

# **Chapter 19**

## **Zoning Ordinance**

### **Town of Cape Elizabeth, Maine**

**Effective May 9, 2007**

## **TABLE of CONTENTS**

### **ARTICLE I. SCOPE, PURPOSE and DEFINITIONS**

<b>19-1-1</b>	<b>Scope</b>	<b>1</b>
<b>19-1-2</b>	<b>Purpose</b>	<b>1</b>
<b>19-1-3</b>	<b>Definitions</b>	<b>1</b>

### **ARTICLE II. ESTABLISHMENT of DISTRICTS**

<b>19-2-1</b>	<b>Zoning Districts</b>	<b>21</b>
<b>19-2-2</b>	<b>Zoning Map</b>	<b>21</b>
<b>19-2-3</b>	<b>Certified Copy of Ordinance</b>	<b>22</b>
<b>19-2-4</b>	<b>Location of District Boundaries</b>	<b>22</b>
<b>19-2-5</b>	<b>Location of Resource Protection District Boundaries</b>	<b>22</b>
<b>19-2-6</b>	<b>Lots in Two or More Districts</b>	<b>24</b>

### **ARTICLE III. ADMINISTRATION and ENFORCEMENT**

<b>19-3-1</b>	<b>Code Enforcement Officer</b>	<b>24</b>
<b>19-3-2</b>	<b>Approvals and Permits Required.</b>	<b>24</b>
<b>19-3-3</b>	<b>Building Permits</b>	<b>27</b>
<b>19-3-4</b>	<b>Certificate of Occupancy</b>	<b>29</b>
<b>19-3-5</b>	<b>Fees</b>	<b>29</b>
<b>19-3-6</b>	<b>Violations</b>	<b>30</b>

### **ARTICLE IV. NONCONFORMANCE**

<b>19-4-1</b>	<b>Intent</b>	<b>31</b>
<b>19-4-2</b>	<b>General Provisions</b>	<b>31</b>
<b>19-4-3</b>	<b>Nonconformance Outside of Shoreland &amp; Resource Protection Districts</b>	<b>32</b>
	A. Nonconforming Lots	32
	B. Nonconforming Buildings and Structures	36
	C. Nonconforming Uses	37
<b>19-4-4</b>	<b>Nonconformance Within the Shoreland Performance Overlay District</b>	<b>38</b>
	A. Nonconforming Lots	38
	B. Nonconforming Buildings and Structures	39
	C. Nonconforming Uses	41
<b>19-4-5</b>	<b>Nonconformance Within the Resource Protection Districts</b>	<b>42</b>
	A. Nonconforming Buildings and Structures	42
	B. Nonconforming Uses	45
	C. Replacement Structures	45

## **ARTICLE V. ZONING BOARD OF APPEALS**

<b>19-5-1</b>	<b>Appointment and Composition</b>	<b>46</b>
<b>19-5-2</b>	<b>Powers and Duties</b>	<b>46</b>
<b>19-5-3</b>	<b>Procedures</b>	<b>49</b>
<b>19-5-4</b>	<b>Variances</b>	<b>50</b>
<b>19-5-5</b>	<b>Conditional Use Permits</b>	<b>51</b>

## **ARTICLE VI. DISTRICT REGULATIONS**

<b>19-6-1</b>	<b>Residence A District (RA)</b>	<b>54</b>
<b>19-6-2</b>	<b>Residence B District (RB)</b>	<b>61</b>
<b>19-6-3</b>	<b>Residence C District (RC)</b>	<b>68</b>
<b>19-6-4</b>	<b>Town Center District (TC)</b>	<b>74</b>
<b>19-6-5</b>	<b>Business District A (BA)</b>	<b>92</b>
<b>19-6-6</b>	<b>Business District B (BB)</b>	<b>98</b>
<b>19-6-7</b>	<b>Business District C (BC)</b>	<b>103</b>
<b>19-6-8</b>	<b>Fort Williams Park District (FWP)</b>	<b>106</b>
<b>19-6-9</b>	<b>Resource Protection Districts (RP1-CW, RP1 CW Buffer Overlay, RP2-WP, and RP3-F)</b>	<b>109</b>
<b>19-6-10</b>	<b>Town Farm District (TF)</b>	<b>117</b>
<b>19-6-11</b>	<b>Shoreland Performance Overlay District</b>	<b>119</b>
<b>19-6-1</b>	<b>Great Pond Watershed Overlay District</b>	<b>123</b>
<b>19-6-1</b>	<b>Tower Overlay District</b>	<b>124</b>

## **ARTICLE VII. GENERAL STANDARDS**

<b>19-7-1</b>	<b>Purpose</b>	<b>125</b>
<b>19-7-2</b>	<b>Open Space Zoning</b>	<b>126</b>
<b>19-7-3</b>	<b>Transfer of Development Rights</b>	<b>132</b>
<b>19-7-4</b>	<b>Mandatory Affordable Housing Provisions</b>	<b>134</b>
<b>19-7-5</b>	<b>Creation of Accessory Dwelling Unit</b>	<b>137</b>
<b>19-7-6</b>	<b>Eldercare Facility Standards</b>	<b>138</b>
<b>19-7-7</b>	<b>Manufactured Housing Parks</b>	<b>140</b>
<b>19-7-8</b>	<b>Off-Street Parking</b>	<b>145</b>
<b>19-7-9</b>	<b>Private Access Provisions</b>	<b>151</b>
	A. Existing Private Road Standards	151
	B. New Private Road Standards	151
	C. Private Accessway	152
	D. Private Accessway Procedures	152
<b>19-7-10</b>	<b>After the Fact Reductions</b>	<b>156</b>
<b>19-7-11</b>	<b>Multiple Principal Buildings on a Lot</b>	<b>156</b>
<b>19-7-12</b>	<b>Corner Clearances</b>	<b>157</b>
<b>19-7-13</b>	<b>Bisected Lots</b>	<b>157</b>
<b>19-7-14</b>	<b>Temporary Activities and Events</b>	<b>157</b>
<b>19-7-15</b>	<b>Temporary Structures</b>	<b>157</b>

## **ARTICLE VIII. PERFORMANCE STANDARDS**

<b>19-8-1</b>	<b>Buffering of Nonresidential Use</b>	<b>158</b>
<b>19-8-2</b>	<b>Shoreland Performance Standards</b>	<b>160</b>
<b>19-8-3</b>	<b>Resource Protection Performance Standards</b>	<b>172</b>
<b>19-8-4</b>	<b>Reserved</b>	<b>183</b>
<b>19-8-5</b>	<b>Earth Materials Removal Standards</b>	<b>183</b>
<b>19-8-6</b>	<b>Archaeological and Historic Resources</b>	<b>187</b>
<b>19-8-7</b>	<b>Great Pond Watershed Performance Standards</b>	<b>189</b>
<b>19-8-8</b>	<b>Home Day Care and Day Care Facility Standards</b>	<b>190</b>
<b>19-8-9</b>	<b>Boat Repair Facility Standards</b>	<b>191</b>
<b>19-8-10</b>	<b>Agricultural Standards</b>	<b>192</b>
<b>19-8-11</b>	<b>Use of Recreational Camping Vehicle or Other Temporary Residential Unit</b>	<b>192</b>
<b>19-8-12</b>	<b>Town and Antenna Performance Standards</b>	<b>193</b>

## **ARTICLE IX. SITE PLAN REVIEW**

<b>19-9-1</b>	<b>Purpose</b>	<b>196</b>
<b>19-9-2</b>	<b>Applicability</b>	<b>196</b>
<b>19-9-3</b>	<b>Review and Approval Authority</b>	<b>197</b>
<b>19-9-4</b>	<b>Review Procedures</b>	<b>197</b>
<b>19-9-5</b>	<b>Approval Standards</b>	<b>201</b>
<b>19-9-6</b>	<b>Amendments</b>	<b>209</b>
<b>19-9-7</b>	<b>Appeals of Planning Board Actions</b>	<b>210</b>

## **ARTICLE X. AMENDMENT/INTERPRETIVE PROVISIONS**

<b>19-10-1</b>	<b>Conflict With Other Provisions</b>	<b>210</b>
<b>19-10-2</b>	<b>Severability</b>	<b>210</b>
<b>19-10-3</b>	<b>Amendments</b>	<b>210</b>

Appendix A. Reserved

Appendix B. Street Classifications

Appendix C. Historic Resources

Great Pond Watershed Map

Tower Overlay District Map

Zoning Map 

**CHAPTER 19**  
**ZONING ORDINANCE**  
**(Revision Effective Through May 9, 2007)**

**ARTICLE I. SCOPE, PURPOSE AND DEFINITIONS**

**SEC. 19-1-1. SCOPE**

This Ordinance shall be known as the "Zoning Ordinance of the Town of Cape Elizabeth, Maine," and may be referred to by said designation.

No building or structure shall be erected, structurally altered, enlarged, repaired, moved, rebuilt, or used, and no land shall be used, except in conformity with the provisions of this Ordinance.


**SEC. 19-1-2. PURPOSE**

The purpose of this Ordinance is to promote the health, safety and general welfare of the residents of Cape Elizabeth; to encourage the most appropriate use of land throughout the Town; to promote traffic safety; to provide safety from fire and other hazards; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsanitary areas; to provide an adequate street system; to promote the coordinated development of unbuilt areas; to encourage the formation of community units; to provide an allotment of land area in new development sufficient for all the requirements of community life; to conserve natural and cultural resources; to provide for adequate public services; and to enhance the

value of property within the Town. The foregoing purposes shall be implemented by establishment of the zoning districts adopted hereby and herein and by compliance with all of the other provisions of this Ordinance. This Ordinance is intended to carry out and be consistent with the Town's Comprehensive Plan.

### SEC. 19-1-3. DEFINITIONS

For the purposes of this Ordinance, the following terms, words, and phrases shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future tense. Words used in the singular shall include the plural. Where so indicated by the text, these definitions also include substantive regulations. Where reference is made to Town or State laws, ordinances, or regulations, each reference to a particular law, regulation, or section shall include all amendments and successor sections.

 **Abattoir:** A place used or intended for the slaughtering of poultry or livestock.

**Accessory Building or Structure:** A detached, subordinate building, the use of which is clearly incidental and related to that of the principal building or use of the land, and which is located on the same lot as the principal building or use. For residential uses, accessory buildings and structures shall include, but not be limited to, the following:

1. garage
2. gazebo
3. greenhouse
4. home workshop, as defined below
5. recreational facilities for the use of occupants of the residence, such as a swimming pool or a tennis court, and related structures
6. a temporary open stand, easily moveable, and utilized only on a seasonal basis, from which a Cape Elizabeth resident sells, at retail, agricultural products grown exclusively from land owned or leased by a Cape Elizabeth resident, or aquacultural products gathered or caught exclusively by a Cape Elizabeth resident
7. wharf, dock, landing, or boathouse


**Accessory Dwelling Unit:** A single subordinate dwelling unit accessory to and wholly contained within a principal building or structure and/or attached garage in which a single-family dwelling unit is the principal use.

**Accessory Use:** A use that is incidental and subordinate to the principal use. The principal use shall not become subordinate to accessory uses, when aggregated.


**Adult Business:** An establishment consisting of, including, or having the characteristics of selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials or devices of any kind which appeal to prurient interest and/or which depict or describe specified sexual activities and

anatomical areas as described and reviewed in the case of *SJD, Inc. v. City of Houston*, 837 F. 2d 1268 (5th cir. 1988).

**Affordable Housing:** Lots/units which may be purchased for occupancy by buyers with low and moderate incomes as established by the State Planning Office or the Greater Portland Council of Governments.

**Agriculture:** ~~The production, keeping or maintenance for sale or lease, of plants and/or animals. Agriculture does not include forest management or timber harvesting activities.~~ 

**Alternative Tower Structure:** Mounting structures, such as, but not limited to, clock towers, bell steeples, utility and light poles, and water towers, that conceal the presence of antennas or towers and which are used primarily for purposes other than to support an antenna. (Effective April 15, 2000)

**Amateur Wireless Telecommunication facility:** An amateur (ham) radio station licensed by the Federal Communications Commission, including equipment such as but not limited to a tower or alternative tower structure supporting a single, radiating antenna platform and other equipment, which are not marketed to the general public. (Effective April 15, 2000) 

**Antenna:** Any structure or device used for the purpose of collecting or radiating electromagnetic waves; including, but not limited to, directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas, which are located on the exterior of, or outside of, any building, or structure. A single, radiating antenna platform, which includes one or more antennas, shall be regulated as a single antenna. (Effective April 15, 2000)

**Aquaculture:** The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Athletic Facility:** A private or public facility including but not limited to stadiums, playing fields for organized sports involving teams with coaches, uniforms, and an established schedule, and gymnasiums that hosts sports events which accommodate spectators, but not including private facilities accessory to a permitted residential or commercial use.

**Banking, Professional and Business Office:** Offices for lawyers, engineers, architects, landscape architects, land use planners, accountants, building contractors, doctors, dentists, or other professionals similar to those listed above and banking, security and commodity brokerage, real estate sales, travel agency, employment counseling, insurances sales, advertising, mailing and stenographic services, and other services of a similar nature.

**Basal Area:** A measure of the volume or density of a forest stand. It is the area of a cross-section of a tree stem at four and a half (4½) feet above ground level and inclusive of bark.

**Bed and Breakfast:** An owner-occupied building in which up to nine (9) guest rooms are used to provide overnight accommodations for transient guests.

**Board:** The Zoning Board of Appeals constituted under Sec. 19-5-1, Appointment and Composition, of this Ordinance.

**Boat Launching Facility:** A facility designed primarily for the launching and landing of watercraft, which may include an access ramp, docking area and parking spaces for vehicles and trailers.

**Building:** Any structure having a roof supported by columns or walls, and including sheds and all attached structures such as porches, decks, balconies, carports and similar structures for which a building permit is required.

**Building Footprint:** The area of a building measured from the exterior surface of the exterior walls at grade level, exclusive of cantilevered portions of buildings and temporary structures. Where a building is elevated above grade level, the building footprint is the area the building would cover if it were located at ground level.

**Campground:** Any area or tract of land to accommodate two (2) or more persons in temporary living quarters including, but not limited to, tents, recreational camping vehicles or other shelters.

**Canopy Tree:** A tree of a species identified in Appendix C of the Subdivision Ordinance.

**Cluster Development:** A residential subdivision that conforms to the standards of Sec. 19-7-2, Open Space Zoning.

**Coastal Dunes:** Sand deposits within a marine beach system above normal high tide, including but not limited to beach berms, frontal dune ridges, back dune areas and other sand areas deposited by wave or wind action. Coastal dunes may extend into wetland areas.

**Colocation:** The location of more than one antenna on a Tower or Alternative Tower Structure. **(Effective April 15, 2000)**

**Commercial Wireless Telecommunication Services:** Cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and similar services that are marketed to the general public. **(Effective April 15, 2000)**

**Conditional Use:** The use of any building or land in a manner which is subject to express conditions and limitations as to such use and which is expressly made subject to approval by the Zoning Board of Appeals.

**Congregate Housing:** Housing that is designed to provide housing and congregate housing services primarily for elderly households. Such a facility shall provide meals and a supportive services program including housekeeping and chore assistance and case management.

**Continuing Care Retirement Community:** A residential care facility that provides a combination of congregate housing, residential care, and/or long-term care as defined herein.



**Cottage Industry Manufacturing:** The manufacture and retail sale on the premises of artifacts, works of art, products produced by hand or with table mounted or power tools such as ceramics, handmade pottery, hand-blown glass, furniture, millworking, woodworking, woven or textile goods, and articles of a similar nature.

**Council:** The Town Council of the Town of Cape Elizabeth, Maine.

**Day Care Facility:** A facility which provides a regular program of care and protection during any part of the day for either (i) three (3) or more adults or seven (7) or more children under the age of sixteen (16) in the operator's residence or (ii) any number of children or adults in a building other than the operator's residence.

**Deck:** An open platform.

**Densely Developed Area:** An area developed with at least six (6) principal buildings within two hundred fifty (250) feet of the center of the subject structure or building.

**Developed Residential Street:** A local street providing vehicular access for (5) or more existing dwelling units, considered as of the time immediately prior to the proposed construction of a through road creating a short-cut via such local street. **(Effective June 23, 2006)**

**Dock:** Any structure, whether permanent or temporary, which acts as a landing place for watercraft. This includes any combination of piers, docks, and floats.

**Draining:** As used in the context of resource protection districts, the lowering of the water table below its natural level.

**Dredging:** Removing materials from below the Wetland Upland Edge.

**Dwelling:** A building containing one (1) or more dwelling units and used for human habitation.

**Dwelling Unit:** A room or group of rooms forming a habitable unit for one (1) family with facilities used or intended to be used for living, sleeping, cooking and eating.

**Earthwork:** One or more commercial operations involved in preparing or moving earth for use in construction, including foundations, buildings, roads, utilities and landscaping. **(Eff. 2/12/05)**

**Earthwork Contractor:** A business that primarily and regularly conducts Earthwork and performs one or more of the following activities in the course of and related to conducting its Earthwork:

1. Processing, storing and stock piling minerals, wood, compost and other similar materials for resale (processing may include screening, crushing, chipping, recycling or blending multiple products);
2. Storing prefabricated materials associated with construction;

3. Parking, maintaining and fueling construction vehicles and equipment (fuel storage shall be for the exclusive use of the business and not for resale);
4. Loading, unloading and transporting product used in conducting Earthwork;
5. Transporting and storing snow; and
6. Administrative activities. **(Eff. 2/12/05)**

**Earthwork Contractor's Yard:** The portion of a lot used by an Earthwork Contractor for conducting its business activities outside or within structures erected in accordance with Town Ordinances. An Earthwork Contractor shall be deemed to use any portion of a lot upon which the Earthwork Contractor conducts any of the activities enumerated in items number 1 through 6 of the above definition of Earthwork Contractor, other than transporting materials across designated driveways. **(Eff. 2/12/05)**

**Education and scientific research:** Activities that provide instruction and/or involve investigation in the natural, physical, or social sciences and that require a natural environment. **(Effective November 13, 1999)**

**Eldercare Facility:** A facility defined herein as a congregate housing, long-term care or residential care facility, or a continuing care retirement community. All attached or detached housing projects that do not fall within this definition shall be classified and treated as multiplex housing or single-family housing under this Ordinance and the Subdivision Ordinance.

**Essential Services:** Utility facilities including gas, electrical, communication, steam, fuel, water or sewage transmission, collection, or distribution systems.

**Excavating:** As used in the context of resource protection districts, the removal of earth materials below the existing ground surface.

**Expansion of a Structure:** An increase in the floor area or volume of a structure, including all extensions such as, but not limited to, attached structures such as decks, garages, porches and greenhouses.

**Expansion of Use:** The addition of weeks or months to a use's operating season, additional hours of operation, or the use of more floor area, ground area, or volume devoted to a particular use.

**FAA:** The Federal Aviation Administration. **(Effective April 15, 2000)**

**FCC:** The Federal Communications Commission. **(Effective April 15, 2000)**

**Farm Market:** ~~A farm market that is operated primarily for the purpose of selling raw agricultural~~

~~products grown upon a minimum of ten (10) acres of agricultural land within Cape Elizabeth. A maximum of twenty five percent (25%) of the total building floor area devoted to retail sales at all farm markets, including those defined as a home business, may be dedicated to related market products, whether such related market products are stored or displayed inside or outside of the building.~~

~~**Farming:** The cultivation of crops and plant materials, but shall not include the raising of animals.~~

**Filling:** Placing of any material which raises, either temporarily or permanently, the ground elevation of an area.

**Fish Market:** A fish market that is operated primarily for the retail sale of raw aquacultural products, most of which are caught or gathered by Cape Elizabeth residents. A maximum of twenty-five percent (25%) of the total building floor area devoted to retail sales at all fish markets, including those defined as a home business, may be dedicated to related market products, whether such related market products are stored or displayed inside or outside of the building.


**Floor Area of a Structure:** The sum of the contiguous horizontal areas of the floor(s) of a structure enclosed by exterior walls, including unfinished areas within the exterior walls, and attached garages, and excluding basement space, porches and decks. Area calculation for compliance with the Shoreland Performance Overlay District shall include porches and decks. Floor area shall be calculated by measurement of the outside dimensions of the exterior walls. **(Effective August 11, 1999)**

**Forest Management Activities:** Timber cruising and other forest resource evaluation activities, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads. <sup>^</sup>

**Golf Course:** A tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways and hazards. A miniature golf facility is not a golf course. **(Effective February 12, 2003)**

**Golf Course Related Activities:** Uses such as a tennis court, swimming pool, parking lot, driving range, clubhouse, restaurant, or meeting hall and maintenance buildings (any of which may be rented out for events) which is located on a lot under common ownership with a lot where a golf course is located in the Town of Cape Elizabeth. **(Effective February 12, 2003, Rev. eff. 12/10/03))**

**Governmental Telecommunication Facility:** A tower and wireless telecommunication services owned by local, state or federal government. **(Effective April 15, 2000)**

 **Growing Season:** As used in this Ordinance, the period from April 1 to November 1.

**Height, Building:** The vertical distance from the average original grade to the top of the highest roof beams of a flat roof, or to the mean level of the highest gable or slope of a hip roof. When a

building faces on more than one (1) street, the height shall be measured from the average of the original grades at the center of the face of the building fronting on each street. Where the original grade steeply slopes to the extent that the building face along the road frontage will be located below the elevation of the road and within fifty (50) feet of the edge of the road right-of-way, the building height shall be measured from the average finished grade that allows the building first floor elevation facing the street to be constructed up to two (2') feet above the road elevation. Architecturally appropriate building tops, such as but not limited to spires and clock towers, which are not occupied, shall not be included in the measurement of the height of the building. **(Rev. eff. 12/10/03)**

**Height, Tower:** The distance measured from average original grade to the highest point on the tower or other structure, even if said highest point is an antenna. **(Effective April 15, 2000)**

**Home Business:** A business or professional use that is more intensive than a home occupation and which is conducted within or from a dwelling unit by an occupant of the dwelling unit. The use may also be conducted within an accessory structure which existed as of April 1, 1998. The business or professional use shall be accessory to the primary residential use. A home business shall comply with all of the following criteria: **(Effective August 11, 1999)**

1. Not more than one (1) person who is not a resident of the dwelling unit shall be involved or employed on the premises in the business or professional use;
2. The nature of the business or professional use shall not increase vehicular traffic on the street by more than two percent (2%) of the current average annual daily traffic (AADT) or 10 trips a day, whichever is larger; **(Rev. eff. 12/10/03)**
3. The business or professional use shall not produce any odors, fumes, dust, glare, noise, or electrical interference in excess of that produced by normal residential use;
4. Any external alteration of the building or site, including the provision of parking in accordance with Sec. 19-7-8, Off-Street Parking, shall not detract from the residential character of the neighborhood;
5. The square footage occupied by the business or professional use shall occupy an area no greater than twenty percent (20%) of the floor area of the structure (as defined above) of the dwelling unit; **(Effective August 11, 1999)**
6. All signs shall comply with the Sign Ordinance; and
7. There shall be no outdoor storage of equipment or materials.

**Home Day Care:** A facility which provides a regular program of care and protection in the operator's residence for up to six (6) children under the age of sixteen (16) or up to two (2) adults for any part of the day.

**Home Occupations:** A business or professional use that is conducted within a dwelling unit by an

occupant of the dwelling unit. The use may also be conducted within an accessory structure which existed as of April 1, 1998. The business or professional use shall be accessory and incidental to the primary residential use. A home occupation shall comply with all of the following criteria: **(Effective August 11, 1999)**

1. No one who is not a resident of the dwelling unit shall be involved or employed in the business or professional use;
2. The nature of the business or professional use shall not require clients, or service or delivery vehicles, to regularly visit the premises;
3. The business or professional use shall not produce any odors, fumes, dust, glare, noise, or electrical interference in excess of that produced by normal residential use;
4. There shall be no external alteration of the building or site that changes its residential character including the creation of a separate "business" entrance;
5. The square footage occupied by the business or professional use shall occupy an area no greater than twenty percent (20%) of the floor area of the structure (as defined above) of the dwelling unit; **(Effective August 11, 1999)**
6. All signs shall comply with the Sign Ordinance; and
7. There shall be no outdoor storage of equipment or materials.

**Home Workshop or Workroom:** A workshop, located within a principal building or within an accessory building, which is used primarily by the occupants of the dwelling unit for personal use and not a commercial use. **(Effective August 11, 1999)**

**Hotel:** A building used primarily for occupancy of individuals who are lodged with or without meals, having ten (10) or more guest rooms, and intended to be rented principally to transients on a short-term basis.

**Hydric Soils:** Soils as defined in U. S. Soil Conservation Service publication entitled Hydric Soils of Southern Maine, Revised 12/3/86, as further revised, a copy of which is available for review in the Town Office. (Formerly used names in parentheses.) These soils shall include, but not be limited to, the following:

1. Very poorly drained organic soils, including Chocorua, Ossipee, Rifle, Sebago, Togus, Vassalboro and Waskish
2. Very poorly drained mineral soils, including Biddeford, Burnham, Gouldsboro (Tidal Marsh), Halsey, Medomak (Saco), Peacham (Whitman), Searsport (Scarboro), Washburn, and Whately
3. Poorly drained mineral soils, including Atherton, Aurelie, Brayton (Ridgebury),

Charles (Limerick), Easton, Fredon, Lyme, Monarda, Moosilauke (Walpole), Naskeag, Naumberg (Au Gres), Roundabout, Rumney, Scantic, and Swanton

**Impervious Area or Impervious Surface:** The total area of a parcel that consists of buildings and associated constructed facilities, areas which have been or will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas, which have been or will be compacted through design or use to reduce their permeability. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam, or other surfaces which similarly impede the natural infiltration of stormwater.

**Increase in nonconformity of a structure** – any change in a structure or property which causes further deviation from the dimensional standards(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of the nonconformance of the existing structure shall not be considered to increase the nonconformity. For example, there is no increase in nonconformity of the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body or wetland than the closest portion of the existing structure from that water body or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures. **(Rev. eff. 12/10/03)**

**Individual Private Campsite:** An area of land, not associated with a campground, but which is developed for repeated camping by only one (1) group not to exceed ten (10) individuals and which involves site improvements which may include, but are not limited to, gravel pads, parking areas, fire places, or tent platforms.

**Informal Recreation:** Activities for the enjoyment of open space for all ages and interests, including but not limited to walking, picnicking, bird watching, kite flying, cross country skiing, sledding, dog walking, frisbee throwing, jogging, as well as quiet reflection and enjoyment of the scenery, trees, shrubs, flowers, and nature trails. Informal recreation does not require prescribed sites or fields, extensive equipment or manmade structures. Informal recreation does not include active team sports or motorized vehicles such as but not limited to snowmobiles, but may include programs related to the history of the district. **(Effective November 13, 1999)**

**Institutional Use:** A nonprofit, religious, or public use, such as a use by a church, library, public or private school, or hospital, or a government-owned or operated building, structure, or land used for public purpose, but not including essential services as herein defined.

**Junk Yard:** A lot or part thereof, exposed to the elements, which is used for the storage or sale of:

1. Second-hand products or materials, such as automobile parts, building supplies, bottles, and papers

2. Automobiles, trucks, or other motor vehicles, two (2) or more of which have remained for a period of six (6) consecutive months either unregistered or without state inspection certificates affixed thereto.

**Light Manufacturing:** Manufacturing involving the assembly or fabrication of products made from previously processed materials.

**Local Plumbing Inspector:** The Code Enforcement Officer or other person designated by the Town to oversee the installation of plumbing and on-site sewage disposal systems.

**Long-Term Care Facility:** Housing that provides a program of assisted living services to deal with the activities and instrumental activities of daily living and nursing homes.

**Lot:** A parcel of land with ascertainable boundaries described in a recorded deed or shown on an approved subdivision plan and meeting zoning requirements at the time it was created.

**Lot Area:** Total area within the property lines of a lot excluding any part thereof lying within the boundaries of any public or private existing or proposed street right-of-way.

**Lot Coverage:** The percentage of the total area of the lot that is covered by impervious areas or surfaces.

**Lot Width:** The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line. Minimum lot width shall be measured through that part of the principal building where the lot is narrowest. In no case, however, shall the width of the lot in the area from the front property line to the principal building be less than the Minimum Lot Width. **(Effective August 11, 1999)**

**Low Income:** Family income which is between fifty percent (50%) and eighty percent (80%) of median family income for the Portland Metropolitan Statistical Area as established by the State Planning Office or the Greater Portland Council of Governments.

**Mandatory Buffer:** The Resource Protection 1-Critical Wetland Buffer Overlay District where it is adjacent to RP1 wetlands which have been rated moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife. **(Effective August 11, 1999)**

**Manufactured Housing:**

1. Those units constructed after June 15, 1976, commonly called "newer mobile homes," which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures, transportable in one (1) or more sections, which, in the traveling mode, are fourteen (14) body feet or more in width and are seven hundred fifty (750) or more square feet, and which are built on a permanent chassis and designed to be used

as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein; except that the term shall include any structure which meets all the requirements of this paragraph except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and,

2. Those units commonly called "modular homes," which the manufacturer certifies are constructed in compliance with the State's Manufactured Housing Act and regulations, meaning structures, transportable in one (1) or more sections which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein.

**Manufactured Housing on Individual Lots:** To qualify as manufactured housing that can be placed on individual lots that are not part of a manufactured housing park, a manufactured housing unit shall have the following characteristics:

1. it shall have a double pitched roof, with a minimum pitch of 3/12 covered with asphalt or fiberglass composition shingles or other roofing shingles made of other materials, but specifically excluding corrugated metal roofing material;
2. the exterior walls shall have the appearance of traditional residential site-built walls;
3. the house shall be anchored on a permanent full frost free wall foundation; and
4. any hitch or tow bar together with axles and wheels shall be removed.

**Manufactured Housing Unit:** Structures, transportable in one (1) or more sections, constructed in a manufacturing facility, transported to a building site and which are designed to be used as dwellings when connected to the required utilities, including plumbing, heating, air conditioning and electrical systems contained therein.

**Manufactured Housing Park:** A parcel of land under unified ownership designed and/or used to accommodate three (3) or more manufactured housing units.

**Manufactured Housing Park Lot:** The area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

**Marine Structure:** Any non-habitable structure, whether permanent or temporary, built on or over a water body, including but not limited to piers, docks, wharves, breakwaters, culverts, jetties, groins, bridges, soil erosion retaining walls, bait sheds, and processing facilities.



**Market Value:** The estimated price a property would bring in the open market under prevailing market conditions in a sale between a willing seller and a willing buyer, each conversant with the property and with prevailing general price levels.

**MDOT:** The Maine Department of Transportation or its authorized representative or agent.

**Miniature Golf:** A tract of land laid out for playing miniature golf where all holes are separated by barriers and the only clubs used on the course are putters. **(Effective February 12, 2003)**

**Mixed Use Building:** A building that includes both nonresidential and residential uses.

**Moderate Income:** Family income which is between eighty percent (80%) and one hundred fifty percent (150%) of median family income for the Portland Metropolitan Statistical Area as established by the State Planning Office or the Greater Portland Council of Governments.

**Motel:** A building or group of attached or detached buildings containing guest rooms or dwelling units, most of which have separate outside entrances and adjacent parking spaces and are intended to be rented principally to transients on a short-term basis.

**Multifamily:** A building containing 2 or more dwelling units (excepting accessory dwelling units), or a mixed use building containing 1 or more dwelling units. **(Eff. 2/12/05)**

**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. **(Rev. ef. 12/10/03)**

**Multipurpose Playing Field:** The field located in Fort Williams Park as approved on September 9, 1996, by the Town Council, without expansion.

**No other Feasible Alternative:** In the case of a variance request, there is no other place on the lot, taking into consideration the physical constraints of the property, or no other location on the structure that the proposed construction could go without the need for a variance or without causing the owner to create other compliance problems on the lot because of the Zoning Ordinance, deed restrictions or conditions imposed by a lease or contract. **(Effective August 10, 2000)**

**Nature trail:** A track made by passage or manmade efforts through a natural area. **(Effective November 13, 1999)**

**Net Residential Area:** The net area of a parcel of land that constitutes “buildable land” that can be used in determining the maximum allowable density of a site. The net residential area shall be determined by subtracting the following from the gross area of the site:

1. The portion of the site used for outside parking, streets, and site access. This portion shall be deemed to be (i) fifteen percent (15%) of the gross area or (ii) at the option of the applicant, the actual area devoted to streets, parking lots, and access drives. In computing the area of streets or ways, the full width of the right-of-way shall be included
2. Any isolated portion of the site that is cut off from the main portion of the site by a road, existing land uses, or major stream or similar physical feature such that it creates a major barrier to the common use or development of the site
3. Any portion of the site located within a floodway or coastal high hazard area as shown on the Flood Insurance Rate Maps or Floodway Map
4. Any portion of the site that is regularly inundated by water, including ponds, streams, oceans, and intertidal areas
5. Any portion of the site that is unsuitable for development in its natural state because of topography, drainage, or subsoil conditions. This shall include the following:
  - a. land located within the RP1 - Critical Wetland District
  - b. any area of one (1) or more contiguous acres with sustained slopes of twenty-five percent (25%) or more
  - c. any area of exposed bedrock
6. Any portion of the site located within utility easements or rights-of-way

Any interpretation of the portion of a site that may be included in calculating the net residential area shall be made by the Planning Board.

**Nonconforming Building:** A nonconforming building or structure is one that does not meet the space and/or bulk standards of the district in which it is located. It is allowed solely because it was in lawful existence as of the effective date of this ordinance or as of the effective date of any subsequent amendment which rendered the building nonconforming.

**Nonconforming Lot:** A nonconforming lot is a single lot which as of the effective date of this Ordinance or as of the effective date of any subsequent amendment does not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage, or other similar lot requirements of the district in which it is located. It is allowed solely because it was in lawful existence as of the effective date of this ordinance or as of the effective date of a subsequent amendment which rendered the lot nonconforming.

**Nonconforming Use:** A nonconforming use is a use of premises that is not a permitted or conditional use in the district in which it is located, but which is allowed to remain solely because it was in lawful existence as of the effective date of this ordinance or as of the effective date of any subsequent amendment which rendered the use nonconforming.

**Normal High Water Line of Coastal Waters:** That line on the shore of tidal waters which is the apparent extreme limit of the effect of the tides, i.e. the top of the bank, cliff or beach above high tide.

**Normal High Water Line of Inland Waters:** That line on the shores and banks of non-tidal waters which marks normal high water, and which is apparent because of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly terrestrial to predominantly aquatic vegetation. (By way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups - water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes and marsh grasses, and terrestrial vegetation includes but is not limited to the following plants and plant groups - upland grasses, aster, lady slipper, wintergreen, partridge berry, sarsaparilla, pines, cedars, oaks, ashes, alders, elms, and maples). In places where the shore or bank is of such character that the normal high water line cannot be easily determined (rockslides, ledges, rapidly eroding or slumping banks) the normal high water line shall be estimated from places where it can be determined by the above method.

**Nursing Home:** A facility in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed by the State of Maine and is designed to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves. For the purposes of this Ordinance, "nursing home" shall include only those facilities that have been certified by the State of Maine as meeting all licensing and operation regulations for skilled care facilities as promulgated by the Department of Human Services pursuant to the provisions of Maine law.

**Ordinance:** The Zoning Ordinance.

**Park:** A publicly owned facility providing active or passive recreational activities and/or facilities.


**Park Maintenance Area:** That area within the Fort Williams Park District that extends between the Park Maintenance Building, the Heavy Equipment Building, Building #326, and the long storage garage behind Building #326.


**Parking Lot:** A lot or part thereof used for or designed for the parking of three (3) or more vehicles in conjunction with a use other than a single family home. The parking lot includes the parking spaces, aisles, and accessways.

**Passive Recreation:** Leisure activities, including but not limited to walking, picnicking, and hiking, that are of an informal nature, do not take place at prescribed sites or fields, and usually do not require extensive equipment. Passive recreation does not involve active team sports or the use of

motorized vehicles.

**Personal Services Shop:** A site where personal services are delivered, including but not limited to a barber or beauty salon, tailor shop, shoe repair shop, dressmaking, tanning salon, dry cleaner, laundromat, recreational facility, a studio for dance, art, music, and photography, radio and television sales and repair shops and services of a similar nature.

**Piggery:**  A building or portion thereof, or an enclosure, used or designed for the keeping of more than five (5) pigs more than six (6) months old.

**Pond:**  Any inland body of water which in its natural state has a surface area of one thousand (1,000) square feet or more, and any body of water artificially formed or increased which has a surface area of one thousand (1,000) square feet or more.

**Porch:** A roofed open area which may be screened that is attached to or part of a building.

**Practical Difficulty:** An occasion where the strict application of the ordinance to a property precludes the ability of the property owner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the property owner.  
(Effective August 10, 2000)

**Predominantly:** When used to modify a natural feature or resource such as soils or vegetation, it shall mean that more than fifty percent (50%) of the feature on a site consists of a particular type or category of the feature, i.e. hydric/nonhydric or wetland vegetation/nonwetland vegetation.

**Principal Building:** Any building containing the primary or main use of the lot on which it is located.

**Private Accessway:** A privately owned and maintained access road to a single lot that does not meet minimum street frontage requirements of this Ordinance.

**Recreational Camping Vehicle:** A motor vehicle or an attachment to a motor vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, including but not limited to a pickup camper, travel trailer, tent trailer, camp trailer, or motor home. In order to be considered as a recreational camping vehicle and not a structure, the vehicle must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Recreational Facility:** A facility designed, equipped and used for indoor athletics, physical fitness training, health education, and/or community recreation activities. Ancillary uses may include child care for users on the premises, vending machines, physical fitness counseling, and education.

 **Related Market Products:** Products for retail sale customarily related to and sold with agricultural products at retail farm markets or aquacultural products at fish markets, including but not limited to the following:

1. Prepared or processed food products
2. Packaged nonalcoholic beverages
3. Handicrafts
4. Christmas wreaths, Christmas trees and garlands


**Residential Care Facility:** Housing that provides residents with a program of assisted living services to deal with the activities and instrumental activities of daily living.

**Restaurant:** An establishment where food and drink are prepared, served, and sold to customers for consumption primarily on the premises.

**River:** A free-flowing body of water including its associated flood plain wetlands from the point at which the river provides drainage for a watershed of twenty-five (25) square miles to its mouth.

**Road:** See definition of street.

**Rooming or Boarding Home:** A house or other residential structure that is maintained wholly or partially for the purpose of boarding, for compensation, more than two (2) residents in not more than nine (9) rooms and that does not provide a supportive services program (see definition of supportive services program).

**Salt Marsh:** An area along coastal waters (most often along coastal bays) which supports salt tolerant species, and where the soil is regularly inundated by tidal waters at average high tide during the growing season. 

**Setback:** The shortest distance from a building to the nearest lot line or side line of a street right-of-way. Where unknown, the width of a privately owned right-of-way shall be presumed to be twenty-five (25) feet.

**Setback, Front:** An open area extending the entire width of a lot from sideline to sideline and extending in depth at a right angle from the street right-of-way to such depth as specified. Such area shall be unoccupied and unobstructed by a building from the ground upward. A lot having frontage on more than one (1) street shall be required to meet the minimum front setback on each street.

**Shore Frontage:** The length of a lot bordering on a water body measured along the normal high water line.

**Short-Cut:** A through road that creates a shorter distance for vehicular travel between any two points on arterial, collector, rural connector or feeder streets. The distance along a short-cut shall be measured along the centerline of the traveled way incorporating such short-cut, from the centerline of the nearest intersection with an arterial, collector, rural connector, or feeder street on one side of the short-cut to the centerline of the next nearest intersection with an arterial, collector, rural connector or feeder street on the other side of the short-cut. This short-cut distance shall be compared to the distance measured along the centerline of the shortest existing traveled way between such same two points by any other route.(Effective June 23, 2006)

**Significant Economic Injury:** Placing the applicant for a variance at a disadvantage in the neighborhood by applying Zoning Ordinance standards, which would prevent the applicant from having a structure or accessory structure comparable in size, location and number to those of other lot owners in the immediate neighborhood, but in no case fewer than 10 of the nearest property owners. **(Effective August 10, 2000)**

**Southern Section of Fort Williams Park:** That area within the Fort Williams Park District beginning at the southeasterly corner of the Portland Head Light Parking Lot and then extending along the southerly edge of the parking lot to the main access road and then along the southerly edge of the main access road to Humphrey Road and along the southerly edge of Humphrey Road to the rear of Building #326 and then following a line westerly from the rear of said building to Shore Road, then southerly along the Shore Road boundary of Fort Williams Park to the Fort Williams Park southern boundary line, then easterly along the Fort Williams Park southern boundary line, to the high water mark of the Atlantic Ocean, then northerly along the high water mark to the southeasterly corner of the Portland Head Light parking lot as shown on the Southern Section of Fort Williams Park map.

