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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.

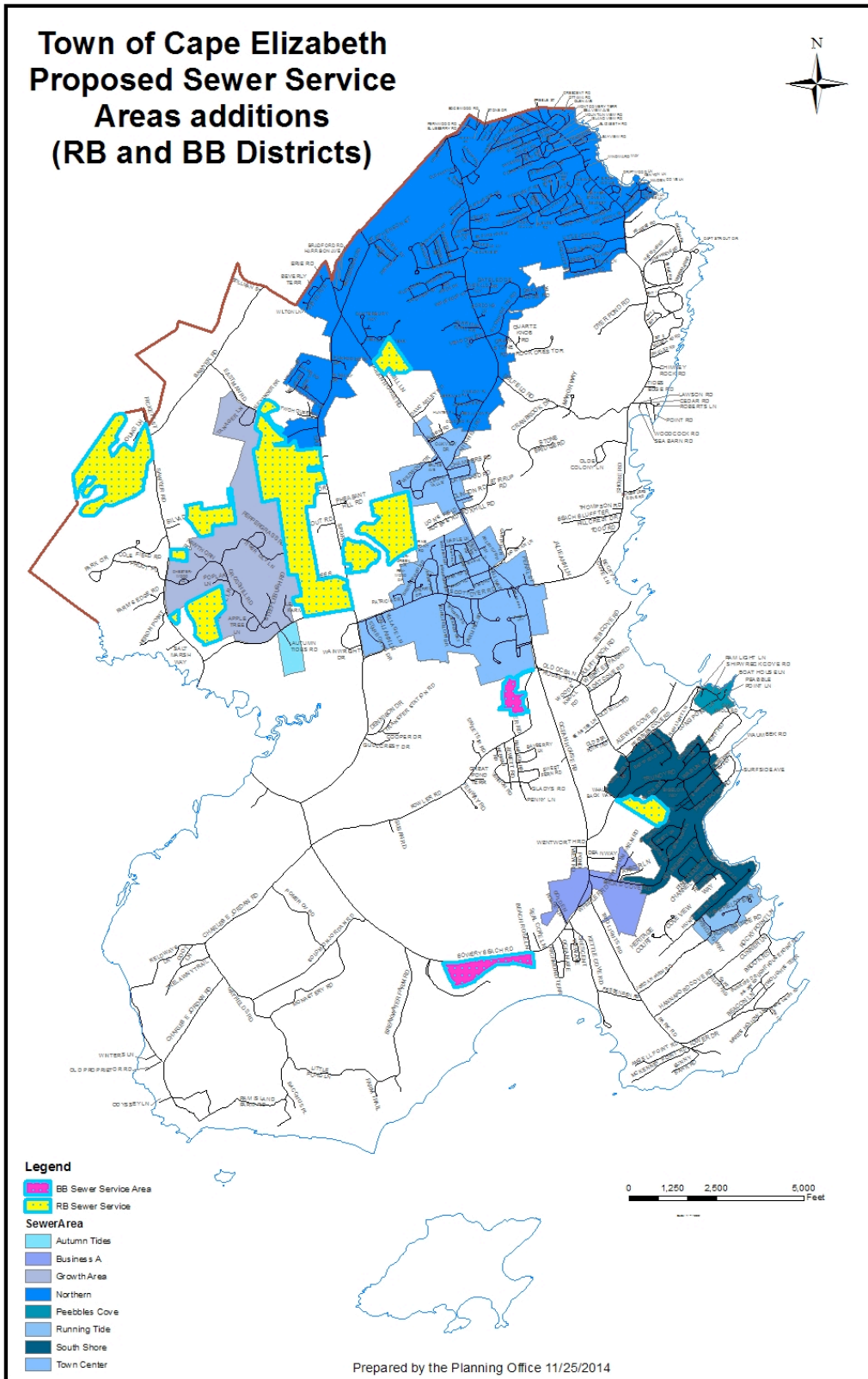
The owner of any house, building or other structure used for human occupancy, employment, recreational or other purpose which requires the disposal of sewage and which is located upon a lot eligible to connect to the public sewer as provided above, shall at the owner's expense connect its sewer facility 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 the end of any stub provided by the Town, otherwise from the public sewer line, (ii) to a

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

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**CHAPTER 16
SUBDIVISION ORDINANCE**

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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

- 1. Purpose. In order to accommodate the expected needs of the subdivision for open space and recreational areas without diminishing the community standard of public open space, the applicant shall be required to donate land with legal public access or otherwise conserved with a public benefit or a cash contribution in lieu of actual land dedication, or a combination of the above, at the option of the Planning Board and with the advice of the Conservation Commission. When a subdivision is designed in compliance with Sec. 19-7-2, Open Space Zoning, the open space conserved shall be deemed to satisfy the Open Space Impact Fee.

