subdivision Ordinance. An inspection fee shall be paid in accordance with Sec. ~~16-2-6(d)~~~~16-2-6(a)~~.

