

**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]

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11 **CHAPTER 19**

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13 **ZONING ORDINANCE**

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

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

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

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

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

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

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

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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.

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

MINIMUM LOT AREA	
<i>(1) Boat repair facility for commercial purposes</i>	200,000 sq. ft. (4.6 acres)
<i>(2) Multiplex housing</i>	10.5 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.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
<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
MINIMUM SETBACKS	
<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. (Effective August 11, 1999)
(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. (Effective August 11, 1999)
© 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.
<i>(2) Multiplex housing and eldercare facilities</i>	
(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.

1 (c) Front yard setback 20 ft.

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

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5 **A. Purpose**

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

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18 **B. Permitted Uses**

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20 **2. The following residential uses:**

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

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28 **E. Standards**

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

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

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MINIMUM LOT AREA	
<i>(1) Eldercare facilities</i>	5 acres
<i>(2) Wind energy systems</i>	20,000 sq. ft. (Effective October 8, 2008)
<i>(3) Other uses</i>	80,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	

<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
MINIMUM STREET FRONTAGE	
<i>(1) All uses</i>	125 ft.
MINIMUM SETBACKS	
<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. (Effective August 11, 1999)
(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. (Effective August 11, 1999)
(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 sewerred 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 or woodland uses, and are not considered to be valuable, large-scale open space with valued scenery or wildlife habitat. The purpose of the district is to provide for areas of compact development that can foster cohesive neighborhoods that are close to community services.

B. Permitted Uses

2. The following residential uses:

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

E. Standards

2. The following Space and Bulk Standards shall apply:

MINIMUM LOT AREA	
<i>(1) Boat repair facility for commercial purposes</i>	200,000 sq. ft. (4.6 acres)
<i>(2) Multiplex housing</i>	5 <u>3</u> acres
<i>(3) Eldercare facilities</i>	5 acres
<i>(4) Wind energy systems</i>	20,000 sq. ft. (Effective October 8, 2008)
<i>(5) Others</i>	20,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
<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 (Effective May 9, 2007)
<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
MAXIMUM NUMBER OF BED AND BREAKFAST ROOMS	
<i>Bed and Breakfast Guest Room</i>	1 room per 5,000 sq. ft of gross lot area
MINIMUM STREET FRONTAGE	
<i>(1) Bed and Breakfast</i>	100 ft. on Shore Road or Route 77
<i>(2) All uses</i>	100 ft.
MINIMUM SETBACKS	
<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. (Effective August 11, 1999)
(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. (Effective August 11, 1999)
(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.
<i>(2) Multiplex housing and eldercare facilities</i>	
(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:*

- 1 a. Single family dwelling
- 2 b. Bed and breakfast
- 3 c. Multifamily dwelling unit
- 4 d. Congregate housing, subject to the provisions of Sec. 19-7-6, Eldercare
- 5 Facility Standards
- 6 e. Rooming or boarding home
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- 8 **D. Standards**
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- 10 2. *The following Space and Bulk Standards shall apply:*
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MINIMUM LOT AREA	
<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 (Effective October 8, 2008)
<i>(4) Other uses</i>	None
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
<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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13 **SEC. 19-6-5. BUSINESS DISTRICT A (BA)**

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15 **A. Purpose**

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17 The Business A District is comprised of neighborhood business districts in which the
18 business uses are geared to the needs of nearby residents rather than a large scale,
19 regional destination center. The district requirements seek to promote (i) business
20 vitality, (ii) pedestrian connectivity between the business district and the adjacent
21 residential areas, (iii) a mix of commercial and housing uses, (iv) high quality design that
22 is pedestrian friendly, compatible with, and protects the integrity of the adjacent
23 residential neighborhood, and (v) an efficient use of the land within the district for
24 business uses. The Business A district regulations recognize that the BA District in the
25 Sore Road area and the BA District in the Ocean House Road area are individually

1 distinctive and may require different treatments, which are specified herein. **(Effective**
 2 **July 8, 2009)**

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 4 **B. Permitted Uses**

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 6 **2. The following residential uses:**

