

## MEMORANDUM

TO: Cape Elizabeth Town Council  
FROM: Planning Board  
DATE: June 22, 2016  
SUBJECT: Technical Amendments

### Introduction

The Town Council authorized the Planning Board at the August 10, 2015 meeting to assemble a package of Technical Amendments. It has been the town's practice to periodically package amendments to clean up, clarify and update current ordinances. *Major* policy changes are typically not included in this type of amendments package. Technical amendments are most often undertaken to (1) protect the town from unintended interpretations of existing ordinance provisions and (2) to improve customer service by adding clarity to existing regulations.

### Process

The Planning Board assembled the Technical Amendments package over 11 meetings, including a public hearing on June 21, 2016. The amendments reflect significant input from town staff and advisers. The Planning Board heard presentations from Public Works Director Bob Malley and Stormwater consultant Kristie Rabasca at the October, 2015 workshop and from Tree Warden Mike Duddy at the March, 2016 workshop. Other staff contributing to the package include Steve Harding, Town Engineer, Tom Errico, Traffic engineer consultant, John Wall, Town Attorney, and Ben McDougal, Code Enforcement Officer.

### Summary of Amendments

The Technical Amendments package includes amendments to the Subdivision Ordinance, Zoning Ordinance, Conservation Ordinance and a new Chapter 25, Storm water Ordinance. Existing ordinance text is shown in black and new text is shown in red. Text to be deleted is shown in red with strike-through. Only ordinance sections proposed to be changed are shown.

Below is a summary of proposed amendments in the Technical Amendments package, listed by page and line number.

| <b>Page/Line</b> | <b>Amendment description</b> |
|------------------|------------------------------|
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- 1/28 This changes the performance guarantee provisions that apply to subdivisions and site plans. It has been the town's experience that large projects need a smaller percentage amount for contingency.
- 1/37 The town has refined the inspection fee amount as our experience with performance guarantees has grown. At this time, a minimum amount is needed to assure 1-3 visits by the town inspector to confirm projects have been constructed in accordance with the Planning Board approval.
- 2/1 The town has always required that a record drawing of the completed project be provided. This amendment clarifies that record drawings are required for private as well as public roads and that the digital records be delivered as data layers rather than 1 pdf document.
- 2/33 In accordance with new state and federal requirements, this amendment recognizes the need for a stormwater maintenance plan and that the plan be recorded.
- 2/43 As trees planted in new neighborhoods mature, refinements of the town's tree requirements are recommended, such as slightly increasing the distance between trees planted near the road, revising tree species selection and updating tree planting requirements.
- 4/1 At the recommendation of the Tree Warden, the Road Tree planting list is completely overhauled to encourage diversity of the community forest. This is intended to be a list to be reviewed again in 5 years. Most significantly, this list prohibits the planting of new oaks and maples in new development. These species are heavily represented in the current community forest and also increasingly vulnerable to pests and climate change. See the Tree Warden's comments.
- 8/1 As part of the increasing importance of storm water regulation, the town's existing stormwater ordinances are proposed to be moved into a new Chapter 25 Storm water.
- 9/16 This language is one component to address a growing issue where additional dwelling units are added to a lot without the minimum lot size needed to be in compliance with the Zoning Ordinance. This restriction explicitly prohibits overnight stays in accessory structures

with plumbing, which will strengthen the Code Enforcement Officer's ability to restrict additional dwelling units.

- 9/32 The second component of the above amendment is to close the loop hole where second dwelling units have been constructed with a fully configured kitchen minus the stove.
- 9/37 A definition has been added related to expanded focus on stormwater. This is the standard DEP definition used as part of the stormwater regulations.
- 9/47 The moderate income affordable definition is revised to lower the maximum affordable price to 120% of the median income for the Portland area. This is in response to the recent release of restrictions on 4 moderate income homes when they did not sell after a year of marketing and a concern that 150% of median income was not within affordability goals.
- 10/6 The structure definition is refined to exclude very minor elements that could be considered a structure and then would be subject to setback requirements. The roof overhang is an architectural feature and promotes building preservation by promoting better drainage.
- 10/12 The Zoning Ordinance includes 3 groups of nonconformance. They include Shoreland Zoning nonconformance, Resource Protection nonconformance, and nonconformance in all other districts. The heading and introductory text of the third group is changed to make which nonconformance section applies clearer.
- 10/  
11/ Bullet headings to existing provisions are added for readability.
- 12/19 This section amendment is proposed in response to a recent court decision. This provision allows expansion of nonconforming structures with Zoning Board approval, and common practice is to seek approval before beginning the demolition process. Based on the tense in the ordinance, the court decision found that no Zoning Board application could be made unless the structure was already removed. This amendment is recommended by the Code Enforcement Officer.