**Stream (tributary):** A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area. **(Effective August 11, 1999)**

**Street:** A public or private way or road, other than a private accessway as herein defined, having a defined travel way with a paved, gravel, or exposed mineral soil surface that is used on a regular basis to provide vehicular access. (NOTE: Streets are classified as arterials, collectors, rural connectors, feeders, or local streets in Appendix B.)

**Street Frontage:** The distance as measured along the shared boundary of the lot and the right of way of: (1) an abutting public street, (2) a street shown on an approved subdivision plan for which the Town holds a valid Performance Guarantee, (3) a private road that was in existence as of June 4, 1997, and that meets the requirements of Sec. 19-7-9.A, Existing Private Road Standards, (4) a private road that meets the requirements of Sec. 19-7-9.B, New Private Road Standards, or (5) a Private Accessway that was approved by the Planning Board under Sec. 19-7-9.C. **(Effective August 11, 1999, Rev. eff. 12/10/03).**

**Structure:** Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

**Structural Alteration:** Any change involving the addition, removal or replacement of supporting members of a building, such as posts, columns, plates, joists, girders, or foundation walls.

**Supportive Services Program:** A program of services for the elderly that provides, at a minimum: a central dining facility and meals program; a central recreation/activities room and program; housekeeping services; regular transportation services; and personal care assistance.

**Through Road:** A road with more than one point of ingress or egress from or to the larger network of roads. A through road does not include a road approved by the Planning Board with continuously maintained physical barriers to prevent motorized vehicular traffic other than (i) emergency vehicles or public works vehicles while providing service, or (ii) through traffic during a temporary emergency traffic diversion by order of public safety authorities. **(Effective June 23, 2006)**

**Timber Harvesting:** The cutting and removal of trees exceeding fifty (50) cords of timber in any calendar year from the growing site, except in the Shoreland Performance Overlay Zone. Timber harvesting does not include the construction or creation of roads nor the clearing of land for approved construction.

**Tower:** Any structure, whether free-standing or in association with a building or other permanent structure, that is designed, constructed or used primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and similar structures. **(Effective April 15, 2000)**

**Town:** The Town of Cape Elizabeth, Maine.

**Trip:** A single or one-direction vehicle movement with either the origin or the destination (exiting or entering) inside a study site. For trip generation purposes, the total number of trips for a land use over a given period of time is the total of all trips entering plus all trips exiting a site during a designated time period. **(Rev. eff. 12/10/03)**

**Undesirable Change in the Character of the Neighborhood:** The result of a variance where the structure is larger or closer to the road or property lines than the average of the nearest ten principle structures, or in the case of a variance request for an accessory structure, the nearest ten accessory structures. **(Effective August 10, 2000)**

**Variance:** A variance is a relaxation of the terms of this Zoning Ordinance. A variance may be authorized by the Zoning Board of Appeals only for deviations in height, area, and size of structures, or setbacks and open spaces. Establishment or expansion of a use otherwise prohibited or a reduction in the required lot area and street frontage shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or in an adjoining zoning district.

**Village Retail Shop:** Retail shops including but not limited to locations for the sale of appliances, antiques, apparel, auto parts, baked goods, books, building supplies, farm and fish markets, flowers and plants, furniture, groceries, hardware, jewelry, lawn and garden supplies, liquor, office supplies, pharmaceuticals, toys, works of art, and articles of a similar nature.

**Volume of a Structure:** The contiguous volume of all floor area portions of a structure enclosed by roof and fixed exterior walls as measured from the outside faces of these walls and roof.

**Water Body:** Any great pond, river, stream or tidal area.

**Water-dependent Uses:** Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters.

**Wetlands:** Land where saturation with water is the dominant factor determining the nature of soil development and the types of plants and animal communities living in the soil and on its surface. For the purpose of this Ordinance, different categories of wetlands are identified in Sec. 19-6-9, Resource Protection Districts.

**Wetland Buffer:** A designated area bordering wetlands required to be left in their natural state in order to protect wetlands from adjacent land uses.

**Wetland Upland Edge:** The boundary between (1) land with predominantly wetland or aquatic vegetation and land with predominantly terrestrial vegetation; or (2) soil that is predominantly hydric and soil that is predominantly nonhydric; or (3) in the case of wetlands without aquatic vegetation or hydric soils, land that is saturated with water to the surface or covered with shallow water and land that is not saturated with water to the surface or covered with shallow water. Where there is both wetland vegetation and wetland soils, the highest boundary shall be used. In places where the upland edge cannot be accurately determined (e.g., due to ledges or erosion), said upland edge shall be estimated from the nearest locations where wetland vegetation or wetland soils occurs.

**Wetland Vegetation:** those species that are typically adapted for life in saturated or seasonally saturated soil conditions. For the purpose of this ordinance, species identified as Obligate (always found in wetlands under natural conditions with a frequency greater than 99% but may persist in nonwetlands if planted or if a wetland has been transformed into nonwetland) or Facultative Wetland (usually found in wetlands with a frequency of 67% to 99% but occasionally found in nonwetland areas) in the U.S. Fish and Wildlife Service publication entitled Wetland Plants of the State of Maine 1986, as revised, shall be considered to be wetland vegetation. A copy of the publication is available for review in the Town Office.

**Zoning Map:** The map showing the locations of the various districts and overlay zones as adopted by the Town Council and certified by the Town Clerk as being the “official” record of the boundary locations.



## **ARTICLE II. ESTABLISHMENT OF DISTRICTS**

### **SEC. 19-2-1. ZONING DISTRICTS**

It is the intent of this Ordinance to promote land use conformities, except that nonconforming conditions legally in existence before the effective date of this Ordinance and its amendments shall be allowed to continue subject to applicable requirements.

For the purpose of this Ordinance the Town is hereby divided into districts as follows:

- Residence A District (RA)
- Residence B District (RB)
- Residence C District (RC)
- Town Center District (TC)
- Business District A (BA)
- Business District B (BB)
- Business District C (BC)
- Fort Williams Park District (FWP)
- Resource Protection Districts
  - Resource Protection 1-Critical Wetlands District (RP1-CW)
  - Resource Protection 2-Wetland Protection District (RP2-WP)
  - Resource Protection 3-Floodplain District (RP3-F)

In addition, the following overlay districts are created:

- Resource Protection 1-Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay)
- Shoreland Performance Overlay District
- Great Pond Watershed Overlay District

### **SEC. 19-2-2. ZONING MAP**

The zoning districts are defined as shown on the official copy of the “Zoning Map of Cape Elizabeth, Maine” as it may be amended from time to time. The Zoning Map shall be certified by the attested signature of the Town Clerk and shall be drawn at a scale of not less than one inch equals two thousand feet (1" = 2000') and kept on file by the Town Clerk. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map. The Zoning Map is hereby made a part of this Ordinance.

### **SEC. 19-2-3. CERTIFIED COPY OF ORDINANCE**

A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted in the Town Hall.

### **SEC. 19-2-4. LOCATION OF DISTRICT BOUNDARIES**

The boundaries of the above districts are as shown on the Zoning Map. Where the Zoning Map shows zoning district boundary lines as following public or private streets or ways, the center lines of such streets or ways shall be the boundary lines. Where district boundary lines are shown approximately on the location of existing property or lot lines and the exact location of the boundaries of the district is not indicated by means of figures, distances or otherwise described, the property or lot lines shall be the district boundary lines. Where the district boundary lines are shown upon the map outside of street lines and approximately parallel thereto, they shall be considered to be parallel to such street lines. Figures on the map between the district boundary lines and the nearest street lines indicate measurement between the same at right angles to the street lines unless otherwise specified. In cases in which the location of boundaries is not defined by detailed description at the time of enactment, such locations shall be determined by the distances in feet, when given upon the map, or when distances are not given, by the scale of the map.

Where uncertainty exists as to the location of any zoning district boundary, the property owner so affected may request, in writing, that the Code Enforcement Officer make a formal, written determination. The Code Enforcement Officer shall make a written determination within five (5) working days of receiving a request. If the property owner does not agree with the Code Enforcement Officer's determination, the property owner may appeal this decision to the Zoning Board of Appeals as an administrative appeal in accordance with Sec. 19-5-2, Powers and Duties.

### **SEC. 19-2-5. LOCATION OF RESOURCE PROTECTION DISTRICT BOUNDARIES**

Where uncertainty exists as to the location of a resource protection district boundary, the following procedures shall be used to reach an official determination of the location:

- A. Upon written request by a property owner, Town board or a municipal staff person, the Code Enforcement Officer shall determine, in writing, the existence of wetland areas and the location of resource protection and buffer district boundaries based on the Zoning Map, this Ordinance, documents cited in this Ordinance and similar materials, and a site visit. If a requesting property owner believes that an initial determination by the Code Enforcement Officer is in error or if a reasonable doubt exists regarding the existence, classification, or location of wetlands, the property owner may submit information on soils and/or vegetation

and request a meeting with the Code Enforcement Officer to reconsider the determination. If the property owner does not concur with the reconsidered determination, the Code Enforcement Officer shall refer the issue to the Planning Board for its review and determination, to be made with the advice of the Conservation Commission.

- B.** If an applicant disputes the determination of wetlands, the boundaries of resource protection districts or buffer districts by the Code Enforcement Officer, or if the Code Enforcement Officer concludes that the location of the boundary is in doubt, the applicant shall submit the following information to the Planning Board, unless otherwise waived by the Planning Board:
  - 1.** a site plan map showing the proposed use, structure or activity including a map at a scale of one inch equals fifty feet (1" = 50'), including any boundaries of Resource Protection 1-Critical Wetland Districts, Resource Protection 2-Wetland Protection Districts, Resource Protection 3-Floodplain District scaled from the Zoning Map, as well as the outer limits of Resource Protection 1-Critical Wetland Buffer Overlays, if established;
  - 2.** a topographic map showing the location and slopes for all grades within the site, by not greater than 1-foot contours;
  - 3.** a high intensity soils map as described in Sec. 19-8-3.A.2.c.6, Resource Protection Permit Procedures, showing the Wetland Upland Edge for the site as defined by wetland soils;
  - 4.** a description of the vegetative cover of the site, including dominant species and the location of the Wetland Upland Edge for the site as defined by wetland vegetation;
  - 5.** a description, supported by necessary documentation, explaining why the site is not within a Resource Protection 1-Critical Wetland District, Resource Protection 2-Wetland Protection District, Resource Protection 3-Floodplain District or Resource Protection 1-Critical Wetland Buffer Overlay as defined herein; and
  - 6.** additional information deemed necessary by the Planning Board.
- C.** In determining the existence and boundaries of particular wetland areas, district boundaries and buffer areas, the Code Enforcement Officer, the Town Planner or the Planning Board may request the Conservation Commission to inspect the site and submit its recommendations in writing.
- D.** In evaluating wetland or floodplain boundaries, the Code Enforcement Officer, the Planning Board or the Conservation Commission may consult with expert persons or agencies.
- E.** In determining wetland boundaries, the Code Enforcement Officer or Planning Board may exclude areas beyond the point where the wetland area is less than one hundred (100) feet in

width for a distance of more than one hundred (100) feet.

- F. In all cases, the burden of proof shall be on the applicant to show that the site in question is not within a Resource Protection 1-Critical Wetland District, Resource Protection 2-Wetland Protection District, Resource Protection 3-Floodplain District or designated Resource Protection 1-Critical Wetland Buffer Overlay.

## **SEC. 19-2-6. LOTS IN TWO OR MORE DISTRICTS**

Where a district boundary line as established in this Ordinance and as shown on the Zoning Map divides a lot which existed at the time of enactment of this Ordinance, the use and other requirements applying to the less restricted portion of such lot under this Ordinance may be extended thirty (30) feet beyond the district boundary line into the lot in the more restricted district. This section does not apply to Resource Protection 1-Critical Wetland Districts, Resource Protection 2-Wetland Protection District, Resource Protection 3-Floodplain Districts, Shoreland Overlay District, and Great Pond Watershed Overlay District. **(Effective August 11, 1999)**

## **ARTICLE III. ADMINISTRATION AND ENFORCEMENT**

### **SEC. 19-3-1. CODE ENFORCEMENT OFFICER**

The Code Enforcement Officer of the Town shall interpret and enforce the provisions of this Ordinance and shall require compliance with its requirements and restrictions. The Code Enforcement Officer shall adopt procedures to facilitate the handling of all matters and questions arising hereunder within the scope of the Code Enforcement Officer's authority and duties. Any decision of the Code Enforcement Officer denying a permit shall be in writing, a copy of which shall be given to the applicant. Appeals from decisions of the Code Enforcement Officer shall be to the Zoning Board of Appeals in accordance with the provisions of Sec. 19-5-2.A, Administrative Appeals.

### **SEC. 19-3-2. APPROVALS AND PERMITS REQUIRED**

Activities involving the use of land, the construction, structural alteration, repair, enlargement or relocation of a building or structure, or the demolition of a building or structure may require approvals and/or permits under the requirements of this Ordinance. No activity subject to an approval and/or permit shall commence until after the issuance of all required approvals and permits. The following activities require approvals or permits:

#### **A. Conditional Use Permit**

No use of land, buildings, or structures identified as a conditional use in the district in which it is located shall commence until after the issuance of a Conditional Use Permit by the Zoning Board of

Appeals in accordance with the provisions of Sec. 19-5-5, Conditional Use Permits. Where a conditional use shall also require Planning Board review, the Planning Board shall be substituted for the the Zoning Board of Appeals in issuing a Conditional Use Permit in accordance with the provisions of Sec. 19-5-5, Conditional Use Permits. Such conditional use review shall be conducted concurrently with any other review required by the Planning Board. **(Effective August 11, 1999)**

## **B. Site Plan Approval**

None of the following activities shall commence until after site plan approval has been obtained from the Planning Board in accordance with the provisions of Article IX, Site Plan Review:

1. activities involving the construction or expansion of nonresidential buildings or structures
2. the change or expansion of a nonresidential use (except as provided in the Town Center District)
3. the construction of multiplex housing or eldercare facilities
4. any other activity identified in Article VI, District Regulations, as requiring site plan review
5. new construction involving more than ten thousand (10,000) square feet of impervious surface, paving, clearing, or vegetative alteration, or any combination thereof.

## **C. Building Permit**

No construction, structural alteration, enlargement, or relocation of a building or structure shall commence until after the issuance of a Building Permit by the Code Enforcement Officer in accordance with Sec. 19-3-3, Building Permits.

No installation of an amateur or governmental wireless telecommunication facility antenna which extends 15' feet or more from the roof of a structure shall occur until after the issuance of a Building Permit by the Code Enforcement Officer in accordance with Sec. 19-3-3. No installation of a commercial wireless telecommunication antenna on an alternative tower structure shall occur until after the issuance of a Building Permit by the Code Enforcement Officer in accordance with Sec. 19-3-3, except that the Code Enforcement Officer may refer the antenna installation application to the Planning Board for review under Sec. 19-9, Site Plan Review and Sec. 19-8-12, Tower and Antenna Performance Standards, if the antenna concealment is not complete. **(Effective April 15, 2000)**

## **D. Certificate of Occupancy**

None of the following activities shall occur and no building, structure, or portion thereof for which a building permit was issued shall be occupied until after the issuance of a Certificate of Occupancy

by the Code Enforcement Officer in accordance with Sec. 19-3-4, Certificate of Occupancy:

1. an increase in the number of dwelling units in a structure
2. the establishment of a home occupation or home business
3. a change in the use of a nonconforming use
4. occupancy and use of vacant land except for the raising of crops, or change in the use of land, except in the raising of crops
5. any change in the use of a building from one category of use as set forth in Article VI to another category of use
6. any activity for which site plan approval is required by the Planning Board

#### **E. Demolition Permit**

No demolition of a building or structure or major portion thereof, shall commence until after the issuance of a Demolition Permit by the Code Enforcement Officer.

A permit for the demolition of a locally historic structure within the Town Center District or an historic resource identified in Sec. 19-8-6, Archaeological and Historic Resources, shall not be issued until forty-five (45) days after notice has been provided to the Town Manager, Code Enforcement Officer, and Maine Historic Preservation Commission and published in a newspaper of general circulation within Cape Elizabeth. When only a portion of a structure will be demolished, plans depicting the areas to be demolished and any replacement new construction must be submitted to the Code Enforcement Officer before the 45 day waiting period commences. **(Effective August 11, 1999)**

#### **F. Resource Protection Permit**

No activity listed in Sec. 19-6-9, Resource Protection Districts, as being permitted only upon the issuance of a Resource Protection Permit shall commence until after the issuance of said permit by the Planning Board in accordance with Sec. 19-8-3, Resource Protection Performance Standards.

#### **G. Reserved**

#### **H. Earth Materials Permit**

No removal of thirty (30) or more cubic yards of earth materials, including rock, sand, gravel, topsoil, and similar materials within any twelve (12) month period shall commence until after the issuance of an Earth Materials Permit by the Planning Board in accordance with Sec. 19-8-5, Earth Materials Removal Standards.

**I. Home Day Care Permit**

No home day care shall commence or expand its operation until after the issuance of a Home Day Care Permit by the Code Enforcement Officer in accordance with Sec. 19-8-8, Home Day Care and Day Care Facility Standards.

**J. Construction on an Existing Private Road**

No building permit shall be issued for construction on a residential lot that uses an existing private road to provide access to and street frontage for the lot until the Code Enforcement Officer determines that the road provides adequate all-season emergency access and legally binding maintenance arrangements are established in accordance with Sec. 19-7-9.A., Existing Private Road Standards.

**K. Construction Utilizing a Private Accessway**

No lot shall be created as a developable parcel that does not have the required street frontage for the district in which it is located unless the Planning Board has approved the creation of a private accessway serving the lot in accordance with Sec. 19-7-9.C., Private Accessways.

**SEC. 19-3-3. BUILDING PERMITS**

**A. Permit Required**

No building, structure, or part thereof shall be constructed, structurally altered, enlarged, or moved until a Building Permit for such action has been issued by the Code Enforcement Officer. The contractor, builder, and developer, as well as the property owner shall be responsible for any and all permits. Site plan approval, in accordance with the provisions of Article IX, Site Plan Review, may be required prior to the issuance of a building permit for certain types of uses including commercial and multiplex residential construction.

**B. Compliance With This Ordinance**

No Building Permit shall be issued until the proposed construction or alteration complies with the provisions of this Ordinance or with a decision rendered by the Zoning Board of Appeals and with any approvals of the Planning Board.

**C. Applications for Permits**

All applications for Building Permits shall be submitted in writing to the Code Enforcement Officer on forms provided for the purpose. The application shall be accompanied by the following information:

1. A site plan drawn to an indicated scale and showing the location and dimensions of all

buildings to be erected, the sewage disposal system, driveways and turnarounds, and abutting lot and street lines. The site plan shall accurately represent the relationship between any proposed building or structure or addition to an existing building and all property lines to demonstrate compliance with the setback requirements of this Ordinance. If there is any doubt as to the location of a property line on the ground or if the Code Enforcement Officer cannot confirm that all setback requirements are met from the information provided, the Code Enforcement Officer may require the applicant to provide a boundary survey or mortgage inspection plan.

2. Approval by the Local Plumbing Inspector of any private sewage disposal system proposal for the building, together with the plans for the approved system.
3. Information required to determine compliance with the terms and conditions for building and development in flood hazard areas as set forth under Chapter 6, Article VI, Floodplain Management Ordinance if the building is located within a flood hazard area.
4. Such other information as the Code Enforcement Officer may require to determine compliance with this Ordinance or the Building Code.

#### **D. Action on Applications**

Within seven (7) working days of the filing of an application for a Building Permit involving a single family residence or fifteen (15) working days for permits involving other uses, the Code Enforcement Officer shall approve, deny, or refer such application to the appropriate body. The decision of the Code Enforcement Officer shall be in writing citing the provisions of the Ordinance that apply and communicated directly to the applicant. One copy of the decision shall be filed in the Code Enforcement Officer's office. If the proposed activity requires site plan review in accordance with Article IX, Site Plan Review, the Code Enforcement Officer shall refer the applicant to the Town Planner. If a Conditional Use permit is required, the Code Enforcement Officer shall refer the applicant to the Zoning Board of Appeals and provide a copy of the decision to the Board.

#### **E. Plumbing Permit Required**

No Building Permit shall be issued for any structure or use involving the construction, installation, or alteration of plumbing facilities unless a valid plumbing permit has been secured by the applicant.

#### **F. Revision of Proposed Work**

A new or revised building permit is required if any substantial changes are made in the size, use, or construction of the structure or building after issuance of the permit.

#### **G. Building Permit Expiration**

A Building Permit secured under the provisions of this Ordinance shall become invalid if the authorized work is not commenced within six months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of



commencing the work. If the work is not completed within eighteen (18) months after the date on which the permit is granted and the Code Enforcement Officer determines that completion is not being diligently pursued, then the Code Enforcement Officer may deem the Building Permit expired. **(Effective August 11, 1999)**

## **H. Required Records**

Applications for permits with their accompanying plans and building permits shall be maintained as a permanent record by the Code Enforcement Officer.

## **SEC. 19-3-4. CERTIFICATE OF OCCUPANCY**

None of the following activities shall occur and no building, structure, or portion thereof for which a building permit was issued shall be occupied until after the issuance of a Certificate of Occupancy by the Code Enforcement Officer.

1. An increase in the number of dwelling units in a structure
2. The establishment of a home occupation or home business
3. A change in the use of a nonconforming use
4. Occupancy and use of vacant land except for the raising of crops, or change in the use of land, except in the raising of crops
5. Any change in the use of a building from one category of use as set forth in Article VI to another category of use
6. Any activity for which site plan approval is required by the Planning Board.

A Certificate of Occupancy shall not be issued if the Code Enforcement Officer finds that the project is not in compliance with this Ordinance or with any applicable approvals or permits.

In cases of use and occupancy of any building or part thereof, during a period of construction or alteration, the Code Enforcement Officer may issue a temporary certificate for periods not exceeding six (6) months. A temporary certificate may be issued for a project that received site plan approval only if a financial guarantee meeting the requirements of Sec. 16-2-4(c)(7)(A) of the Subdivision Ordinance is in place for all uncompleted site improvements, including landscaping.

## **SEC. 19-3-5. FEES**

The Town Council shall establish fees for all permits. A copy of the fee schedule shall be available from the Code Enforcement Officer.

If any work requiring a permit is commenced without first obtaining such permit, and if all requirements for the issuance of such permit can be met, the Code Enforcement Officer may issue such permit upon the filing of a late application accompanied by the required late fee for the same. **(Rev. eff. 12/10/03)**

If work is commenced because of an emergency and an application for a permit is filed within two (2) business days of the commencement of said work, the Code Enforcement Officer may waive the late fee.

## **SEC. 19-3-6. VIOLATIONS**

### **A. Notice**

If, upon investigation, the Code Enforcement Officer determines that activities are or have occurred that are in violation of this Ordinance or any permits or approvals granted for a project, the Code Enforcement Officer shall give written notice to the owner and/or occupant of the premises. The notice shall specify the nature of the violation, actions necessary to abate the violation, and the time frame within which these actions shall occur. In addition, the notice shall advise the party of the right to appeal the Code Enforcement Officer's decision and/or to seek a variance from the Zoning Board of Appeals, if appropriate.

### **B. Enforcement Action**

If, after such notice and demand, the violation has not been abated within the time provided, the Code Enforcement Officer and/or the Town Council shall institute appropriate action in the name of the Town to prevent, correct, restrain, or abate the violation(s) of this Ordinance.

### **C. Penalties**

Any owner or occupant of, or any person or entity having control or the use of, or any person or entity engaged in the construction, alteration or repair of or receiving a permit for, any building or land or part thereof, found to violate any of the provisions of this Ordinance, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable as provided in 30-A, M.R.S.A. §4452, except as otherwise provided by State law. Each day such violation is permitted to exist after written notification thereof by the Code Enforcement Officer shall constitute a separate offense.

In the event of a wetlands violation, the Town shall have the power to order complete restoration of the wetland area involved or creation of new wetlands, by the person or agent responsible for the violation. If such responsible person or agent does not complete such restoration or creation within the time specified in the order, the Town shall have the authority to restore the affected wetlands to the prior condition wherever possible and the person or agent responsible for the original violation shall be held liable to the Town for the costs associated with wetland restoration or creation, including the fees of consultants retained by the Town to design or oversee the corrective actions.

## **ARTICLE IV. NONCONFORMANCE**

### **SEC. 19-4-1. INTENT**

It is the intent of this Ordinance to promote land use conformities, except that nonconforming conditions that were created by the adoption of this Ordinance shall be allowed to continue, subject to the requirements of this Article.

### **SEC. 19-4-2. GENERAL PROVISIONS**

#### **A. Transfer of Ownership**

Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.

#### **B. Repair and Maintenance**

This Ordinance allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations which do not involve expansion of the nonconforming use or structure. Such other changes in a nonconforming use or structure as may be required by federal, state, or local building and safety codes are allowed so long as such changes comply with all other provisions of Article IV, Nonconformance.

#### **C. Reduction in Lot Size**

Except as expressly provided in this Article or for a taking by eminent domain or a conveyance in lieu thereof, no lot shall be reduced in size by conveyance of a portion thereof unless (1) the remaining land meets the minimum lot size required for the zoning district in which that land is located, and (2) the land to be conveyed either meets the minimum lot size requirement or will be conveyed to the owner of abutting property, the Town, or to a conservation organization in conjunction with covenants or similar restrictions that prohibit its development.

### **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.

### 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)**

	RA District	RC District	TC District
Front setback for principal structure			
- local roads	25'	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
- other roads	As required by Sec. 19-6-1.E	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
Side setback	25'	10'	As required by Sec. 19-6-4.D
Rear setback	20'	15'	As required by Sec. 19-6-4.D
Minimum lot area			
- with public sewerage	10,000 sq.ft.	10,000 sq.ft.	As required by Sec. 19-6-4.D
- with on-site sewage disposal	20,000 sq.ft.*	20,000 sq.ft.*	
Maximum building coverage			
- with public sewerage	25%	25%	NA
- with on-site sewage disposal	20%	20%	NA




\*Or otherwise meet the requirements of Chapter 15, Sewer Ordinance, the State Subsurface Wastewater Disposal Rules and have received a waiver of the state minimum lot size requirement pursuant to 12 M.S.R.A. Section 4807-B. The issuance of a minimum lot size waiver by the Department of Human Services in connection with a lot created prior to January 1, 1970, shall be deemed valid. Provided however, in no event shall a building permit issue for a lot which contains less than 10,000 sq. ft. **(Effective July 4, 2001)**

If a principal structure cannot be sited on a lot in conformance with these setback requirements, the owner may seek a variance from the setback requirements from the Zoning Board of Appeals (see Sec. 19-5-2.B, Variances).




## **2. *Developed Nonconforming Lots***

- a. Single Lots: A single nonconforming lot that is improved with a principal building or structure may continue to be used. Any existing principal or accessory building or

structure may be modified, enlarged, or relocated or a new building or structure constructed even though it does not conform to the setback requirements of the district in which it is located provided that such modification, construction, or relocation conforms to the standards, except minimum lot size, set forth in Sec. 19-4-3.A.1.a. above. **(Effective August 11, 1999 and revised effective July 4, 2001)**

One Owner	One Owner	One Owner
Non Conforming Lot 	Non Conforming Lot 	Non Conforming Lot 




**Lots may be conveyed;  
Buildings may be  
enlarged per limitations  
on Nonconformance  
chart**

One Owner		
One Owner	One Owner	Conforming Lot
Non Conforming Lot 	Non Conforming Lot 	Proposed Undersized Lot 

**Proposed  
undersized  
lot not  
buildable**

- b. Contiguous Developed Lots: Two or more contiguous, developed nonconforming lots or parcels in common ownership as of June 4, 1997, may be conveyed separately or together, even if all or some of the lots do not meet the dimensional requirements of this Ordinance, if a principal use or structure exists on each lot, provided that the nonconforming lots comply with the State Subsurface Wastewater Disposal Rules and the Town Sewage Ordinance. **(Revised effective July 4, 2001)**

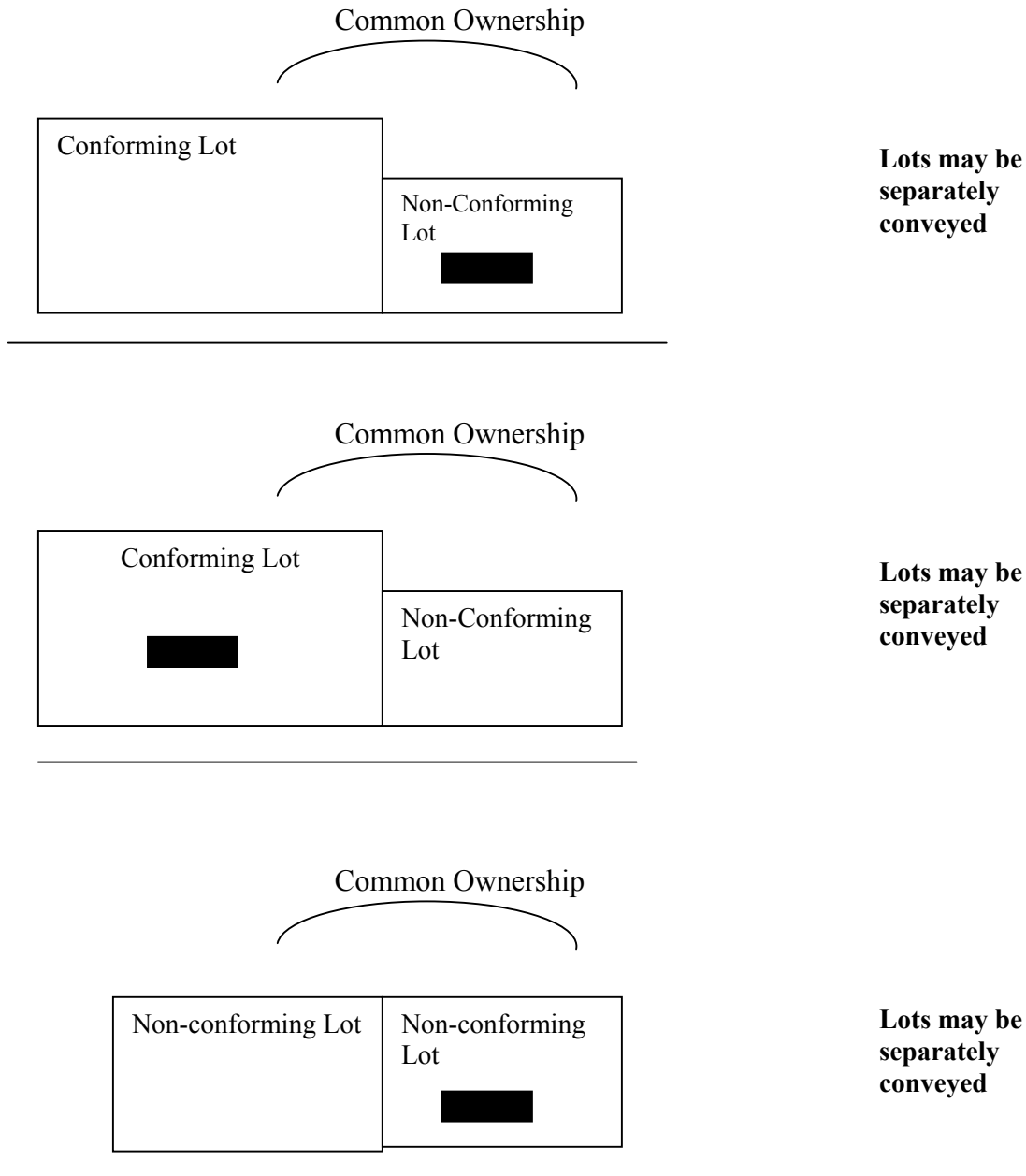
Common Ownership of Lots

Non Conforming Lot 	Non Conforming Lot 	Non Conforming Lot 
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**Lots may be  
separately  
conveyed**

- c. Partially Developed Contiguous Lots: If a vacant conforming lot abuts a developed

nonconforming lot held in the same ownership, the two lots may be separated and owned independently. If a vacant nonconforming lot abuts a developed conforming lot in the same ownership, the two lots may be separated and owned independently. If a developed nonconforming lot abuts an undeveloped nonconforming lot held in the same ownership, the lots may be separated and owned independently. **(Effective August 11, 1999 and revised effective July 4, 2001)**



## **B. Nonconforming Buildings and Structures**

### ***1. Continuation***

Any lawfully constructed building or structure which is made nonconforming by reason of the enactment of this Ordinance, or any amendment thereto, may be continued, even though such building or structure does not conform with the provisions of this Ordinance or any amendment thereto. Ordinary maintenance and repair may be done on such nonconforming structure, and such structural alterations may be made which are necessary to maintain the building or structure in good condition.

### ***2. Relocation***

A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Zoning Board of Appeals, and provided that if the use is not connected to the public sewerage system, the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated so as to increase its nonconformity.

In determining whether the building relocation meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system (if any) and other on-site soils suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the relocation.

### ***3. Reconstruction or Replacement***

Any nonconforming structure which is located closer than the required setback from the property line and which is removed, or damaged or destroyed may be reconstructed or replaced provided that a permit is obtained within one (1) year of the date of said damage, destruction, or removal, and the building or structure will be located within the original building footprint, will not increase the number of square feet of floor area, and will not create or expand any nonconformities. Reconstruction of a nonconforming structure not in compliance with these limitations may be permitted provided that such reconstruction is in



compliance with the setback requirement to the greatest practical extent as determined by the Zoning Board of Appeals in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider the physical condition and type of foundation present, if any, in addition to the criteria in Sec. 19-4-3.B.3, Relocation.

## **C. Nonconforming Uses**

### **1. Continuation**

Any lawful use of any building, structure or land, which is made nonconforming by reason of the enactment of this Ordinance, or any amendment thereto, may be continued even though such use does not conform with the provisions of this Ordinance or any amendment thereto.

### **2. Change of Nonconforming Use**

A lawful nonconforming use shall not be changed to any use other than a use permitted in the district in which the use is located, or to a less objectionable and less detrimental nonconforming use as determined by the Zoning Board of Appeals according to the following standards:

- a. The proposed use shall not increase the hours of operation;
- b. The proposed use shall not create hazardous or increased traffic conditions;
- c. The proposed use shall not create unsanitary conditions by reason of sewage disposal, emissions to the air, or other aspects of its design or operation; and
- d. The proposed use shall not adversely affect the value of adjacent properties.

### **3. Enlargement**

A nonconforming use of a building or structure shall not be extended, nor shall a nonconforming use of part of a building or structure be extended to other parts of the building or structure, unless in the opinion of the Zoning Board of Appeals: (i) those parts were manifestly arranged or designed for such use prior to the enactment of this Ordinance or any amendment making such use nonconforming, (ii) such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health, safety, or access codes, or to correct a condition that may not technically be in violation but which is determined by the Zoning Board of Appeals to constitute a health, safety, or access problem, or (iii) the change expands the total floor area devoted to the nonconforming use by less

than 25% over the lifetime of the structure and the Zoning Board of Appeals finds that the increase meets the Conditional Use Standards of Sec. 19-5-5.D, Standards for Conditional Use Approval. The expansion shall be limited to the minimum necessary to accomplish that purpose. Applications for enlargement of a nonconforming use shall be handled in accordance with the procedures of Sec. 19-5-5, Conditional Use Permits.

#### **4. *Extension of Nonconforming Use of Land***

A lawful nonconforming use existing on premises outside of a building or structure shall not be extended to or allowed to occupy any other part or parts of such premises.

#### **5. *Abandonment***

The lawful nonconforming use of any building, structure, lot of land, or portions thereof which has been abandoned, shall have been terminated and shall not thereafter be resumed. A lawful nonconforming use shall be deemed abandoned if any one of the following events occurs:

- a. the lawful nonconforming use has been changed to a conforming use;
- b. the lawful nonconforming use has been discontinued for a period of twelve (12) consecutive months;
- c. the lawful nonconforming use is changed to a prohibited use in violation of this Ordinance; or
- d. the lawful nonconforming use has been lawfully changed to another nonconforming use in compliance with this Ordinance. <sup>Λ</sup>

### **SEC. 19-4-4. NONCONFORMANCE WITHIN THE SHORELAND PERFORMANCE OVERLAY DISTRICT**

The following provisions shall govern nonconformance within the Shoreland Performance Overlay District. Nonconforming conditions in existence before the effective date of this district shall be allowed to continue, subject to the requirements set forth in this section.

#### **A. *Nonconforming Lots***

##### **1. *Single Vacant, Nonconforming Lots***

A nonconforming lot as of the effective date of this overlay district or amendment thereto may be built upon, provided that such lot is in separate ownership and not contiguous with

any other lot in the same ownership, and that all provisions of this overlay district except lot size and frontage can be met. Variances relating to setback or other requirements not involving lot size or frontage may be obtained from the Zoning Board of Appeals.

## **2. *Contiguous Built Lots***

If (i) two or more contiguous lots or parcels are in common ownership at the time of adoption of this overlay district, (ii) all or part of the lots do not meet the dimensional requirements of this overlay district, and (iii) a principal use or structure exists on each lot, then the nonconforming lots may be conveyed separately provided that said conveyance complies with the State Minimum Lot Size Law, State Subsurface Wastewater Disposal Rules, and Chapter 15, Sewer Ordinance.

If two or more principal uses or structures exist on a single lot on the effective date of this overlay district, each may be sold as a separate lot provided that the above referenced law and rules and ordinance are complied with. When such lots are divided, each lot thus created must conform as nearly as possible to the dimensional requirements of this overlay district.

## **3. *Contiguous Lots - Vacant or Partially Built***

If (i) two or more contiguous lots or parcels are in common ownership at the time of amendment of this overlay district, (ii) any of these lots do not individually meet the dimensional requirement of this overlay district or subsequent amendments, and (iii) one or more of the lots is vacant or contains no principal structure, then the nonconforming lots may be conveyed separately as long as said conveyances comply with the State Minimum Lot Size Law, State Subsurface Wastewater Disposal Rules, and Chapter 15, Sewer Ordinance.

# **B. Nonconforming Buildings and Structures**

## **1. *Enlargement***

A nonconforming structure may be added to or expanded after obtaining a permit from the Code Enforcement Officer, provided that such addition or expansion does not increase the nonconformity of the structure.

- a. After January 1, 1989, if any portion of a structure does not meet the required setback from the normal high-water line of a water body or wetland upland edge, that portion of the structure shall not be expanded in floor area or volume by more than 30% during the lifetime of the structure. Construction or enlargement of a foundation beneath an existing structure shall not be considered an expansion of the structure provided that: (i) the structure and new foundation meet the setback requirement to the greatest practical extent as determined by the Zoning Board of Appeals, utilizing the criteria specified in Sec. 19-4-4.B.2, Relocation; (ii) the completed foundation does not extend beyond the exterior dimensions of the structure; and (iii) the

foundation does not cause the structure to be elevated by more than three (3) additional feet. **(Effective August 11, 1999)**

- b. No structure which fails to meet the required setback from the normal high-waterline of a water body, tributary stream, or wetland upland edge shall be expanded toward the water body, tributary stream, or wetland. **(Effective August 11, 1999)**

## **2. *Relocation***

A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Zoning Board of Appeals, and provided that, if the use is not connected to the public sewerage system, the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State Law, the State Subsurface Wastewater Disposal Rules, and Chapter 15, Article II, Private Sewage Disposal Ordinance, or that a new system can be installed in compliance with the law and said rules. In no case shall a structure be relocated so as to increase its nonconformity.

In determining whether a relocation meets the setback to the greatest practical extent, the Zoning Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system (if any) and other on-site soils suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the relocation. The Zoning Board of Appeals may request guidance from the Conservation Commission prior to its decision.

## **3. *Reconstruction or Replacement***

Any nonconforming structure which fails to meet the required setback from the normal high-water line of a water body, tributary stream, or wetland upland edge and which is damaged or destroyed by more than 50% of the market value of the structure before such damage or destruction may be reconstructed or replaced provided that a building permit is obtained within one (1) year of the date of said damage or destruction. The reconstruction or replacement shall be in compliance with the water setback requirement to the greatest practical extent as determined by the Zoning Board of Appeals in accordance with the purposes of this district. The Zoning Board of Appeals may request guidance from the Conservation Commission prior to its decision. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.

Any nonconforming structure which is damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place with a permit from the Code Enforcement Officer.

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent, the Zoning Board of Appeals shall consider, in addition to the criteria in Sec. 19-4-4.B.2, Relocation, the physical condition and type of foundation, if any.

#### **4. *Change of Use of a Nonconforming Structure***

The use of a nonconforming structure may not be changed to another use unless the Planning Board, after receiving written application for a change of use in the Shoreland Performance Overlay District, determines that the proposed new use will have no greater adverse impact on the water body or wetland, or on the subject or adjacent properties and resources, than the existing use. In determining that no greater adverse impact will occur, the Planning Board may require written documentation from the applicant regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, and archaeological and historic resources. The Planning Board may request guidance from the Conservation Commission prior to making its decision.