- 7
- 8 a. Single family detached dwelling existing as of April 1, 2008 **(Effective**
 9 **July 8, 2009)**
- 10 a. Multifamily dwelling units **(Effective July 8, 2009)**
- 11 b. Congregate housing, subject to the provisions of Sec. 19-7-6. Eldercare
 12 Facility Standards **(Effective July 8, 2009)**
- 13 d. Rooming or boarding home
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MINIMUM LOT AREA	
(1) Single family dwelling unit i. adjacent to the RA District ii. adjacent to the RC District	80,000 sq. ft. 20,000 sq. ft. (Effective July 8, 2009)
(2) Multifamily dwelling unit	15,000 sq. ft.
(3) Wind energy systems	20,000sq. ft (Effective October 8, 2008)
(4) Other uses	None
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multifamily housing in a mixed use building or multiplex housing	1 unit per 7,500 sq. ft. of net residential area (Effective July 8, 2009)
(2) Rooming or boarding home	1 bed per 5,000 sq. ft. of gross lot area

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 16 **SEC. 19-6-9. RESOURCE PROTECTION DISTRICTS**

17 (RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F)

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 19 **D. Prohibited Uses**

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

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

A. Applicability

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)**

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

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1 criteria of the net residential area definition. [For example, if a parcel consists of
2 one hundred twenty (120) acres, at least forty-eight (48) acres shall be kept as
3 open space. Of this forty-eight (48) acres, at least sixteen (16) acres shall be
4 usable applying the criteria of the net residential area definition.]

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6 **D. Open Space Design Standards**

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

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12 **1e. Open Space Layout**

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14 The land within the subdivision to be preserved as open space shall be designed in
15 accordance with the following standards.

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17 a. Contiguous land. To the greatest extent possible, open space shall be conserved
18 in large, contiguous blocks. Narrow strips of open space (for example, extended
19 strips of open space of less than fifty (50) feet in width) shall not be included in
20 the open space design unless they provide public access connectors to nearby
21 public open space (which includes lands and/or greenbelt trails), wildlife corridors
22 or links to neighborhoods that would benefit from use of the open space to be
23 preserved.

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25 b. Connectivity. Where public open space is located in close proximity to the
26 subdivision, open space shall be laid out to concentrate land to be preserved
27 adjacent to or near existing public open space. Access for lots/units in the
28 development shall be provided to land to be preserved as open space. Greenbelt
29 trail connections to existing public open space and land to be preserved shall also
30 be provided where appropriate. ~~in a manner that maximizes the amount of~~
31 ~~contiguous, usable area for agriculture or woodlot production, and outdoor~~
32 ~~recreation included as part of the required open space~~

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

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37 **2f. ~~Priorities for Location of Lots and Open Space~~ Preservation Priorities**

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39 The land within the subdivision to be preserved as open space shall be determined
40 using the following priorities, in the order that they appear. When the amount of
41 land that qualifies as a priority exceeds the amount required to be preserved under
42 Sec. 19-7-2 (C)(4), Open Space Zoning, the lower priority open space lands may
43 be included in the developed portion of the property. ~~The Planning Board shall~~
44 ~~find that individual building lots or building locations are laid out to achieve the~~
45 ~~following objectives, as applicable. Where the Planning Board finds that~~
46 ~~objectives conflict, the objectives shall be achieved in the order listed:~~

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- a. ~~on soils suitable for subsurface wastewater disposal where on site wastewater disposal is to be used~~
- b. Wetlands/environmentally sensitive areas/wildlife habitat. In a manner that preserves ~~as part of the required open space~~ environmentally sensitive areas, such as wetlands, steep slopes (as included in the computation of net residential area), flood plains, and wildlife habitat rated by the Maine Department of Inland Fisheries and Wildlife as high value, ~~and unique natural features~~
- b. Agriculture. In a manner that preserves active agricultural fields as identified in the Future Open Space Preservation (FOSP) report, and as subsequently amended by the Town Council.
- c. Greenbelt and Recreation area. In a manner that preserves and promotes connectivity of the Cape Elizabeth greenbelt townwide.
- d. Scenic character. In a manner that preserves visual resources identified in An Assessment of the Visual Resources of Cape Elizabeth, Maine (February 19, 1989), a copy of which is on file with the Town Clerk
- d. ~~in a manner that preserves or allows the establishment of a vegetated buffer to serve as an effective visual screen from adjacent properties~~

3-2. Permanent ~~Common~~ Open Space Preservation

The land in the subdivision to be preserved as open space shall be permanently preserved, and meet the following standards.