- 12/35 This amendment articulates current practice of allowing some enlargement of nonconforming structures and supported by the Code Enforcement Officer.
- 13/7 This is a companion revision to the amendment above clarifying the three groups of nonconformance.
- 13/24 Town attorney John Wall has recommended that the town make clear if the Zoning Board should act in an appellate or de novo review capacity. Recent court appeals to Zoning Board decisions have based their decision on both types of review. In order to reduce legal costs, it should be clear which type of review the Zoning Board conducts and de novo review is recommended by town staff.
- 13/42 These amendments to the residential zoning districts are clean up of changes that should have been added when the wind energy system, short term rentals and day camps amendments were processed. The amendments make clear that these uses do not require site plan review.
- 15/1 This provision would allow construction of a home and then finish construction of the driveway that has received a private accessway permit as long as a performance guarantee is posted. This has been the practice when a property owner would like to avoid damage to a new driveway from construction vehicles, etc.
- 15/4 This buffering requirement predates the landscape and buffering requirements the Planning Board applies in the Site Plan regulations, Town Center and Business A districts standards and now the multiplex standards. This is not a Zoning Ordinance section that the Planning Board has authority to apply and therefore is proposed to be deleted.
- 16/1 A telecommunications coverage map has been added to the submission requirements for telecommunications facilities.
- 16/40 With the adoption of Chapter 25 proposed in this package of amendments, this reference will need to be updated.
- 18/43 Bullet headings have been added for readability. The text also more clearly explains the current process to determine completeness.

- 19/32 A description of the existing process has been added. This text is similar to text used in the recently updated Subdivision Ordinance.
- 20/2 Compliance with Planning Board approvals has improved with expanded post-approval procedures. This provision adds to the site plan approval requirements provisions that already apply to subdivisions and have become the current practice.
- 20/27 The Site Plan submission requirements and review standards have been overhauled to align submission requirements with standards. For example, traffic information needs to be a submission requirement and then a traffic review standard should be in place to review that information. Mirroring the submission format used in the Subdivision Ordinance, the submission list bolds information that must be shown on a plan.
- 23/7 The stormwater submission requirements and review standards have been updated to reflect current practice. Review is broken into 3 groups. Group 1 are projects that decrease impervious surface or increase to less than 10,000 sq. ft. Group 2 are projects with 10,000 sq. ft. to under 1 acre of impervious surface. Group 3 are projects with 1 acre or more of impervious surface. The summary chart has been created to show the three tier approach "at a glance." An explicit requirement for a professional engineer for group 2 has been added.
- 25/26 The lighting submission requirement is a good example of how the submission and standard are now aligned. A photometric study is explicitly required, which is desirable to demonstrate meeting the review standard of .5 footcandles at the property line.
- 25/34 The noise submission requirement has been expanded to describe the type of noise and not just the decibel level and also to reference tables to provide noise level estimates.
- 26/6 The Planning Board always entertains requests to waive submission information. This section has been expanded, partly in reaction to a recent legal challenge that the Planning Board should not consider any waivers. The text reflects current practice.
- 27/14 Bullet headings have been added for readability. Much of the existing review standard text has been retained.

- 29/30 The stormwater review standard has been overhauled parallel to the submission requirement. For projects in group 1, a new requirement has been added that some type of LID feature must be included in the project. For group 2 projects, the LID feature must treat the first ½" of new stormwater. For group 3 projects, the state standards in the Storm water ordinance apply. This is generally the current review approach.
- 31/4 The water supply standard now encourages connection to a public water supply.
- 32/5 The standard for setback of propane tanks has been revised to reflect the setbacks required in the building code.
- 36/32 A new site plan amendment option is proposed that allows an expedited review of minor amendments to approved site plans. This has been recommended by the CEO and applicants to provide some flexibility, typically needed during the construction phase. The process allows minor changes with review by the town planner and review and signature from the Planning Board chair.
- 38/1 This is the new Chapter 25, Storm Water Ordinance, which has two articles. Article 1 and 2 have been moved from Chapter 18. Most of both sections are existing language. Article 1 sections that list submission requirements and review standards have been overhauled and aligned similar to the treatment for Site Plan review.
- 38/44 The applicability text has been cleaned up and specifically references projects with an acre or more.
- 39/13 New standard definitions for "best management practices," "developed area," "disturbed area," and "impervious surface" have been added.
- 41/22 This section has been overhauled to align submission information with standards of review, and to add bullet headings for readability.
- 42/40 These are the review standards section which has been revised to align with submission requirements and to format each paragraph as a review standard.

45/6                    The Public Works Director has requested that allowed discharges include “individual” car washing, lawn watering runoff and dechlorinated swimming pool discharges.

47/17                   Changes to Article II are almost all the addition of bullet headings for readability.

Recommendation

At the June 21, 2016 meeting, the Cape Elizabeth Planning Board unanimously adopted the following motion:

BE IT ORDERED that, based on the supporting materials and draft ordinance amendments prepared and the facts presented, the Planning Board recommends the Technical Amendments to the Town Council for consideration.