### **C. *Nonconforming Uses***

#### **1. *Expansion***

Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may be expanded within existing residential structures or within expansions of such structures as permitted in Sec. 19-4-4.B.1, Expansion, after obtaining a permit from the Zoning Board of Appeals.

#### **2. *Resumption Prohibited***

If a nonconforming use is discontinued for a period of more than one year, or is superseded by a conforming use, the lot, building, or structure may not again be devoted to a nonconforming use. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

#### **3. *Change of Use***

An existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject property and the adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater impact shall be made according to criteria listed in Sec. 19-4-4.B.4, Change of Use of a Nonconforming Structure.

## **SEC. 19-4-5. NONCONFORMANCE WITHIN THE RESOURCE PROTECTION DISTRICTS**

A use, structure or activity that was lawful before May 9, 1990, and made nonconforming by the Resource Protection provisions or any amendment thereto, may be continued subject to the provisions of this section. Determinations of building status shall be regulated by the Town Assessor's property card as of April 1, 1990. No building footprint expansion of a nonconforming structure shall be allowed if any variance is required under the Zoning Ordinance. An expansion shall include any increase in floor area or volume of a structure or the construction or expansion of a porch or deck. For the purposes of this section, the sum of the horizontal area shall constitute the floor area of a deck or porch.

### **A. Nonconforming Buildings and Structures**

A nonconforming structure may be altered, added to or expanded only if the following standards are met, but these standards do not restrict the conversion of basement or cellar space, as defined by the Building Code, into finished area, provided such conversion is consistent with the Floodplain Management Ordinance. No exterior structural alteration or addition to any nonconforming structure over the life of the structure shall expand beyond the limitations set forth below:

#### ***1. Resource Protection 1-Critical Wetland District***

In the case of any structure located in the Resource Protection 1-Critical Wetland District, no expansion shall be permitted which expands: (i) the structure's floor area or volume by more than twenty-five percent (25%) of its size at the time it became a nonconforming structure, or (ii) the existing building footprint.

#### ***2. Resource Protection 1-Critical Wetland Buffer Overlay and Resource Protection 2-Wetland Protection District***

In the case of any structure located in a Resource Protection 1-Critical Wetland Buffer Overlay and within one hundred (100) feet of the Resource Protection 1-Critical Wetland upland edge or in a Resource Protection 2-Wetland Protection District, no expansion shall be permitted which expands the structure's floor area or volume by more than twenty-five percent (25%) of its size at the time it became a nonconforming structure. An expansion of the existing building footprint may be permitted to accommodate up to a twenty-five percent (25%) expansion of floor area or volume, provided that all of the requirements of this section are met. A building footprint shall not be expanded to be closer than the shortest nonconforming setback distance from the wetland upland edge (see Figure A). In no event shall any expansion be within twenty-five (25) feet of the wetland upland edge (see Figure B). Sketches A and B illustrate the requirements of this section.

**3. *Resource Protection 1-Critical Wetland Buffer Overlay greater than one hundred (100) feet from the Resource Protection 1-Critical Wetland Upland Edge***

In the case of an existing main building which is located in the Resource Protection 1-Critical Wetland Buffer Overlay and more than one hundred (100) feet from the Resource Protection 1-Critical Wetland upland edge, the main building may be expanded a distance of not more than fifty (50) feet from the building footprint existing at the time it became a nonconforming structure, provided that all of the requirements of this section are met. No expansion shall be permitted which expands the floor area or volume by more than twenty-five percent (25%) of its size at the time the structure became nonconforming. However, a single story building that (a) is connected to public sewer and (b) is not a single family home, may increase its volume or floor area by no more than eighty percent (80%) of its pre-expansion volume or floor area, so long as there is no expansion of the building footprint as it existed as of March 16, 2007. No part of the expansion may be constructed within one hundred (100) feet of the Resource Protection 1-Critical Wetland upland edge. **(Effective May 9, 2007)**

In the case of structures other than the main building, no expansion shall be permitted which expands the structure's floor area or volume by more than twenty-five percent (25%) of its size at the time it became a nonconforming structure. An expansion of the existing building footprint may be permitted to accommodate up to a twenty-five percent (25%) expansion of the floor area or volume, provided that all of the requirements of this section are met. No part of the expansion may be constructed within one hundred (100) feet of the Resource Protection 1-Critical Wetland upland edge. **(Effective August 11, 1999)**

**4. *Decks in the Resource Protection 1-Critical Wetland Buffer Overlay and Resource Protection 2-Wetland Protection District***

Expansion or construction of a deck or patio shall be calculated and included as a footprint expansion. No deck or patio shall be permitted which is located closer than the shortest existing nonconforming setback distance or a distance of one hundred (100) feet, whichever is less, from the wetland upland edge. In no case shall a deck be constructed which is within twenty-five (25) feet of the wetland edge. Decks allowed under this section shall require a building permit.





## **5. Variance**

If an expansion of an existing main building is proposed which exceeds the above restrictions and is not located in the Resource Protection 1-Critical Wetland, the Zoning Board of Appeals may grant a variance for the proposed expansion in accordance with the procedures and standards in Sec. 19-5-2.,B, Variances. No variance shall be granted to expand the existing building footprint, and the floor area or volume expansion shall not exceed forty percent (40%) of the main building size at the time it became a nonconforming structure.

### **B. Nonconforming Uses**

If a nonconforming use is discontinued for twelve (12) consecutive months, no resumption shall be allowed unless it is expressly permitted under Sec. 19-6-9.B, Permitted Uses, or Sec. 19-6-9.C, Uses Permitted with a Resource Protection Permit. Agricultural uses shall be exempt from this subsection.



### **C. Replacement Structures**

If any nonconforming structure or use is destroyed or substantially damaged by fire, explosion or other act of nature, it may be rebuilt provided the building permit is obtained within one year of the destruction. Any expansion of a replacement structure shall comply with the standards of Sec. 19-4-5.A, Expansion of Nonconforming Structures, and Sec. 19-4-5.B, Nonconforming Uses.

### **D. Septic Systems**

Requests for expansion or replacement of septic systems located within established Resource Protection 1-Critical Wetland Buffer Overlays shall be reviewed by the Code Enforcement Officer and approved only if in conformance with the State Plumbing Code.

### **E. Exemption**

Notwithstanding any provisions of this Ordinance to the contrary, a principal building or structure (and any building addition or accessory buildings) may be erected upon a lot which is part of a subdivision approved by the Planning Board after December 22, 1976, provided that:

1. Such construction and use either will not occur within a Resource Protection 1-Critical Wetland District excluding any Resource Protection 1-Critical Wetland Buffer Overlays or which has a valid Resource Protection Permit that was issued by the Planning Board applying the provisions in effect prior to May 10, 1990; and
2. Such construction has a valid building permit in place as of May 10, 2000. **(Effective August 11, 1999)**

## **ARTICLE V. ZONING BOARD OF APPEALS**

### **SEC. 19-5-1. APPOINTMENT AND COMPOSITION**

There is hereby established the Zoning Board of Appeals. The Board shall consist of seven (7) members, appointed by the Town Council to serve without compensation for staggered three (3) year terms expiring on January 1 or until their successors have been duly appointed. The Board shall elect a Chair and a Secretary from its own membership, both to be elected for one (1) year. The Board shall make such rules as it deems necessary to carry out the provisions of this Ordinance and govern the conduct of its public hearings.

### **SEC. 19-5-2. POWERS AND DUTIES**

The Board shall have the following exclusive powers and duties to be exercised only upon written appeal by a party aggrieved by a decision of the Code Enforcement Officer or other municipal official or board:

#### **A. Administrative Appeals**

To determine whether the decision of the Code Enforcement Officer is in conformity with the provisions of this Ordinance, to modify such decision to conform with such provisions, and to interpret the meaning of the Ordinance in all cases of uncertainty.

#### **B. Variances (Effective August 10, 2000)**

##### **1. All Districts Except the Shoreland Performance Overlay District**

To grant variances from the terms of this Ordinance provided that (i) there is no substantial departure from the intent of the Ordinance, and (ii) a literal enforcement of the Ordinance would cause a practical difficulty as defined by 30-A.M.R.S.A. Sec. 4353, 4-C. Variance from dimensional standards, and when the following conditions exist:

- a. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
- b. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties; In determining whether a variance would have an unreasonable detrimental effect on the use or market value of abutting properties, the Zoning Board shall consider if the variance would have the effect of blocking an established view, posing a fire safety hazard, casting a shadow on an adjoining lot, reducing the appraised

value of an adjoining property by 10% or more or of eliminating the privacy of an adjoining property without an effort to mitigate the lost privacy;

c. The practical difficulty is not the result of action taken by the applicant or a prior owner;

d. No other feasible alternative to a variance is available to the petitioner;

e. The granting of a variance will not unreasonably adversely affect the natural environment; and

f. The property is not located in whole or in part within shoreland areas as described in Title 38, Section 435.

Notwithstanding the definition of “dimensional standards” in 30 M.R.S.A. Sec. 4353, 4-C, no variance shall be granted:

- a. to permit a use or structure otherwise prohibited,
- b. to reduce the required lot area or street frontage, or
- c. to either reduce a setback to less than 10’ or the shortest nonconforming setback distance created by the existing building.

The Zoning Board of Appeals may grant a variance for the purpose of making that property accessible to an applicant with a disability who is living on the property without a finding that a strict application of the ordinance to the applicant and the applicant’s property would cause practical difficulty. The Board shall restrict any variance granted for the purpose of making that property accessible to an applicant with a disability who is living on the property, solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the applicant with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the applicant with the disability lives on the property.

## **2. Shoreland Performance Overlay District (Effective August 10, 2000)**

To grant variances from the terms of this Ordinance provided that (i) there is no substantial departure from the intent of the Ordinance, and (ii) a literal enforcement of the Ordinance would cause undue hardship as defined by 30-A M.R.S.A. §4353, Zoning Adjustment. The term "undue hardship" as used in this section means:

- a.* The land in question cannot yield a reasonable return unless a variance is granted;
- b.* The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

- c. The granting of a variance will not alter the essential character of the locality; and
- d. The hardship is not the result of action taken by the applicant or a prior owner.

Notwithstanding the definition of “dimensional standards” in 30 M.R.S.A. § 4353, 4-C, no variance shall be granted:

- a. to permit a use or structure otherwise prohibited,
- b. or to reduce the required lot area or street frontage, or
- c. to either reduce a setback to less than 10’ or the shortest nonconforming setback distance created by the existing building.

The Zoning Board of Appeals may grant a variance for the purpose of making that property accessible to an applicant with a disability who is living on the property without a finding that a strict application of the ordinance to the applicant and the applicant’s property would cause undue hardship. The Board shall restrict any variance granted for the purpose of making that property accessible to an applicant with a disability who is living on the property, solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the applicant with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the applicant with the disability lives on the property.

### **C. Conditional Use Permits**

To consider requests for the issuance of permits for any of the conditional uses of land or buildings permitted in the various districts, in accordance with the procedures and standards of Sec. 19-5-5, Conditional Use Permits.

### **D. Setback Reductions**

To consider requests for reduction of the setback requirements in accordance with the procedures and standards of Sec. 19-7-10, Reductions in Setbacks.

### **E. Sewer Appeals**

To consider written appeals by a party aggrieved by a decision of any public official or agent of the Town under Chapter 15, Sewer Ordinance, to consider and act upon requests for special permits under Sec. 15-1-8(c) of the Sewage Ordinance, and to interpret any provision of Chapter 15 in cases of uncertainty.

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

Any person aggrieved by a decision of the Code Enforcement Officer or other municipal official, where applicable, may appeal such decision to the Board within thirty (30) days following the date of such decision by filing a notice of appeal with the Code Enforcement Officer. Notices of appeal and applications for permits for conditional uses of land or buildings shall be filed with the Code Enforcement Officer upon forms approved by the Board setting forth the grounds for the appeal or application, accompanied by a fee in an amount prescribed by the Town Council and such other information as the Board may require.

#### **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. 16-2-4(a)(7) of the Subdivision Ordinance, except that a legal notice shall be published once in a newspaper. **(Effective August 11, 1999)**

#### **B. Conduct of Hearing**

The Code Enforcement Officer, unless excused, shall attend all hearings on appeals and applications and shall present to the Board all plans, photographs or other factual materials which are relevant to the proceeding. The Board shall keep minutes of its proceedings, including a record of the final disposition of all matters together with the reasons therefor. The Director of Public Works, unless excused, shall attend meetings at which sewer appeals are discussed.

#### **C. Decision Procedures**

A written notice of the Board's decision on each appeal or application, with the reasons therefor, shall be issued to the appellant or applicant and to the Code Enforcement Officer within thirty (30) days following the date of the hearing thereon. The Board may grant a variance only with an affirmative vote of four (4) members of the Board. Any decision requiring action by the Code Enforcement Officer, or when applicable by the Director of Public Works, shall expressly direct such action. The appellant or applicant and any property owner with standing may seek judicial review of the decision by the Board in accordance with the Laws of the State of Maine.

#### **D. Renewed Proceedings**

After a decision has been made by the Board, a new appeal or application of similar import shall not be considered by the Board until one (1) year has elapsed following the date of such decision. The Board may consider a new appeal or application within this one-year period if it determines that

owing to a mistake of law or misunderstanding of fact an injustice was done, or that a change has taken place in some essential aspect of the case sufficient to warrant reconsideration. Any such new appeal or application shall be processed as a new request subject to the procedures set out above.

## **SEC. 19-5-4. VARIANCES**

### **A. Criteria for Approval**

The Board may grant a variance from the provisions of this Ordinance only if it finds that literal enforcement of the Ordinance will cause a practical difficulty as defined in Sec. 19-5-2.B, Powers and Duties. **(Effective August 10, 2000)**

### **B. Conditions**

The Board may impose such conditions to a variance as it deems necessary. The applicant shall comply with all conditions imposed.

### **C. Notification to the Department of Environmental Protection**

A copy of each variance granted by the Board from the provisions of Sec. 19-6-9, Resource Protection Districts, or from the provisions of Sec. 19-6-11, Shoreland Performance Overlay District, shall be submitted by the Code Enforcement Officer to the Department of Environmental Protection within fourteen (14) days of the decision.

### **D. Recording of Variances**

No rights shall accrue to the recipient of any variance unless the applicant records a certificate of variance in conformity with 30-A M.R.S.A. §4353, Zoning Adjustment in the Cumberland County Registry of Deeds within ninety (90) days of final approval of the variance and provides a copy of the recorded certificate to the Code Enforcement Officer within ten (10) days of the recording.

### **E. Expiration of Variance**

Notwithstanding the recording of a certificate of variance, the applicant's legal rights set forth in a variance shall expire if the construction or alteration involved is not substantially completed within one (1) year from the date on which the Zoning Board of Appeals voted to grant the variances. The Board may grant one (1) extension for up to one (1) additional year upon written request of the applicant. This variance expiration provision shall be effective for all variances approved after January 1, 1989.

## **SEC. 19-5-5. CONDITIONAL USE PERMITS**

The purpose of this section is to establish the procedures and standards to enable the Town to review applications for conditional use permits.

### **A. Conditional Use Approval Required**

A building, structure, or parcel of land may be used for a conditional use if:

1. The use is specifically listed as a conditional use in the district, and
2. conditional use approval is granted by the Zoning Board of Appeals.

### **B. Administrative Procedures**

1. Prior to submitting a formal application for conditional use approval, the applicant should meet with the Code Enforcement Officer to informally discuss the proposed application and the review process. The purpose of this informational meeting is to allow the applicant to understand the process and clarify any questions before submitting a formal application.
2. An application for conditional use approval shall be made to the Code Enforcement Officer on forms provided for that purpose.
3. The application form shall be accompanied by the supporting materials set forth in Sec. 19-5-5.C, Application Requirements, and an application fee.
4. The application shall be processed in accordance with the procedures set forth in Sec. 19-5-3, Procedures.

### **C. Application Requirements**

The applicant's submissions shall include the following:

1. A completed and signed application form
2. The appropriate fee
3. The location of the proposed use, including Assessor's tax map and lot number, and a location map
4. A description of the exact nature of the proposed use, including but not limited to the type of use, square footage involved, hours of operation, types and amount of any pollutants to be generated, and types and amount of traffic expected to be generated
5. A scale drawing, including existing and proposed buildings, important natural features,

driveways, parking areas, pedestrian ways, streets and other rights-of-way, and location of signs and outdoor lighting

6. Information demonstrating that the application complies with the standards of approval of Sec. 19-5-5.D, Standards for Conditional Use Approval

This information must be provided or a waiver sought before the application will be considered by the Board. The Board may waive any of these submission requirements at its initial consideration of the application upon written request of the applicant. In waiving any submission requirement, the Board shall find that such waived information is not needed to determine conformance with the standards of approval due to the scale or nature of the proposed activity.

The Board may also request, at the initial consideration of the application, that additional information be provided to determine compliance with the standards of approval. The applicant shall have the burden of providing the information upon which the Board will base its findings and decision.

#### **D. Standards for Conditional Use Approval**

The Board shall, after review of required materials, authorize issuance of a conditional use permit, upon a showing that:

1. any conditions prescribed for such conditional use will be satisfied;
2. the proposed use will not create hazardous traffic conditions when added to existing and foreseeable traffic in its vicinity;
3. the proposed use will not create unsanitary conditions by reason of sewage disposal, emissions to the air, or other aspects of its design or operation;
4. the proposed use will not adversely affect the value of adjacent properties;
5. the proposed site plan and layout are compatible with adjacent property uses and with the Comprehensive Plan; and
6. the design and external appearance of any proposed building will constitute an attractive and compatible addition to its neighborhood, although it need not have a similar design, appearance or architecture.

Upon a finding by the Board that all of these standards have been met, the Board shall authorize the issuance of a permit for such conditional use, but may impose such conditions upon the use as it deems necessary in order to assure that the foregoing objectives will be attained.

#### **E. Conditions of Approval**

The Board may attach conditions to its approval of a conditional use. These conditions may include,



but are not limited to, such requirements as:

1. off-site street improvements
2. access restrictions
3. hours of use
4. buffering and screening
5. utility improvements
6. performance guarantees

The Board may require that the terms of any conditions of approval be recorded in the Cumberland County Registry of Deeds.

#### **F. Duration of a Conditional Use Approval**

1. Provided all conditions and standards of approval are met, a conditional use shall be a continuing grant of permission for as long as the property is used for such purposes. The conditional use shall expire if the owner:
  - a. physically alters the property and/or structure so it can no longer be used for the conditional use, or
  - b. ceases to use the property for the approved conditional use for one (1) year or more, or
  - c. fails to initiate the operation or conduct of the conditional use within one (1) year of the date of the Board's vote to grant said approval.
2. A conditional use may be expanded in area or function only with the granting of a new conditional use approval by the Board.

#### **G. Scope of Approval**

All permits or approvals shall include, as an express condition, a written statement to the effect that the permit or approval is granted subject to all elements of the final plans and specifications submitted by the applicant and to all representations, oral or written, made by or on behalf of the applicant in support of the application.

## ARTICLE VI. DISTRICT REGULATIONS

### 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

The following uses are permitted in the Residence A District:

##### *1. The following resource-related uses:*

- a. Any use permitted in Resource Protection 1-Critical Wetlands District, or in Resource Protection 2-Wetland Protection District, or in Resource Protection 3-Floodplain District, as shown on Table 19-6-9
- b. Agriculture, provided that no animal or fowl shall be raised for commercial purposes on any lot containing less than one hundred thousand (100,000) square feet
- c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet
- d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards
- e. Timber harvesting

##### *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

**3. The following nonresidential uses:**

- a. Home day care
- b. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet for retail sales of products
- c. Boat repair facility, subject to the provisions of Sec. 19-8-9, Boat Repair Facility Standards
- d. Golf Course and Golf Course Related Activities **(Effective February 12, 2003)**

**4. The following accessory uses:**

- a. Accessory building, structure or use
- b. Outside athletic facility accessory to permitted use
- c. Home occupation
- d. The renting of not more than two (2) rooms within a single-family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
- e. Amateur or governmental wireless telecommunication facility antenna **(Effective April 15, 2000)**
- f. Amateur or governmental wireless telecommunication facility tower **(Effective April 15, 2000)**
- g. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. **(Effective April 15, 2000)**

**C. Conditional Uses**

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

**1. The following resource-related uses:**

- a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see permitted uses), subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards

**2. The following nonresidential uses:**

- a. Cemetery
- b. Day care facility
- c. Fraternal or social institution
- d. Institution of an educational, religious, or philanthropic nature, including school, hospital, church, municipal use, or similar facility
- e. Playground or park

**3. The following accessory uses:**

- a. Home business
- b. Accessory dwelling unit

**D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

**E. Standards**

**1. Performance standards**

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Residence A District include:

Sec. 19-7-5 Creation of an Accessory Dwelling Unit  
 Sec. 19-7-6 Eldercare Facility Standards  
 Sec. 19-8-5 Earth Materials Removal Standards  
 Sec. 19-8-7 Great Pond Watershed Performance Standards  
 Sec. 19-8-8 Home Day Care and Day Care Facility Standards  
 Sec. 19-8-9 Boat Repair Facility Standards

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

<b>MINIMUM LOT AREA</b>	
<b>(1) Boat repair facility for commercial purposes</b>	200,000 sq. ft. (4.6 acres)
<b>(2) Multiplex housing</b>	10 acres
<b>(3) Eldercare facilities</b>	10 acres
<b>(4) Golf Course (eff. February 12, 2003)</b>	150 acres (eff. February 12, 2003)
<b>(5) Other uses</b>	80,000 sq. ft.
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<b>(1) Multiplex housing</b>	1 unit per 66,000 sq. ft. of net residential area
<b>(2) In subdivisions</b>	1 unit per 80,000 sq. ft. of net residential area

<b>(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning</b>	1 unit per 66,000 sq. ft. of net residential area
<b>(4) In eldercare facilities</b>	1 unit per 6,000 sq. ft. or 1 bed per 3,500 sq. ft. of net residential area, whichever is less
<b>(5) Other housing</b>	1 unit per 80,000 sq. ft. of gross lot area
<b>MINIMUM STREET FRONTAGE</b>	
<b>(1) All uses</b>	125 ft.
<b>MINIMUM SETBACKS</b>	
<b>(1) All uses unless otherwise specified</b>	
(a) Side yard setback	30 ft.  The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(b) Rear yard setback	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(c) Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private streets	30 ft.
<b>(2) Multiplex housing and eldercare facilities</b>	
(a) From property line	75 ft.

<p><b>(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade</b></p> <p>(a) Side yard setback</p> <p>(b) Rear yard setback</p>	<p>10 ft.</p> <p>5 ft.</p>
<p><b>(4) Farm and fish markets</b></p> <p>(a) Side yard setback</p> <p>(b) Rear yard setback</p> <p>(c) Front yard setback</p> <p>Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure</p> <p>(a) Property line setback</p> <p>Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure</p> <p>(a) Property line setback</p> <p>(b) Front yard setback</p> <p><b>(5) Open Space Zoning Subdivisions</b> <i>(See Sec. 19-7-2)</i></p> <p>(a) Side yard setback</p>	<p>50 ft.</p> <p>50 ft. <sup>Λ</sup></p> <p>100 ft.</p> <p><del>No outside storage shall be located within these setbacks.</del> <sup>Λ</sup></p> <p>125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p> <p>125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p> <p>125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more <b>(Effective April 15, 2000)</b></p> <p>20 ft.</p>

(b) Rear yard setback	20 ft.
(c) Front yard setback	20 ft.
<b><i>(6) Deck with a height of less than ten (10) feet above average grade</i></b>	
(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
<b><i>(7) Accessory building having less than one hundred fifty (150) square feet of floor area</i></b>	
(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
<b><i>(8) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use</i></b>	
(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
	<b>(Rev. eff. 12/10/03)</b>
<b>MAXIMUM TELECOMMUNICATION HEIGHT</b>	
<b><i>(1) Antenna attached to a structure</i></b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b><i>(2) Amateur or governmental tower attached or braced against a structure</i></b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b><i>(3) Freestanding amateur or governmental wireless telecommunication tower</i></b>	50' measured from average original grade <b>(Effective April 15, 2000)</b>
<b>MINIMUM LOT WIDTH (Effective August 11, 1999)</b>	

<i>(1) All uses</i>	40 ft.
<b>MAXIMUM BUILDING FOOTPRINT</b>	
<i>(1) All uses</i>	None, except nonconforming lots shall comply with the building footprint standards contained in Sec. 19-4-3, Nonconformity Outside of Shoreland and Resource Protection Areas.
<b>MAXIMUM BUILDING HEIGHT</b>	
<i>(1) All uses</i>	35 ft.

#### **F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Multiplex housing and eldercare facilities
2. Nonresidential uses listed in Sec. 19-6-1.B.3, except home day cares, which shall not require site plan review **(Effective August 11, 1999)**
3. Nonresidential uses listed Sec. 19-6-1.C.2
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review



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

### **A. Purpose**

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

### **B. Permitted Uses**

The following uses are permitted in the Residence B District:

#### ***1. The following resource-related uses:***

- a. Any use permitted in Resource Protection 1-Critical Wetlands District, or in Resource Protection 2-Wetland Protection District, or in Resource Protection 3-Floodplain District, as shown on Table 19-6-9
- b. Agriculture, provided that no animal or fowl shall be raised for commercial purposes on any lot containing less than one hundred thousand (100,000) square feet
- c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet
- d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards
- e. Timber harvesting

#### ***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

**3. *The following nonresidential uses:***

- a. Home day care
- b. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet for retail sales of products
- c. Golf Course Related Activities, excluding restaurants, clubhouses and meeting halls. **(Eff. February 12, 2003)**

**4. *The following accessory uses:***

- a. Accessory building, structure or use
- b. Outside athletic facility accessory to permitted use
- c. Home occupation
- d. The renting of not more than two (2) rooms within a single-family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
- e. Amateur or governmental wireless telecommunication facility antenna **(Effective April 15, 2000)**
- f. Amateur or governmental wireless telecommunication facility tower **(Effective April 15, 2000)**
- g. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. **(Effective April 15, 2000)**

**C. Conditional Uses**

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

**1. *The following resource-related uses:***

- a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see permitted uses), subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards

**2. *The following nonresidential uses:***

- a. Cemetery
- b. Day care facility
- c. Fraternal or social institution
- d. Institution of an educational, religious, or philanthropic nature, including school, hospital, church, municipal use, or similar facility
- e. Playground or park A

**3. *The following accessory uses:***

- a. Home business
- b. Accessory dwelling unit

**D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

**E. Standards**

**1. *Performance standards***

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Residence B District include:
  - Sec. 19-7-5 Creation of an Accessory Dwelling Unit
  - Sec. 19-7-6 Eldercare Facility Standards
  - Sec. 19-8-5 Earth Materials Removal Standards
  - Sec. 19-8-8 Home Day Care and Day Care Facility Standards

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

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

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

<b>MINIMUM STREET FRONTAGE</b>	
<b><i>(1) All uses</i></b>	125 ft.
<b>MINIMUM SETBACKS</b>	
<b><i>(1) All uses unless otherwise specified</i></b>	
(a) Side yard setback	30 ft.  The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(b) Rear yard setback	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. <b>(Effective August 11, 1999)</b>
(c) Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private streets	30 ft.
(d) Limit on parking within the front yard	A nonresidential use shall not locate its required off-street parking within the front yard setback
<b><i>(2) Multiplex housing and eldercare facilities</i></b>	
(a) From property line	75 ft.
<b><i>(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade</i></b>	

(a) Side yard setback	10 ft.
(b) Rear yard setback	5 ft.
<b><i>(4) Farm and fish markets</i></b>	
(a) Side yard setback	50 ft.
(b) Rear yard setback	50 ft. <sup>Λ</sup>
(c) Front yard setback	100 ft.
	<del>No outside storage shall be located within these setbacks.</del> <sup>Λ</sup>
Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	
(a) Property line setback	125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b>
Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure	
(a) Property line setback	125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b>
(b) Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more <b>(Effective April 15, 2000)</b>
<b><i>(5) Deck with a height of less than ten (10) feet above average grade</i></b>	
(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
<b><i>(6) Accessory building having less than one hundred fifty (150) square feet of floor area</i></b>	

(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
<b>(7) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use</b>	
(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
<b>(Rev. eff. 12/10/03)</b>	
<b>MAXIMUM TELECOMMUNICATION HEIGHT</b>	
<b>(1) Antenna attached to a structure</b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b>(2) Amateur or governmental tower attached or braced against a structure</b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b>(3) Freestanding amateur or governmental wireless telecommunication tower</b>	50' measured from average original grade <b>(Effective April 15, 2000)</b>
<b>MINIMUM LOT WIDTH (Effective August 11, 1999)</b>	
<b>(1) All uses</b>	40 ft.
<b>MAXIMUM BUILDING FOOTPRINT</b>	
<b>(1) All uses</b>	None, except nonconforming lots shall comply with the building footprint standards contained in Sec. 19-4-3
<b>MAXIMUM BUILDING HEIGHT</b>	
<b>(1) All uses</b>	35 ft.

## F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Multiplex housing and eldercare facilities
2. Nonresidential uses listed in Sec. 19-6-2.B.3, except home day cares, which shall not require site plan review
3. Nonresidential uses listed in Sec. 19-6-2.C.2
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

## **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**

The following uses are permitted in the Residence C District:

#### ***1. The following resource-related uses:***

- a. Any use listed in Resource Protection 1-Critical Wetlands District, or in Resource Protection 2-Wetland Protection District, or in Resource Protection 3-Floodplain District, as shown on Table 19-6-9
- b. Agriculture, provided that no animal or fowl shall be raised for commercial purposes on any lot containing less than one hundred thousand (100,000) square feet
- c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet
- d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards
- e. Timber harvesting

#### ***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



**3. *The following nonresidential uses:***

- a. Home day care
- b. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet for retail sales of products
- c. Boat repair facility, subject to the provisions of Sec. 19-8-9, Boat Repair Facility Standards

**4. *The following accessory uses:***

- a. Accessory building, structure or use
- b. Outside athletic facility accessory to permitted use
- c. Home occupation
- d. The renting of not more than two (2) rooms within a single-family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
- e. Amateur or governmental wireless telecommunication facility antenna **(Effective April 15, 2000)**
- f. Amateur or governmental wireless telecommunication facility tower **(Effective April 15, 2000)**
- g. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. **(Effective April 15, 2000)**

**C. Conditional Uses**

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

**1. *The following resource-related uses:***

- a. Extraction of sand, gravel, rock and similar earth materials, except topsoil (see permitted uses), subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards

**2. *The following nonresidential uses:***

- a. Cemetery
- b. Day care facility
- c. Fraternal or social institution
- d. Institution of an educational, religious, or philanthropic nature, including school, hospital, church, municipal use, or similar facility
- e. Playground or park

**3. *The following accessory uses:***

- a. Home business
- b. Accessory dwelling unit

#### **D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

#### **E. Standards**

##### **1. Performance Standards**

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Residence C District include:
  - Sec. 19-7-5 Creation of an Accessory Dwelling Unit
  - Sec. 19-7-6 Eldercare Facility Standards
  - Sec. 19-7-7 Manufactured Housing Parks
  - Sec. 19-8-5 Earth Materials Removal Standards
  - Sec. 19-8-8 Home Day Care and Day Care Facility Standards
  - Sec. 19-8-9 Boat Repair Facility Standards

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

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

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

<p><b>(2) Multiplex housing and eldercare facilities</b></p> <p>(a) From property line</p>	<p>75 ft.</p>
<p><b>(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade</b></p> <p>(a) Side yard setback</p> <p>(b) Rear yard setback</p>	<p>10 ft.</p> <p>5 ft.</p>
<p><b>(4) Farm and fish markets</b></p> <p>(a) Side yard setback</p> <p>(b) Rear yard setback</p> <p>(c) Front yard setback</p> <p>Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure</p> <p>(a) Property line setback</p> <p>Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure</p>	<p>50 ft.</p> <p>50 ft. <sup>Λ</sup></p> <p>100 ft.</p> <p><del>No outside storage shall be located within these setbacks.</del> <sup>Λ</sup></p> <p>125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p>
<p>(a) Property line setback</p> <p>(b) Front yard setback</p> <p><b>(5) Open Space Zoning Subdivisions</b> <b>(See Sec. 19-7-2)</b></p>	<p>125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p> <p>125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more <b>(Effective April 15, 2000)</b></p>

(a) Side yard setback	15 ft.
(b) Rear yard setback	15 ft.
(c) Front yard setback	20 ft.
<b><i>(6) Deck with a height of less than ten (10) feet above average grade</i></b>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
<b><i>(7) Accessory building having less than one hundred fifty (150) square feet of floor area</i></b>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
<b><i>(8) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use</i></b>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
	<b>(Rev. eff. 12/10/03)</b>

#### MAXIMUM TELECOMMUNICATION HEIGHT

<b><i>(1) Antenna attached to a structure</i></b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b><i>(2) Amateur or governmental tower attached or braced against a structure</i></b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b><i>(3) Freestanding amateur or governmental wireless telecommunication tower</i></b>	50' measured from average original grade <b>(Effective April 15, 2000)</b>

#### MINIMUM LOT WIDTH (Effective August 11, 1999)

<b><i>(1) All uses</i></b>	40 ft.
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<b>MAXIMUM BUILDING FOOTPRINT</b>	
<b><i>(1) All uses</i></b>	None, except nonconforming lots shall comply with the building coverage standards contained in Sec. 19-4-3
<b>MAXIMUM BUILDING HEIGHT</b>	
<b><i>(1) All uses</i></b>	35 ft.

#### **F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Multiplex housing, eldercare facilities, and boarding care facilities
2. Nonresidential uses listed in Sec. 19-6-3.B.3, except home day cares, which shall not require site plan review
3. Nonresidential uses listed in Sec. 19-6-3.C.2
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

### **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**

The following uses are permitted in the Town Center District:

- 1. The following resource-related uses:***

- a. ~~Farming use~~ except that outdoor storage of chemicals and commercial animal husbandry are not permitted.

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

- a. Single family dwelling
- b. Bed and breakfast
- c. Multifamily dwelling units that are accessory to a nonresidential use and are located in a building where more than fifty percent (50%) of the floor area of the structure is occupied by nonresidential uses.
- d. Congregate housing, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
- e. Rooming or boarding home

**3. *The following nonresidential uses:***

- a. Banking, professional, and business office
- b. Personal service
- c. Village retail shop
- d. Veterinarian office not including the boarding of animals but allowing presurgical and/or postsurgical care.
- e. Medical clinic
- f. Restaurant including delicatessen, ice cream parlor, and sit down restaurant with a maximum of seventy-five (75) seats.
- g. Gas station with not more than two (2) fueling islands with each island having not more than four (4) "fueling points" from no more than two (2) gas dispensers. A car wash is allowed only if accessory to a service station and if each car wash bay's ingress and egress are not visible from a street.
- h. Repair garage
- i. Institutional use including, but not limited to, church, government use, and school use
- j. Day care facility
- k. Cottage industry manufacturing

**4. *The following accessory uses:***

- a. Accessory building, structure or use
- b. Outside storage accessory to an allowed use provided that the area used for storage shall not exceed the floor area of the principal use and that, except for display area, the outside storage is screened from public view and abutting properties.
- c. A drive-through for a bank or car wash provided that it is accessory to the principal use and located immediately adjacent to the structure of the principal use.
- d. Home occupation
- e. Home business

- f. The renting of not more than two (2) rooms within a single-family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
- g. Amateur or governmental wireless telecommunication facility antenna **(Effective April 15, 2000)**
- h. Amateur or governmental wireless telecommunication facility tower **(Effective April 15, 2000)**
- i. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. **(Effective April 15, 2000)**



**C. Prohibited Uses**

All uses not specifically allowed as permitted uses are prohibited within this district. Adult businesses, as herein defined, are prohibited within the Town Center District. Drive-through services, except those associated with a bank or car wash that are specifically permitted as accessory uses, are prohibited within the Town Center District.

**D. Standards*****1. Performance Standards***

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted uses in the Town Center District include:  
  
Sec. 19-7-6 Eldercare Facility Standards
- c. No project shall create an adverse impact on abutting property values. Each project shall be compatible with the existing uses and purposes of the district.
- d. Each lot with frontage on an arterial street shall not be allowed more than one (1) driveway onto the arterial street, unless the driveway is shared with an abutting property, in which case two (2) driveways are allowed. Lots with at least two hundred (200) feet of road frontage shall be allowed two (2) driveways.
- e. No communication tower in excess of ten (10) feet in height or exposed satellite dish in excess of two (2) feet in diameter shall be allowed which is exposed to public view, except for exclusive municipal and school uses. Satellite dishes and the base of communication towers that are installed at ground level shall be screened from public view.
- f. No parking for uses other than school uses shall be allowed in the front yard setback.
- g. Structures existing as of June 7, 1995, which do not conform to the maximum footprint or the maximum lot coverage requirement may increase the building footprint by up to twenty-five percent (25%), to a maximum footprint expansion of five thousand (5,000) square feet, as long as the development will be in compliance with all other dimensional requirements of Sec. 19-6-4.D.2, Space and Bulk Standards, subject to Site Plan review by the Planning Board.