- a. Restricted activities. Activities on the open space shall be restricted to preserve the open space from future development.

No principal residential, commercial or other buildings shall be constructed on the preserved open space. Structures related to the preservation priorities in Sec. 19-7-2 (D) (2) may be allowed. For example, open space preserved as a (i) wetlands/environmentally sensitive areas/wildlife habitat priority may include viewing platforms, nature observation shelters, or boardwalk and bridge structures; (ii) agriculture priority may include a barn or shed structure; (iii) greenbelt and recreation area may include boardwalk and bridge structures; and (iv) scenic character areas may include an overlook. The open space must be dedicated to the recreational amenity and environmental enhancement of the development, must protect natural resources, and must be recorded as such. For the purpose of these provisions, open space means an area that:

Existing vegetation shall be preserved, but vegetation management related to the preservation priorities may be allowed. For example, open space preserved as a (i) wetlands/environmentally sensitive areas/wildlife habitat priority may include limited clearing and vegetation trimming to install and maintain greenbelt trails; (ii) agriculture priority may include tilling of fields and animal grazing; (iii) greenbelt and recreation area may include construction and maintenance of athletic fields; and (iv) scenic character areas may include vegetation removal and management to create and maintain public views.

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

b. Permanent legal protection. Deed and/or easement documents shall be prepared and recorded to permanently protect the land within the subdivision to be preserved as open space. Documentation shall be submitted to the Planning Board as part of the application review. Documentation shall specify the ownership structure of the open space. For example, land within the subdivision to be preserved as open space may be deeded to the Town of Cape Elizabeth, subdivision homeowners association, a third party conservation organization or retained by the applicant. Documentation shall specify, at a minimum, restricted activities and vegetation preservation. Access to the open space must be made available to the homeowners of the subdivision and is strongly encouraged to be made available to the public, and may be modified consistent with the open space priorities. The common open space shall be controlled by one (1) or more of the following methods:

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

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- ~~(2) — common ownership by the owners of the units within the project with a conservation easement granted to the Town, subject to acceptance by the Town, or recognized conservation organization;~~
- ~~(3) — common ownership by the owners of units within the project;~~
- ~~(4) — transfer, with permanent restrictions, to a land trust or other recognized conservation organization; and/or~~
- ~~(5) — ownership by a private party for agricultural or other natural resource use provided that permanent restrictions are in place to provide for its continued use for this purpose.~~
- c. ~~Maintenance: If the land in the subdivision to be preserved as open space shall not be deeded to the Town of Cape Elizabeth, documentation shall be submitted describing the responsible party and methods to be employed to maintain the open space as described in the documentation. Any subdivision proposed under this section shall specify the ownership, use, management, and person responsible for maintenance of all common areas and facilities. The Planning Board shall approve the arrangements for the ownership, control, and maintenance of the common open space in accordance with the standards of subsections a. and b. above as part of the approval of a final subdivision plan. No changes in the use or management of common open space not owned by the Town shall be made without Planning Board approval and a note shall be provided on the approved subdivision plan to this effect.~~
- d. ~~Any common open space or facility not retained by a private owner shall be maintained by a developer or homeowners' association unless and until it is transferred in its entirety to the Town or a recognized conservation organization, and until the transfer actually is completed. The formation and incorporation by the developer of a homeowners' association, if one is proposed, shall be accomplished prior to final subdivision approval. Covenants for mandatory membership in the association shall be approved by the Planning Board and included in the deed restrictions for each lot or unit. The association's documents shall specify that:~~
 - ~~(1) — The association shall have the responsibility of maintaining the common open space and other private facilities dedicated to the use in common by the development's residents;~~
 - ~~(2) — The association shall levy annual charges against all property owners to defray the expenses, if any, connected with maintenance of the common open spaces and facilities; and~~

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

SEC. 19-7-3. TRANSFER OF DEVELOPMENT RIGHTS

A. Applicability

The Planning Board may approve residential developments in the Residence A District that exceed the density standards of Sec. 19-6-1.E, Standards, due to the transfer of development rights, provided that the development conforms to all of the following criteria:

- 1. The development is consistent with the comprehensive plan;
- 2. The development conforms to the requirements set forth in Sec. 19-7-3.B, Standards;
- 3. The parcel proposed for development is not designated as a transfer zone under the provisions of Sec. 19-7-3.C, Transfer Zone;
- 4. Development rights equal to the increase in density will be transferred from a lot or lots within the Transfer Zone through conservation easements on land meeting the requirements of Sec. 19-7-3.D, Easement Reservation, that have been approved by the Planning Board and have received preliminary approval by the Town Council.
- 5. The proposed development will be a clustered development in accordance with Sec. 19-7-2, Open Space Zoning.