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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. 19-4-3. NONCONFORMANCE OUTSIDE OF SHORELAND AND RESOURCE PROTECTION DISTRICTS

The following provisions shall govern the use and modification of nonconforming lots, structures, and uses in all areas of the Town that are not located within a Shoreland Performance Overlay District or a Resource Protection District. Nonconformities within the Shoreland Performance Overlay District shall be governed by the provisions of Sec. 19-4-4, Nonconformance Within the Shoreland Protection Overlay District, and nonconformities in the Resource Protection Districts (RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F) shall be governed by the provisions of Sec. 19-4-5, Nonconformance Within the Resource Protection Districts.

A. Nonconforming Lots

The following provisions shall govern the development of lots that are nonconforming because they do not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage, or similar requirement of the district within which they are located. Lots which do not meet the minimum street frontage requirement shall comply with Sec. 19-7-9, Private Access Provisions.

1. Vacant Nonconforming Lots

- a. Vacant nonconforming lots may be built upon in conformance with the provisions of the district in which they are located even though the lots do not meet the minimum lot area, net lot area per dwelling unit, street frontage, or similar requirements as long as the requirements of the chart below are met. **(Effective August 11, 1999 and revised effective July 4, 2001)**

| | | | |
|-----------------------|------------------------|------------------------|--|
| One Owner | One Owner | One Owner | Individual Lots May Be built On |
| Non-Conforming Lot | Non- Conforming Lot | Non- Conforming Lot | |

| | | | |
|---------------------------|-------------------------------|--|---|
| One Owner | | | Proposed undersized lot is NOT buildable |
| One Owner | Conforming Lot | | |
| Non- Conforming Lot | Proposed Undersized Lot | | |

The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met: **(Effective August 11, 1999)**

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.

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. |

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

- 3
- 4 (a) Side yard setback 20 ft.
- 5
- 6 (b) Rear yard setback 20 ft.
- 7
- 8 (c) Front yard setback 20 ft.
- 9

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

11
12 **A. Purpose**

13
14 The Residence B District is differentiated from the Residence A District in that
15 subdivisions in Residence B are required to be laid out according to the principles of
16 open space zoning, as described in Sec. 19-7-2, Open Space Zoning. The Residence B
17 District includes lands outside of the built-up parts of Town where the Comprehensive
18 Plan indicates growth can and should be accommodated as a result of soils suitable for
19 individual or common septic systems or the extension of public sewer lines. The purpose
20 of this district is to allow a significant portion of the Town’s anticipated residential
21 growth to occur in these areas, in a manner that preserves the character of rural lands,
22 promotes healthy neighborhoods, offers flexibility in design, and minimizes the costs of
23 municipal services.
24

25 **B. Permitted Uses**

26
27 **2. The following residential uses:**

- 28
- 29 a. Single family dwelling
- 30 b. Manufactured housing on an individual lot
- 31 c. Multiplex housing
- 32 d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility
- 33 Standards
- 34

35 **E. Standards**

36
37 **2. The following Space and Bulk Standards shall apply:**

- 38
- 39 a. Lots that are part of residential subdivisions approved by the Planning Board after
40 June 4, 1997, shall comply with the terms of Sec. 19-7-2, Open Space Zoning, except that
41 subdivisions for which completed applications have been submitted to the Planning
42 Board prior to June 4, 1997, shall be subject to the regulations in effect at the time of
43 their submission.
44

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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. |

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 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> | 5-3 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

1 apply in the core subdistrict, except where standards specific to the Town Center Core
 2 Subdistrict are established.

3
 4 **B. Permitted Uses**

5
 6 2. *The following residential uses:*

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

14
 15 **D. Standards**

16
 17 2. *The following Space and Bulk Standards shall apply:*

| 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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 20 **SEC. 19-6-5. BUSINESS DISTRICT A (BA)**

21
 22 **A. Purpose**

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 24 The Business A District is comprised of neighborhood business districts in which the
 25 business uses are geared to the needs of nearby residents rather than a large scale,
 26 regional destination center. The district requirements seek to promote (i) business

vitality, (ii) pedestrian connectivity between the business district and the adjacent residential areas, (iii) a mix of commercial and housing uses, (iv) high quality design that is pedestrian friendly, compatible with, and protects the integrity of the adjacent residential neighborhood, and (v) an efficient use of the land within the district for business uses. The Business A district regulations recognize that the BA District in the Sore Road area and the BA District in the Ocean House Road area are individually distinctive and may require different treatments, which are specified herein. **(Effective July 8, 2009)**