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

<b>MINIMUM LOT AREA</b>	
<i>(1a) Single family dwelling unit</i>	80,000 sq. ft.
<i>(1b) Single family dwelling unit in the Town Center Core Subdistrict</i>	10,000 sq. ft.
<i>(2) Multifamily dwelling unit</i>	7,500 sq. ft.
<i>(3) Other uses</i>	None
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) Multifamily housing in a mixed use building</i>	1 unit per 7,500 sq. ft. of gross lot area
<i>(2) Rooming or boarding home</i>	1 bed per 5,000 sq. ft. of gross lot area
<b>MAXIMUM NUMBER OF MULTIFAMILY DWELLING UNITS PER LOT</b>	
<i>(1) All uses</i>	4
<b>MINIMUM STREET FRONTAGE</b>	
<i>(1) School and municipal uses</i>	None
<i>(2) All other uses</i>	50 ft.
<b>MAXIMUM LOT COVERAGE (INCLUDES ALL BUILDINGS, PARKING, AND DRIVEWAY AREAS)</b>	
<i>(1) School Uses</i>	40% (Effective August 11, 1999)
<i>(2) Municipal uses</i>	None
<i>(3) All other uses</i>	70%
<b>MINIMUM SETBACKS</b>	
<i>(1) School uses</i>	
(a) Side yard setback	50 ft. The side yard setback shall be increased to 100 ft. where it abuts a residential district.
(b) Rear yard setback	50 ft. The rear yard setback shall be increased to 100 ft. where it abuts a residential district.
(c) Front yard setback	75 ft.
<i>(2) Municipal uses</i>	

<p>(a) Side yard setback</p> <p>(b) Rear yard setback</p> <p>(c) Front yard setback</p> <p>Building with up to 5,000 sq. ft. of floor area</p> <p>Building with more than 5,000 sq. ft. of floor area</p>	<p>15 ft.</p> <p>The side yard setback shall be increased to 50 ft. where it abuts a residential district.</p> <p>15 ft.</p> <p>The rear yard setback shall be increased to 50 ft. where it abuts a residential district.</p> <p>Minimum of 25 ft.-Maximum of 35 ft.</p> <p>50 ft.</p>
<p>Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure</p> <p>(a) Property line setback</p>	
<p>Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure</p> <p>(a) Property line setback</p> <p>(b) Front yard setback</p>	
<p><b>(5) All other uses</b></p> <p>(a) Side yard setback</p> <p>(b) Rear yard setback</p>	<p>125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p> <p>125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p> <p>125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more <b>(Effective April 15, 2000)</b></p> <p>15 ft.</p> <p>The side yard setback for new construction shall be increased to 50 ft. where it abuts a residential district.</p> <p>15 ft.</p> <p>The rear yard setback for new construction shall be increased to 50 ft. where it abuts a residential district.</p>



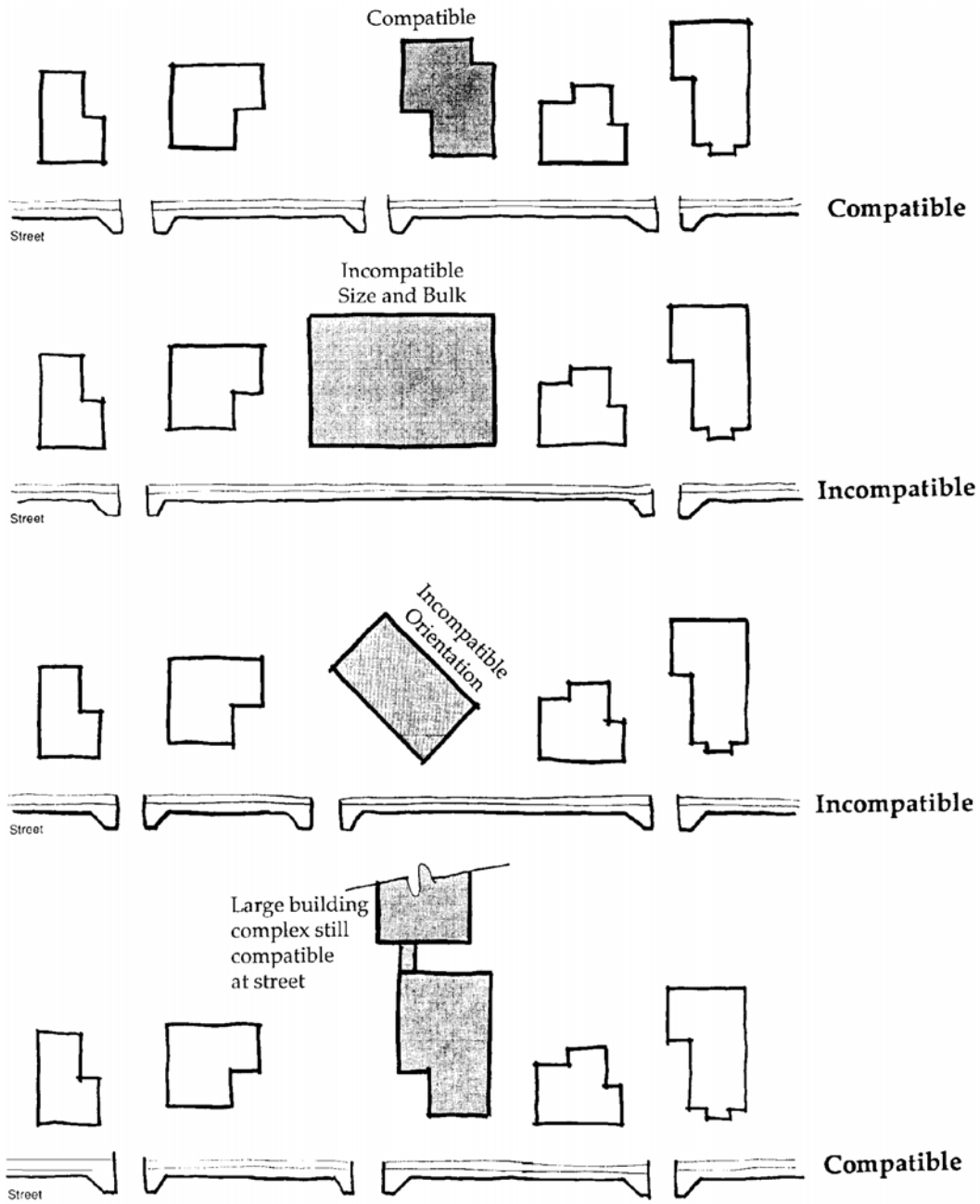
(c) Front yard setback	Minimum 25 ft. Maximum 35 ft.
<b>(6) <i>Deck with a height of less than ten (10) feet above average grade</i></b>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
<b>(7) <i>Accessory building having less than one hundred fifty (150) square feet of floor area</i></b>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
<b>(8) <i>Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use</i></b>	
(a) Side yard setback	10 ft.
(b) Rear yard setback	10 ft.
<b>(Rev. eff. 12/10/03)</b>	
<b>MAXIMUM TELECOMMUNICATION HEIGHT</b>	
Antenna attached to a structure	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b>(2) <i>Amateur or governmental tower attached or braced against a structure</i></b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b>(3) <i>Freestanding amateur or governmental wireless telecommunication tower</i></b>	50' measured from average original grade <b>(Effective April 15, 2000)</b>
<b>MINIMUM SETBACK OF PARKING INCLUDING PARKING AISLES FROM PROPERTY LINE</b>	
<b>(1) <i>School uses</i></b>	
(a) Front	80 ft.
(b) Side	35 ft.
(c) Rear	35 ft.

<b>(2) <i>Municipal and other uses</i></b>	
(a) Front, side, and rear	5 ft. Parking setback may be reduced to 0 ft. for a shared parking lot at the common property line. <b>(Rev. eff. 12/10/03)</b>
<b>MAXIMUM BUILDING HEIGHT</b>	
<b>(1) <i>All uses</i></b>	35 ft.
<b>MAXIMUM BUILDING FOOTPRINT</b>	
<b>(1) <i>All uses other than school or municipal uses</i></b>	5,000 sq. ft. This limitation shall not prohibit the connection of separate structures by a covered or enclosed walkway.
<b>MAXIMUM BUILDING DIMENSION</b>	
<b>(1) <i>All uses other than school or municipal uses</i></b>	100 ft.

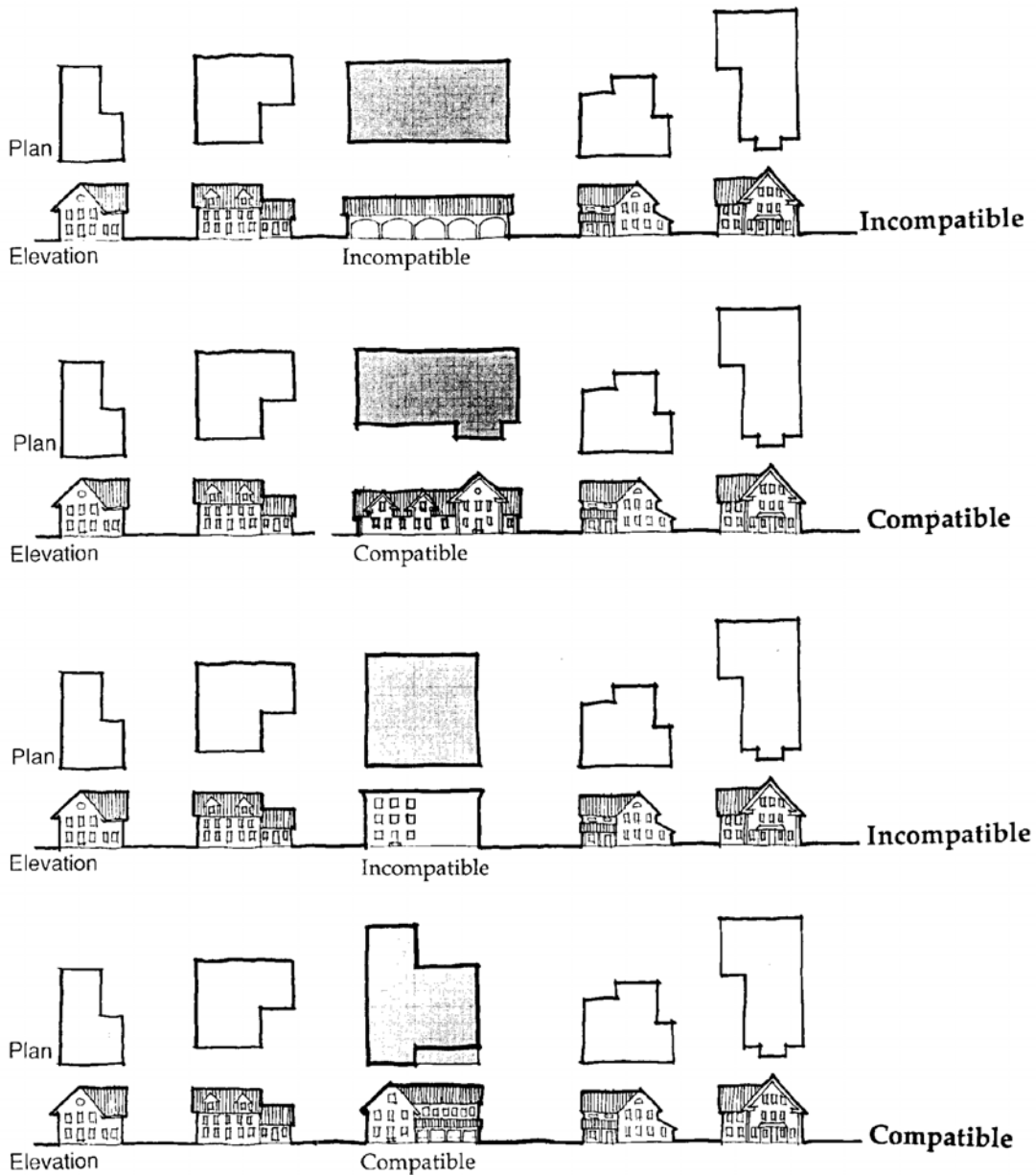
### 3. *Design Requirements*

The following requirements shall be applicable to all development which requires site plan review by the Planning Board, any new construction or addition, and any exterior alteration to a locally historic structure designated in the Town Center Plan. These standards shall be used to determine if a development is compatible with the Town Center District. The intent is not that all buildings should look the same, but rather to encourage a mix of compatible styles, sizes, and characteristics.

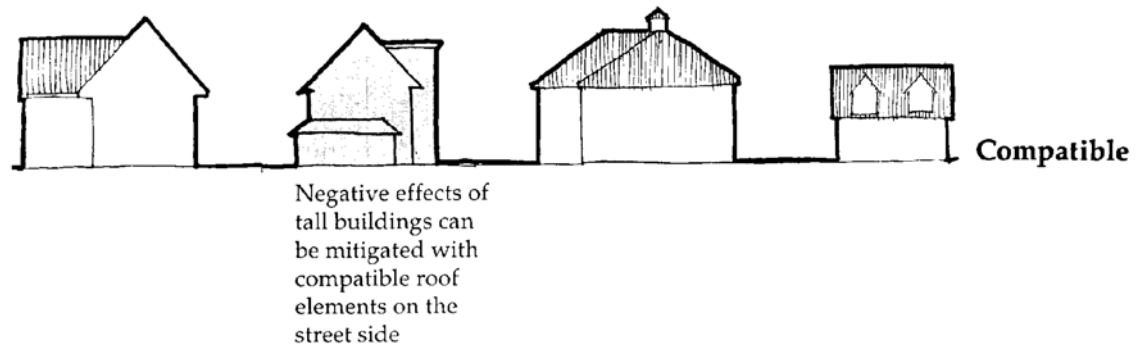
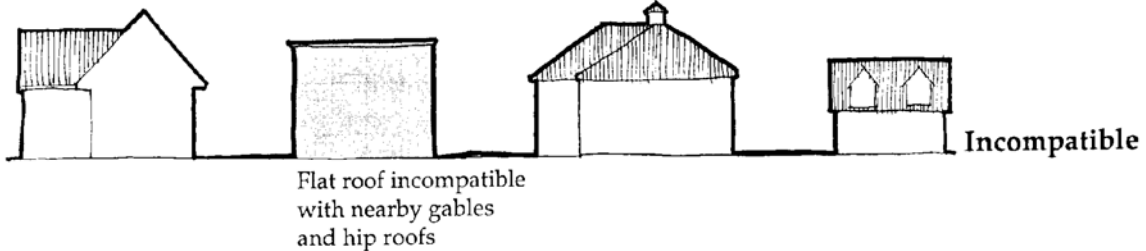
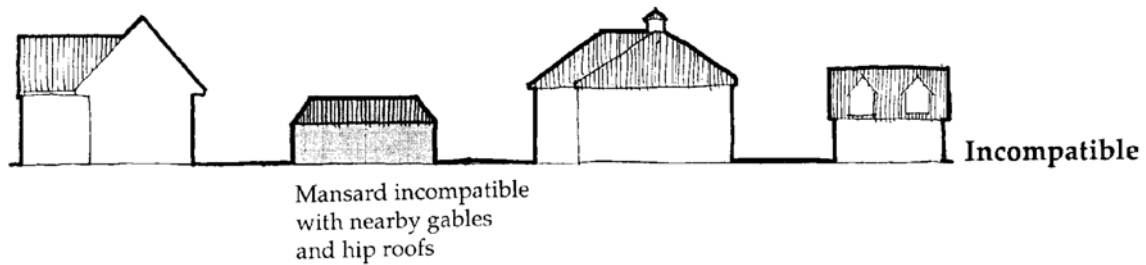
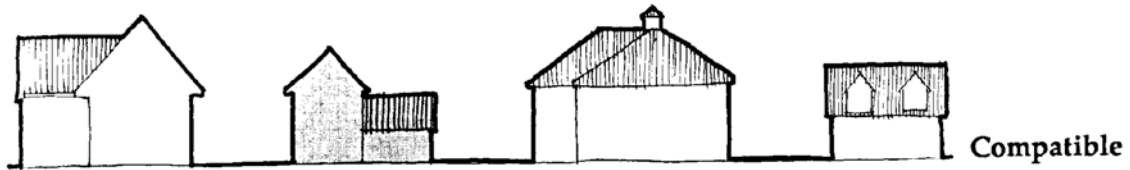
- a. Footprint. The building footprint of new construction shall be compatible with the Town Center District. The visual impact of a building is influenced by the placement of other buildings on the lot, the irregular and varied surface of buildings due to architectural features, and the spaces between those buildings along the street. The existing buildings and open spaces between the buildings create a rhythm with which new construction should be compatible. Determination of compatibility shall be based on the overall building footprint square footage, the dimensions of each footprint side, placement of the building footprint on the lot, and the rhythm of buildings and spaces along the street edge.



- b. Scale. Scale is the apparent size of a structure in relation to its surroundings, including other buildings, open space, and people. Scale gives a building "presence," making the building seem large or small, awkward or graceful, overpowering or unimportant. The perception of a structure is influenced by its size, but more importantly how the overall size is distributed throughout the building. New construction shall be compatible in scale with other structures in the district. Determination of compatibility shall be based on the maximum dimension of the structure, the degree of articulation on building surfaces, the magnitude of unbroken faces of a structure, the impact of the building mass upon view sheds, and the integration of mechanical equipment within the structure.

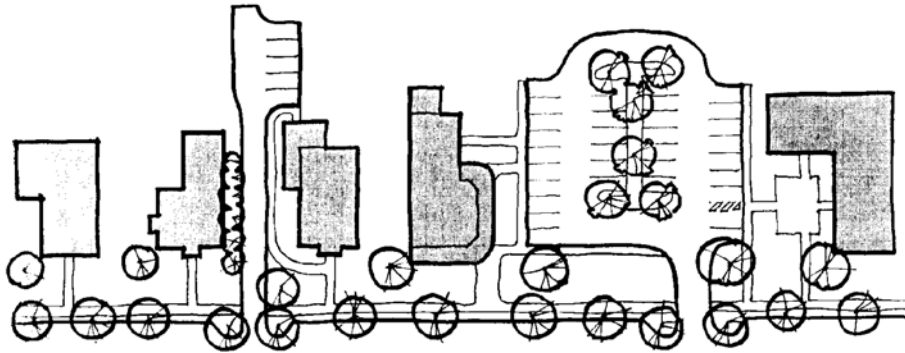


- c. Height and Roof Pitch. The height of a building and the type of roof design significantly influence the scale of a structure and can detract from the streetscape. New roof construction shall conform to the predominant heights of roofs of nearby buildings in the Town Center District and to the design of the structure. Roofs shall generally be of a gable or other sloping roof design with a minimum pitch of 7:12 or as matches the existing roof pitch. Flat roofs are discouraged.



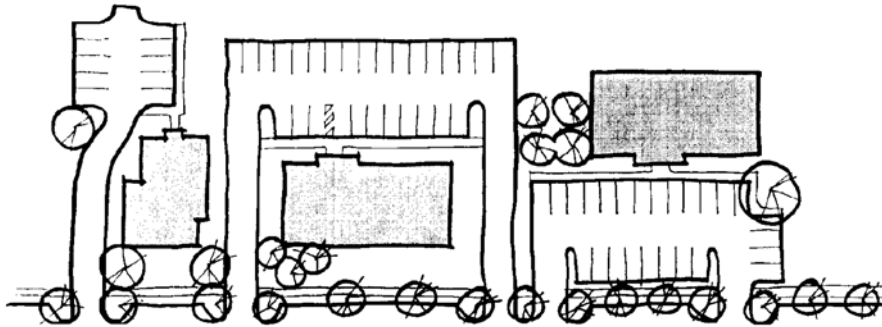


- d. Building and Parking Orientation. The first impression of a building is from the side which faces the street. The front facade of the structure shall face the street. The structure shall be designed with a primary orientation to the street, although the primary entrance may be located on other than the front façade. The front facade shall include a distinctive entrance. A sidewalk shall be constructed parallel to the front facade. The side yard visible to the public should be designed to present a pleasing appearance to the pedestrian.



Compatible

Front and front/side entries are compatible with village character. Small parking areas (2-7 cars) work well behind a building. Larger parking areas (8-40 cars) work better to the side of a building.

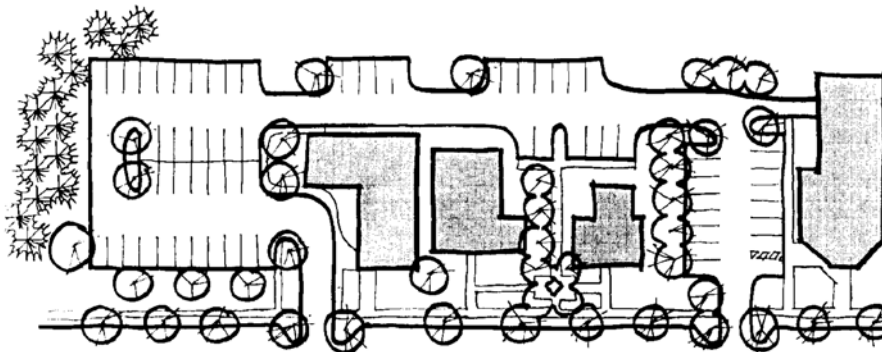


Incompatible

Rear entries incompatible with village character.

No public entry from sidewalk.

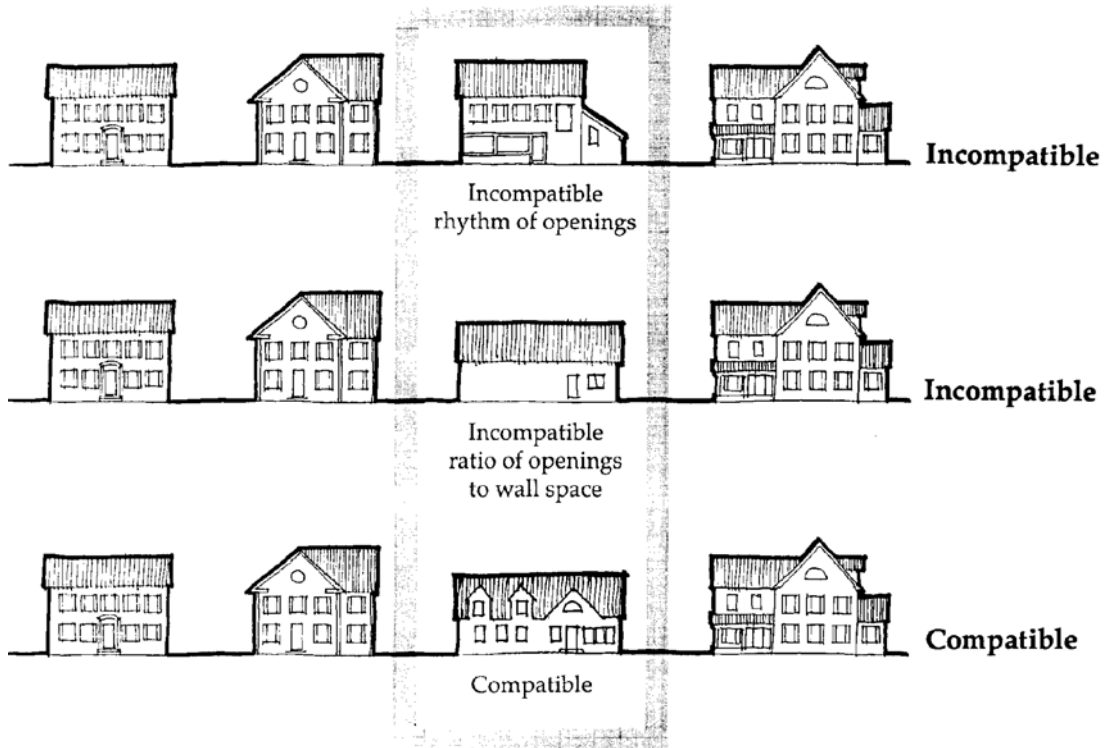
Parking in front setback not permitted and not compatible with village character.



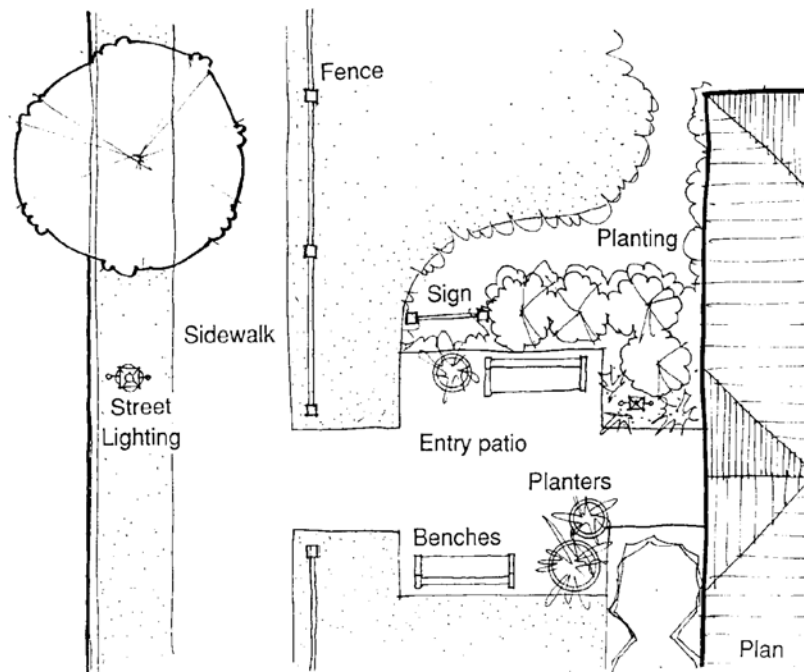
Compatible

Shared parking and shared driveways are encouraged. Cross connection with rear parking is encouraged if walkway and building layout orients people to street side front entries.

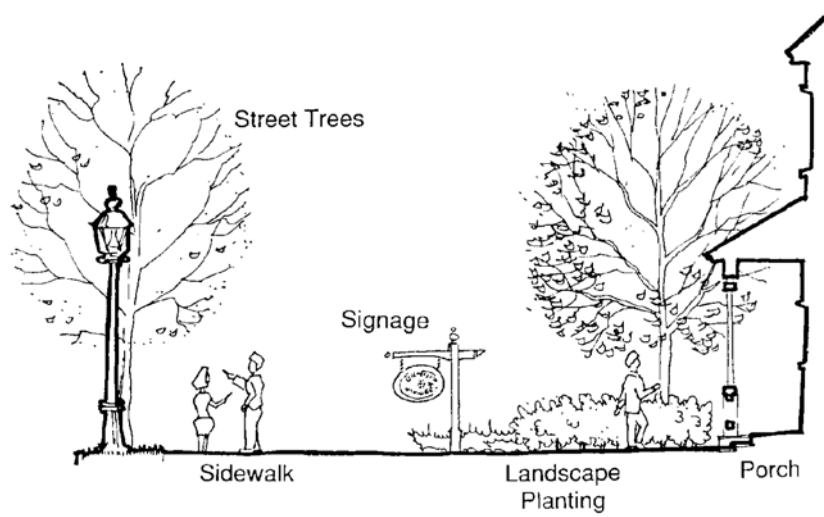
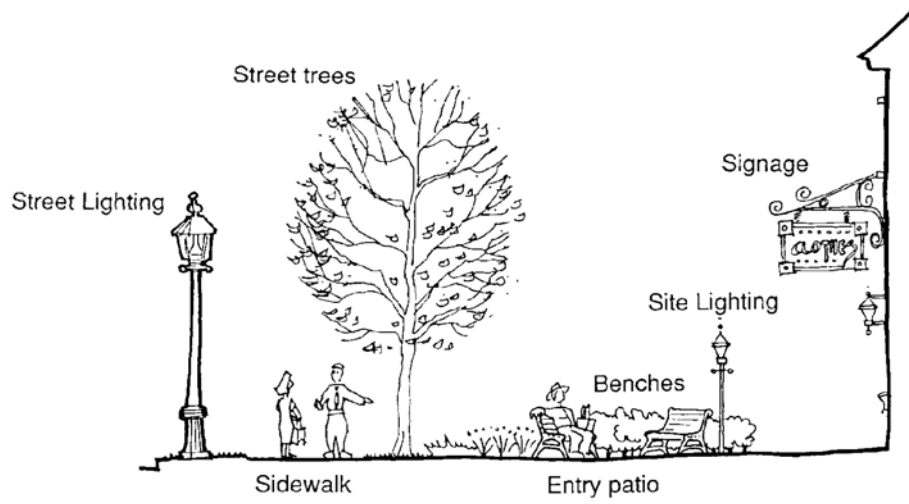
- e. Openings. The relationship between doors and windows to exterior wall space of a building creates a rhythm or pattern. The pattern of window or door openings of a structure shall be compatible with the rhythm of openings in nearby structures. Doors and windows shall be consistent with the style of the building. Development in existing structures shall maintain the original rhythm and size of openings. The first floor front facade shall be constructed with an equal proportion of openings to wall space.



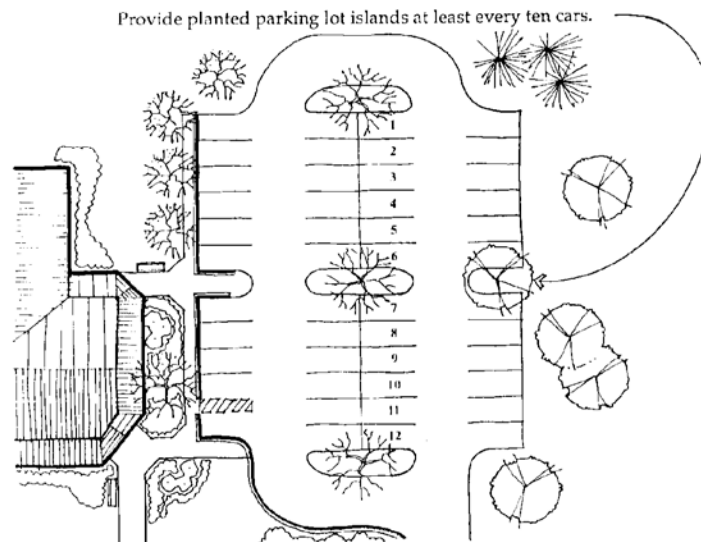
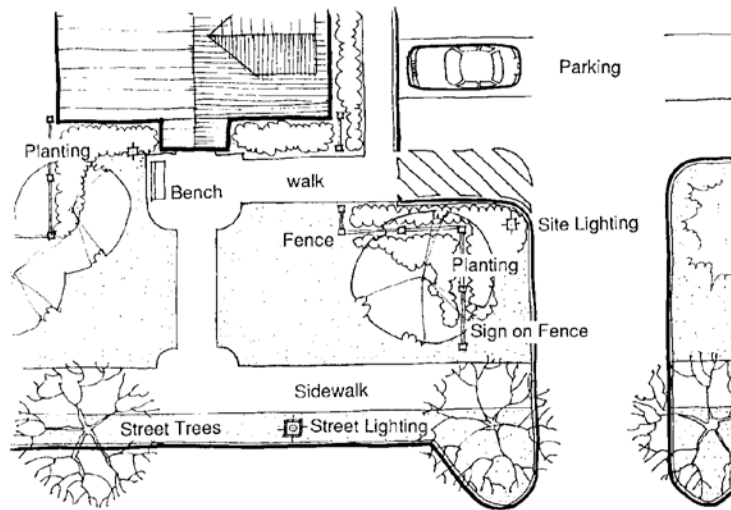
- f. Exterior Materials. Facade materials give a structure character. Exterior materials shall be compatible with nearby buildings and with the design of the structure. No structure addition shall consist of architectural materials inferior in quality, appearance, or detail to any other exterior of the same building. The use of wood shingles, wood clapboards, copper, and brick is permitted and the use of concrete block, sheet metal, vinyl, or aluminum siding is discouraged.
- g. Landscaping and Site Development
- (1) Front setback. The land in the front yard setback is a transitional space between the public domain of the road right-of-way and the private structure and is a determining factor in the character and ambiance of the Town Center. This area shall be designated and landscaped to be pedestrian-friendly in scale, access, lighting, and security. A sidewalk and other pedestrian pathways, such as to the building and to parking areas, shall be located between the road and the structure. The side of the structure facing the front yard setback shall be designed with a distinctive entrance for pedestrians. Multifamily dwellings shall be designated with the main entrance facing the front yard. Design elements of single family homes such as front steps and a front porch shall be incorporated whenever practicable. The front setback shall be carefully landscaped with attention to details evident to pedestrians and shall include street trees. The development of front courtyard gardens is strongly encouraged. Multifamily dwellings shall include at least one (1) street tree per unit in the front yard landscape plan.



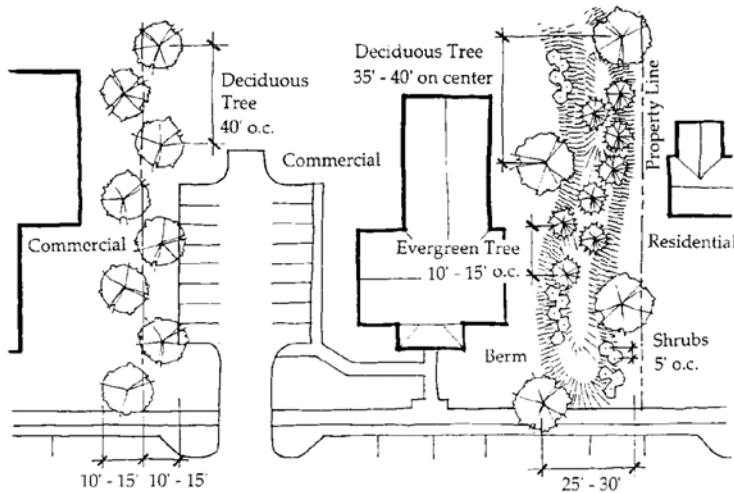
Front Setback  
Character Illustrations



- (2) Parking lot. While adequate and convenient parking is necessary in the Town Center District, an expanse of gravel or asphalt parking can appear barren and hostile for pedestrians. Landscaping around and within parking lots perceptually softens the hard surface of parking areas. Parking lots shall be designed and landscaped to be compatible with the pedestrian-friendly purpose of the Town Center District. A minimum five (5) foot wide landscaped esplanade shall be required around parking lots. A landscaped area shall be required in the front yard setback between the road and the parking lot and shall include plantings of a size sufficient to obscure the view of parked cars and parking lots from the sidewalk and transitioning to a lesser height. At least one landscaped island shall be included for each row of at least ten (10) parking spaces and shall be located within the interior of the parking lot. The landscaped island(s) shall be of sufficient size to accommodate and be planted with at least one (1) road tree. **(Effective August 11, 1999)**

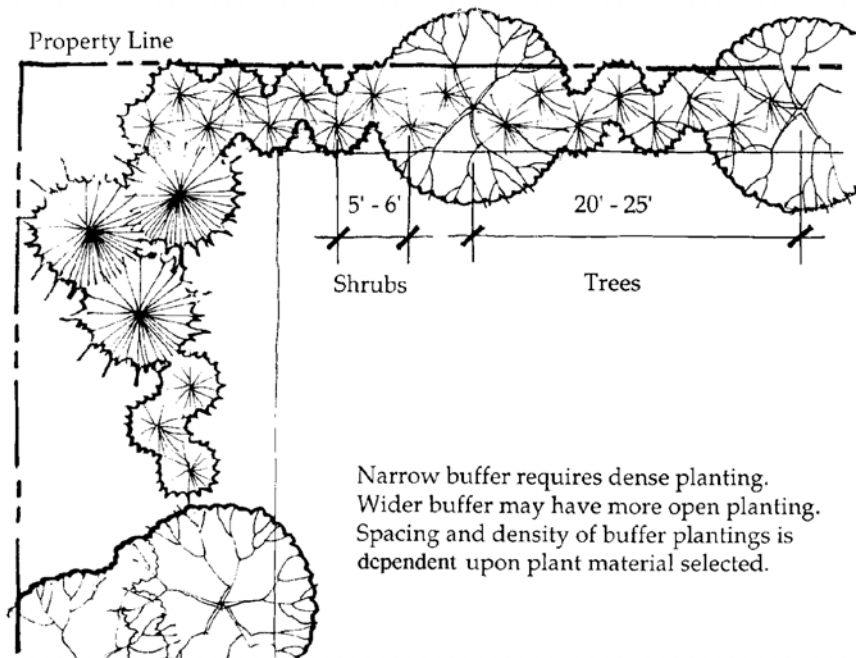


- (3) **Buffering.** Buffering serves to soften narrow yards, screen parking areas, and create a sense of enclosure by transforming a street into an outdoor room. Within the Town Center, landscaping between properties can mitigate conflicts between land uses, densities, and building styles and scale. Side and rear yard buffering defines the edge of a property and can also identify the edge of the Town Center. Each lot shall provide a landscaped side and rear yard buffer. The depth and density of the buffer shall be determined by the type of use proposed, its compatibility with adjacent uses and with the Town Center.



Adjacent compatible uses require narrower buffers that define the edge.

Non-compatible adjacent uses require wider buffers and earth berms or wood fences for a physical separation. Denser massing of deciduous and evergreen planting provides for seasonal variation and buffer continuity.



Narrow buffer requires dense planting. Wider buffer may have more open planting. Spacing and density of buffer plantings is dependent upon plant material selected.

## E. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to the issuance of any building permit, plumbing permit, or other permit:

1. Construction involving any permitted use other than ~~farming~~ and a single family dwelling, except that construction of or conversion to a single family dwelling in the Town Center Core Subdistrict shall be subject to site plan review by the Planning Board.
2. Conversion of an existing building or structure or portion thereof from a less intensive category of use to a more intensive category use according to the following scale of uses with Category 1 being the least intensive and Category 10 being the most intensive:

Use Category 1. Multifamily dwellings and bed and breakfasts

Use Category 2. Banking, professional, and business offices

Use Category 3. Personal services and village retail shops

Use Category 4. Veterinarian offices and medical clinics

Use Category 5. Restaurants, including a delicatessen, ice cream parlor, and a sit down restaurant

Use Category 6. Gas station and repair garages

Use Category 7. Institutional uses, including but not limited to churches, governmental, and school uses

Use Category 8. Day care facilities

Use Category 9. Congregate housing

Use Category 10. Cottage industry manufacturing

3. Conversion of an existing building or structure or portion thereof within the same category or to a less intensive category of use on the above scale of use categories unless:
  - a. The current use category received site plan approval,
  - b. There will be no exterior alterations other than signage, and
  - c. No multifamily dwelling units, rooming house, or bed and breakfast will be created.
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review.

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

The purpose of the Business District A is to provide for business activity oriented primarily to neighborhood goods and services. It is intended that the district accommodate a mix of uses, both residential and commercial, at a neighborhood scale.

**B. Permitted Uses**

The following uses are permitted in the Business District A:

**1. *The following resource-related uses:***

- a. Any use permitted in Resource Protection 1-Critical Wetlands District, or in Resource Protection 2-Wetland Protection District, or in Resource Protection 3-Floodplain District, as shown on Table 19-6-9
- b. Agriculture, provided that no animal or fowl shall be raised for commercial purposes on any lot containing less than one hundred thousand (100,000) square feet
- c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet
- d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards
- e. Timber harvesting

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

- a. Single family detached dwelling existing as of December 8, 1993
- b. Multifamily (**Eff. 2/12/05**)
- c. Multiplex housing
- d. Rooming or boarding home

**3. *The following nonresidential uses:***

- a. Banking, professional, and business office
- b. Village retail shop
- c. Personal service
- d. Restaurant
- e. Municipal use
- f. Home day care
- g. Farm and fish market, with a maximum floor area of two thousand (2,000) square feet for retail sales of products



- h. Boat repair facility, subject to the provisions of Sec. 19-8-9, Boat Repair Facility Standards

**4. *The following accessory uses:***

- a. Accessory building, structure or use
- b. Outside athletic facility accessory to permitted use
- c. Home occupation
- d. Home business
- e. The renting of not more than two (2) rooms within a single-family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
- f. Amateur or governmental wireless telecommunication facility antenna **(Effective April 15, 2000)**
- g. Amateur or governmental wireless telecommunication facility tower **(Effective April 15, 2000)**
- h. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. **(Effective April 15, 2000)**

**C. Conditional Uses**

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

**1. *The following nonresidential uses:***

- a. Day care facility
- b. Fraternal or social institution
- c. Gasoline service station or repair garage
- d. Institution of an educational, religious, or philanthropic nature, including school, hospital, church, municipal use, or similar facility
- e. Playground or park

**2. *The following accessory uses:***

- a. Accessory dwelling unit

**D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

**E. Standards**

### 1. Performance Standards

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Business A District include:
  - Sec. 19-7-5 Creation of an Accessory Dwelling Unit
  - Sec. 19-7-6 Eldercare Facility Standards
  - Sec. 19-8-5 Earth Materials Removal Standards
  - Sec. 19-8-8 Home Day Care and Day Care Facility Standards
  - Sec. 19-8-9 Boat Repair Facility Standards

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

<b>MINIMUM LOT AREA</b>	
<i>(1) Nonresidential uses, containing no dwelling unit other than an accessory residence for a caretaker or attendant</i>	None, provided that if the lot is not sewered and requires the installation of sanitary plumbing, it shall conform to the regulations of the State Subsurface Wastewater Disposal Rules concerning waste disposal
<i>(2) Single family dwelling unit</i>	80,000 sq. ft.
<i>(3) Multifamily dwelling unit</i>	15,000 sq. ft.
<i>(4) Other uses</i>	None
<b>MAXIMUM NUMBER OF DWELLING UNITS PER AREA</b>	
<i>(1) Multifamily housing in a mixed use building or multiplex housing</i>	1 unit per 15,000 sq. ft. of net residential area
<i>(2) Rooming or boarding home</i>	1 bed per 5,000 sq. ft. of gross lot area
<b>MINIMUM STREET FRONTAGE</b>	
<i>(1) All uses</i>	None
<b>MINIMUM SETBACKS</b>	
<i>(1) All uses unless otherwise specified</i>	
(a) Side yard setback	25 ft.; 50 ft. if the lot abuts a Residence District
(b) Rear yard setback	25 ft.; 50 ft. if the lot abuts a Residence District
(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

<ul style="list-style-type: none"> <li>- Arterial street</li> <li>- Collector and rural connector streets</li> <li>- Local, private, and feeder streets</li> </ul>	<p>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.</p> <p style="text-align: right;">40 ft.</p> <p style="text-align: right;">30 ft.</p> <p style="text-align: right;">20 ft.</p>
<p><b>(2) <i>Nonresidential use abutting a Residence District</i></b></p>	<p>A buffer shall be established in accordance with the provisions of Sec. 19-8-1.A, Buffering of Nonresidential Uses.</p>
<p><b>(3) <i>Multiplex housing</i></b></p> <p>(a) From each property line</p>	<p style="text-align: right;">75 ft.</p>
<p><b>(4) <i>Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade</i></b></p> <p>(a) Side yard setback</p> <p>(b) Rear yard setback</p>	<p style="text-align: right;">10 ft.</p> <p style="text-align: right;">5 ft.</p>
<p><b>(5) <i>Farm and fish markets</i></b></p> <p>(a) Side yard setback</p> <p>(b) Rear yard setback</p> <p>(c) Front yard setback</p> <p><b>(6) <i>Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure</i></b></p> <p>(a) Property line setback</p>	<p style="text-align: right;">50 ft.</p> <p style="text-align: right;">50 ft. <sup>Λ</sup></p> <p style="text-align: right;">100 ft.</p> <p style="color: red; text-align: center;"><del>No outside storage shall be located within these setbacks.</del> <sup>Λ</sup></p> <p style="text-align: right;">125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p>
<p><b>(7) <i>Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure</i></b></p>	

(a) Property line setback	125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b>
(b) Front yard setback	125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front of the existing structure plus 5', whichever is more <b>(Effective April 15, 2000)</b>
<b>(8) Deck with a height of less than ten (10) feet above average grade</b>	
(a) Side yard setback	12.5 ft.
(b) Rear yard setback	12.5 ft.
<b>(9) Accessory building having less than one hundred fifty (150) square feet of floor area</b>	
(a) Side yard setback	12.5 ft.
(b) Rear yard setback	12.5 ft.
<b>(10) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use</b>	
(a) Side yard setback	12.5 ft.
(b) Rear yard setback	12.5 ft. <b>(Rev. eff. 12/10/03)</b>
<b>MAXIMUM TELECOMMUNICATION HEIGHT</b>	
<b>(1) Antenna attached to a structure</b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b>(2) Amateur or governmental tower attached or braced against a structure</b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b>(3) Freestanding amateur or</b>	50' measured from average original grade

<i>governmental wireless telecommunication tower</i>	(Effective April 15, 2000)
<b>MAXIMUM BUILDING FOOTPRINT</b>	
<i>(1) All uses</i>	None (Effective August 11, 1999)
<b>MAXIMUM BUILDING HEIGHT</b>	
<i>(1) All uses</i>	35 ft.