B. Standards

The Planning Board may approve residential developments utilizing transferred development rights that conform with the following requirements provided that the applicant has transferred the appropriate number of development rights to support the increased density from land located within a transfer zone in accordance with Sec. 19-7-3.D., Easement Reservation.

MINIMUM <u>RECEIVING</u> LOT AREA	
(1) <i>All residential uses involving transfers of development rights</i>	10 acres
MAXIMUM DENSITY OF A SUBDIVISION UTILIZING TRANSFER OF DEVELOPMENT RIGHTS	

<i>(1) Developments in the RA District connected to the public sewerage system</i>	1 lot /unit per 20,000 sq. ft. of net residential area
<i>(2) Developments in the RA District served by on-site sewage disposal when the development rights are transferred from an abutting parcel</i>	1 lot /unit per 40,000 sq. ft. of net residential area
<i>(3) Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel in the same ownership as the development parcel</i>	1 lot /unit per 40,000 sq. ft. of net residential area
<i>(4) Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel located within two thousand feet of the perimeter of the development parcel</i>	1 lot /unit per 50,000 sq. ft. of net residential area
<i>(5) Developments in the RA District served by on-site sewage disposal when the development rights are transferred from a parcel located more than two thousand feet from the perimeter of the development parcel</i>	1 lot /unit per 60,000 sq. ft. of net residential area

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C. Transfer Zone

Development rights may be transferred from any parcel ~~located within a transfer zone.~~ designated as a TDR sending area on the official Transfer of Development Rights map. ~~The transfer zones shall be shown on the Transfer Zone-Transfer of Development Rights (TDR) Map which shall be part of the Ordinance.~~ The Map shall designate parcels or tracts of land within the RA District that are appropriate for conservation by reason of one or more of the following attributes:

1. The land is used for agricultural purposes
2. The land is identified as having greenbelt and/or recreation area value in the most recent town Greenbelt Plan ~~in the visual analysis as being of scenic value~~
3. The land is identified as having significant wildlife habitat value ~~has identified historic or archaeological significance~~
4. The land is has significant scenic, cultural and/or unique properties identified by the Town Council using a public process ~~used for forestry purposes and is within two hundred fifty (250) feet of public road.~~

D. Easement Reservation

The Planning Board may approve a development that exceeds the base density only if the applicant provides a conservation easement(s) on land located within a TDR sending area as depicted on the Transfer of Development Rights (TDT) map ~~transfer zone~~. For each

1 unit in the proposed development in excess of that allowed by the base RA density, a
2 conservation easement shall be provided on at least sixty-four thousand (64,000) square
3 feet of net residential area within a designated transfer zone. The conservation
4 easement(s) shall be perpetual subject to the terms of Sec. 19-7-3.E, Easement
5 Provisions.

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7 **E. Easement Provisions**

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9 The form and conditions of each easement shall be determined by the Planning Board,
10 and approved by the Town Council. The easement shall be recorded in the Cumberland
11 County Registry of Deeds within ninety (90) days of the vote of approval of the
12 development by the Planning Board and a copy provided to the Town Planner.

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14
15 **SEC. 19-7-8. OFF-STREET PARKING (Revised effective May 12, 2002)**

16
17 a. Residential

- | | | | |
|----|-----|--------------------------|------------------------------|
| 18 | (1) | Single Family Dwellings, | 2 spaces per dwelling unit |
| 19 | | | including manufactured |
| 20 | | housing | |
| 21 | | | |
| 22 | (2) | Two-Family Dwellings | 2 spaces per dwelling unit |
| 23 | | | |
| 24 | (3) | Multiplex housing or | 1.5 spaces per dwelling unit |
| 25 | | with | |
| 26 | | multifamily dwellings | one bedroom, 1.75 spaces for |
| 27 | | | unit with two bedrooms, and |
| 28 | | | 2 spaces per unit with three |
| 29 | | | or more bedrooms |
| 30 | | | |
| 31 | | | |
| 32 | | | |