B. Permitted Uses

2. The following residential uses:

- a. Single family detached dwelling existing as of April 1, 2008 **(Effective July 8, 2009)**
- b. Multifamily dwelling units **(Effective July 8, 2009)**
- c. Congregate housing, subject to the provisions of Sec. 19-7-6. Eldercare Facility Standards **(Effective July 8, 2009)**
- d. Rooming or boarding home

| 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 |

SEC. 19-6-9. RESOURCE PROTECTION DISTRICTS

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

D. Prohibited Uses

1 Uses shown as prohibited uses on Table 19-6-9 and any other use not specifically listed
 2 as a permitted use or a use permitted with a resource protection permit shall be prohibited
 3 in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F Districts.
 4

5 **TABLE 19-6-9**
 6
 7

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

8
 9 **SEC. 19-7-2. OPEN SPACE ZONING**
 10

11 **A. Applicability**
 12

13 **1. Residence B District**
 14

15 The provisions of this section shall be mandatory for residential subdivisions in
 16 the Residence B District.
 17

18 **2. Other Districts**
 19

20 In the Residence A District and Residence C District, the provisions of this
 21 section shall be optional. In such districts, notwithstanding other provisions of
 22 this Ordinance, the Planning Board in reviewing and approving proposed
 23 residential subdivisions may modify provisions relating to space and bulk,
 24 including but not limited to increasing setbacks, to permit innovative approaches
 25 to housing and environmental design in accordance with the standards of this
 26 Article. Such modifications of Space and Bulk Standards shall not be construed
 27 as granting variances to relieve hardship. **(Revised effective December 10, 2003)**
 28

29 **C. Dimensional Standards**
 30

31 The average size of the individual lots shall be smaller than that required in the district in
 32 which the cluster development is located and the balance of the required area shall be
 33 reserved as open space. The lots and open space shall conform to the following Space
 34 and Bulk Standards:
 35

36 **1. Density**
 37

38 The overall density of the subdivision shall not exceed the density requirements of
 39 the district in which it is located as shown in the chart below. In the event that a
 40 subdivision is located in more than one zoning district, the overall density of the
 41 subdivision shall not exceed the combination of the density requirements of the
 42 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 30,000 <u>20,000</u> sq. ft. of net residential area with public sewerage | 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 |
| 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.

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.]

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.~~

1e. Open Space Layout

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

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

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

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

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

The land within the subdivision to be preserved as open space shall be determined using the following priorities, in the order that they appear. When the amount of

land that qualifies as a priority exceeds the amount required to be preserved under Sec. 19-7-2 (C)(4), Open Space Zoning, the lower priority open space lands may be included in the developed portion of the property. The Planning Board shall find that individual building lots or building locations are laid out to achieve the following objectives, as applicable. Where the Planning Board finds that objectives conflict, the objectives shall be achieved in the order listed:

- 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.
- de. 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;~~
- ~~(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 ~~TDR sending transfer zone on the Transfer of Development Rights map 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> | <u>510</u> acres |
| MAXIMUM DENSITY OF A SUBDIVISION UTILIZING TRANSFER OF DEVELOPMENT RIGHTS | |
| (1) <i>Developments in the RA District connected to the public sewerage system</i> | 1 <u>lot</u> /unit per 20,000 sq. ft. of net residential area |
| (2) <i>Developments in the RA District served by on-site sewage disposal when the development rights are transferred from an abutting parcel</i> | 1 <u>lot</u> /unit per 40,000 sq. ft. of net residential area |
| (3) <i>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 <u>lot</u> /unit per 40,000 sq. ft. of net residential area |
| (4) <i>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 <u>lot</u> /unit per 50,000 sq. ft. of net residential area |
| (5) <i>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 <u>lot</u> /unit per 60,000 sq. ft. of net residential area |

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C. TDR Sending-Transfer Zone

Development rights may be transferred from any parcel designated as a TDR sending zone on the official Transfer of Development Rights map located within a transfer zone.
~~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.