#### **F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other special permit:

1. Any use allowed in this District by virtue of being allowed in a Residence District on condition of site plan review
2. Nonresidential uses listed in Sec. 19-6-5.B.3

3. Nonresidential uses listed in Sec. 19-6-5.C.1
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

## **SEC. 19-6-6. BUSINESS DISTRICT B (BB)**


### **A. Purpose**

The purpose of the Business District B is to recognize locations where moderate intensity, non-retail commercial uses have developed in close proximity to residential areas. **(Rev. 2/12/05)**

### **B. Permitted Uses**

The following uses are permitted in the Business District B:



#### ***1. The following resource-related uses:***

- a. Any use permitted in Resource Protection 1-Critical Wetlands District, or in Resource Protection 2-Wetland Protection District, or in Resource Protection 3-Floodplain District, as shown on Table 19-6-9
- b. Agriculture
- c. Keeping of livestock, such as a horse, cow, pig, goat, sheep, or similar animal, provided that such activity occurs only on a lot containing at least one hundred thousand (100,000) square feet
- d. Removal of topsoil, subject to the provisions of Sec. 19-8-5, Earth Materials Removal Standards
- e. Timber harvesting
- f.  Horticulture, including nurseries, greenhouses, and commercial sale of items produced in nurseries and greenhouses; accessory retail sales shall be permitted


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

- a. Single family detached dwelling existing as of December 8, 1993
- b. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards

#### ***3. The following nonresidential uses:***

- a. Storage and selling of farm, dairy, orchard, or forest products; accessory retail sales shall be permitted 
- b. Athletic or recreational facility, riding stable, or corral
- c. Earthwork Contractor's Yard **(Eff. 2/12/05)** 

#### ***4. The following accessory uses:***

-  a. Home occupation
- b. Home business

- c. The renting of not more than two (2) rooms within a single-family dwelling provided that there is no physical alteration of the building and no change in the external appearance of the structure.
- d. Amateur or governmental wireless telecommunication facility antenna **(Effective April 15, 2000)**
- e. Amateur or governmental wireless telecommunication facility tower **(Effective April 15, 2000)**
- f. Commercial wireless telecommunication service antenna which is attached to an alternative tower structure in a manner which conceals the presence of an antenna. **(Effective April 15, 2000)**

### **C. Conditional Uses**

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Applicability:

#### ***1. The following nonresidential uses:***

- a. Hotel or motel
- b. Restaurant

### **D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses are prohibited within this district.

### **E. Standards**

#### ***1. Performance Standards***

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. Standards relating to permitted and conditional uses in the Business B District include:

Sec. 19-7-6 Eldercare Facility Standards

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

<b>MINIMUM LOT AREA</b>	
<i>(1) Nonresidential uses, containing no dwelling unit other than an accessory residence for a caretaker or attendant</i>	None, provided that if the lot is not sewerred and requires the installation of sanitary plumbing, it shall conform to the regulations of the State Subsurface Wastewater Disposal Rules concerning waste disposal
<i>(2) Eldercare facilities</i>	5 acres
<i>(3) Single family dwelling unit</i>	80,000 sq. ft.
<i>(4) Earthwork Contractor</i>	20 acres (Eff. 2/12/05)
<b>MAXIMUM NO. OF DWELLING UNITS PER AREA</b>	
<i>(1) In eldercare facilities</i>	1 unit per 3,500 sq. ft. or 1 bed per 2,500 sq. ft. of net residential area, whichever is less
<b>MINIMUM STREET FRONTAGE</b>	
<i>(1) Earthwork Contractor</i>	100' (Eff. 2/12/05)
<i>(2) All other uses</i>	None (Effective August 11, 1999)
<b>MINIMUM SETBACKS</b>	
<i>(1) All uses unless otherwise specified</i> (a) Side yard setback (b) Rear yard setback (c) Front yard setback	25 ft.; 50 ft. if the lot abuts a Residence District 25 ft.; 50 ft. if the lot abuts a Residence District 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.
<ul style="list-style-type: none"> <li>- Buildings with footprints of up to 2,000 sq. ft.</li> <li>- Buildings with footprints of more than 2,000 sq. ft.</li> <li>- Parking spaces and parking aisles</li> </ul>	<p>50 ft.</p> <p>50 ft. <b>(Eff. 1/13/05)</b></p> <p>35 ft.</p>
<b>(2) <i>Nonresidential use abutting a Residence District</i></b>	A buffer shall be established in accordance with the provisions of Sec. 19-8-1.A, Buffering of Nonresidential Uses.
<b>(3) <i>Eldercare facilities</i></b>	50 ft. from property line
<b>(4) <i>Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade</i></b> <ul style="list-style-type: none"> <li>(a) Side yard setback</li> <li>(b) Rear yard setback</li> </ul>	<p>10 ft.</p> <p>5 ft.</p>
<b>(5) <i>Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure</i></b> <ul style="list-style-type: none"> <li>(a) Property line setback</li> </ul>	<p>125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p>
<b>(6) <i>Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure</i></b> <ul style="list-style-type: none"> <li>(a) Property line setback</li> <li>(b) Front yard setback</li> </ul>	<p>125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b></p> <p>125% of the distance from the ground to the top of the antenna or the distance from the street right of way to the front</p>

	of the existing structure plus 5', whichever is more <b>(Effective April 15, 2000)</b>
<b><i>(7) Deck with a height of less than ten (10) feet above average grade</i></b>	
(a) Side yard setback	12.5 ft.
(b) Rear yard setback	12.5 ft.
<b><i>(8) Accessory building having less than one hundred fifty (150) square feet of floor area</i></b>	
(a) Side yard setback	12.5 ft.
(b) Rear yard setback	12.5 ft.
<b><i>(9) Outdoor recreational facilities such as swimming pools, tennis courts, and basketball courts that are accessory to a single family residential use</i></b>	
(a) Side yard setback	12.5 ft.
(b) Rear yard setback	12.5 ft. <b>(Rev. eff. 12/10/03)</b>
<b><i>(10) Earthwork Contractor's Yard</i></b>	
(a) Road setback	40'
(b) Setback from all other property lines	70' <b>(Eff. 2/12/05)</b>
<b>MAXIMUM TELECOMMUNICATION HEIGHT</b>	
<b><i>(1) Antenna attached to a structure</i></b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b><i>(2) Amateur or governmental tower attached or braced against a structure</i></b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>

(3) <i>Freestanding amateur or governmental wireless telecommunication tower</i>	50' measured from average original grade (Effective April 15, 2000)
<b>MAXIMUM BUILDING FOOTPRINT</b>	
(1) <i>All uses</i>	None (Effective August 11, 1999)
<b>MAXIMUM BUILDING HEIGHT</b>	
(1) <i>All uses</i>	35 ft.

#### **F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Nonresidential uses listed in Sec. 19-6-6.C.1
2. Eldercare facilities
3. Earthwork Contractor's Yard
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

### **SEC. 19-6-7. BUSINESS DISTRICT C (BC)**

#### **A. Purpose**

The purpose of the Business District C is to provide a flexible mechanism for locating nonpolluting, job-creating enterprises within the Town. It is intended that this mechanism will allow for the location of proposed enterprises on sites that have the capacity to support them, and that are tailored to their needs in a manner that promotes the public welfare.

#### **B. Permitted Uses**

The following uses are permitted in the Business District C:

1. *The following nonresidential uses:*
  - a. Business or professional office
  - b. Government office
  - c. Research laboratory
  - d. Light manufacturing

#### **C. Prohibited Uses**

All uses not specifically allowed as permitted uses are prohibited within this district.

**D. Standards**

**1. Standards**

The standards of performance of Articles VII and VIII shall be observed.

**2. Space and Bulk Standards**

The Space and Bulk Standards of Business District B shall apply in Business District C, except that a site proposed to be zoned as Business District C shall contain a minimum of five (5) acres (gross).

**E. Procedure**

1. An application to zone a lot or lots as Business District C shall be submitted to the Planning Board. It shall include all information required for a change of zone, as set forth in Article X, Amendment/Interpretive Provisions, of this Ordinance.
2. Within sixty (60) days of receipt of a completed application for the rezoning of a lot or lots as Business District C, the Planning Board shall forward to the Town Council a copy of the application along with a written discussion of issues which it believes may relate to the request. This discussion of issues shall not constitute findings, conclusions, or recommendations concerning the request, but rather is intended to serve as background for the Town Council. The written discussion of issues shall be prepared by the Planning Board following at least one (1) meeting with the applicant.
3. The Town Council, upon review of the application and the Planning Board's discussion of issues, shall make a written, preliminary finding as to the likelihood of the success of the application. This conditional municipal approval may be accompanied by suggestions or conditions that would make the application more acceptable to the Town. The preliminary finding shall not be construed as either an approval or a denial of the application, but rather is intended to give guidance to the applicant.
4. Following the preliminary finding of the Town Council, the applicant at his or her discretion may request in writing that the Planning Board proceed with a full review of the application. This request, in addition to any alteration of the original rezoning application, shall be accompanied by an application for site plan approval containing all the information required by Article IX, Site Plan Review, of this Ordinance.
5. In its review of the proposed rezoning and accompanying site plan, the Planning Board shall follow the procedure set forth for a change of zone in Article X of this Ordinance. After reviewing the site plan, including any additional information reasonably requested, the

Planning Board shall grant approval of the site plan if it finds that the application, with any reasonable conditions the Planning Board deems necessary, will conform with the criteria for approval in Sec. 19-6-7.F, Criteria for Approval.

6. Upon taking action on the site plan, the Planning Board shall forward to the Town Council a written report containing the action taken along with a recommendation concerning the rezoning of the subject lot or lots to a Business District C.
7. The application will become effective only upon the approval by the Town Council of an amendment to the Zoning Map designating the subject lot or lots as Business District C.

**F. Criteria for Approval**

The Planning Board shall grant approval of the site plan and transmit to the Town Council a favorable recommendation on the application for a change of zone to Business District C if it finds that the proposal, with any reasonable conditions it deems necessary, will conform upon completion of construction with the terms of Site Plan Review as set forth in Article IX and the following criteria:

1. The use will not create any smoke, dust, odor, or other unhealthy or offensive airborne discharge detectable at the lot line;
2. The use will not create any offensive noise or vibration;
3. The use will not include any outdoor storage of equipment or material;
4. The use will not involve the handling, storage, or disposal of hazardous waste material in a manner that would threaten public health through contamination of surface or groundwater;
5. The use will not create unsafe traffic conditions or excessive traffic that would either adversely affect neighborhood character or unduly burden the ability of the Town to maintain the roads;
6. The proposed use will not adversely affect the value of adjacent properties. In reaching a decision on this criterion, the Planning Board may require an independent appraisal by a licensed appraiser hired by the Town at the expense of the applicant;
7. The design and external appearance of any proposed building will constitute an attractive and compatible addition to its neighborhood; and
8. The use will comply with all wetland provisions of this Ordinance.

## **SEC. 19-6-8. FORT WILLIAMS PARK DISTRICT (FWP)**

### **A. Purpose**

The Fort Williams Park District (FWP) consists of the ninety-six (96) acre municipally owned tract known as Fort Williams Park and Portland Head Light. Fort Williams is a unique community resource which has irreplaceable scenic, natural, and historical qualities. The purpose of the FWP District is to assure that this resource is dedicated primarily to park, recreational and cultural uses which preserve, enhance, and are fully compatible with its unique qualities and are within the financial resources of the Town. The district is intended to carry out the policies of the Town as expressed in The Master Plan of Fort Williams Park dated November 1990, as it may be amended by the Town Council from time to time.

### **B. Permitted Uses**

The following uses are permitted in the Fort Williams Park District:

1. Any use shown on the adopted Master Plan of Fort Williams Park (October, 2003) as such plan may be amended from time to time by the Town Council in accordance with Sec. 19-6-8.D, Master Plan Amendments. **(Rev. eff. 12/10/03)**
2. Special events or other nonpermanent uses approved by the Town Council upon recommendation of the Fort Williams Advisory Commission.
3. Buildings, structures, or uses accessory to a use shown on the adopted Master Plan as approved by the Town Council upon recommendation of the Fort Williams Advisory Commission.
4. Occupancy of the existing historic buildings for uses determined by the Town Council, upon recommendation of the Fort Williams Advisory Commission, to be compatible with the park, recreational and cultural character of the District. **(Rev. eff. 12/10/03)**

### **C. Prohibited Uses**

All uses not specifically allowed as permitted uses are prohibited within this district.

## **D. Master Plan Amendments**

The Town Council may amend the Master Plan of Fort Williams Park in accordance with the following procedures and standards:

### ***1. Procedures***

Prior to considering any amendment to the Master Plan, the Town Council shall refer the proposed amendment to both the Planning Board and Fort Williams Advisory Commission for their recommendation on the proposed amendment.

The Planning Board and Fort Williams Advisory Commission shall be given a minimum of forty-five (45) days to review the proposed amendment. Prior to making its recommendation, the Planning Board may hold a public hearing on the proposed amendment. The recommendations of the Planning Board and the Fort Williams Advisory Commission shall be based upon the Comprehensive Plan, the Town's general policy for the use of Fort Williams Park, and the standards set forth in Sec. 19-6-8.D.2, Standards.

Prior to considering the proposed amendment, the Town Council shall hold a public hearing on the proposal and shall give notice of the hearing as provided for in Sec. 19-10-3, Amendments. Any recommendation from the Planning Board or the Fort Williams Advisory Commission shall be considered at the public hearing. Following the public hearing, the Town Council shall determine whether to adopt such amendment.

### ***2. Standards***

The Town Council shall adopt an amendment to the Master Plan of Fort Williams Park only if it finds:

- a. That such proposal is for a park, recreational or cultural use consistent with the long-term plans of the Town for the use of Fort Williams Park;
- b. That the proposed building or use will not interfere with or detract from park, recreational or cultural uses then existing or anticipated during the period of such use;
- c. That such proposed use will be sensitive to and not unduly impact the adjacent residentially zoned properties; and
- d. That such proposed use will be consistent with the active recreational use of Ship Cove and with the passive recreational use of the remaining shoreline within Fort Williams Park.

**E. Standards****1. Performance Standards**

- a. The standards of performance of Articles VII and VIII shall be observed.
- b. All use of land, including development and construction activities, within the FWP District shall be carried out in such manner as to preserve existing scenic features with particular attention to the preservation of the views identified in the Assessment of the Visual Resources of Cape Elizabeth, Maine.

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

<b>MINIMUM SETBACKS</b>	
<b>(1) All uses</b>	
(a) Front and side yard setbacks	<p>All new buildings, structures, athletic facilities, drives, and parking areas shall be sited in the approximate location shown on the Master Plan, but in no case shall they be located within 100 feet of the front and side property lines.</p> <p>Existing buildings, structures, athletic facilities, drives, and parking areas located within 100 feet of the front and side property lines as of June 4, 1997, may be improved, expanded or modified provided that such changes do not reduce the setback beyond the existing conditions.</p>
<b>(2) Amateur antennas extending from 15' to 25' measured from the highest point of the alternative tower structure</b>	
(a) Property line setback	125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b>
<b>(3) Towers which are freestanding, and towers which are attached or braced against a structure and exceed 15' in height measured from the highest point of the roof of the structure</b>	
(a) Property line setback	125% of the distance from the ground to the top of the antenna <b>(Effective April 15, 2000)</b>
<b>MAXIMUM TELECOMMUNICATION HEIGHT</b>	



<b>(1) <i>Antenna attached to a structure</i></b>	25' measured from the highest point of the roof of the alternative tower structure <b>(Effective April 15, 2000)</b>
<b>(2) <i>Amateur or governmental tower attached or braced against a structure</i></b>	25' measured from the highest point of the roof of the structure <b>(Effective April 15, 2000)</b>
<b>(3) <i>Freestanding amateur or governmental wireless telecommunication tower</i></b>	50' measured from average original grade <b>(Effective April 15, 2000)</b>
<b>MAXIMUM BUILDING HEIGHT</b>	
<b>(1) <i>All uses</i></b>	35 ft.

## **F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit.

- 1. Nonresidential uses involving the construction or expansion of a building or structure*
- 2. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review*

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

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

### **A. Purpose**

The wetlands and floodplains of the Town are fragile natural resources which provide wildlife habitat, pollution control, storage and passage of flood waters, aquifer recharge, erosion control, education, scientific study, recreation, and open space. Nationally, considerable wetland acreage has been lost or impaired by drainage, dredging, filling, excavating, building, pollution, and other activities inconsistent with the natural uses of such areas. Therefore, it is the policy of the Town to ensure that wetlands and floodplains are protected from detrimental impacts and that wetland and floodplain alteration activities do not threaten public safety, welfare or cause nuisances, or negatively alter natural wetland ecology. To protect these natural resources, four (4) Resource Protection Districts are designated based upon their natural resource value and vulnerability:

### ***1. Resource Protection 1 - Critical Wetland District (RP1-CW)***

Areas that deserve the highest protection from filling, draining and other adverse activities due to their particular environmental or hydrological importance, sensitivity to alterations or special characteristics are designated Resource Protection 1 - Critical Wetland District (RP1-CW). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP1-CW District:

- a. is at least one (1) acre in size and the substrate is predominantly hydric soils categorized as very poorly drained organic or mineral soils as defined (see Sec. 19-1-3, hydric soil definition);
- b. is at least one (1) acre in size and contains, at least periodically, predominantly "Obligate" wetland vegetation, as defined in Sec. 19-1-3, Definitions - Wetland Vegetation; or
- c. is a coastal dune, as defined herein.

The Town has prepared a zoning map showing the RP1-CW District based upon the best available information at a townwide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

### ***2. Resource Protection 1 - Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay)***

Areas that require regulation due to their proximity to Resource Protection 1 - Critical Wetland Districts, and function to protect wetland values including but not limited to wildlife habitat, pollution abatement, and erosion control are designated Resource Protection 1 - Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay). The RP1-CW Buffer Overlay District is an overlay zone and is located adjacent to Resource Protection 1 - Critical Wetland Districts. The RP1-CW Buffer Overlay District shall extend upland from the wetland upland edge of any critical wetland as determined by the following criteria:

- a. a two hundred fifty (250) foot buffer will be required if the critical wetland meets one (1) of the following criteria:
  - (1) The wetland is rated as having moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife;
  - (2) The wetland is a marine and/or estuarine marsh; or
  - (3) The Resource Protection 1 - Critical Wetland District as defined is not well separated from adjacent areas by topography or other natural features.

- b. Notwithstanding any provision of this section to the contrary, a one hundred (100) foot buffer will be required if the wetland area meets one (1) of the following criteria and the critical wetland is not rated as having moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife:
  - (1) The Resource Protection 1 - Critical Wetland District is distinctly separated from the area of the proposed development by topography such that the development area, in its natural state, drains away from the wetland. An existing road or driveway shall not be considered a topographical divide if the road drains toward the wetland.
  - (2) The Resource Protection 1 - Critical Wetland District is within two hundred fifty (250) feet of densely developed areas. For the purposes of this section, an area shall be considered densely developed if at least six (6) principal buildings are located within two hundred fifty (250) feet of the center of any proposed structure.
  - (3) The Resource Protection 1 - Critical Wetland District is two (2) acres or less in size.
  - (4) The Resource Protection 1 - Critical Wetland District is a coastal sand dune as measured from the point where sand and dune grasses are replaced by upland soils and vegetation.
- c. The RP1-CW Buffer Overlay District may be reduced to one hundred (100) feet from the edge of the wetland to allow placement of a permanent or temporary tool shed where the footprint of the tool shed does not exceed eighty (80) square feet and the tool shed will be used for storage. Tool sheds allowed under this provision shall require a building permit.

### **3. *Resource Protection 2 - Wetland Protection District (RP2-WP)***

Areas that require regulation due to the sensitivity to development or to their general wetland qualities are designated Resource Protection 2 - Wetland Protection District (RP2-WP). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP2-WP District:

- a. An area where the substrate is predominantly hydric soils categorized as poorly drained mineral soils (see Sec. 19-1-3 for hydric soil definition) and that, at least periodically, supports wetland vegetation listed as "Facultative Wetland" as defined in Section 19-1-3, Definitions - Wetland Vegetation.

- b. An area less than one (1) acre in size where the substrate is predominantly hydric soils categorized as very poorly drained organic or mineral soils as defined (see Sec. 19-1-3 for hydric soil definition); or
- c. An area where the substrate is saturated with water to the surface or submerged for at least twenty (20) consecutive days during the growing season each year.

The Town has prepared a zoning map showing the RP2-WP District based upon the best available information at a townwide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

#### 4. ***Resource Protection 3 - Floodplain District (RP3-F)***

Areas that require regulation due to their sensitivity to development that would adversely affect water quality, productive habitat, biological ecosystems or natural values are designated Resource Protection 3 - Floodplain (RP3-F). Any area that, upon field verification, is determined to have one (1) or more of the following characteristics shall be included in the RP3-F District:

- a. Floodplains along rivers defined by the 100-year floodplain as shown on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps. Floodplains that include two (2) or more principal structures per one thousand (1,000) linear feet of shoreline are not included.
- b. Areas of two (2) or more contiguous acres with sustained slopes of twenty percent (20%) or greater.
- c. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

The Town has prepared a zoning map showing the RP3-F District based upon the best available information at a townwide scale. The actual boundaries of this district, however, shall be determined by field verification in accordance with Sec. 19-2-5, Location of Resource Protection District Boundaries.

## B. Permitted Uses

Any use shown on Table 19-6-9 as a permitted use in each district shall be permitted in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, or RP3-F district respectively.

## C. Uses Permitted with a Resource Protection Permit

Any use shown on Table 19-6-9 as a permitted use with a resource protection permit in the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, or RP3-F District shall be permitted in that district but only upon the issuance of a resource protection permit in accordance with the provisions of Sec. 19-8-3, Resource Protection Performance Standards.

## D. Prohibited Uses

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

**TABLE 19-6-9**  
**Uses permitted, allowed with a resource protection permit,**  
**and prohibited in the Resource Protection Districts.**

All use of land, buildings, and structures within the Resource Protection Districts shall be in accordance with the following:

- **“Permitted”** indicates uses that are permitted by right subject to Sec. 19-8-3, Resource Protection Performance Standards
- **“RPP”** indicates uses that are permitted, provided that a resource protection permit is issued in accordance with Sec. 19-8-3, Resource Protection Performance Standards
- **“No”** indicates uses that are prohibited

***No use, structure, or activity shall be permitted that is not in compliance with Sec. 19-8-3, Resource Protection Performance Standards.***

Uses allowed with a resource protection permit may include incidental activities that otherwise would be prohibited, provided that such incidental activities are expressly included in the permit application.

A permitted use that includes within it an incidental prohibited activity shall be allowed only if a resource protection permit is issued in accordance with Sec. 19-8-3, Resource Protection

Permitted = Permitted subject to performance standards

RPP = Permitted with a resource protection permit

No = Prohibited


## Performance Standards.

Use, Activity, Structure	RP1-CW and RP1-CW Buffer Overlay	RP2-WP	RP3-F
1. Expansion of nonconforming structure subject to the provisions of Sec. 19-4-5, Nonconformance within the Resource Protection Districts	Permitted	Permitted	Permitted
2. Forest management activities	Permitted	Permitted	Permitted
3. Timber harvesting	Permitted	Permitted	Permitted
4. Conservation of soil, water, vegetation, fish, shellfish, and wildlife	Permitted	Permitted	Permitted
5. Wilderness area, wildlife preservation and refuges	Permitted	Permitted	Permitted
6. Education and scientific research and nature trails	Permitted	Permitted	Permitted
7. Shellfishing and trapping	Permitted	Permitted	Permitted
8. Non-intensive recreational activity including but not limited to hunting where permitted, bird-watching, duck blinds, hiking, horseback riding, swimming and trapping, provided there is no alteration of the wetland and no operation of any motorized recreational vehicles	Permitted	Permitted	Permitted
9. Maintenance of existing golf course waterholes, municipal skating ponds	Permitted	Permitted	Permitted
10. Maintenance of stormwater detention basins by the Town, or by a homeowners' association as approved by the Planning Board as part of an approved subdivision or site plan	Permitted	Permitted	Permitted
11. Grooming of existing residential lawns and landscaping, including the installation of fences in existing lawns	Permitted	Permitted	Permitted
12. Fire prevention activities	Permitted	Permitted	Permitted

Permitted = Permitted subject to performance standards

RPP = Permitted with a resource protection permit

No = Prohibited

Use, Activity, Structure	RP1-CW and RP1-CW Buffer Overlay	RP2-WP	RP3-F
13. Aquaculture	Permitted	Permitted	Permitted
14. Replacement of septic disposal system	Permitted	Permitted	Permitted
15. Service drop to allowed use	Permitted	Permitted	Permitted
16. Individual campsite	Permitted	Permitted	Permitted
17. Home occupation and home business	Permitted	Permitted	Permitted
18. Fences, wildlife management shelters, observation decks and shelters	RPP	Permitted	RPP
19. Minor recreational structure	RPP	Permitted	RPP
20. Catwalks and footbridges	RPP	RPP	RPP
21. Public utilities/essential utility services	RPP	RPP	RPP
22. Existing road reconstruction	RPP	RPP	RPP
23. Official vegetated playing fields and related accessory structures, including parking facilities, located more than one hundred (100) feet from the RP1 wetland upland edge 	RPP	RPP	RPP
24. Damming	RPP	RPP	No
25. Dredging	No	RPP	RPP
26. Grading	No	RPP	RPP
27. New street construction	No	RPP	RPP
28. Agriculture (existing uses exempted)	<del>No</del>	RPP	RPP
29. Piers, docks and boathouses	No	RPP	RPP
30. Marina	No	RPP	RPP
31. Filling	No	RPP	No
32. Draining	No	RPP	No
33. Excavating	No	RPP	No
34. Mining or drilling	No	RPP	No
35. One and two family dwellings and	No	RPP	No

Permitted = Permitted subject to performance standards

RPP = Permitted with a resource protection permit

No = Prohibited

Use, Activity, Structure	RP1-CW and RP1-CW Buffer Overlay	RP2-WP	RP3-F
accessory buildings and structures			
36. Multi-unit residential	No	RPP	No
37. Parking facility	No	No	RPP
38. Commercial structure	No	No	No
39. Industrial structure	No	No	No
40. Governmental/institutional	No	No	No
41. Conversion to year-round	No	No	No
42. Private septic disposal system	No	No	No
43. Campground	No	No	No
44. Polluting	No	No	No

Permitted = Permitted subject to performance standards  
RPP = Permitted with a resource protection permit  
No = Prohibited



**E. Standards****1. Performance Standards**

- a. The general standards of Articles VII and VIII shall be observed.
- b. All uses of land and buildings within the RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F Districts shall be subject to the applicable provisions of Sec. 19-8-3, Resource Protection Performance Standards.

**2. Space and Bulk Standards**

Within a Resource Protection District, the Space and Bulk Standards of the most restrictive abutting district shall apply except that lots within one hundred (100) feet of the Residence C District shall use the Space and Bulk Standards of the Residence C District.

**3. Other Standards**

All permitted structures shall be constructed to allow the unobstructed flow of waters and preserve the natural contour of the wetland except as authorized by resource protection permits.

**F. Concurrent Site Plan Review**

Uses or activities listed in Sec. 19-9-2.A, Activities Requiring Site Plan Review, as requiring site plan review that also require a resource protection permit shall be reviewed concurrently by the Planning Board.

**SEC. 19-6-10. TOWN FARM DISTRICT (TF) (Effective November 13, 1999)****A. Purpose**

The Town Farm District includes the area west of Spurwink Ave formerly known as the "Poor Farm" and an area extending from Spurwink Ave 100' to the east. The Town Farm District is intended to preserve the upland portion of the Town Farm. The historic boundaries of the Town Poor Farm also include the Spurwink Marsh, extending to Sawyer Rd.


The land is undeveloped open space comprised of rolling fields, treed ridge lines, and the Spurwink River and Spurwink Marsh. The purpose of this district is to recognize and protect the special nature of the Town Farm as an area representing historic, cultural, scenic, natural, and open space qualities which should continue. The Town Farm embodies rural character and is integral and essential to the Town and the Greenbelt. The scenic significance of the Town Farm is discussed in more detail in a town report entitled An Assessment of the Visual Resources of Cape Elizabeth, Maine, dated February 1989. The Town Farm District is created to preserve these features for the benefit of the

public.

## **B. Permitted Uses**


The following uses are permitted in the Town Farm District:

### **1. *The following resource-related uses:***

- a. Agriculture 
- b. Vegetation Management
  - 1. Mowing
  - 2. Tree maintenance
  - 3. Brush clearing
  - 4. Other vegetation management activities necessary to maintain and enhance views and scenic quality

### **2. *Reserved***

### **3. *The following nonresidential uses:***

- a. Informal Recreation
- b. Education and scientific research
- c. Nature trails, catwalks and footbridges
- d. Snowmobile touring 

## **C. Conditional Uses**

The following uses may be permitted only upon approval by the Zoning Board as a conditional use, in accordance with Sec. 19-5-5, Conditional Use Permits:

### **1. *Reserved***

### **2. *The following nonresidential uses:***

- a. Public utilities/essential utility services, except telecommunication towers
- (5) Activities permitted under the terms of the Portland Water District lease, to be located only on the land leased to the Portland Water District for as long as such lease remains in effect

## **D. Prohibited Uses**

All uses not specifically allowed as permitted or conditional are prohibited within this district. In addition, the following uses are expressly prohibited:

- 1. Parking
- 2. Organized sports involving teams with coaches, uniforms or established schedules
- 3. Athletic playing fields
- 4. New structures
- 5. Telecommunication towers
- 6. Public bathrooms or rest facilities

**E. Standards****1. Performance standards**

The standards of performance of Articles VII, General Standards, and VIII, Performance Standards, shall be observed.

**2. Reserved****F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Public utilities/essential utility services
2. Any construction allowed under the Portland Water District Lease
3. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

**SEC. 19-6-11. SHORELAND PERFORMANCE OVERLAY DISTRICT****A. Purpose**

In order to maintain safe and healthful conditions; to prevent and control water pollution; to protect spawning grounds of fish, aquatic life, bird and other wildlife habitat; to protect archaeological and historic resources; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover; to protect visual, as well as actual, points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impact of development in shoreland areas, all land use activities within the Shoreland Performance Overlay District shall conform to the applicable land use standards in Sec. 19-8-2, Shoreland Performance Standards. This district is established in accordance with the provisions of 38 M.R.S.A. §435 et seq.

The Shoreland Performance Overlay District applies to all land within two hundred fifty (250) feet, horizontal distance, of the normal high-water line of Great Pond, the Spurwink River or any saltwater body; within two hundred fifty (250) feet, horizontal distance, of the wetland upland edge as depicted on the Zoning Map; and within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream. This district also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending beyond the normal high-water line of a water body or within a wetland.

**B. Permitted Uses**

The Shoreland Performance Overlay District is an overlay zone. As such, any use that is permitted in the underlying zoning district is permitted in the Shoreland Performance Overlay District, except as specifically provided in Sec. 19-6-11.D, Prohibited Uses. Any permitted use shall comply with the standards of Sec. 19-8-2, Shoreland Performance Standards.

**C. Conditional Uses**

Any use that is allowed as a conditional use in the underlying zoning district is a conditional use in

the Shoreland Performance Overlay District, except as specifically provided in Sec. 19-6-11.D., Prohibited Uses. A conditional use may be permitted only upon approval of the Zoning Board as a conditional use in accordance with Sec. 19-5-5, Applicability, of this Ordinance, provided further that the standards of Sec. 19-8-2, Shoreland Performance Standards, are met.

#### **D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses in the underlying zoning district are prohibited in the Shoreland Performance Overlay District. In addition, the following commercial and industrial uses are expressly prohibited within the Shoreland Performance Overlay District adjacent to Great Pond and the streams which flow to Great Pond:

1. Auto washing facility
2. Auto or other land vehicle service and/or repair operation, including body shop
3. Chemical and bacteriological laboratory
4. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or ~~forms~~ <sup>land</sup>
5. Commercial painting, wood preserving and furniture stripping
6. Dry cleaning establishment
7. Electronic circuit assembly
8. Laundromat, unless connected to a sanitary sewer
9. Metal plating, finishing or polishing
10. Petroleum or petroleum product storage and/or sale, except storage on the same property as use occurs and except for storage and sales associated with marinas
11. Photographic processing
12. Printing

#### **E. Standards**

##### **1. Performance Standards**

- a. The general standards of Articles VII and VIII shall be observed.
- b. All uses of land and buildings within the Shoreland Performance Overlay District shall conform to the applicable provisions of Sec. 19-8-2, Shoreland Performance Standards.

##### **2. Space and Bulk Standards**

In addition to the Space and Bulk Standards of the underlying district, all use of land within the Shoreland Performance Overlay District shall comply with the standards set forth in this subsection. In the event of a conflict between the standards of this overlay district and those of the underlying district, the more restrictive standards shall apply:

<b>MINIMUM LOT AREA</b> <b>(Unless the requirements of the underlying district require a larger lot)</b>	
<b>(1) Residential per dwelling unit adjacent to tidal areas</b>	30,000 sq. ft.
<b>(2) Residential per dwelling unit adjacent to non-tidal areas</b>	40,000 sq. ft.

<b><i>(3) Governmental, Institutional, Commercial or Industrial per principal structure adjacent to tidal areas</i></b>	40,000 sq. ft.
<b><i>(4) Governmental, Institutional, Commercial or Industrial per principal structure adjacent to non-tidal areas</i></b>	60,000 sq. ft.
<b><i>(5) Public and Private Recreational Facilities in tidal and non-tidal areas</i></b>	40,000 sq. ft.

#### **MINIMUM SHORE FRONTAGE**

Note: Shore Frontage shall be measured along the normal high-water line. In addition to the shore frontage requirements below, all conforming shoreland lots shall also have a minimum distance of 100 feet measured in a straight line between the intersections of the lot lines with the shoreline at the normal high-water line.

<b><i>(1) Residential per dwelling unit adjacent to tidal areas</i></b>	150 ft.
<b><i>(2) Residential per dwelling unit adjacent to non-tidal areas</i></b>	200 ft.
<b><i>(3) Governmental, Institutional, Commercial or Industrial per principal structure adjacent to tidal areas</i></b>	200 ft.
<b><i>(4) Governmental, Institutional, Commercial or Industrial per principal structure adjacent to non-tidal areas</i></b>	300 ft.
<b><i>(5) Public and Private Recreational Facilities in tidal and non-tidal areas</i></b>	200 ft.

#### **MINIMUM SHORELINE SETBACKS**

Note: The water body or wetland setback provision shall not apply to structures which require direct access to the water as an operational necessity, such as piers, docks, and retaining walls, nor to other functionally water-dependent uses.

<b><i>(1) Normal high-water line of Great Pond</i></b>	250 ft. for all new principal and accessory structures
<b><i>(2) Wetland upland edge of the RP1-CW District</i></b>	100 ft. for all new principal and accessory structures
<b><i>(3) Normal high-water line of other water bodies and tributary streams</i></b>	75 ft. for all new principal and accessory structures

#### **MAXIMUM BUILDING HEIGHT**

Note: This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

<b><i>(1) Principal and accessory structures and expansions of existing structures</i></b>	35 ft.
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#### **MAXIMUM COVERAGE**

**(1) All uses**

The total area of all structures, parking lots and other impervious surfaces, within the shoreland district shall not exceed twenty percent (20%) of the lot, or the portion thereof, located within the district, including land area previously developed. **(Effective August 11, 1999)**

- a. Land below the normal high-water line of a water body or wetland upland edge and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.
- b. Lots located on opposite sides of a public or private road shall each be considered a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- c. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or wetland upland edge shall be no less than the shore frontage requirement for a lot with the proposed use.
- d. If more than one (1) residential dwelling unit or more than one (1) principal commercial or industrial structure is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure, except for clustered developments under Sec. 19-7-2, Open Space Zoning, where dimensional requirements are waived provided that the overall dimensional requirement, including but not limited to frontage and lot area per dwelling unit, are met.
- e. Setbacks shall be measured as the shortest horizontal distance from the foundation, sills or other supports of a building or other structure, or from the edge of the improved areas of any other improvement, to the normal high-water line.
- f. Notwithstanding the requirements stated above, stairways or similar structures may be allowed to provide shoreline access in areas of steep slopes or unstable soils, with a permit from the Code Enforcement Officer provided that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or wetland upland edge (unless permitted by the Maine Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. §480-C); and that the applicant demonstrates that no reasonable alternative exists on the property.

**F. Site Plan Review**

Any use that requires site plan review in the underlying zoning district shall require site plan review in the Shoreland Performance Overlay District.

## **SEC. 19-6-12. GREAT POND WATERSHED OVERLAY DISTRICT**

### **A. Purpose**

The Great Pond Watershed Overlay District is created to protect and improve the water quality of Great Pond by limiting the runoff of nutrients such as phosphorous.

The Great Pond Watershed Overlay District applies to all land within the watershed of Great Pond being all of the land area that drains to Great Pond as depicted on the Great Pond Watershed Map.

### **B. Permitted Uses**

The Great Pond Watershed Overlay District is an overlay zone. As such, any use that is permitted in the underlying zoning district is permitted in the Great Pond Watershed Overlay District. Any permitted use shall comply with the standards of Sec. 19-8-7, Great Pond Watershed Performance Standards.

### **C. Conditional Uses**

Any use that is allowed as a conditional use in the underlying zoning district is a conditional use in the Great Pond Watershed Overlay District. A conditional use may be permitted only upon approval of the Zoning Board as a conditional use in accordance with Sec. 19-5-5, Applicability, of this Ordinance, provided further that the standards of Sec. 19-8-7, Great Pond Watershed Performance Standards, are met.

### **D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses in the underlying zoning district are prohibited in the Great Pond Watershed Overlay District.

**E. Standards**

**1. Performance Standards**

- a. The general standards of Articles VII and VIII shall be observed.
- b. All uses of land and buildings within the Great Pond Watershed Overlay District shall conform to the applicable provisions of Sec. 19-8-7, Great Pond Watershed Performance Standards.

**2. Space and Bulk Standards**

All uses shall conform to the Space and Bulk Standards of the underlying district and the standards of Sec. 19-8-7, Great Pond Watershed Performance Standards.

**F. Site Plan Review**

Any use that requires site plan review in the underlying zoning district shall require site plan review in the Great Pond Watershed Overlay District.

**SEC. 19-6-13. TOWER OVERLAY DISTRICT (Effective April 15, 2000)**

**A. Purpose**

The purpose of this district is to respond to the communication policies embodied in the 1996 Federal Telecommunications Act by establishing predictable and balanced regulations, within the confines of permissible local regulation, for the siting and screening of towers and antennas in order to accommodate the growth of telecommunications within the Town while protecting the public against any adverse impacts on the Town's public health, safety and welfare.

**B. Permitted Uses**

The Tower Overlay District is an overlay zone. As such, any use that is permitted in the underlying zoning district is permitted in the Tower Overlay District. In addition, notwithstanding the underlying zone, the following uses are also permitted:

Towers providing commercial, amateur and governmental wireless telecommunication services.  
Antennas providing commercial, amateur, and governmental wireless telecommunication services.

**C. Conditional Uses**

Any use that is allowed as a conditional use in the underlying zoning district is a conditional use in the Tower Overlay District.

**D. Prohibited Uses**

All uses not specifically allowed as permitted uses or conditional uses in the underlying zone or in the Tower Overlay District are prohibited in the Tower Overlay District.

**E. Standards**



**1. Performance Standards**

- a. The general standards of Articles VII and VIII shall be observed.
- b. All uses of land and buildings within the Tower Overlay District shall conform to the applicable provisions of Sec. 19-8-12, Tower and Antenna Performance Standards.

**2. Space and Bulk Standards**

In addition to the Space and Bulk Standards of the underlying district, all use of land within the Tower Overlay District or any other district shall comply with the standards set forth in this subsection. In the event of a conflict between the standards of this overlay district and those of the underlying district, the more restrictive standards shall apply:

MAXIMUM HEIGHT	
<i>Towers, including antennas and any other attachments</i>	180 ft.
MINIMUM SETBACK	
<i>Property Line Setback</i>	125% of tower height

**F. Site Plan Review**

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to the issuance of any building permit, plumbing permit, or other permit.