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

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

40
41 **SEC. 19-8-3. RESOURCE PROTECTION PERFORMANCE**
42 **STANDARDS**

43
44 All activities in the Resource Protection Districts shall comply with the following
45 performance standards as applicable:
46

1 **A. Resource Protection Permit Procedures**

2
3 ***1. Review***

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

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

18
19 **C. Permit Procedures (Amended effective February 14, 2002)**

- 20
21 3. The Planning Board in its review of an application may require a "peer
22 review" by a professional engineer or other relevant expert. The cost of all
23 such review, including the cost of review by the Town Engineer, shall be
24 taken from the application's Review Escrow Account. If a Review Escrow
25 Account has not been established pursuant to the provisions of other
26 ordinances governing an aspect of the applicant's proposed activity, the
27 Planning Board shall be authorized to require an applicant for an earth
28 materials permit to establish a Review Escrow Account under the terms of
29 Sec. ~~16-2-4(a)(1)~~ ~~16-2-1(c)~~ of the Subdivision Ordinance. Any funds not
30 disbursed from the Review Escrow Account shall be promptly returned to the
31 applicant upon final disposition of his or her application.
32
33 4. Within thirty-five (35) days following the public hearing, or such longer
34 period as may be mutually agreeable to the Planning Board and the applicant,
35 the Planning Board shall render its decision to approve, to approve with
36 conditions or to disapprove in writing, specifying the reasons therefore.
37 Notwithstanding other provisions of this Ordinance, the applicant, or any
38 property owner entitled to notice of the public hearing, who is aggrieved by a
39 decision of the Planning Board under this ordinance, may appeal to the
40 Superior Court as provided by the Maine Rules of Civil Procedure.
41
42 5. The Planning Board may require the applicant furnish to the Town, before the
43 issuance of a permit, a performance guarantee in accordance with Section ~~16-~~
44 ~~2-6(c)~~ ~~16-2-4(e)(7)(A)~~ of the Subdivision Ordinance. The amount and the
45 conditions shall be consistent with the purposes of this Ordinance and shall
46 secure the proper performance of the alteration work. The amount shall be

1 based upon the estimated cost of completing or correcting any work necessary
2 to satisfy the conditions of the permit and the criteria of this Ordinance plus
3 the estimated costs of preventing or correcting any damage to the subject or
4 other property which the Planning Board considers probable or of sufficient
5 gravity to justify the expected expense of such guarantee.
6

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

9
10 **2. Performance Standards**

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12 j. Performance Guarantee. No building permit may be issued until the
13 applicant has provided a performance guarantee to the town in accordance
14 with Sec. ~~16-2-6(c)16-2-4(e)(7)(a)~~, Subdivision Ordinance.
15

16 **ARTICLE IX. SITE PLAN REVIEW**

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

19
20 **B. Application Review Procedures**

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22 **1.** After an application has been submitted with the requisite fees, including
23 establishment of a Review Escrow Account under the terms of Sec. ~~16-2-1(c)16-~~
24 ~~2-4 (a) (1)~~ of the Subdivision Ordinance, and after any required Zoning Board of
25 Appeals approval has been obtained, the Town Planner shall issue a dated receipt
26 to the applicant.
27

28 **2.** Upon certification by the Planning Board that an application is complete, the
29 Planning Board, at its discretion, may hold a public hearing. If the Planning
30 Board determines to hold a public hearing, it shall hold the hearing within thirty-
31 five (35) days of the date that the application is deemed complete and shall
32 provide public notice in accordance with Sec. ~~16-2-1(b)16-2-4 (a)(7)~~ of the
33 Subdivision Ordinance.
34

35 **3.** The Planning Board, at its discretion, may require that a performance guarantee
36 be established with the Town for the cost of site improvements. Each
37 performance guarantee shall comply with Sec. ~~16-2-6(c)16-2-4 (e)(6) and (7)(A)~~
38 ~~of the~~ Subdivision Ordinance. An inspection fee shall be paid in accordance with
39 Sec. ~~16-2-6(d).16-2-6 (a)~~.
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