1 **D. Easement Reservation**

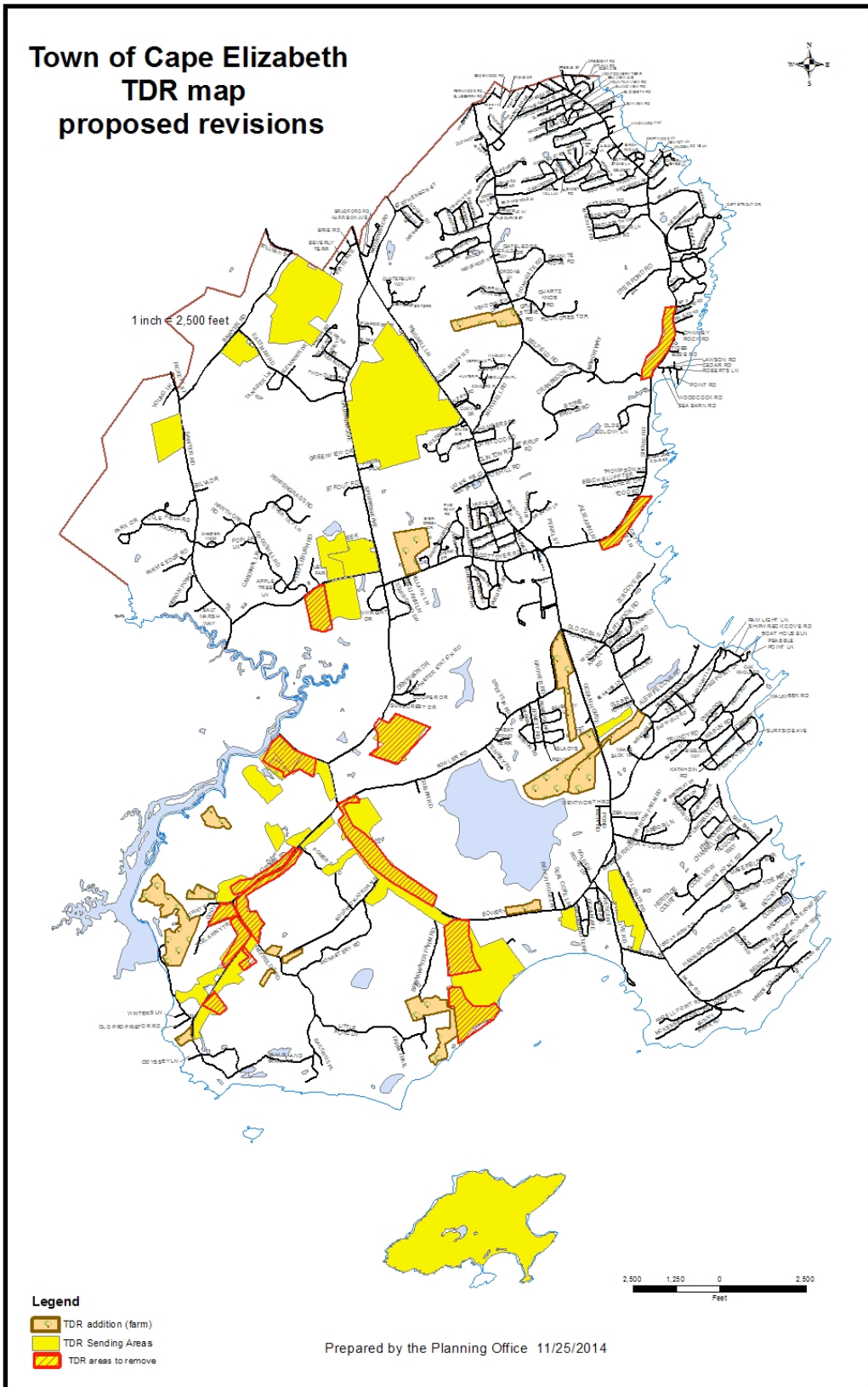
2
3 The Planning Board may approve a development that exceeds the base density only if the
4 applicant provides a conservation easement(s) on land located within a TDR sending
5 zone as depicted on the Transfer of Development Rights (TDR) map~~transfer zone~~. For
6 each unit in the proposed development in excess of that allowed by the base RA density,
7 a conservation easement shall be provided on at least sixty-four thousand (64,000) square
8 feet of net residential area within a designated TDR sending~~transfer~~ zone, except as
9 provided in subsection F, Agricultural Transfer of Development Bonus. The
10 conservation easement(s) shall be perpetual subject to the terms of Sec. 19-7-3.E,
11 Easement Provisions.

12
13 **E. Easement Provisions**

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

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20 **F. Agricultural Transfer of Development Bonus**

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22 Land that has been designated a TDR sending area because it is used for agricultural
23 purposes may transfer up to 33% more development rights than the density allowed on
24 the agricultural land. For each 1.34 development right transferred, a conservation
25 easement shall be provided on at least sixty-four thousand (64,000) square feet of net
26 residential area within a designated TDR sending zone. The conservation easement(s)
27 shall be perpetual subject to the terms of Sec. 19-7-3.E, Easement Provisions.
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SEC. 19-7-8. OFF-STREET PARKING (Revised effective May 12, 2002)

a. Residential

(1) Single Family Dwellings, 2 spaces per dwelling unit including manufactured housing

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

(3) Multiplex housing or with multifamily dwellings 1.5 spaces per dwelling unit one bedroom, 1.75 spaces for unit with two bedrooms, and 2 spaces per unit with three or more bedrooms

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

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

SEC. 19-8-3. RESOURCE PROTECTION PERFORMANCE STANDARDS

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

A. Resource Protection Permit Procedures

1. Review

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

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

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

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

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

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

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

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

2. Performance Standards

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)~~.