1. Commercial wireless telecommunication services towers
2. Amateur or governmental wireless telecommunication facility towers in excess of 50' feet in height

**ARTICLE VII. GENERAL STANDARDS**

**SEC. 19-7-1. PURPOSE**

The purpose of this Article is to incorporate into the Zoning Ordinance tools that will better enable the Town to implement its policies, as expressed in the Comprehensive Plan, to preserve open space and rural character and to provide opportunities for affordable housing. These tools are designed to achieve these goals while respecting the rights of property owners.

## **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. **(Rev. eff. 12/10/03)**

### **B. General Standards**

- 1.** Developments proposed under the terms of this section shall meet all requirements of this section, unless otherwise noted.
- 2.** The uses of the land shall not differ from the uses allowed in the district in which the development is located.
- 3.** Each lot or building must be an element of an overall plan for site development. When the development consists of the creation of lots, the plan shall establish a building envelope for each lot that identifies the area within which the buildings will be located. When the development involves the construction of multiple buildings on one (1) or more lots, the plan shall show the location of each building.
- 4.** Notwithstanding subsection 3 above, when the development of a parcel shall be divided into phases, the Planning Board may allow future phases to be designed at a concept level. Concept level plans shall provide sufficient detail to demonstrate that the Subdivision Ordinance Standards and the Open Space Zoning Standards will be met when final design is completed and submitted to the Planning Board. Concept level plans, at a minimum, shall include: vehicular access, location of significant wetlands and/or other prominent natural features, a general layout of lots or buildings and an adequate amount of open space. No phase of a development shall be constructed until a final plan for such phase demonstrating full compliance with the Subdivision Ordinance and the Open Space Zoning Standards has been approved by the Planning Board and complies with all other requirements of the Subdivision Ordinance. **(Rev. eff. 12/8/04)**

## C. Dimensional Standards

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

### 1. Density

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

District	Maximum Density of Residential Development	
	Single Family	Multiplex
RA	1 unit per 66,000 sq. ft. of net residential area	1 unit per 66,000 sq. ft. of net residential area
RB	1 unit per 60,000 sq. ft. of net residential area with on-site sewerage disposal	1 unit per 60,000 sq. ft. of net residential area with on-site sewerage disposal
	1 unit per 30,000 sq. ft. of net residential area with public sewerage	1 unit per 30,000 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

### 2. Minimum Lot Size

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

District	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

### **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. 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.]

### **5. *Road Frontage***

The minimum road frontage of each lot shall be fifty (50) feet. However, no individual lot or dwelling unit shall have its required frontage on a public road existing as of June 4, 1997.

### **6. *Building Envelope/Location***

If the development consists of buildings on individual lots, the applicant shall establish and show on the subdivision plat a building envelope for each lot, within which the building shall be located. The bounds of the building envelope shall be at least twenty (20) feet from the right-of-way of the road serving the lot, and at least five (5) feet from any side or rear lot line.

If the development consists of multiple buildings on one (1) or more lots, the plat shall show the proposed location of each building. Buildings shall be located so that the distance between any two (2) buildings is at least equal to the height of the taller building.

### **7. *Other Setbacks***

Neither shore frontage nor setbacks from the normal high water marks of water bodies shall be reduced below the minimum otherwise required in this Ordinance.

The structures within a block shall maintain a uniform relationship to the street. A uniform relationship shall mean front setbacks that are within a range of ten (10) feet. The Planning Board may waive this requirement based on the physical characteristics of the site or the design concept for the development.

#### **D. 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.

##### ***1. Priorities for Location of Lots and Open Space***

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. 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, wildlife habitat rated by the Maine Department of Inland Fisheries and Wildlife as high value, and unique natural features
- c. 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
- e. 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.

##### ***2. Common Open Space***

- a. 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:

- (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. 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. 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.

### ***3. Vehicular Access, Street Layout, and Construction***

In addition to the standards of the Town's Subdivision Ordinance, vehicular access within a cluster subdivision shall meet the following additional standards:

- a. All vehicular access to buildings and lots shall be from a street within the development and not from an existing public road.
- b. All streets, roads, access drives, and parking areas shall be designed to harmonize with the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all-season emergency access, snow storage, delivery and collection services, and potential connections to abutting land.

### ***4. Other Design Elements***

The applicant shall address the following issues in the plans prepared under the terms of this section:

- a. The screening and buffering of above-ground utility structures, such as transformer boxes, meters, and pumping stations;
- b. The location of private outdoor space for each dwelling unit;

- c. Private storage space for each dwelling unit, if needed, in order to store such items as lawnmowers, recreational vehicles, lawn furniture, and the like;
- d. Owner and visitor parking;
- e. A landscape plan prepared by a landscape architect or other qualified design professional, which preserves the natural landscape and which adds new landscape materials where needed to buffer, or mitigate, the impacts of new development; and
- f. Pedestrian circulation within the development and, as appropriate, to abutting developments and pedestrian systems.

### **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 LOT AREA	



<b>(1)</b> <i>All residential uses involving transfers of development rights</i>	10 acres
<b>MAXIMUM DENSITY OF A SUBDIVISION UTILIZING TRANSFER OF DEVELOPMENT RIGHTS</b>	
<b>(1)</b> <i>Developments in the RA District connected to the public sewerage system</i>	1 unit per 20,000 sq. ft. of net residential area
<b>(2)</b> <i>Developments in the RA District served by on-site sewage disposal when the development rights are transferred from an abutting parcel</i>	1 unit per 40,000 sq. ft. of net residential area
<b>(3)</b> <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 unit per 40,000 sq. ft. of net residential area
<b>(4)</b> <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 unit per 50,000 sq. ft. of net residential area
<b>(5)</b> <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 unit per 60,000 sq. ft. of net residential area

### **C. Transfer Zone**

Development rights may be transferred from any parcel located within a transfer zone. The transfer zones shall be shown on the Transfer Zone 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 in the visual analysis as being of scenic value
3. The land has identified historic or archaeological significance
4. The land is 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 transfer zone. For each unit in the proposed development in excess of that allowed by the base RA density, a conservation easement shall be provided on at least sixty-four thousand (64,000) square feet of net residential area within a designated transfer zone. The conservation easement(s) shall be perpetual subject to the terms of Sec. 19-7-3.E, Easement Provisions.

#### **E. Easement Provisions**

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

### **SEC. 19-7-4. MANDATORY AFFORDABLE HOUSING PROVISIONS**

#### **A. Purpose**

The Town finds that an adequate supply of affordable housing for persons of low and moderate income is desirable for the public health, safety and welfare in that it promotes a community rich in economic, social and cultural diversity. It is therefore a public purpose and an objective of the Comprehensive Plan to make available and integrate in the Town an adequate supply of housing for persons of all economic segments of the community.

#### **B. Applicability**

The mandatory affordable housing provisions shall apply to all major subdivisions as defined in Sec. 16-1-4, located in the Residence A, Residence B, and Residence C Districts.

All major subdivisions, as defined in Sec. 16-1-4 of the Subdivision Ordinance, shall set aside at least ten percent (10%) of the lots/units in the project as affordable housing for moderate income buyers or five percent (5%) of the lots/units in the project as affordable housing for low income buyers. For projects where a number of lots/units in excess of the mandatory required lots/units are set aside as affordable housing, the applicant shall be eligible for a density bonus of one (1) additional lot/unit for each moderate income affordable lot/unit and two (2) additional lots/units for each low income affordable lot/unit in excess of the mandatory requirement. Non-bonus lots shall meet all requirements of the subdivision regulations. The following minimum lot sizes may be approved for the additional bonus lots/units which may be affordable or market rate:

Zoning District	Minimum Lot Size
Residence A	30,000 sq. ft./lot

Residence B	20,000 sq. ft./lot connected to public sewerage 50,000 sq. ft./lot with on-site sewage disposal
Residence C	8,000 sq. ft./lot Must be served by public sewer

The reduced minimum lot size shall apply only to the creation of bonus lots in new subdivisions.

### C. Standards

1. Affordable housing lots/units shall be sold to qualified low and moderate income buyers as defined in Sec. 19-1-3, Definitions, and any additional criteria adopted by the Town Council. Preference shall be given first to Town residents and then to employees of the Town. A determination of preference shall only be needed where the number of qualified and interested buyers exceeds the number of available units. Buyers shall indicate interest in purchase by contacting the seller. When the number of units available exceeds the number of qualified and interested buyers, the owner shall advertise in the Cape Courier and in a newspaper of general circulation that affordable housing is available for sale. All affordable housing units shall be owner-occupied. **(Ref. Eff. 12/10/03)**
2. Affordable housing lots/units shall be geographically dispersed throughout the development where feasible.
3. The dwellings on affordable housing lots/units shall be compatible with the design of the dwellings on the remainder of the development in terms of appearance, materials, finished quality and level of finish, including finished second floors, and providing a reasonably comparable number of finished bedrooms and baths to the market rate dwellings in the development. Any dwelling sited on a lot shall be located to allow the construction of a garage on the lot without requiring a setback variance.
4. The applicant shall submit for Town Council review and acceptance an agreement which preserves the long-term affordability of the lots/units to low and moderate income households. The agreement shall be either a second mortgage, deed restriction or a combination of the two. The applicant may use an agreement provided by the Town or may present a comparable instrument for review. Agreements must include but not be limited to:
  - a. a proven method to preserve long-term (99 years) affordability to low and moderate income buyers;
  - b. a formula for accruing limited equity to the buyer which includes any physical improvements to the property;
  - c. the option to return housing to market rates only if there are no qualified buyers within one hundred eighty (180) days of the property being on the market; **(Rev. eff. 12/10/03)**

- d. an option to the Town to purchase the affordable lots/units if no qualified buyers apply at the “affordable” price;
  - e. the enforceability of the mechanism;
  - f. the amount of administrative costs to the Town; and
  - g. the supervision of the agreement.
5. The mandatory affordable housing provisions shall run with the land.
6. Affordable housing lots/units shall be constructed and completed at least concurrently with the remainder of the project. In developments where the applicant or its agents, or its successors or assigns shall construct at least fifty percent (50%) of the units, the approved affordable housing units shall be constructed in proportion to the market rate units. Proportionality shall be determined by dividing the total number of units in the development by the total number of affordable units. No building permit shall be issued for a market rate unit in excess of the proportion of affordable housing units for which a certificate of occupancy has been issued.

For example, in a development of 50 units (total) with 5 affordable units, the proportional number of total units to affordable units is 10 total units to 1 affordable unit. If one building permit is issued for an affordable unit, then up to 9 building permits for market rate units can be issued. No additional market rate unit building permit can be issued until the first affordable unit is built and a certificate of occupancy for that unit is issued. An additional 9 market rate unit building permits can then be issued before the second affordable unit has been issued a certificate of occupancy.

When calculating proportionality, any fractional sum shall be rounded down to the nearest whole building unit. For example, in a development of 50 units with 3 affordable units, the proportional number of units to affordable units would be 16 units to 1 affordable unit. **(Rev. eff. 12/10/03)**

#### **D. Modifications and Fees**

1. For projects with less than ten (10) lots/units, the applicant may propose to pay a fee in lieu of creating affordable housing. In-lieu fees shall be equal to the difference between the average fair market value of the housing developed, as determined by the Planning Board based upon the submission by the applicant of an appraisal or equivalent information, and the maximum cost of moderate income affordable housing as defined in Sec. 19-1-3, Definitions. The fee shall be proportional to the number of lots/units in the development.
2. Where the Planning Board finds that undue hardship or environmental conditions do not make the inclusion of affordable housing feasible, the Planning Board may modify the

affordable housing provisions in favor of a proposed alternative upon a showing that it will not have the effect of nullifying the intent and objectives of the Comprehensive Plan or the provisions of this section; provided, however, that in granting a modification the Planning Board may impose such conditions as it deems necessary to secure the foregoing objectives, including but not limited to the imposition of in-lieu fees as calculated in Sec. 19-7-4.D.1, Modifications and Fees, and the creation of affordable housing elsewhere in the Town.

The reduced lot sizes for affordable housing are only applicable in a new subdivision. This provision does not allow otherwise unbuildable lots to be developed to meet Sec. 19-7-4, Mandatory Affordable Housing Provisions.

3. In-lieu fees shall be deposited in a municipal account dedicated to providing affordable housing.

For projects in which the developer will only be selling unbuilt lots, the in-lieu of fee shall be based upon the difference between the proposed selling price of the lots and forty percent (40%) of the cost of a housing unit affordable for a low income buyer as defined in Sec. 19-1-3, Definitions.

## **SEC. 19-7-5. CREATION OF ACCESSORY DWELLING UNIT**

### **A. Purpose**

The purpose of this provision shall be to permit the creation of a single, subordinate dwelling unit within and incidental to an existing single family dwelling. The creation of a subordinate accessory dwelling unit within a new single family dwelling shall also be permitted. An accessory dwelling unit is intended to be a separate suite of rooms within a home where the unit is occupied by one or two people who have a close, personal relationship with the residents of the main dwelling. Accessory dwelling units shall only be created where the single family character of the principal building is maintained.

### **B. Requirements**

The following requirements shall be in addition to other requirements of the Zoning Ordinance. No accessory dwelling unit is permitted where a variance is also required. The Zoning Board of Appeals may permit the creation of an accessory dwelling unit, subject to the applicant's compliance with the provisions of Section 19-5-5, Conditional Use Permits, and the provisions below:

1. A lot must have a minimum of twelve thousand (12,000) square feet to be eligible for the addition of an accessory dwelling unit to an existing single family home. The applicant shall have the burden to establish the lot area by a survey signed and sealed by a registered Maine surveyor. The applicant shall also demonstrate compliance with the Town Sewage Ordinance.
2. An accessory dwelling unit may only be created in a single family, detached dwelling which

has a total existing floor area of the structure, excluding garages, of one thousand five hundred (1,500) square feet or more prior to the addition of the accessory dwelling unit.

3. The accessory dwelling unit shall occupy no more than twenty-five percent (25%) of the resulting floor area of the structure, as defined herein, excluding garages. In no event, however, shall the floor area of the accessory unit be less than a minimum of three hundred (300) square feet or exceed a maximum of six hundred (600) square feet. An interior connecting doorway between the single family dwelling and the accessory dwelling unit shall be provided. The interior connecting doorway shall not permit the informal extension or expansion of the allowable dimensions of the accessory dwelling unit.
4. Any addition to the floor area of the single family detached dwelling to create the accessory dwelling unit shall not exceed fifteen percent (15%) of the floor area of the structure of the single family dwelling prior to conversion.
5. One parking space shall be provided for the accessory dwelling unit in addition to the parking for the single family detached dwelling. The parking space must be located a minimum of five (5) feet from the side and rear property lines. The parking areas for the lot shall be arranged and landscaped to be compatible with adjacent structures.
6. Any exterior alteration shall preserve the single family appearance, architectural style, and character of the original structure and shall be in harmony with the design of the original structure and the general appearance of the neighborhood. Any exterior alteration shall preserve the formal, front entrance of the original structure, in order to maintain the single family appearance and architectural style of the structure, although a secondary entrance which serves the accessory dwelling unit may be permitted. Any secondary entrance shall not detract from the main entrance and shall not be located on the face of the building where the main entrance is located.
7. No accessory dwelling unit shall be approved for any structure that includes a home occupation or home business, nor shall a home occupation or home business be permitted in a structure that includes an accessory dwelling unit.
8. The single family dwelling and the accessory dwelling unit installed therein shall be held in the same ownership. No rights shall accrue to the recipient of the conditional use permit under this section unless the recipient records an attested copy of the conditional use permit in the Cumberland County Registry of Deeds within ninety (90) days of final approval of the conditional use permit. A conditional use permit shall become null and void if not recorded within ninety (90) days of final approval.

#### **SEC. 19-7-6. ELDERCARE FACILITY STANDARDS**

In addition to the other requirements of this Ordinance, any project that meets the definition of an eldercare facility as contained in Sec. 19-1-3, Definitions, shall comply with the following additional

requirements:

**A. Required Open Spaces**

At least fifty percent (50%) of the site's gross acreage shall be devoted to unpaved, nonvehicular open space. A majority of the required open space shall consist of land that is usable for passive recreation purposes.

**B. Buffering**

Adequate landscaping and screening shall be provided to minimize or eliminate the visual, noise, lighting and other impacts of a development on surrounding properties. Landscaping may include such types as tree plantings, hedges, fencing, walling and combinations thereof. Existing significant vegetation shall be preserved whenever possible. A landscaping plan prepared by a landscape architect or other qualified design professional shall be submitted with the project's site plan. Adequate screening from adjacent properties shall be required along the boundaries of the projected site or in other appropriate locations. Screening locations and details shall be included as part of the project's site plan.

**C. Elderly Household Occupancy Guarantee**

Any facility falling under the definition of eldercare facility shall be restricted to occupancy by elderly households. This requirement shall be an express condition of approval of an application for an eldercare facility and shall be included in every resident's written agreement by which residents occupy the units in the facility.

**D. Community Impact Statement**

All applications for an eldercare facility shall include an analysis identifying the impacts that the proposed development is expected to have on community facilities and services. This shall include an analysis of the increased service demands that will be placed on each municipal department, the ability of each department to service the increased demand, and any actions necessary to address deficiencies in services. The statement shall demonstrate that the demands upon facilities and services created by a proposed project will be adequately met or that the applicant will take actions to assure that the needs will be met. The community impact statement shall be submitted with the initial application material submission.

**E. Market and Feasibility Study**

The Planning Board may require the applicant to submit an independent market and project feasibility study to demonstrate the economic viability of the proposed development, the information from which the Planning Board may use to impose additional restrictions or conditions on a proposed development. Unless extended by mutual agreement, the market and project feasibility study shall be submitted within one (1) month of the date that the Planning Board first requests its submission.

**F. Conversion of Eldercare Facilities**

Any eldercare facility that is converted to any other use shall meet the density standards of the Ordinances in place at the time of conversion for the proposed new use and shall also be subject to site plan review and approval by the Planning Board.

**G. Reserved Units**

The Planning Board may require that a congregate housing or nursing home facility give a priority to Town residents or immediate family members thereof on any waiting list for entrance to the proposed facility.

**H. Elevator**

Where an elevator is required by the Building Code, the elevator shall be of sufficient size to accommodate the Town Emergency Rescue stretcher, as determined by the Fire Chief. **(Effective August 11, 1999)**

**SEC. 19-7-7. MANUFACTURED HOUSING PARKS**

**A. Purpose**

The purpose of this section is to accommodate additional housing types in appropriate areas of the Town, while protecting the value and integrity of established residential neighborhoods and ensuring a balanced and orderly pattern of residential development.

**B. Compliance with Laws, Ordinances or Regulations**

Except as stipulated below, manufactured housing parks shall meet all the requirements for a residential subdivision and shall conform to all applicable local and State laws, ordinances or regulations. Where the provisions of this section conflict with specific provisions of the Subdivision Ordinance or other sections of the Zoning Ordinance, the provisions of this section shall prevail.

**C. Lot Area and Lot Width Requirements**

**1. Lots served by individual subsurface wastewater disposal systems:**

Minimum Lot Area: 20,000 square feet  
Minimum Lot Width: 100 feet

**2. Lots served by a central subsurface wastewater disposal system approved by the Maine Department of Human Services:**



Minimum Lot Area: 12,000 square feet  
Minimum Lot Width: 75 feet

The density for lots served by central subsurface wastewater disposal systems shall be determined in accordance with the Net Residential Acreage formula contained in this Ordinance, except that the overall density of such a manufactured housing park shall be no more than one home for every twenty thousand (20,000) square feet.

3. Lots served by public sewer:

Minimum Lot Area: 6,500 square feet  
Minimum Lot Width: 60 feet

4. All individual or central subsurface wastewater disposal systems serving manufactured housing park lots shall meet the requirements of the State Plumbing Code and the ordinances and regulations of the Town.
5. Lots located within any area covered by Sec. 19-6-11, Shoreland Performance Overlay District, shall meet the lot area, lot width and shore frontage requirements of the shoreland zoning provisions.
6. The overall area of the manufactured housing park shall equal at least the sum of:
  - a. The combined area of all manufactured housing lots including the density requirements for lots served by a central subsurface wastewater disposal system;
  - b. The area required for street rights-of-way;
  - c. The area required for buffer strips; and
  - d. The area within the shoreland setback.

**D. Unit Setback Requirements**

1. The following lot setbacks shall apply to all manufactured homes and accessory buildings:
  - a. Front Setback: 20 feet
  - b. Side Setback: 20 feet
  - c. Rear Setback: 10 feet
2. All manufactured housing units and any accessory structures within such development shall be set back from any existing arterial or feeder street as those terms are defined in the Town's Ordinances and regulations, in accordance with the setback provisions for the underlying zone.

**E. Open Space Dedication**

1. For lots served by public sewer and public water, the Planning Board may require that a portion of the lot be reserved as open space as provided for in Sec. 16-3-1(q), General Standards of Subdivision Design.

**F. Buffering**

1. A fifty (50) foot wide buffer strip shall be provided along all property boundaries that:
  - a. Abut developed residential land that has a gross density (dwelling units per acre) of less than half of that proposed in the manufactured housing park; or
  - b. Abut undeveloped residential land that is zoned at a net residential density of less than half of that proposed in the manufactured housing park.

Further, no structures, streets, or utilities shall be placed in the buffer strip, except that utilities may cross a buffer strip to provide services to the park.

2. Within the first twenty-five (25) feet of the buffer, as measured from the exterior boundary of the park, landscaping or visual screening shall be provided to minimize or eliminate the visual, noise, lighting and other impacts of the development on surrounding properties. Landscaping may include such types as tree plantings, hedges, fencing, walling and combinations thereof. Existing significant vegetation shall be preserved whenever possible. A landscaping plan shall be submitted with the project's subdivision plan, which shall include screening locations and details.
3. The setbacks of the individual manufactured housing park lots may be incorporated into the buffer strip to achieve the required fifty (50) feet of buffering.

**G. Street Standards**

1. Streets that the applicant proposes to be dedicated as public streets and to be offered to the Town for acceptance shall meet the minimum design standards contained in Article III of the Subdivision Ordinance.
2. Streets that the applicant proposes to remain private streets shall be designed by a Professional Engineer, registered in the State of Maine, and shall be built in accordance with accepted engineering standards and the requirements described below. Where the street standards duly promulgated by the State Manufactured Housing Board conflict with the standards described below, the Manufactured Housing Board's standards shall apply.
3. The internal street system of a manufactured housing park shall intersect with a public street, and such intersections shall meet all of the intersection requirements of the Town.

4. Single entrance dead-end streets shall meet the requirements of Sec. 16-3-2(a)(9) of the Subdivision Ordinance.
5. Manufactured housing park lots shall have vehicular access only to the interior street created for the manufactured housing park.

**6. *Rights-of-Way and Pavement Widths:***

- a. Privately owned streets within a manufactured housing park shall have a minimum right-of-way of twenty-three (23) feet. The minimum paved surface width of a private street shall be twenty (20) feet for a two-way private street and fourteen (14) feet for a one-way private street. On-street parking shall be prohibited along 14-foot one-way streets and 20-foot two-way streets.
  - b. Parking lanes shall be a minimum of eight (8) feet in width, if provided.
  - c. Cul-de sac turnarounds shall have a minimum radius of sixty (60) feet at the outer edge of the pavement, exclusive of any parking areas.
7. Private streets within a manufactured housing park shall be maintained and kept clear on a year-round basis by the park's owner or management staff.

**H. Parking Requirements**

1. There shall be provided and maintained at least two (2) off-street parking spaces for each manufactured housing park lot. Each parking space shall have minimum dimensions of at least nine (9) feet by eighteen and a half (18 ½) feet.
2. In addition to occupant parking, off-street guest and service parking shall be provided and maintained within the boundaries of a manufactured housing park at a ratio of one (1) space for each four (4) manufactured housing park lots.

**I. Sidewalks/Walkways**

Sidewalks may be required by the Planning Board, if it deems them necessary for pedestrian safety purposes.

**J. Storage**

At least five hundred (500) cubic feet of enclosed tenant storage facilities shall be conveniently provided near or on each manufactured housing park lot for the storage of materials and equipment.

**K. Trash Containers**

Central trash storage containers shall be provided to adequately store all trash and waste produced by

a manufactured housing park.

**L. Screening**

All trash storage containers, bottled gas tanks, storage sheds, or other similar items or accessory structures shall be located and suitably screened by planting or fencing so as not to be clearly visible from the street or abutting properties.

**M. Groundwater**

- I.* For mobile home parks not served by a public sewer or public water system, the application shall include an assessment of the impacts of the manufactured housing park development on groundwater quality. The person developing a manufactured housing park has the burden of proving that the development will not pollute a public water supply or aquifer. The assessment shall be prepared by a Certified Geologist or Registered Professional Engineer and shall demonstrate that the proposed manufactured housing park shall include at least the following information:
  - a. A map showing the basic soil types
  - b. The depth to the water table at representative points throughout the manufactured housing park
  - c. Drainage conditions throughout the manufactured housing park
  - d. Data on the existing groundwater quality, either from test wells in the manufactured housing park or from existing wells on neighboring properties
  - e. An analysis and evaluation of the effect of the manufactured housing park on groundwater resources. The evaluation shall, at a minimum, include a projection of post-development nitrate-nitrogen concentrations at any wells within the manufactured housing park, at the park's boundaries and at a distance of one thousand (1,000) feet from potential contamination sources, whichever is a shorter distance
  - f. A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the manufactured housing park and within two hundred (200) feet of the manufactured housing park boundaries
2. The standards for the groundwater assessment studies, described in Sec. 19-7-7.M.1, Groundwater, are as follows:
  - a. No manufactured housing park shall increase any contaminant concentration in the groundwater to more than one half of the Primary Drinking Water Standards. No manufactured housing park shall increase any contaminant concentration in the

groundwater to more than the Secondary Drinking Water Standards.

- b. If groundwater contains contaminants in excess of the primary or secondary standards, and the manufactured housing park is to be served by on-site groundwater supplies, the applicant shall demonstrate how water quality will be improved or treated.

**N. Manufactured Housing Park Lots, Ownership and Use**

1. The manufactured housing park lots shall be shown on the subdivision plan for a proposed manufactured housing park.
2. The subdivision plan for a manufactured housing park shall contain a note indicating that Town services shall not be provided on private streets within the manufactured housing park. Individual leases for lots shall disclose that Town services shall not be provided on private streets within the manufactured housing park.
3. The land within a manufactured housing park shall remain in a unified ownership. No individual interests in the manufactured housing park lots may be created or conveyed, except that individual manufactured housing pads may be leased to the owners or occupants of the manufactured housing placed thereon.
4. Manufactured housing park lots are allowed only in manufactured housing parks approved by the Planning Board in compliance with this section, and shall not be considered lots for any other purpose under this Zoning Ordinance.
5. No dwelling unit other than a manufactured housing unit shall be located within a manufactured housing park.
6. All rules and regulations pertaining to the operation of a manufactured housing park within Cape Elizabeth shall be reviewed and approved by the Town Attorney and Town Planner prior to final subdivision approval, and shall thereafter be made available by the park's management staff to the Planning Board and Town Planner on an annual basis.

**SEC. 19-7-8. OFF-STREET PARKING (revised effective 05/12/2002)**

**A. Applicability**

Off-street parking shall be provided for all new construction, expansions, and changes of use in accordance with the requirements and standards found in this section.

**B. Minimum Requirements for Off-Street Parking**

Off-street parking shall be considered an accessory use when required or provided to serve any legal use located in any zone except as set forth in the following sections. An off-street parking space

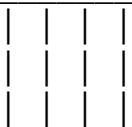




shall be a minimum of nine (9) feet wide by eighteen (18) feet long, may be open or covered. The Planning Board may allow up to twenty percent (20%) of the parking requirement to be met with “compact car” spaces that are a minimum of eight (8) feet wide by sixteen (16) feet long provided that such spaces shall be clearly marked as “compact car parking.” Each parking space must be sited to allow access and exit without obstruction. Handicapped parking shall be provided in compliance with the Americans with Disabilities Act and applicable State requirements. In order to determine compliance with this section, the owner or applicant shall submit a plan showing the physical layout of all required off-street parking areas. Any change in the evidence or conditions upon which the plan is approved shall nullify such approval.

- I.* Parking shall be provided on the lot occupied by the use for which the parking is required, or on an adjacent lot owned or controlled by such use. In addition, uses located within the Town Center, BA or BB District may provide all or part of the required off-street parking through any of the following:
  - a. Private off-street parking located on another lot that is located within one mile of the subject lot and that is controlled by long-term written lease or ownership by the applicant.
  - b. Off-street parking shared with other uses (consistent with paragraph 2 below) located within one mile of the subject lot, provided that the Planning Board finds that there is adequate parking capacity to meet the parking requirements of all uses sharing the parking due to variation in the time of parking demand and that the shared parking is available to the applicant through a written lease or other enforceable agreement.

Where parking is proposed elsewhere on an existing parking lot which has received Site Plan approval, the Planning Board shall approve or deny the off site parking after considering the adequacy of the parking and traffic impacts. Where parking is proposed elsewhere on an existing parking lot which has not received Site Plan approval, the Planning Board shall approve or deny the off site parking after reviewing the lot for compliance with the following Site Plan Standards in Sec. 19-9-5: (B) Traffic Access and Parking, (M) Exterior Lighting, and (N) Landscaping and Buffering.

2. Where multiple use of a lot occurs or where the use involves more than one activity (i.e., an ice cream shop that includes a gift shop), off-street parking shall be provided for each use in accordance with this section. Where the applicant can demonstrate and document nonconflicting periods of use, shared use of parking spaces may be permitted by the Planning Board.
3. Travel and queuing aisles associated with off-street parking, drive-in facilities and motor vehicle fuel pumps shall be provided and shall not interfere with the use of or be part of the required off-street parking.

Parking stalls and aisle layout shall conform to the following standards.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
				
90°	9'-0"		18'-0"	24'-0" two way
60°	8'-6"	10'-6"	18'-0"	16'-0" one way only
45°	8'-6"	12'-9"	17'-6"	12'-0" one way only
30°	8'-6"	17'-0"	17'-0"	12'-0" one way only

4. The following minimum number of spaces, rounded up to the nearest whole number, shall be provided and maintained for each use on a lot, including each use within all buildings. The Planning Board may reduce by up to thirty percent (30%) the required parking for the reuse of a building existing as of June 4, 1997. In granting such a reduction, the Planning Board must find that:
- the reduction will not create or aggravate parking problems in the neighborhood, and
  - the required number of spaces cannot be reasonably accommodated on the lot.

*The maximum number of employees scheduled during peak demand/shift shall be used in calculating the number of required parking spaces when employee is referenced in the list below.*

*The floor area of the structure as defined in Sec. 19-1-3 shall be used in calculating the number of required parking spaces, unless otherwise noted.*

a. Residential

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|--|--|
| (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 multifamily dwellings | 1.5 spaces per dwelling unit with one bedroom, 1.75 spaces for unit with two bedrooms, and 2 spaces per unit with three or more bedrooms |
| (4) Home Businesses                            | 2 spaces in addition to required parking for residence (This requirement may be reduced by the Zoning Board of Appeals.)                 |

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| (5) | Eldercare facilities | 1.25 spaces per unit or 1 space per 4 beds plus 1 space per employee |
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b. Institutional

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| (1) | Municipal Uses | 1.25 spaces per employee plus 1 space per 150 sq. ft. of public assembly and meeting area |
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|-----|--|--|
| (2) | Places of Public Assembly, such as; Theaters/Cinemas/Auditoriums/Stadiums/Sports Arenas/Churches and Synagogues/Gymnasiums | 1 space per 4 seats plus 1 space per 2 employees |
|-----|--|--|

- |     |          |  |
|-----|----------|--|
| (3) | Schools: |  |
|-----|----------|--|

Grades K-8	1 space per classroom plus 1 space for each employee plus parking in accordance with the places of public assembly for the largest assembly space
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Secondary	8 spaces per classroom plus parking in accordance with the places of public assembly for the largest assembly space
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Post Secondary	1 space for each 2 students plus 1 space for each employee plus parking in accordance with the places of public assembly for the largest assembly space
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Nursery Schools and Day Care Facilities	1 space per employee plus a safe off-street area for vehicle pickup and drop-off of students/children
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Schools not listed above: 1 space per each 2 students at capacity plus 1 space for each employee plus parking in accordance with the places of public assembly for the largest assembly space

c. Commercial




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|-----|--|--|
| (1) | Retail sales                                       | 3 spaces per use or 3 spaces per 1,000 sq. ft. (or 1 space per 333 sq.ft. or portions thereof) plus 1 space per employee, whichever is greater |
| (2) | Gas and/or Service Station; Auto Repair Garage bay | .25 space per fuel pump plus 1 space per employee plus 4 spaces per service bay  |

(For gas stations involving other uses [e.g., gas pumps with convenience stores], the minimum number of required parking spaces shall be the total of the requirements for each use, plus the standards listed above).

- |     |   |   |
|-----|---|---|
| 3)  | Banks   | 4 spaces per use or 3 spaces per 1,000 sq.ft. (or 1 space per 333 sq.ft. or portions thereof), whichever is greater |
| (4) | Personal Services and Business Services         | 3 spaces per use or 4 spaces per 1,000 sq.ft. (or 1 space per 250 sq.ft. or portions thereof), whichever is greater |
| (5) | Business and Professional Offices (non-medical) | 3 spaces per use or 4 spaces per 1,000 sq.ft. (or 1 space per 250 sq.ft. or portions thereof), whichever is greater |
| (6) | Professional Office (medical)                   | 5 spaces per 1,000 sq. ft. (or 1 space per 200 sq. ft. or portions thereof)   |
| (7) | Restaurants/Eating Places                       | 1 space per 4 patrons at capacity plus 1 space per employee   |

(Measurement of standing and seating capacity shall be based upon the latest adopted edition of the BOCA National Building Code and NFPA 101, whichever is more stringent.)

- |      |                      |   |
|------|----------------------|---|
| (8)  | Motels, Hotels, Inns | 1 space per guest room plus 1 space per employee plus 4 spaces per 1,000 sq.ft. (or 1 space per 250 sq.ft. or portions thereof) of public assembly area |
| (9)  | Bed and Breakfasts   | 2 spaces plus 1 space per guest room  |
| (10) | Veterinary Clinics   | 4 spaces/doctor plus 1 space/other employee   |

(11)	Farm and Fish Markets 	1 space per 150 sq.ft. of retail sales area
d.	Industrial	1 space per employee
e.	Golf Courses	4 spaces per hole plus parking for any assembly, restaurant, or retail space in accordance with the appropriate requirements
f.	Other Uses	As determined by the Planning Board based upon the ITE Parking Generation Manual or data of actual parking demand
		of similar uses

### C. Off-Street Parking Design Standards

The following design standards shall apply to all new and expanded off-street parking areas:

1. Parking areas for uses other than single and two-family dwellings shall be designed so that vehicles will not back out into a street.
2. Parking areas shall not inhibit emergency vehicle access to any building or structure.
3. Parking areas shall be separated from the front of all buildings by a landscaped area at least five (5) feet wide where parking is allowed in the yard area.
4. Wheel stops/curbs shall be placed where needed to prevent encroachment into walkways, landscaped areas, circulation aisles, streets and structures.
5. Parking spaces and travel aisles shall be clearly delineated in parking lots.
6. All parking areas shall be designed to adequately control drainage. In furtherance of this standard, drainage calculations used shall reflect a paved condition and all parking areas shall be constructed with base material which can withstand normally expected vehicle loading and winter maintenance.
7. If parking spaces are provided for self-parking by employees or visitors or both, accessible spaces meeting ADA requirements shall be provided in each parking area in conformance with the following:

Total Parking  
in Lot

Required  
Minimum Number

of Accessible Spaces	
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

8. Parking facilities within the Town Center District shall comply with the standards of Sec. 19-6-4.D.3.g., Landscaping and Site Development.

## SEC. 19-7-9. PRIVATE ACCESS PROVISIONS

### A. Existing Private Road Standards

A private road that existed as of June 4, 1997, and is shown on the Town Street Map may be used to provide access to and street frontage for a residential lot upon certification by the Code Enforcement Officer that:

1. based upon the recommendation of the Fire Chief, that the road provides adequate all-season emergency access for the existing and proposed use, and
2. legally binding arrangements exist to provide for the long-term maintenance of the road.

If the Code Enforcement Officer determines that the existing private road does not provide adequate all-season emergency access, the applicant may submit a report to the Code Enforcement Officer prepared by a registered professional engineer setting forth improvements that are proposed to be made to the road to improve emergency access. The Code Enforcement Officer shall review the report with the advice of the Fire Chief and Town Engineer and determine if adequate emergency access will be provided if the proposed improvements are made. If the Code Enforcement Officer determines that the improvements will provide adequate access, the applicant shall be responsible for making the proposed improvements and providing the Code Enforcement Officer with a written certification from the professional engineer verifying that the improvements were constructed as designed. No building permit shall be issued until the road improvements are completed, the engineer's certification is provided to the Code Enforcement Officer, and legally binding arrangements for long-term maintenance are in place.

### B. New Private Road Standards

A private road may be created to provide access to and street frontage for one (1) or more residential lots provided that:

1. the design and construction of the road has been approved by the Planning Board using the procedures for the review of a subdivision application as being in compliance with the standards for a local road as set forth in Chapter 16, Subdivision Regulations, except that the Planning Board may waive the requirement for sidewalks and permit a gravel travel surface instead of asphalt paving, and
2. a legally binding agreement approved by the Planning Board exists that provides for the long-term maintenance of the road.

### **C. Private Accessways**

The Space and Bulk Standards of Article VI, District Regulations, establish minimum street frontage requirements for lots to be developable. Recognizing that the natural character of the landscape and prior development patterns make compliance with the minimum street frontage requirement difficult or impossible in some situations, this section allows the Planning Board to approve the development of an individual lot lacking the required street frontage if adequate access is provided to the lot, the development is carried out in a manner that minimizes the impact on adjacent properties, and is consistent with sound neighborhood development. The Planning Board may approve the creation and/or development of one (1) lot lacking the required minimum street frontage for the district in which it is located if the Planning Board finds that it conforms with the standards set forth in Sec. 19-7-9.D.4., Private Accessway Standards. The Planning Board may approve the creation of only one (1) such lot from each lot in existence as of June 4, 1997.

### **D. Private Accessway Procedures**

#### **1. *Pre-application Conference***

Applicants for approval of a lot served by a private accessway are required to schedule a pre-application conference with the Town Planner. The purpose of this meeting is to familiarize the applicant with the review procedures and submission requirements, review the private accessway standards and familiarize the Planner with the nature of the proposal. No decisions relative to the application may be made at this meeting. The Town Planner may ask representatives of other departments and agencies to participate in the conference.

#### **2. *Application Procedure***

The owner shall submit a formal application for review and approval of a lot on a private accessway to the Planning Board. The application shall consist of:

- a. a fully executed and signed copy of the application for private accessway review (provided by the Town)

- b. Fourteen (14) copies of a plan and supporting documentation as described in Sec. 19-7-9.D.3, Submission Requirements
- c. a review fee as established by the Town
- d. a review escrow fee as established in Sec. 19-9-4.B., Application Review Procedures

Upon receipt of an application, the application shall be processed and reviewed in accordance with the procedures established in Sec. 19-9-4, Review Procedures.

### **3. *Submission Requirements***

The applicant for a lot on a private accessway shall provide fourteen (14) copies of written materials plus fourteen (14) sets of the plan, maps, or drawings containing the information listed below. The plan, maps, or drawings shall be at a scale sufficient to allow review of the items listed under Subsection 4, Private Accessway Standards, but in no case shall be more than fifty (50) feet to the inch.

- a. A completed application form showing:
  - (1) the record owner's name, address, and phone number and applicant's name, address and phone number if different
  - (2) the assessing tax map and lot number of the parcel or parcels
  - (3) documentation to demonstrate right, title or interest
- b. A map showing the general location of the site
- c. A plan showing the private accessway prepared by a registered land surveyor. The plan shall be drawn in permanent ink or permanent transparency material and shall be sealed by the surveyor preparing the plan. The plan shall be labeled "Plan of a Private Accessway" and shall provide an approval block for signatures of a legal majority of the Planning Board, the date of approval, and the words, "Private Accessway, Approved by the Town of Cape Elizabeth Planning Board." The plan shall also contain the following note: "The Town of Cape Elizabeth shall not be responsible for the maintenance, repair, plowing, or similar services for the private accessway shown on this plan." The plan shall show information sufficient to establish on the ground the exact location, direction, width, and length of the private accessway and related right-of-way and the following:
  - (1) boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is affected by the application.
  - (2) location and size of any existing and proposed sewer and water mains,

culverts and drains, on-site sewage disposal systems, wells, and power and telephone lines and poles within the right-of-way of the proposed private access and the location, names, and present widths of existing streets and rights-of-way within or adjacent to the proposed private access.

- (3) location of intersecting roads or driveways within fifty (50) feet of the private access.
  - (4) the location of open drainage courses, floodplains, wetland boundaries, stands of trees, major trees, and other important natural features, with a description of such features to be retained.
  - (5) the direction of existing surface water drainage in the vicinity of the proposed private access and the location of proposed surface water drainage with provisions for drainage handling, including culverts when necessary.
  - (6) location and dimensions of any existing easements and copies of existing covenants or deed restrictions.
  - (7) the location of the nearest fire hydrant, dry hydrant or other water supply for fire protection and a description of any existing fire protection systems.
  - (8) the location of all proposed utilities, including fire protection systems.
  - (9) a building envelope defining the area of the lot within which building may occur.
- d. A maintenance agreement which shall run with the land establishing the responsibilities for the long-term maintenance of the private accessway.

#### **4. *Private Accessway Standards***

The Planning Board shall find that the proposed lot and related accessway conform to the following standards:

- a. The lot approved under this provision shall be improved with only one (1) dwelling unit and related accessory buildings and uses.
- b. The lot shall be served by a private accessway meeting the following requirements:
  - (1) The accessway shall be located within a dedicated right-of-way having a minimum width of thirty (30) feet.
  - (2) The accessway shall be improved with a gravel or paved drive meeting the following standards:

- (a) The subbase shall be constructed with gravel meeting MDOT Spec. 703.06 Type D with a depth of at least fifteen (15) inches, and having a width of at least eighteen (18) feet.
  - (b) The travel way shall be constructed with a minimum of three (3) inches of crushed gravel having a width of at least fourteen (14) feet. The remaining width of the gravel base may be loamed and seeded.
  - (c) Within ten (10) feet of the edge of the street paving, the accessway shall be paved with at least two (2) inches of asphalt paving. The maximum grade within the first fifty (50) feet of the edge of street paving shall be five percent (5%). Pavement radius at the intersection with the street shall be twenty (20) feet. **(Rev. Eff. 12/10/03)**
  - (d) Gutter drainage along the street shall not be allowed to sheet across the face of the intersection and provisions shall be made to keep drainage from the access from running into the public street.
  - (e) A turnaround shall be provided meeting the requirements of the Fire Chief.
- (3) The accessway shall be located so that sight distance conforms to the requirements of the Subdivision Ordinance.
  - (4) A private accessway may serve only one (1) lot.
  - (6) The Planning Board may reduce the requirements of subsection b (1), (2) and (3) above to a lesser standard where there is an existing private access or to promote better neighborhood development, but in no case shall standards be reduced so that access for any municipal emergency vehicle is prohibited. **(Effective August 11, 1999)**
- c. Adequate disposal of sewage shall be provided as evidenced by connection to the public sewerage system or the submission of a completed HHE-200 form or subsequent form.
  - d. That a building envelope be depicted wherein the house and accessory buildings will be located on the lot demonstrating conformance with the setback requirements of the district in which it is located and any natural constraints and that the house site will be buffered from abutting residential properties.

## **5. *Post Approval Procedures***

- a. Inspection: The applicant shall be responsible for demonstrating that the construction

of the private accessway meets the standards of this section. The private accessway shall be inspected under the direction of a registered professional engineer. Prior to the issuance of any building permits for the lot served by a private accessway, the engineer shall certify to the Code Enforcement Officer that the private accessway has been constructed in accordance with this section.

- b. Recording of the Approved Plan: The original plan(s) and maintenance agreement shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of approval by the Planning Board and prior to the issuance of building permits on any lots served by the private access. If the plan and agreement are not recorded within this period, the approval of the Planning Board shall be void.
- c. Amendments: Any construction of the private accessway that is inconsistent with the approved private accessway plan shall require an amendment to the plan. De minimis changes may be approved by the Town Planner. All other changes must be approved by the Planning Board.

#### **SEC. 19-7-10. AFTER THE FACT REDUCTIONS**

Notwithstanding the provisions of Article VI Districts, setback requirements may be reduced in accordance with the provisions of this section.

The Code Enforcement Officer may issue a certificate reducing the required setback to validate the situs of mislocated single family, residential structures, and related accessory structures which are not otherwise legally sited and which were in existence on April 1, 1997, provided that:

- 1. The use of the property is and will remain as a single family dwelling,
- 2. The reduction will not be more than ten (10) feet, and
- 3. The encroachment is the result of the inadvertent misplacement of a structure.

If a reduction is approved, the Code Enforcement Officer shall provide the applicant with a signed instrument in recordable form indicating the setback reduction granted under the terms of this section. The applicant shall be responsible for the recording of this instrument in the Cumberland County Registry of Deeds. If the reduction is not approved, the Code Enforcement Officer shall advise the applicant of the right to seek an appeal through the Zoning Board of Appeals. **(Rev. eff. 12/10/03)**

#### **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. 19-7-12. CORNER CLEARANCES**

On a corner lot in any district, no fence, wall, hedge, or other planting more than three and a half (3½) feet in height shall be erected, placed or maintained within the three-sided area formed by the intersecting street lines and a line joining them at points which lie twenty (20) feet distant from the point of intersection, measured along said street lines.

#### **SEC. 19-7-13. SINGLE FAMILY DWELLING BISECTED LOTS**

No new single family dwelling lot shall be created which is bisected by a public or private road unless the lot area on at least one (1) side of the road meets the minimum lot size requirement for the district in which it is located. If any segment of the bisected single family dwelling lot does not meet the minimum lot size requirement, the various segments shall be retained in single ownership and shall be treated as one lot for the purposes of this Ordinance. **(Effective March 15, 2006)**

#### **SEC. 19-7-14. TEMPORARY ACTIVITIES AND EVENTS**

Temporary uses of a community or nonprofit nature such as festivals, fairs, carnivals, and similar events may be permitted in any district by vote of the Town Council, notwithstanding the provisions of this Ordinance. Such temporary use shall not be contrary to the objectives of this Ordinance. A vote by the Council allowing such temporary use shall not be deemed a change in the zoning and shall apply to the specific event or activity only for its stated duration.

#### **SEC. 19-7-15. TEMPORARY STRUCTURES**

The use of a temporary construction trailer on a site that has an active building permit may be permitted by the Code Enforcement Officer. The use of a temporary marketing and/or sales trailer may be permitted on a lot in an approved subdivision, in which case the construction, marketing and sales uses shall be combined in one trailer. A marketing and/or sales trailer which is not necessary to and located in an approved subdivision under construction shall not be permitted unless it has received Site Plan Approval or is part of a building which has received Site Plan Approval. A building permit shall be required for the temporary structure and shall require that the structure be removed in one year, which may be extended once by the Code Enforcement Officer for an additional year. **(Effective August 11, 1999)**

#### **SEC. 19-7-16. Creation of a Short-Cut via Developed Residential Street**

No new short-cut may be created, if the measurement of the distance along such short-cut includes a developed residential street.

Notwithstanding the waiver provision of Sec. 16-3-5 or otherwise, the foregoing limitation on the creation of short-cuts via developed residential streets shall not be waived by the Planning Board in connection with any subdivision approval.

Notwithstanding 1 M.R.S.A. Sec. 302, this provision shall apply to any pending proceeding proposing the creation of a short-cut via developed residential street, unless all approvals and building permits for the project have been obtained prior to the filing of the petition for enactment of this Ordinance with the Town Clerk. **[Filing date January 20, 2006] (Effective June 23, 2006)**

## ARTICLE VIII. PERFORMANCE STANDARDS

The following standards of performance shall apply to the uses and areas of the community as listed in the specific standard. Any use of land, buildings, or structures to which these standards apply shall be in conformance with the requirements.



### SEC. 19-8-1. BUFFERING OF NONRESIDENTIAL USES

1. The required side and rear yards of nonresidential uses that are located within residential districts or that are on lots that abut a residential district shall be retained in their natural vegetated state to the maximum extent possible to provide a visual screen between different uses.
2. Where natural buffering does not exist, or is not possible to be retained, or is not sufficient to achieve an effective visual screen, the required side and rear yards shall be landscaped to provide a visual screen between different uses. The buffer shall be a minimum of twenty-five (25) feet wide and located between any building and the abutting property line and a minimum of ten (10) feet wide between any parking area or driveway and the abutting property line, and may be interrupted only by a single pedestrian pathway at each abutting property line no more than five (5) feet wide. The buffer shall include, for each one hundred (100) feet of length (or, if less than one hundred [100] feet, the fraction thereof), a minimum of two (2) canopy or evergreen trees, four (4) understory trees, and six (6) shrubs, plus such other plantings as a licensed landscape architect certifies in writing will achieve seventy-five percent (75%) opacity to a height of at least six (6) feet on a year-round basis within three (3) years of planting, or, if solid fencing also is installed in the buffer area, fifty percent (50%) opacity to a height of at least six (6) feet within three (3) years of planting.

For every mature canopy or evergreen tree existing prior to the development and retained within the buffer area, the required number of new trees may be reduced by two (2). In this case, an amount of money sufficient to provide for replacement as provided for below and approved by the Planning Board, shall be deposited by the owner into an interest-bearing escrow account established and controlled by the Town. If any such retained tree dies within five (5) years of the date of the building permit issued for the development, it shall be replaced with two (2) canopy trees meeting the standard of this Ordinance. The escrow fund balance including any unexpended interest shall be released to the owner upon the expiration of the five (5) year period provided that the buffering requirement is met. The Town may use the escrow fund at any time during the five (5) years to replace dead plant stock if, after

written notice to the owner, the owner fails to do so in a timely manner.

## **SEC. 19-8-2. SHORELAND PERFORMANCE STANDARDS**

All activities in the Shoreland Performance Overlay District shall comply with the following performance standards as applicable, except where the requirements of the underlying district are more restrictive, in which case the more restrictive standards shall apply:

### **A. Piers, Docks, Wharves, Bridges Over Ten (10) Feet in Length and Other Marine Structures Extending Over or Beyond the Normal High-Water Line of Water Body or Within a Wetland**

All piers, docks, wharves and other structures listed above shall require site plan approval by the Planning Board and compliance with the performance standards below. The Planning Board may require the submission of an environmental impact assessment on natural areas and may require mitigation measures such as changes in the design and construction of the marine structure and in the magnitude, duration, and location, of activities on the marine structure. The performance standards are as follows:

1. Access from shore shall be developed on soils appropriate for such use, as determined through consultation with the local Soil and Water Conservation District Office. Whenever possible, access from the shore to the marine structure shall be placed on bedrock. Measures shall be taken to minimize soil erosion both during and after construction.
2. The location of the marine structure shall not unreasonably interfere with access to existing marine structures or points of public access, nor shall it unreasonably interfere with existing developed or natural beach areas.
3. The marine structure shall be designed, sited, and constructed to mitigate unreasonable adverse impacts on significant wildlife habitats or unique natural areas including, but not limited to: fin fish and shellfish fisheries, salt marshes, eel grass beds, shorebird and nesting habitats, critical fish spawning and nursery areas.
4. Unreasonable interference with the natural flow of any surface or subsurface waters, or impedance of the flow of the current of any river or stream shall be minimized during the construction and subsequent use of the marine structure.
5. The marine structure shall be designed, sited, and constructed so as not to encroach upon federally designated navigation channels or mooring areas or otherwise obstruct by any means whatsoever the free use of piers, docks, and other common landing places.
6. The marine structure shall comply with the dimensional limits listed below. Its size and construction shall not change the intensity of the adjoining land use, and by no means shall exceed a total distance of more than one-third the width of the water body, when proposed for coastal or inland waters. The applicant may request a variance from the dimensional

requirements due to the additional requirement of handicap access or unusual wind or wave conditions.

<u>Marine Structure</u>	<u>Maximum Width</u>	<u>Maximum Length</u>
Private Piers	6 ft.	100 ft.*
Commercial Piers	12 ft.	100 ft. *
Ramps	4 ft.	As appropriate
Docks, Floats	200 sq. ft. total	

\* As measured landward of the mean low water line

7. When proposed by the applicant, new subdivisions shall provide a community dock in lieu of the development of docks on individual lots. The applicant may request a variance for additional community docks provided a demonstrated need can be shown for the additional facilities.
8. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
9. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in the district.
10. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

All such structures shall be considered permanent unless constructed for removal from the water and remaining in the water for less than seven (7) months in any period of twelve (12) consecutive months.

## **B. Individual Private Campsites**

Individual private campsites not associated with campgrounds are permitted provided the following conditions are met:

1. One campsite per lot existing on the effective date of this district, or thirty thousand (30,000) square feet of lot area within the shoreland district, whichever is less, may be permitted.
2. Campsite placement on any lot, including the area intended for a tent platform, shall be set back one hundred (100) feet from the normal high-water line of Great Pond, and seventy-five

(75) feet from the normal high-water line of other water bodies, tributary stream, or the wetland upland edge.

3. Recreational camping vehicles shall not be allowed.
4. The clearing of vegetation for the siting of a tent or similar shelter in a Resource Protection 1-Critical Wetland District, if a Resource Protection Permit is issued by the Planning Board, shall be limited to one thousand (1,000) square feet per site.

### **C. Parking Areas**

Parking areas shall meet the shoreline setback requirements for structures. The setback requirement for parking areas serving public boat launching facilities may be reduced to no less than fifty (50) feet from the normal high-water line or one hundred (100) feet from the wetland upland edge of the Resource Protection 1 District if the Zoning Board of Appeals finds that no other reasonable alternative exists.

Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.

In determining the appropriate size of parking facilities, the following shall apply:

Typical parking space: Nine (9) feet wide and Eighteen (18) feet long. Boat trailer parking space: Nine (9) feet wide and forty (40) feet long. Internal travel aisles: Twenty-four (24) feet wide.

### **D. Roads and Driveways**

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts, and other related features.

1. New roads and driveways shall be set back at least two hundred fifty (250) feet from the normal high-water line of Great Pond and one hundred (100) feet from the wetland upland edge of the Resource Protection 1 District and seventy-five (75) feet from the normal high-water line of other water bodies and tributary streams, unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet upon a clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland. On slopes of greater than twenty percent (20%), the road and/or driveway setback shall be increased by ten (10) feet for each five percent (5%) increase in slope above twenty percent (20%).

2. An existing public road may be expanded within the legal road right-of-way regardless of its setback from a water body.
3. New roads and driveways are prohibited in a Resource Protection 1-Critical Wetland District except to provide access to permitted uses within the district. New driveways may be approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and shall have a maximum width of sixteen (16) feet.
4. Road banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical and shall be graded and stabilized in accordance with the provisions contained in Sec. 19-8-2.L, Erosion and Sedimentation Control.
5. Road grades shall be no greater than ten percent (10%) except for short segments of less than two hundred (200) feet.
6. In order to prevent road surface drainage from directly entering water bodies, roads shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet plus two (2) times the average slope in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or wetland upland edge. Road surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:
  - a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

Road Grade (Percent)	Spacing (feet)
0-2	250
3-5	200
6-10	100
11-15	80
16-20	60
21 +	40



- b. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten percent (10%) or less.
  - c. On road sections having slopes greater than ten percent (10%), ditch relief culverts shall be placed across the road at approximately a thirty (30) degree angle downslope from a line perpendicular to the center line of the road.
  - d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning. Inlet and outlet ends shall be stabilized with appropriate materials.
8. Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads shall be maintained on a regular basis to assure effective functioning.

**E. Stormwater Runoff**

- 1. All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
- 2. Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

**F. Sewage Disposal Standards**

All subsurface sewage disposal systems shall be installed in compliance with the Maine Subsurface Wastewater Disposal Rules (Rules) and Chapter 15, Article II, Private Sewage Disposal Ordinance.

- 1. All subsurface sewage disposal systems shall be located in areas of suitable soil of at least one thousand (1,000) square feet in size. The determination of soil suitability shall be based on a soils report prepared in accordance with Chapter 15, Article II, Private Sewage Disposal Ordinance.
- 2. The minimum setback for underground sewage disposal facilities from the normal high-water line of a water body shall be no less than one hundred (100) horizontal feet. Where a daily sewage flow exceeds two thousand (2,000) gallons, the minimum setback shall be three hundred (300) feet from any shoreline. All other setback requirements imposed under Chapter 15, Article II, Private Sewage Disposal Ordinance shall be met in full. Setbacks from shorelines for all subsurface sewage disposal facilities shall not be reduced by variance.
- 3. Other systems of sanitary waste disposal may be permitted after approval by the State

Department of Human Services, Health Engineering Division, but no such other system shall include facilities for discharge to any water body, unless the same are buried and not visible to a point below normal low water, and are secured against damage and uncovering by the tides, erosion or other foreseeable action of the elements.

#### **G. Essential Services**

Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors. No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the district unless written authorization attesting to the validity and currency of all local permits has been issued by the appropriate town officials. Following the installation of service, the company or district shall forward the written authorization to the Town Manager, indicating that installation has been completed.

#### **H. Mineral Exploration and Extraction**

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitations. Mineral extraction may be permitted in accordance with Sec. 19-8-5, Earth Materials Removal Standards, and the following conditions:

- I.** Unless authorized pursuant to the Natural Resources Protection Act 38, M.R.S.A., § 480-C, no part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet of the normal high-water line of Great Pond or the wetland upland edge in the Resource Protection 1 District, nor within seventy-five (75) feet of the normal high-water line of any other water body or tributary stream.
- 2.** Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - a.** All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
  - b.** The final graded slope shall be no steeper than a three to one (3:1) slope.
  - c.** Topsoil or loam shall be retained to cover all disturbed areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

## I. Agriculture

1. All spreading or disposal of manure shall be accomplished in conformance with the "Maine Guidelines for Manure and Manure Sludge Disposal on Land" published by the University of Maine and the Maine Soil and Water Conservation Commission in July, 1972, or the most current subsequent revisions.
2. There shall be no tilling of soil within one hundred (100) feet, horizontal distance, of the normal high-water line of Great Pond or the wetland upland edge in the Resource Protection 1 District; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
3. Where soil is tilled in a Resource Protection 1 - Critical Wetland District, tilled in excess of forty thousand (40,000) square feet in surface area, or where there is the spreading, disposal or storage of manure within this district, such tillage shall be carried out in conformance with the provisions of a Conservation Plan which meets the standards of the State Soil and Water Conservation Commission, and is approved by the Cumberland County Soil and Water Conservation District. The plan shall be filed with the Code Enforcement Officer. Nonconformance with the provisions of such Conservation Plan shall be considered to be a violation of this ordinance.
4. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of Great Pond, or within seventy-five (75) feet, horizontal distance, of other water bodies, tributary streams, or wetlands. Within five (5) years of the effective date of this ordinance, all manure storage areas within the shoreland district must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five (5) year period.
5. After the effective date of this district, newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of Great Pond; within seventy-five (75) feet, horizontal distance, of other water bodies, nor within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Livestock grazing associated with ongoing ~~farm~~ activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

## **J. Timber Harvesting**

Timber harvesting within the Shoreland Zoning Overlay District shall be carried out in conformance with the following:

### ***1. Adjacent to Great Pond***

- a. Within the strip of land extending seventy-five (75) feet inland from the high water line of Great Pond, there shall be no timber harvesting, except to remove safety hazards.
- b. At a distance greater than seventy-five (75) feet from the normal high water line of Great Pond, harvesting of no more than forty percent (40%) of the basal area on any lot in any ten (10) year period is permitted. There shall be no clearcut openings. A well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

### ***2. Adjacent to the Spurwink River and the Atlantic Ocean, and Streams Subject to Shoreland Zoning***

- a. Within seventy-five (75) feet of the normal high-water line of the Spurwink River, the Atlantic Ocean, and streams subject to shoreland zoning, harvesting of no more than forty percent (40%) of the basal area on any lot in any ten (10) year period is permitted, provided that there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, is maintained.
- b. At a distance greater than seventy-five (75) feet from the normal high-water line of the Spurwink River, the Atlantic Ocean, and streams subject to shoreland zoning, harvesting of no more than forty percent (40%) of the basal area on any lot in any ten (10) year period is permitted. Clearcut openings shall be permitted, provided that harvesting activities shall not create single clearcut openings greater than seven thousand five hundred (7,500) square feet in the forest canopy. When clearcut openings exceed five thousand (5,000) square feet, they shall be at least one hundred (100) feet apart. Clearcut openings shall be included in the calculation of total basal area.

### ***3. Additional Timber Harvesting Standards***

All timber harvesting shall conform to the following standards:

- a. No accumulation of slash shall be left within fifty (50) feet of the normal high-water line of any water body. In all other areas, slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than

four (4) feet above ground.

- b. Timber harvesting equipment shall not use stream channels as travel routes except when surface waters are frozen and the activity will not result in any ground disturbance.
- c. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- d. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- e. Skid trails, log yards, and other sites, excepting water crossings, where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet in width for slopes up to ten percent (10%) shall be retained between the exposed mineral soil and the Wetland Upland Edge. For each ten percent (10%) increase in slope, the width of the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the normal high-water line, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty-five (25) feet from the normal high-water line.
- f. Timber harvesting activities shall be conducted between the first hard frost of the winter and the spring thaw.

**K. Clearing of Vegetation for Development**

- 1. Within the district where the underlying district is the Resource Protection 1-Critical Wetland District abutting Great Pond, there shall be no cutting of vegetation within the strip of land extending seventy-five (75) feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in the district where the underlying district is the Resource Protection 1-Critical Wetland District, the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.
- 2. A buffer strip shall be required except in areas as described in paragraph 1. above, or to allow for the development of permitted uses, or for those portions of public recreational facilities adjacent to public swimming areas where cleared areas are limited to the minimum area necessary. Within a strip of land extending one hundred (100) feet, horizontal distance, inland from the normal high-water line of Great Pond and the wetland upland edge in the Resource Protection 1 District, and seventy-five (75) feet, horizontal distance, from any



other water body or tributary stream, a buffer strip of vegetation shall be preserved as follows:

- a. There shall be no cleared opening greater than two hundred fifty (250) square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten (10) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. Adjacent to Great Pond, or stream flowing to Great Pond, the width of the footpath shall be limited to six (6) feet.
- b. Harvesting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section, a "well-distributed stand of trees and other vegetation" adjacent to Great Pond or stream flowing to Great Pond shall be defined as maintaining a rating score of twelve (12) or more in any twenty-five (25) foot by twenty-five (25) foot square (625 square feet) area as determined by the following rating system.

Diameter of Tree at 4 ½ feet Points  
Above Ground Level (inches)

2-4 inches	1
4-12 inches	2
12 inches	4

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees and other vegetation" is defined as maintaining a minimum rating score of eight (8) per twenty-five (25) foot square area. Notwithstanding the above provision, no more than forty percent (40%) of the total volume of trees four (4) inches or more in diameter, measured at four and a half (4 ½) feet above ground level may be removed in any ten (10) year period.

- c. In order to protect water quality and wildlife habitat, adjacent to Great Pond and streams which flow to Great Pond, existing vegetation under three (3) feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described in paragraphs 1 and 2a above.
- d. Pruning of tree branches on the bottom one-third (1/3) of the tree is permitted.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

3. At distances greater than one hundred (100) feet, horizontal distance, from Great Pond and the wetland upland edge in the Resource Protection 1 District and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body or tributary stream, except to allow for the development of permitted uses, there shall be permitted on any lot, in any ten (10) year period, harvesting of not more than forty percent (40%) of the volume of trees four (4) inches or more in diameter, measured four and a half (4 ½) feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty percent (40%) calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.

In no event shall cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, twenty-five percent (25%) of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously developed.

4. Cleared openings legally in existence on the effective date of this district may be maintained, but shall not be enlarged, except as permitted by this district.



Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

#### **L. Erosion and Sedimentation Control**

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - a. Mulching and revegetation of disturbed soil
  - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches
  - c. Permanent stabilization structures such as retaining walls or riprap
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

3. Erosion and sedimentation measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases, permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - a. Where mulch is used, it shall be applied at a rate of least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - c. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

#### **M. Soils**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established and maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, commercial or industrial development and other similar intensive land uses shall require a soils report based on an on-site investigation and be prepared by qualified professionals. Qualified professionals shall be certified by the State Department of Human Services and include State Certified Soils Scientists, Registered Professional Engineers, State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties and can provide proof of this training and experience in the manner specified by the Department of Human Services. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.



**N. Water Quality Protection**

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life, or impair designated uses or the water classification of the water body.

**O. Archaeological Sites**

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

**P. Beach Construction**

Beach construction on any great pond or coastal wetland, as defined by statute, shall require a permit from the Department of Environmental Protection. Beach construction on any stream or brook capable of floating watercraft shall require approval from the Commissioner of the Department of Inland Fisheries & Wildlife, as required by law.

**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***

- a. Any activity, use or structure listed in Sec. 19-6-9, Resource Protection Districts, in a Resource Protection 1-Critical Wetland, Resource Protection 2-Wetland Protection, Resource Protection 3-Floodplain, or Resource Protection 1-Critical Wetland Buffer Overlay District listed as permitted with a Resource Protection Permit shall be permitted only if a Resource Protection Permit is obtained in accordance with this section.
- b. The Planning Board shall review the submitted application and accompanying

materials. The Planning Board may require additional material that, considering the probable cost and effects of the proposed alteration, it deems necessary for a full consideration of the proposal and its effects, including more detailed plans.

- 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. 16-2-4 (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.
- d. The Planning Board shall process the application in accordance with the procedures established for site plan review in Sec. 19-9-4, Review Procedures.
- e. Prior to considering the application, the Planning Board shall refer it to the Conservation Commission for its review and recommendation.
- f. Within thirty-five (35) days following the public hearing if one is held or sixty (60) days following the application being determined to be complete if no hearing is held, 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 therefor. 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.
- g. For projects reviewed under the Subdivision Regulations or the Site Plan Review Provisions, the Planning Board shall conduct a concurrent review of any past or proposed wetlands alterations within the subdivision, applying the procedures and standards of this Ordinance. Alterations to be reviewed shall include proposed public improvements and all anticipated wetlands alterations within any of the proposed individual lots or common areas.
- h. Permits shall be valid for one (1) year from the date of issue. An applicant may request an extension of the permit for an additional period of up to one (1) year. The request must be submitted prior to the expiration of the permit.

## **2. *Submission Requirements***

- a. The owner of lands in a Resource Protection District shall apply for the Resource Protection Permit by submitting to the Town Planner or the Code Enforcement Officer fifteen (15) copies of the plans for the proposed location or activity.
- b. Upon receipt of all such materials and upon payment by the applicant of fees established by the Town Council, the Town Planner shall submit the proposal to the Planning Board; the Town Planner shall also submit one (1) copy of all materials to the Chair of the Conservation Commission for its consideration and any recommendations which it deems advisable. The Conservation Commission may request that the applicant attend a meeting of the Commission to discuss the application.
- c. Unless the Planning Board waives one or more of the following requirements, applications for a Resource Protection Permit shall include the information listed below. For Resource Protection Permit applications in the Resource Protection 3-Floodplain District, the submission requirements in Sec. 6-6-3 of the Floodplain Management Ordinance shall be substituted for the list below, except that item (4) below shall also be submitted. The application shall include:
  - (1) a detailed site plan for the proposed activity including a map at a scale of one (1) inch equals one hundred (100) feet showing the location, width, depth, and length of all existing and proposed structures, roads, wells, sewage treatment facilities, drainage facilities, and utility installations within three hundred (300) feet of the mapped wetland
  - (2) a topographic map showing the location and slope for all grades existing and as proposed upon the completion of the wetland alteration. Wetland areas should be mapped at no greater than one (1) foot contours, and non-wetland areas at no more than two (2) foot contours
  - (3) a written description of the entire parcel of land owned by the applicant and the location of the wetland on the parcel
  - (4) property locations and names of all abutting property owners
  - (5) a written description of the vegetative cover of the site including dominant species, and a map indicating existing wetland vegetation as defined herein and the Wetland Upland Edge as defined by wetland vegetation. This map and accompanying materials shall be prepared by a qualified botanist or wetland specialist
  - (6) a written description of the site's underlying soils and a high intensity soils

map with all mapping units being no greater than one quarter (1/4) acre, indicating the boundaries of soil types, the location of hydric soils as defined herein and the Wetland Upland Edge as defined by hydric soils. This requirement shall apply notwithstanding that fill material has been placed on the site, and shall apply regardless of the depth to the underlying soils. Where fill has been placed (prior to 5/9/90) on hydric soils and then developed by construction of a principal structure on the filled land, the area of filled wetland to a maximum distance of fifty (50) feet from the principal building footprint shall be identified as filled land. This map and accompanying materials shall be prepared by a soils scientist certified by the State of Maine

- (7) in cases where there are no hydric soils or wetland vegetation, a map indicating the Wetland Upland Edge based on site-specific hydrology
- (8) the location and flow direction of all existing watercourses, ponds, or standing water present for two (2) or more months each year
- (9) a stormwater runoff plan prepared by a professional engineer showing pre- and post-development runoff patterns for both twenty-five (25) and one hundred (100) year storm events, a contour map of the wetland's watershed and proposed stormwater management measures including sewers, drainage ditches, conduits, catch basins, culverts and impoundment areas
- (10) delineation of the building envelope within which the proposed activities will occur
- (11) the exact sites and specifications for all proposed draining, filling, grading, dredging, and vegetation removal including the amount and procedures
- (12) the purpose of the project and an explanation of why the proposed activity cannot be located at other sites, and if applicable, an explanation of how the proposed activity is dependent on wetlands or water-related resources
- (13) any mitigation measures taken to offset wetland losses
- (14) the Town Planner may require the submission of additional information, such as study of flood erosion, other hazards at the site, and the effect of any protective measures that might be taken to reduce such hazards, and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of the wetlands provisions of this Ordinance.

## **B. Resource Protection Permit Standards**

The Planning Board shall grant a Resource Protection Permit for uses, structures and activities within Resource Protection Districts if it makes a positive finding based upon the information presented that the alteration as proposed, or with specified conditions of approval:

1. will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
2. will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;
3. will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;
4. will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
5. will not pose problems related to the support of structures;
6. will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
7. will not disturb coastal dunes or contiguous back dune areas;
8. will maintain or improve ecological and aesthetic values;
9. will maintain an adequate buffer area between the wetland and adjacent land uses;
10. will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;
11. will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and
12. will, in the case of Resource Protection Permits in the Resource Protection-Floodplain District, also comply with Section 6-6-6 of the Floodplain Management Ordinance.

In evaluating the proposed activity, the Planning Board may consult with expert persons or agencies.

### **C. Resource Protection Permit Conditions**

The Planning Board may attach such conditions to the granting of a Resource Protection Permit as it deems necessary to carry out the purposes of the ordinance. Such conditions may include but shall not be limited to:

1. establishment of a buffer between Resource Protection 2-Wetland Protection Districts and adjacent uses, structures and activities
2. increases beyond two hundred fifty (250) feet in the required buffer for Resource Protection 1-Critical Wetland Districts
3. limitation on the total portion of any lot or the portion of the wetland on the lot that may be graded, filled, or otherwise modified. This limitation may be linked to an overall protection policy for the particular wetland
4. requirements that structures be elevated on piles or otherwise protected against natural hazards
5. modification of subsurface waste disposal systems and water supply facilities
6. imposition of operational controls and deed restrictions concerning future use and subdivision of land such as flood warnings, preservation of undeveloped areas in open space use, and limitation of vegetation removal
7. dedication of easements to protect wetlands
8. erosion control measures
9. setbacks for structures, fill deposit of spoil and other activities from the wetlands
10. modifications in project design to ensure continued water supply to the wetland and circulation of waters
11. replanting of wetland vegetation.

The Planning Board may require that the applicant furnish to the Town, before the issuance of a permit, a performance guarantee in accordance with Section 16-2-4(c)(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. Further, as an additional remedy, and not in lieu of such performance guarantee, the Planning Board or Code Enforcement Officer may pursue the remedies hereafter set forth in Sec. 19-8-3.D.

Further, the Code Enforcement Officer may suspend or revoke a permit if he/she finds that the applicant has not complied with the conditions or limitations set forth in the permit, or has exceeded the scope of the work set forth in the application.

#### **D. Wetlands Restoration and Creation**

- I.* The Planning Board, as a condition of a Resource Protection Permit or the Code Enforcement Office, as a remedy for a violation of this Ordinance, may require that the applicant, or violator, engage in the restoration or creation of wetlands in order to offset, in whole or in part, the losses resulting from an applicant's or violator's actions. In determining whether such a requirement will be imposed, the Planning Board or the Code Enforcement Officer shall consider factors including the following:
  - a. The type, size, and location of the wetland altered, and the effect it may have upon the remaining system or watershed of which the wetland is a part
  - b. The reversible or irreversible nature of the wetland's impairment or loss
  - c. The degree to which the applicant has demonstrated a good faith effort to incorporate measures to minimize or avoid any negative impact upon wetlands
- 2.* As part of this process, the applicant or violator may be required to develop a wetlands restoration or creation plan for review and approval by the Planning Board, with advice from the Conservation Commission. This plan should contain the following elements: the location of the proposed wetlands restoration or creation site; ownership, size, type, and complete ecological assessment of the restored or new wetland area; topographic survey data, including slope percentage and final grade elevations; plane view and cross-sectional scaled drawings; and other technical information in sufficient detail as required to explain, illustrate and provide for:
  - a. soils and substrate conditions
  - b. erosion and sediment control needed for the short and long-term survival of the new or restored wetland area
  - c. planting plants specifying plant species types, quantities, locations, size, and method(s) of planting
  - d. water quality and hydrocycle conditions necessary to ensure the long-term viability

of the restored or new wetland area

- e. a three (3) year monitoring and replacement plan establishing responsibility for the permanent establishment of the wetland system
  - f. a demonstration of fiscal capacity and technical competence to successfully execute the overall project
3. The applicant or violator shall ordinarily be required to undertake restoration or creation efforts on or adjacent to the site where permanent losses have been sustained or where restoration of a former wetland is possible. Replication of the impacted wetland will be the preferred alternative for restoration or creation efforts. Where the applicant is able to demonstrate to the satisfaction of the Planning Board, with advice from the Conservation Commission, that a wetland of a different type or location is strongly justified, or that replication is not feasible due to technical constraints, the Planning Board may approve an alternative proposal that meets the intent of this Ordinance.
4. In evaluating the proposed wetland restoration or creation proposal and implementation, the Planning Board or the Code Enforcement Officer may consult with expert persons or agencies.

**E. Additional Standards for Construction of Roads and Public Utilities**

The Planning Board may permit the construction of public utilities and the reconstruction of existing roads within Resource Protection 1-Critical Wetland Districts or associated buffers and the construction of public utilities and new roads or the reconstruction of existing roads within Resource Protection 2-Wetland Protection Districts and Resource Protection 3-Floodplain Districts, which may include associated construction activities that are otherwise not permitted under Sec. 19-6-9, Resource Protection Districts. In addition to meeting the Resource Protection Permit standards above, the proposed construction or reconstruction shall meet one of the following standards:

- 1. The road or structure shall be sited within the designated Resource Protection 1-Critical Wetland Buffer Overlay as far as possible from the established Wetland Upland Edge; or, if siting within the actual wetland area is unavoidable, as close to the Wetland Upland Edge as possible.
- 2. The road or structure shall be sited in such a way that the least amount of wetland area is disturbed.

In determining whether subsection 1. or subsection 2. should be applied to a proposed development, the Planning Board shall select the siting standard that will minimize the negative ecological impact on the wetland area.



The placement of public utilities in the Resource Protection I-Critical Wetland District shall also be subject to the following standards:

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services is not permitted except to provide services to a permitted use within the Resource Protection I-Critical Wetland District, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

**F. Timber Harvesting Standards**

**1. Notification and Plan**

a. Notification

The owner of the land to be harvested shall give the Code Enforcement Officer written notice at least five (5) working days prior to the start of any timber harvesting activities.

b. Forest Management and Timber Harvesting Plan

Prior to timber harvesting that involves more than fifty (50) cords in any five (5) year period, a Forest Management and Timber Harvesting Plan prepared by a professional forester licensed in the State of Maine in accordance with 36 M.R.S.A. § 573 (3-A) shall be submitted to the Code Enforcement Officer. In addition to the minimum requirements, the Forest Management and Timber Harvesting Plan shall include a map of the area to be harvested drawn to scale with a tie-in to an accepted town road, north arrow, property lines, name of the property owner, names of the abutting property owners, and the location of the Wetland Upland Edge as defined in this Ordinance based on the forester's best assessment.

**2. Wetland Buffer Overlay Surrounding Great Pond**

- a. Within the Resource Protection 1 - Critical Wetland Buffer Overlay surrounding Great Pond, there shall be no timber harvesting within the strip of land extending seventy-five (75) feet inland from the Wetland Upland Edge surrounding Great Pond except to remove safety hazards.
- b. At a distance of greater than seventy-five (75) feet from the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource

Protection 1 - Critical Wetland Buffer Overlay. There shall be no clearcut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

### **3. *Other Resource Protection 1 - Critical Wetlands***

- a. Within seventy-five (75) feet of any Wetland Upland Edge in the RP1-CW District other than the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource Protection 1 - Critical Wetland Buffer Overlay. There shall be no clearcut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
- b. At a distance of greater than seventy-five (75) feet from any Wetland Upland Edge in the RP1-CW District other than the Wetland Upland Edge surrounding Great Pond, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted in the Resource Protection 1 - Critical Wetland Buffer Overlay. In addition, clearcut openings not to exceed ten thousand (10,000) square feet in the forest canopy shall be permitted. Where clearcut openings exceed five thousand (5,000) square feet, they shall be at least one hundred (100) feet apart.

### **4. *Resource Protection 2 - Wetland Protection District***

Within the Resource Protection 2 - Wetland Protection District, selective cutting of no more than forty percent (40%) of the basal area on any lot within a ten (10) year period shall be permitted. There shall be no clearcut openings and a well distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.


### **5. *Additional Timber Harvesting Standards***

- a. No accumulation of slash shall be left within fifty (50) feet of the Wetland Upland Edge in the Resource Protection 1 - Critical Wetland Buffer Overlay District. In all other areas, slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above ground.
- b. Timber harvesting equipment shall not use stream channels as travel routes except when surface waters are frozen and the activity will not result in any ground disturbance.
- c. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

- d. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- e. Skid trails, log yards, and other sites, excepting water crossings, where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet in width for slopes up to ten percent (10%) shall be retained between the exposed mineral soil and the Wetland Upland Edge. For each ten percent (10%) increase in slope, the width of the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty-five (25) feet from the Wetland Upland Edge.
- f. Timber harvesting activities shall be conducted between the first hard frost of the winter and the spring thaw.

## **G. Agriculture Standards**

### ***1. New Agricultural Activities***

- a. There shall be no new agricultural activities in a Resource Protection I-Critical Wetland District nor within seventy-five (75) feet, horizontal distance, of the Wetland Upland Edge.
-  b. New agricultural activities shall be permitted within a Resource Protection I-Critical Wetland District's buffer area at distances greater than seventy-five (75) feet, horizontal distance, of the Wetland Upland Edge.

### ***2. All Agricultural Activities***

Where soil is tilled in a Resource Protection I-Critical Wetland District, such tillage shall be carried out in compliance with the provisions of a Conservation Plan which meets the standards of the State Soil and Water Conservation Commission, and is approved by the Cumberland County Soil and Water Conservation District. The plan shall be filed with the Code Enforcement Officer. Noncompliance with the provisions of such Conservation Plan shall be considered to be a violation of this Ordinance.

Agricultural activities that exist in a Resource Protection I-Critical Wetland District (including buffers) on or before the effective date of the wetlands provisions of this ordinance are a permitted use.

## **H. Exempted Water Bodies**

The general maintenance and use of stormwater detention basins approved by the Planning Board as part of an approved site plan or subdivision, existing golf course water holes, and municipal skating ponds shall be exempt from the requirements for Resource Protection Permits.

A Resource Protection Permit shall not be required for ponds used primarily for agriculture or fire protection purposes, such as but not limited to irrigation, on active farms as of May 9, 1990. Ponds on inactive farmland or where the agricultural or fire protection use of the pond has been discontinued as of May 9, 1990, shall not be exempt under this provision.

General maintenance and use shall include trimming of vegetation, removal of snow and debris, repair of culverts, retaining walls and other drainage infrastructure, landscaping and similar activities as determined by the Code Enforcement Officer. Activities that change the size of a pond are not exempted.

## **SEC. 19-8-4. RESERVED**

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

All removal of earth materials, including rock, sand, gravel, topsoil, and similar materials, shall comply with the following performance standards as applicable:

### **A. Applicability**

The removal of thirty (30) or more cubic yards of rock, sand, gravel, topsoil, and/or similar earth materials from a lot or parcel within any twelve (12) month period shall be permitted only after the issuance of an Earth Materials Permit, except removal in conjunction with an exempted activity.

This requirement shall apply to both existing and proposed extraction activities. Any use or operation of an extraction site shall be carried out in accordance with the provisions of this section and with any terms and conditions set forth in the Earth Materials Permit.

Removal of earth materials in conjunction with the following activities shall be exempt from the requirement for an Earth Materials Permit:

1. Construction of approved public or private ways
2. Construction for which a building permit has been issued
3. Normal maintenance or landscaping of a residential property

4. The normal conduct of a farming business including the movement of topsoil between different parcels under the common control of the farm or its individual owners

## **B. Earth Materials Permit**

The Planning Board shall review an application for an Earth Materials Permit and shall issue a permit only if it finds that the operation of the removal activities will comply with the standards of this section.

## **C. Permit Procedures (amended eff February 14, 2002)**

The owner of the lot or parcel on which the removal activities is proposed to occur shall make a written application for a permit to the Planning Board in accordance with the following procedures.

1. The Planning Board shall process an application for earth material removal activities in accordance with the procedures established for site plan review in Sec. 19-9-4, Review Procedures.
2. The Planning Board shall review the submitted application and accompanying materials. The Planning Board may require additional material that, considering the probable cost and effects of the proposed activity, it deems necessary for a full consideration of the proposal and its effects, including more detailed plans.
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) 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 16-2-4(c)(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.
6. The Earth Materials Permit must be utilized through conducting activities provided for in the permit on the permitted site within one (1) year from the date of Planning Board approval. If work has not commenced on the site within one year, the permit holder or their designee may request an extension for up to one (1) year for cause shown. Once a permit is activated through activity on the site, the permit shall remain in place without expiration. The Code Enforcement officer shall suspend any permit for failure to comply with conditions placed upon the Earth Materials Permit, failure to post any necessary performance guarantees, noncompliance with any other permitting process or to address any other issues of earth materials removal effecting the public health, safety and welfare.

#### **D. Standards**

All extraction operations and sites within the Town shall be conducted and maintained in accordance with, and the Planning Board shall impose, such conditions upon any permit issued under this Section as the Planning Board deems necessary or desirable to assure compliance with the following requirements:

1. No part of any extraction operation shall be permitted within one hundred (100) feet of any property or street line, and natural vegetation shall be left and maintained on the undisturbed land.
2. No standing water shall be permitted in any extraction site during or after extraction operations, except that during active extraction operations standing water may be permitted under strict conditions with respect to fencing, safe levels of coliform bacteria count and treatment to prevent breeding of insects so as to assure the public health and safety.
3. No slopes steeper than three (3) feet horizontal to one (1) foot vertical shall be permitted at any extraction site during or after extraction operations, except that during any period of

active operations steeper slopes shall be permitted as long as, in locations where the excavation will be more than fifteen (15) feet in depth with a slope steeper than 2:1, a fence at least three (3) feet high is erected to limit access to such locations.

4. Before commencing removal of any earth materials, the owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance against liability arising from the proposed extraction operations, and such insurance shall be maintained throughout the period of operation.
5. The hours of operation at any extraction site shall be limited as the Planning Board deems advisable.
6. Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load. All trucking routes and methods shall be subject to approval by the Chief of Police.
7. All access roads leading from the extraction site to public ways shall be treated with stone, calcium or other suitable materials to reduce dust and mud.
8. No equipment debris, junk or other materials shall be permitted at an extraction site except those directly relating to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith shall be removed within thirty (30) days following completion of active extraction operations.
9. For the removal of rock, sand, gravel, and similar earth materials, any topsoil and subsoil suitable for purposes of revegetation shall, to the extent required for restoration, be stripped from the location of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased. Following the completion of extraction operations at any extraction site or at any one or more locations within any extraction site, ground levels and grades shall be established in accordance with the approved plans filed with the Planning Board; all debris, stumps, boulders and similar materials shall be removed and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two (2) feet of soil. Retained topsoil and subsoil shall be respread over the disturbed area with any additional loam required to create a minimum seed bed depth of six (6) inches, and the soil shall then be limed, fertilized and seeded with a grass or legume mixture which meets the minimum standards of the Technical Guide adopted by the Cumberland County Soil and Water Conservation District. The foregoing restoration measures shall be completed within such period as may be determined by the Planning Board, not exceeding eight (8) months following completion of extraction operations. The planted area shall be protected from erosion during the establishment period using good conservation practices.
10. The applicant's proposal shall adequately control erosion and stormwater runoff, and upon

completion of active extraction operations, the land shall be left so that natural storm drainage and water courses leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not increased.

- 11.** The applicant shall preserve any areas containing artifacts of possible archaeological significance, and shall promptly notify the Maine Historic Preservation Commission in writing of such artifacts.
- 12.** In the case of topsoil removal, the applicant shall also assure that:
  - a. The proposed removal operation will stockpile the upper six (6) inches of topsoil and redistribute the same to a depth of six (6) inches throughout the site. This restoration shall be assured by high intensity soils surveys, and sieve analysis before and after the removal operation.
  - b. Where the proposed topsoil removal operation will have a duration greater than one (1) year, the applicant shall initially present to the Planning Board annual phasing plans. No permit shall be granted for a subsequent phase until the removal site for all prior phases has been restored and revegetated in accordance with the conditions of the original permit.
- 13.** For operations involving blasting, the owner shall maintain records of the blasting operation, provide for supervision of the blasting activity by a person qualified, experienced and regularly engaged in such work, and provide the Town with prior notice of the drilling and blasting activity as required by the Planning Board.

## **SEC. 19-8-6. ARCHAEOLOGICAL AND HISTORIC RESOURCES**

### **A. Archaeological Resources**

The following provisions are intended to prevent the disturbance of sites with potential or identified archaeological significance until their importance is documented.

#### **1. Identified Sites**

No activity which disturbs the ground such as trenching, grading, or excavating shall be commenced and no municipal permit or approval shall be issued within any of the following archaeological resource potential areas until the Maine Historic Preservation Commission has been notified of the nature of the proposed activity in writing by the owner of the property, a copy of the notice is provided to the Code Enforcement Officer, and a reconnaissance level archaeological survey is conducted, unless the Maine Historic Preservation Commission notifies the owner in writing that such a survey will not be needed.



The survey requirement will be deemed satisfied if the Maine Historic Preservation Commission has not carried out a survey or responded to the owner in writing within six (6) months or if the owner of the property has a reconnaissance level survey completed by a competent professional and provides a copy of the survey to the Maine Historic Preservation Commission and the Code Enforcement Officer.

The archaeological resource potential areas as identified in the Comprehensive Plan are:

- Within two hundred fifty (250) feet of Alewife Brook
- Within two hundred fifty (250) feet of Great Pond
- Within two hundred fifty (250) feet of the high water line at Hannaford Cove
- Richmond Island including the breakwater
- Within two hundred fifty (250) feet of the Spurwink River downstream of the Route 77 bridge
- Within two hundred fifty (250) feet of the upland edge of the Spurwink Marsh.

## **2. *Other Areas***

If an artifact is uncovered during ground-disturbing activities in other areas not identified above as archaeological resource potential areas, the activities shall be halted and not recommenced until the Maine Historic Preservation Commission has been notified in writing of the find by the owner of the property, a copy of the notice provided to the Code Enforcement Officer, and a written response received from the Commission. If no response is received within forty-five (45) days from the date notification was provided to the Commission, the Code Enforcement Officer shall authorize recommencement of the activity.

## **B. *Historic Resources***

The following provisions are intended to establish a waiting period prior to the demolition of an historically significant building or structure to allow for alternatives to be explored.

### **1. *Identified Resources***

No permit for the demolition, in whole or in part, of a historical building or structure listed in Appendix C shall be issued until forty-five (45) days after notice has been provided to the Town Manager, Code Enforcement Officer, and Maine Historic Preservation Commission and has been published in a newspaper of general circulation within Cape Elizabeth. Upon the completion of the forty-five (45) day notice period, the Code Enforcement Officer shall issue the demolition permit subject to the normal review and standards unless:

- a. the applicant has withdrawn the request, or
- b. a court of law has issued an injunction barring the issuance of the permit.

The forty-five (45) day notice period shall not apply to the demolition of accessory buildings or

structures other than barns that are part of the “historic character” of the site, the removal of additions that are not part of the “historic character” of the building, or the demolition of the remains of a building resulting from a fire or destruction by a natural disaster.



## **SEC. 19-8-7. GREAT POND WATERSHED PERFORMANCE STANDARDS**

In addition to the other requirements of this ordinance, all land within the watershed of Great Pond shall conform to the following standards. These standards shall apply to all new construction activities, including paving and the modification of existing uses:

1. Within five hundred (500) feet of the high water mark of Great Pond, no more than thirty percent (30%) of the total lot area may be stripped at any given time. Within other areas of the watershed, no more than fifty percent (50%) of the total lot area may be stripped of existing vegetation at any given time. The balance of the lot cannot be stripped of existing vegetation until the Code Enforcement Officer verifies in writing that the area previously stripped has been permanently stabilized by use of sod, seed, landscape vegetation, or similar ground covers or rip-rap.
2. Not more than thirty-five percent (35%) of the total area of a lot may be covered by impervious surfaces, including buildings, structures, and paved or graveled surfaces.
3. Any area of disturbed ground resulting from construction or similar activities shall be temporarily or permanently stabilized by use of riprap, seed, mulch, and other similar ground cover within one (1) week from the time it was last actively worked.
4. Vegetated buffer strips at least twenty-five (25) feet wide shall be maintained adjacent to waterways, drainage ditches, manmade ponds, and swales. Waterways, ditches, pond edges, and swales must be revegetated prior to September 15 of the year in which the new construction is conducted. Owners are encouraged to maintain these buffer strips in a naturally vegetated state.
5. Silt fencing and haybale barriers per the Cumberland County Soil and Water Conservation District Standards shall be used during all phases of construction projects including single-family homes to control erosion on the site.
6. New construction projects that require Site Plan Review may be required, if deemed necessary by the Planning Board with the guidance of the Town Engineer, to construct nutrient loading control devices such as sedimentation ponds, wet ponds, swales, flow slips, or similar devices in accordance with Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Developments.

In addition, best management practices as set forth in Stormwater Management for Maine: Best Management Practices shall be used for all current and future agricultural land within the watershed.

As part of the process for obtaining a building permit, the owner of a parcel within the watershed shall complete a Watershed Information Form (WIF) which provides the following details: 1) percentage of existing vegetation to be cleared; 2) percentage of impervious surface to be created; 3) description of erosion control measures; and 4) the development's approximate distance from the Great Pond shoreline.

## **SEC. 19-8-8. HOME DAY CARE AND DAY CARE FACILITY STANDARDS**

In addition to all other requirements of this ordinance, home day care and day care facilities shall be subject to the following provisions:

### **A. Approval of Home Day Care**

A home day care shall be allowed in any zoning district in which it is a permitted use only if it has received a home day care permit in accordance with the provisions of this section.

The owner of the property where the home day care will be located shall apply to the Code Enforcement Officer for a permit using forms provided by the Town. Upon receipt of a permit application, the Code Enforcement Officer shall notify, in writing, the abutters of the subject parcel of the pending application. The notice shall advise the abutters that the permit will be issued if the application conforms to the standards of Sec. 19-5-5, Conditional Use Permits, and that the abutter can provide written information as to the conformance of the request with these standards within thirty (30) days of mailing of the notice. If the Code Enforcement Officer finds that the application conforms to the standards and no information to the contrary is received during the thirty (30) day period, the permit shall be issued.

- 1.** If the Code Enforcement Officer receives information that the application may not conform to the standards, the Code Enforcement Officer shall:
  - a. notify the applicant of the information,
  - b. refer the application to the Zoning Board of Appeals for consideration; and
  - c. notify the parties providing the information of the referral.
- 2.** The Zoning Board of Appeals shall consider the application for a home day care permit in accordance with the procedures for hearing conditional use applications as set forth in Sec. 19-5-5, Conditional Use Permits. The Zoning Board of Appeals shall direct the Code Enforcement Officer to issue the permit if it finds that:

- a. the application conforms to the requirements of Sec. 19-8-8.C, Requirements for Home Day Care and Day Care Facilities, and
- b. the application conforms to the conditional use standards of Sec. 19-5-5, Conditional Use Permits.

Any home day care receiving a permit from the Code Enforcement Officer shall not be subject to site plan review.

### **B. Approval of Day Care Facilities**

A day care facility shall be allowed in any zoning district in which it is a conditional use only if it has:

- 1. received a conditional use permit in accordance with Sec. 19-5-5, Conditional Use Permits, and
- 2. received site plan approval in accordance with Article IX, Site Plan Review.

### **C. Requirements for Home Day Care and Day Care Facilities**

All home day care and day care facilities shall conform to the following requirements:

- 1. The facility shall not operate before the hours of 7:00 a.m. or after the hours of 7:00 p.m.
- 2. A fenced outdoor play area shall be provided with a minimum of 75 square feet per child
- 3. No outside play shall be allowed before 9:00 a.m. on Saturdays, Sundays, or holidays
- 4. Adequate lighting shall be provided at the vehicle drop-off and pickup area

## **SEC. 19-8-9. BOAT REPAIR FACILITY STANDARDS**


In addition to the other requirements of this ordinance, a commercial boat repair facility shall comply with the following additional standards:

- 1. No more than four (4) persons shall be engaged on a continuous basis in boat construction or repair;

2. Front, side and rear setbacks of one hundred fifty (150) feet shall be maintained from any public roads or from any abutting properties;
3. The visibility of the facility shall be minimized from abutting properties and from any public roads;
4. The facility shall not have a commercial appearance;
5. No outside storage of boats or materials shall be visible from the public road;
6. The hours of operation shall be limited to between the hours of 8:00 a.m. and 6:00 p.m.;
7. No boat shall be built or repaired at such facility to be transported over public roads which will endanger the safety of the public or require the moving of utility lines.

#### **SEC. 19-8-10. AGRICULTURAL STANDARDS**

In addition to the other requirements of this ordinance, an agricultural use or the keeping of livestock shall comply with the following additional standards:

1. Commercial piggeries and abattoirs are prohibited in all districts; 
2. A poultry house or range containing more than twenty-five (25) birds shall be located at least one hundred fifty (150) feet from any property line;
3. A temporary sawmill shall be located at least three hundred (300) feet from any property line.

#### **SEC. 19-8-11. USE OF RECREATIONAL CAMPING VEHICLE OR OTHER TEMPORARY RESIDENTIAL UNIT**

The use of a travel trailer, motor home, or other recreational camping vehicle as a temporary or permanent dwelling is prohibited in all districts. A travel trailer, motor home, or other recreational camping vehicle may be used on an occasional basis for temporary occupancy by its owner. For the purpose of this section, occasional basis shall mean occupancy on not more than three (3) nights in any thirty (30) day period. Unoccupied travel trailers, motor homes, or recreational camping vehicles may be parked or stored on a lot in any district provided the lot is owned by the owner of the unit.

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

In addition to the other requirements of this ordinance, all land within the Tower Overlay District shall conform to the following standards. These standards shall apply to the erection of a tower and the installation of an antenna on a tower or an alternative tower structure in any structure.

### ***1. Procedure***

- a. **Applicability.** The erection of: (i) a tower providing commercial wireless telecommunication services or (ii) a tower in excess of 50' in height serving as an amateur or governmental wireless telecommunication facility, shall be permitted with Site Plan Approval from the Planning Board in accordance with Sec. 19-9, Site Plan Review and the standards of Sec. 19-8-12(2) below. The installation of a commercial wireless telecommunication service antenna on a tower or an alternative tower structure shall be permitted with issuance of a building permit by the Code Enforcement Officer in accordance with Sec. 19-3-3, Building Permits and the standards of Sec. 19-8-12(2) below. The installation of a second amateur wireless telecommunication facility antenna or additional governmental wireless telecommunication facility antennas shall be permitted with issuance of a building permit by the Code Enforcement Officer in accordance with Sec. 19-3-3, Building Permits and the standards of Sec. 19-8-12(2) below.
- b. **Submission Requirements.** In addition to the Submission requirements of Sec. 19-9, Site Plan Review, or Sec. 19-3-3, Building Permits, as applicable, the applicant shall be required to submit all information necessary to demonstrate compliance with the Performance Standards in Sec. 19-8-2 (2), below.

### ***2. Performance Standards***

Where the following standards shall be applied during Site Plan Review, the "Town" shall be the Planning Board. Where the following standards shall be applied for the installation of an antenna on a tower or an alternative tower structure, the "Town" shall be the Code Enforcement Officer.

- a. **Colocation.** The applicant, owner and all other tower users shall allow other commercial wireless telecommunication service providers using functionally compatible technology to colocate antennas, equipment and facilities on a tower and site, unless satisfactory evidence is presented and the Town concurs that technical constraints prohibit colocation. Commercial wireless telecommunication service providers shall provide a mechanism for the construction and maintenance of colocated antennas and infrastructure and shall provide for reasonable sharing of cost in accordance with industry standards. To ensure colocation, the Town may require

colocation on a tower in order to prevent the need for commercial wireless telecommunication service providers to build new towers, may deny an application for a tower because of inadequate provisions and/or arrangements for colocation and may require an existing tower to be extended in height to the maximum height allowed in that district (provided that a structural analysis indicates that such extension is structurally feasible and safe and the tower height does not exceed the maximum limit in Sec. 19-6-13, Tower Overlay District) in order to provide for colocation.

- b. **Color.** Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by the federal or state authorities.
- c. **Buffers.** Unless existing vegetation provides a buffer strip, a vegetated buffer shall be provided along all property lines along roadways or visible to existing abutting or nearby buildings (within a 1/4 mile radius), to be landscaped as follows: (1) with 6' - 8' evergreen shrubs planted in an alternate pattern, 5' on center and within 15' of the site boundary; (2) with at least one row of deciduous trees, no less than 2 1/2 - 3" caliper measured 3' above grade, and spaced not more than 20' apart and within 25' of the site boundary; (3) with at least one row of evergreen trees at least 4'-5' in height when planted, and spaced not more than 15' apart within 40' of the site boundary; and (4) in lieu of the foregoing, the Town may determine that the existing vegetation must be supplemented to meet an equivalent buffering standard or may accept alternative means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the Town may require the applicant to provide an analysis by a qualified professional of the visual impact of the tower base.
- d. **Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other Federal or state authority, and shall not display strobe lights. If lighting is required, the Town may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties and views. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, and similar areas may be attached to the tower.

- e. Structural. To ensure the structural integrity of towers, the owner shall ensure that the construction of a new tower or any alteration of a tower, including the addition of antennas or other attachment, is designed, constructed, and maintained in conformance with applicable Federal, State, and Local building, electrical and safety codes and designed and installed in accordance with the current standards of the Electronic Industries Association (EIA) *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*.
  - f. Security. A security fence or wall not less than 8' in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate. Amateur wireless telecommunication facilities that are located adjacent to the owner's primary residence shall not be required to meet this standard.
  - g. Advertising. No advertising or signage is permitted on towers or antennas providing commercial wireless telecommunications services.
  - h. Non-interference. The applicant and owner shall include either a preliminary or a certified statement that the construction of the tower, including reception and transmission functions, will not interfere with the radio, television, or telecommunication service enjoyed by the community. In the event only a preliminary statement is submitted with the application, a final certified statement of non-interference shall be provided by a professional engineer and approved by the Town prior to issuance of a building permit. The statement shall be prepared by an engineer licensed to practice in the State.
  - i. Abandonment. All abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the Town. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the tower and associated facilities may be removed by the Town and the costs of removal assessed against the property.
- (7) Performance Guarantee. No building permit may be issued until the applicant has provided a performance guarantee to the town in accordance with Sec. 16-2-4 (c)(7)(a), Subdivision Ordinance.



## **ARTICLE IX. SITE PLAN REVIEW**

### **SEC. 19-9-1. PURPOSE**

The site plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, preserve the environment, and minimize improvements that must be paid for by the Town's taxpayers by assuring that nonresidential, multiplex residential, eldercare, and similar facilities are designed and developed in a manner which assures that adequate provisions are made for: traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment; minimizing the adverse impact on adjacent properties; and fitting the project harmoniously into the fabric of the community.

### **SEC. 19-9-2. APPLICABILITY**

#### **A. Activities Requiring Site Plan Review**


The owner of a parcel of land shall obtain site plan approval prior to undertaking any alteration or improvement of the site including grubbing or grading, obtaining a building or plumbing permit for the activities, or commencing any of the following activities on the parcel:

- 1.* The construction of any nonresidential building or building addition
- 2.* Any nonresidential expansion or change in use except that changes of use within the Town Center District shall be governed by the provisions of Sec. 19-6-4.E, Site Plan Review
- 3.* Multiplex housing and eldercare facilities
- 4.* Any other activity or use requiring Planning Board review in the Zoning Ordinance
- 5.* New construction involving more than ten thousand (10,000) square feet of impervious surface, paving, clearing, or vegetative alteration, or any combination thereof. (The Planning Board shall review the proposal for control of stormwater runoff under the terms of Chapter 18, Article II, Stormwater Control Ordinance.)

#### **B. Activities Not Requiring Site Plan Review**

The following activities shall **not** require site plan approval (certain of these activities may, however, require the owner to obtain a building permit, plumbing permit, or other State and local approvals):

- 1.* The construction, alteration or enlargement of a single family or two-family dwelling unit, including accessory buildings and structures

2. the placement of manufactured housing or mobile home on individual lots
-  3. agricultural activities, including agricultural buildings and structures
4. temporary structures such as construction trailers or equipment storage sheds

### **SEC. 19-9-3. REVIEW AND APPROVAL AUTHORITY**

The Planning Board is authorized to review and act on all site plans for development requiring site plan review as defined above. In each instance where the Planning Board is required to review the site plan for a proposed use, it shall approve, deny, or conditionally approve the application based on its compliance with the standards in Sec. 19-9-5, Approval Standards, which action shall be binding upon the applicant. Where a proposed use is subject to approval of the Zoning Board of Appeals, such approval shall be obtained before the Planning Board considers the site plan for the proposed use.

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

The Planning Board shall use the following procedures in reviewing applications for site plan review.

#### **A. Workshop**

Prior to submitting a formal application, the applicant shall schedule a preapplication workshop with the Planning Board. The preapplication workshop shall be informal and informational in nature. There shall be no fee for a preapplication review, and such review shall not cause the plan to be a pending application. No decision on the substance of the plan shall be made at the preapplication workshop. The applicant is encouraged to meet informally with the Town Planner prior to the workshop.

#### **1. Purpose**

The purposes of the preapplication workshop are to:

- a. Allow the Planning Board to understand the nature of the proposed use and the issues involved in the proposal
- b. Allow the applicant to understand the development review process and required submissions

- c. Identify issues that need to be addressed in future submissions

## **2. *Information Required***

There are no formal submission requirements for a preapplication workshop. However, the applicant should be prepared to discuss the following with the Planning Board:

- a. The proposed site, including its location, size, and general characteristics
- b. The natural characteristics of the site that may limit its use and development
- c. The nature of the proposed use and potential development, including a conceptual site plan
- d. Any issues or questions about existing municipal regulations and their applicability to the project
- e. Any requests for waivers from the submission requirements

## **3. *Planning Board Workshop***

The Planning Board workshop shall be informational and shall not result in any formal action. The Planning Board shall identify any issues or constraints which need to be addressed in the formal site plan application.

## **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. 16-2-4 (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. In consultation with the Planning Board Chair or Vice Chair, the Town Planner shall review the site plan application and accompanying materials to determine whether the application is complete or incomplete. If the application is preliminarily determined to be incomplete, the Town Planner shall notify the applicant in writing and shall list in the written determination the materials that must be submitted in order to make the application complete. If the applicant fails to submit a complete application within four (4) months of the issued receipt date, the application shall be deemed withdrawn. When the Town Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board meeting. The Planning Board may require other information in addition to that required in Sec. 19-9-4.C, Submission Requirements. The Planning Board may also request an evaluation of specific aspects of the site plan from the Conservation

Commission, the Town Engineer, or others. In the event that the Planning Board requires additional information or evaluation, it may defer making its decision until its next regular meeting.

No action taken by the Town Planner, either alone or in consultation with the Planning Board Chair or Vice Chair, with respect to reviewing a site plan application, shall result in an application being deemed pending for the purposes of 1 M.R.S.A. §302. The Town Planner, either alone or in consultation with the Planning Board Chair or Vice Chair, shall have no authority to review the substance of a site plan application to determine whether it complies with the site plan review criteria.

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. 16-2-4 (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. 16-2-4 (c)(6) and (7)(A) of the Subdivision Ordinance. An inspection fee shall be paid in accordance with Sec. 16-2-6 (a).
4. Site plan approval shall be valid for a period of one (1) year from the date of the Planning Board vote. Prior to the expiration of the site plan approval, the applicant may request an extension of up to one year from the Planning Board for cause shown. Site plan approval shall remain valid if a building permit has been issued for the project prior to the expiration date. Expiration of the building permit prior to completion of the project shall render the site plan approval null and void. Failure to comply with conditions placed upon site plan approval, to post any necessary performance guarantees, to comply with any other permitting processes or to address any other issues of site development, except pending litigation challenging the site plan approval, shall render the approval null and void unless an extension is granted by the Planning Board for good cause.

### **C. Submission Requirements**

The applicant shall submit fourteen (14) copies of building and site plans and supporting information drawn to a scale of not less than one inch equals fifty feet (1" = 50'). The building plans shall show at a minimum the first floor plan and all elevations, and indicate the proposed construction materials. The site plan and supporting submissions shall include the following information:

1. Evidence of right, title, and interest in the site of the proposed project
2. A key map of the site with reference to surrounding areas and existing street locations

3. The name and address of the owner and site plan applicant, together with the names of the owners of all contiguous land and or property directly across the street and within two hundred (200) feet of the property, as shown by the most recent tax records of all municipalities in which such properties shall lie
4. Lot line dimensions
5. Location of all buildings and structures, streets, easements, driveways, entrances, and exits on the site and within one hundred (100) feet thereof
6. Proposed location and dimensions of proposed buildings and structures, roads, driveways, parking areas and other improvements
7. Building setback, side line, and rear yard distance
8. All existing physical features on the site and within two hundred (200) feet thereof, including streams, watercourses, existing woodlands, and existing trees at least eight (8) inches in diameter as measured four and one-half (4 ½) feet above grade. Soil conditions as reflected by a medium intensity survey (such as wetlands, rock ledge, and areas of high water table) shall also be shown. The Planning Board may require a high intensity soils survey where it deems necessary.
9. Topography showing existing and proposed contours at five (5) foot intervals for slopes averaging five percent (5%) or greater and at two (2) foot intervals for land of lesser slope. A reference benchmark shall be clearly designated. Where variations in the topography may affect the layout of buildings and roads, the Planning Board may require that the topographic maps be based on an on-site survey.
10. Parking, loading, and unloading areas shall be indicated with dimensions, traffic patterns, access aisles, and curb radii
11. Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated with cross sections, design details and dimensions
12. Location and design of existing and proposed stormwater systems, sanitary waste disposal systems and potable water supply, and methods of solid waste storage and disposal
13. Landscaping and buffering plan showing what will remain and what will be planted, indicating botanical and common names of plants and trees, dimensions, approximate time of planting and maintenance plans
14. Lighting details indicating type of standards, location, wattage, radius of light and intensity

in footcandles

15. Location, dimensions, and details of signs
16. Demonstration of technical and financial capability to complete the project. If the applicant concludes that public disclosure of confidential financial information may be detrimental to the success of the project, the applicant may disclose such financial information to the Town Manager, who shall explore with due diligence, the applicant's financial capability to complete the project as proposed in a timely fashion and make a recommendation to the Planning Board.
17. Waiver of information. Where the Planning Board finds that due to special circumstances of a particular plan, the submission of any information listed in Sec. 19-9-4.C, Submission Requirements, is not required in the interest of public health, safety, and general welfare, or is inappropriate because of the nature of the proposed development, the Planning Board may waive such requirements, subject to appropriate conditions.

## **SEC. 19-9-5. APPROVAL STANDARDS**

The following criteria shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In each instance, the burden of proof shall be on the applicant to produce evidence sufficient to warrant a finding that all applicable criteria have been met.

### **A. Utilization of the Site**

The plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas such as wetlands, steep slopes, flood plains, and unique natural features will also be maintained and preserved to the maximum extent feasible. Natural drainage areas will also be preserved to the maximum extent feasible.

**B. Traffic Access and Parking**

***1. Adequacy of Road System***

Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service C or better prior to the development will function at a minimum at Level of Service C after development. If any such intersection is functioning at a Level of Service D or lower prior to the development, the project will not reduce the current level of service.

A development not meeting this requirement may be approved if the applicant demonstrates that:

- a. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard,
- b. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality, or
- c. Town policy does not support the construction improvements.

***2. Access into the Site***

Vehicular access to and from the development shall be safe and convenient.

- a. All entrance and exit driveways are located to afford maximum safety to traffic, provide for safe and convenient ingress and egress to and from the site and to minimize conflict with the flow of traffic.
- b. Any exit driveway or driveway lane is so designated in profile and grading and so located as to provide the maximum possible sight distance measured in each direction. The sight distance available shall be consistent with the standards of the Subdivision Ordinance.
- c. Where a site occupies a corner of two (2) intersecting roads, no driveway entrance or exit is located within fifty (50) feet of the point of tangency of the existing or proposed curb radius of that site.
- d. No part of any driveway shall be located within a minimum of ten (10) feet of a side property line. However, the Planning Board may permit a driveway serving two (2) or more adjacent sites to be located on or within ten (10) feet of a side property line

dividing the adjacent sites.

- e. Driveways intersect the road at an angle as near ninety degrees (90°) as site conditions will permit.
- f. Road, driveway, and parking lot construction comply with the construction and design standards in Sec. 16-3-2 of the Subdivision Ordinance.

### **3. *Internal Vehicular Circulation***

The layout of the site shall provide for the safe movement of passenger, service, and emergency vehicles through the site.

- a. Nonresidential projects that will be served by delivery vehicles will provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of vehicles.
- b. Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane - no parking).
- c. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot.
- d. All roadways shall be designed to harmonize with the topographic and natural features of the site. The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

### **4. *Parking Layout and Design***

Off-street parking shall conform to Sec. 19-7-8, Off Street Parking and the following standards:

- a. Parking areas with more than two (2) parking spaces shall be arranged so that vehicles do not need to back into the street.
- b. All parking spaces, access drives, and impervious surfaces shall be located at least five (5) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within five (5) feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding twenty-four (24) feet in width.
- c. In lots utilizing diagonal parking, the direction of proper traffic flow shall be



indicated by signs, pavement markings or other permanent indications.

- d. Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. “Stacked” parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit.
- e. The “overhang” of parked vehicles shall be restricted when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

### **C. Pedestrian Circulation**

The site plan shall provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system shall connect the major building entrances/exits with parking areas and with existing or planned sidewalks in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system shall be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and sidewalks in the neighborhood.

### **D. Stormwater Management**

Adequate provisions will be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces during a twenty-five (25) year, twenty-four (24) hour storm, through a stormwater drainage system and maintenance plan, which will not have adverse impacts on abutting or downstream properties. The stormwater management provisions shall be consistent with Chapter 18, Article II, Stormwater Control Ordinance and the following:

1. To the extent possible, the plan will retain stormwater on the site using the natural features of the site.
2. For major developments, stormwater runoff systems will detain or retain water such that the rate of flow from the site does not exceed the predevelopment rate, unless the system discharges directly to the Atlantic Ocean.
3. The applicant will demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity.
4. All natural drainage ways will be preserved at their natural gradients and will not be filled or converted to a closed system unless specifically approved.

5. The design of the stormwater drainage system shall provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
6. The design of the storm drainage systems will be fully cognizant of upstream runoff which must pass over or through the site to be developed.
7. The biological and chemical properties of the receiving waters will not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source.

**E. Erosion Control**

All building, site, and roadway designs and layouts will harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible. Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on sloped sites will be terraced to avoid undue cut and fill, and/or the need for retaining walls. Natural vegetation will be preserved and protected wherever possible.

During construction, soil erosion and sedimentation of watercourses and water bodies will be minimized by an active program meeting the requirements of the Cumberland County Soil and Water Conservation District's Best Management Practices.

**F. Water Supply**

The development will be provided with a system of water supply that provides each use with an adequate supply of drinking water.

If the project is proposed to be served by a public water supply, the applicant shall secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

**G. Sewage Disposal**

The development will be provided with a method of disposing of sewage which is in compliance with the State Wastewater Disposal Rules and Chapter 15, Sewer Ordinance.

1. All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste

generation.

2. If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by an on-site sewage disposal system meeting the requirements of the State Wastewater Disposal Rules and Chapter 15, Article II, Private Sewage Disposal Ordinance.
3. When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association and shall conform to the provisions of Chapter 15, Article III, Management of Cluster Disposal Systems. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.
4. Industrial or commercial waste waters may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution.

## **H. Utilities**

The development will be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities shall be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service shall be placed underground.

## **I. Water Quality Protection**

All aspects of the project shall be designed so that:

1. No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.
2. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, shall meet the standards of the State Department of Environmental Protection and the State Fire Marshall's Office.

**J. Wastes**

The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies.

Any waste produced which is classified as a hazardous, special or radioactive waste by either federal or state standards shall be disposed of at a licensed disposal facility appropriate for the type of waste and done in accordance with applicable state and federal regulations.

No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

The proposed development will also provide for adequate disposal of solid wastes. All solid waste will be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

**K. Shoreland Relationship**

The development will not adversely affect the water quality or shoreline of any adjacent water body. The development plan will provide for access to abutting navigable water bodies for the use of the occupants of the development if appropriate.

**L. Technical and Financial Capacity**

The applicant has demonstrated the financial and technical capacity to carry out the project in a timely fashion in accordance with this ordinance and the approved plan.

**M. Exterior Lighting**

The proposed development shall provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours, if such use is contemplated, without excessive illumination.

Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky. Direct or indirect illumination shall not exceed 0.5 footcandles at the lot line or upon abutting residential properties.

All exterior lighting, except security lighting, shall be turned off between 11 P.M. and 6 A.M. unless

located on the site of a commercial or industrial use which is open for business during that period.

**N. Landscaping and Buffering**

The landscape will be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling will be avoided as far as possible. Areas of vegetation to be retained shall be designated on a preservation plan. Within the drip line of trees to be preserved, activity and disturbance shall be prohibited and a physical barrier shall be provided to separate these areas from the construction area.

The development plan will provide for landscaping that defines street edges, breaks up parking areas, softens the appearance of the development and protects abutting properties from any adverse impacts of the development.

The development shall also provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for screening of service and storage areas.

Required parking and loading spaces for nonresidential uses and multiplex housing, where not enclosed within a building, shall be effectively screened from view by a continuous landscaped area not less than eight (8) feet in width containing evergreen shrubs, trees, fences, walls, berms, or any combination thereof forming a visual barrier not less than six (6) feet in height along exterior lot lines adjoining all residential properties, except that driveways shall be kept open to provide visibility for vehicles entering and leaving. This requirement may be reduced or waived when it is determined that such buffering is not necessary or desirable.

**O. Noise**

1. The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall be measured at least four (4) feet above ground at the property boundary of the source.

Sound Pressure Level Limits Using the Sound Equivalent Level of  
One Minute (leq 1) (Measured in dB(a) Scale)

a.m.-	10 p.m.-		10 p.m.	7 a.m.
	<u>Abutting Use</u>			
	Residential		55	45
	Residential located in a commercial-industrial district		65	55
	Public, semipublic and institutional		60	55
	Vacant or rural		60	55
	Commercial		65	55
	Industrial		70	60

2. Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI S1 4-1961) "American Standards Specification for General Purpose Sound Level Meters."
3. No person shall engage in construction activities, on a site abutting any residential use between the hours of 10 p.m. and 7 a.m.

**P. Storage of Materials**

Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and buffers (such as a stockade fence or a dense evergreen hedge) to minimize their impact on abutting residential uses and users of public streets.

All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. Dumpsters or receptacles located in a yard which abuts a residential or institutional use or a public street shall be screened by fencing or landscaping.

All sites potentially hazardous to children shall require physical screening sufficient to deter small children from entering the premises. This screening shall be maintained in good condition.

**SEC. 19-9-6. AMENDMENTS**

Any alteration to a site which is inconsistent with the approved site plan shall require an amendment to the site plan. Planning Board approval must be obtained prior to the alteration. De minimus changes to an approved site plan may be placed on the Planning Board Consent Agenda at the discretion of the Town Planner. De minimus changes shall not include (1) a change to a public or private right-of-way or easement, (2) a decrease in proposed buffering or landscaping, or (3) any issue involving a condition placed on the site plan approval. Prior to placement on the Consent Agenda, the applicant shall meet with the Town Planner to review the proposed changes and shall provide eight (8) copies of the revised site plan to the Town Planner at least eighteen (18) days prior

to the next regular Planning Board meeting. The decision of the Town Planner not to place an item on the Consent Agenda may be appealed to the Planning Board upon submission of fourteen (14) copies of the proposed change to the Town Planner eighteen (18) days prior to the next regular meeting of the Planning Board.

## **SEC. 19-9-7. APPEALS OF PLANNING BOARD ACTIONS**

Appeal of an action taken by the Planning Board regarding site plan review shall be to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

## **ARTICLE X. AMENDMENT/INTERPRETIVE PROVISIONS**

### **SEC. 19-10-1. CONFLICT WITH OTHER PROVISIONS**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation or statute, the more restrictive and specific provision shall control.

### **SEC. 19-10-2. SEVERABILITY**

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

### **SEC. 19-10-3. AMENDMENTS**

This ordinance may be amended and its regulations, boundaries, and district classifications changed by the Town Council, provided that the following criteria are met:

#### **A. Procedure**

- 1.* Amendments to the text or the zoning map shall be consistent with the Comprehensive Plan, and shall be consistent with the purpose of this Ordinance as stated in Sec. 19-1-2, Purpose.
- 2.* Amendments may be initiated by the Planning Board, the Town Council, any landowner, persons having a written agreement to purchase the property, or by a petition by registered voters of the Town in accordance with Article VIII, Sec. 2 of the Town Charter.

3. All requests for amendment to the text of the Zoning Ordinance, or for changes in district boundary lines, or other proposals to change the zoning map, initiated by other than the Planning Board or the Town Council shall be accompanied by a zone change fee.
4. The Town Council shall initially review all requests for zoning amendments. If the Council determines that the request is legally faulty, that it conflicts with State law, or that it is clearly contradictory to established Town policy, the Council may deny the request without further action. Otherwise, the Council shall initiate the formal review process.
5. Prior to the consideration of any proposed amendment or change by the Town Council, it shall be submitted to the Planning Board for its recommendations. The Planning Board shall hold a public hearing on the proposed amendment. Notice of the public hearing shall be published in a newspaper of general circulation within the Town at least seven (7) days prior to the date of the hearing. The Town Council shall not consider any amendment or change until it has received the Planning Board's recommendation or not less than sixty (60) days has elapsed since the Council referred the item to the Planning Board.
6. Changes in zoning boundaries shall be depicted on the Zoning Map within thirty (30) days after the amendment has been approved by the Town Council.

**B. Change of Zone**

All proposals for a change of zone shall include:

1. a map showing existing and proposed district boundaries
2. the exact location of the request
3. the name and address of the property owner and applicant
4. a statement describing fully the existing and proposed land uses
5. the existing and proposed zone classifications
6. a site plan drawn in compliance with the provisions of Sec. 19-9-4.C, Site Plan Review Submission Requirements
7. material establishing the developer's financial and technical capability to complete the proposed development

The Planning Board shall review all proposed site plans accompanying zone change proposals in accordance with Article IX, Site Plan Review and, after a public hearing, shall make its recommendations to the Town Council regarding the land use implications of the proposal. To



recommend the zone change, the Planning Board must find that the proposal will be compatible with the surrounding neighborhood and have no adverse effect on the value of adjacent properties. If the site plan and change of zone are approved by the Town Council, development shall occur in conformity with the approved site plan. No change or alteration in the approved site plan shall be made without amending the plan in accordance with Sec. 19-9-6, Amendments. If an applicant fails to begin substantial construction in accordance with the approved site plan within one (1) year from the effective date of the rezoning, the Planning Board may recommend rezoning to the original zoning classification by the Town Council.

No request for change of zone shall be considered within one year from the date of Town Council denial of a similar request.

**C. Amendments Involving Resource Protection or Shoreland Performance Overlay Districts**

In the case of amendments to Section 19-6-9, Resource Protection Districts; Section 19-6-11, Shoreland Performance Overlay Districts; Sec. 19-8-2, Shoreland Performance Standards; or Sec. 19-8-3, Resource Protection Performance Standards, the change shall become effective and/or shall be depicted on the Zoning Map only after approval by the Commission of the Department of Environmental Protection or forty-five (45) days after notice of the change has been provided to the Commission of the Department of Environmental Protection if the Commission fails to act to approve or disapprove the amendment during the forty-five (45) day period.

End of Ordinance.

Note: The ordinance also contains several appendices relating to soil types, road classifications, historic properties and a map demonstrating setbacks..