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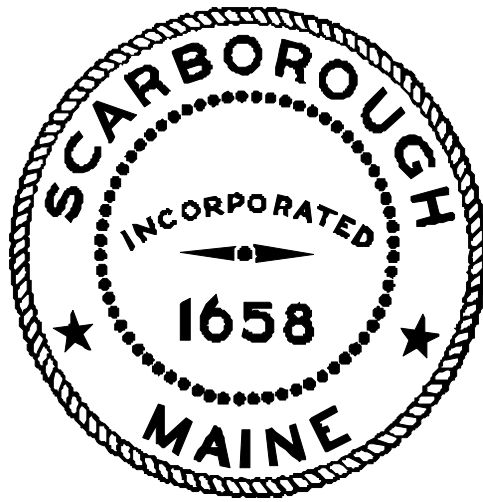
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CHAPTER 405A

TOWN OF SCARBOROUGH FLOODPLAIN MANAGEMENT ORDINANCE



**Enacted on March 7, 2007
Amended October 17, 2007**

**FLOODPLAIN MANAGEMENT ORDINANCE
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**CHAPTER 405A
TOWN OF SCARBOROUGH
FLOODPLAIN MANAGEMENT ORDINANCE**

ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Scarborough, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Scarborough, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Scarborough, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Scarborough has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Scarborough having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Scarborough, Maine.

The areas of special flood hazard, Zones A, A1-30, AO, and V1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Scarborough, Maine, Cumberland County," dated December 19, 1984 with accompanying "Flood Insurance Rate Map" dated April 2, 1992, which are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer except as provided in Article VII. This permit shall be in addition to any other permits, which may be required pursuant to the codes and ordinances of the Town of Scarborough, Maine.

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;
[Items H-K.3. apply only to new construction and substantial improvements.]
- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. in Zones A1-30, AO, and V1-30, from data contained in the "Flood Insurance Study - Town of Scarborough, Maine," as described in Article I; or,
 - b. in Zone A:
 - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.K. and IX.D.;
 - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
 - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
 - 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
 - 1. a Floodproofing Certificate (FEMA Form 81-65, 02/06, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI; (amended 10/17/2007)
 - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zones V1-30, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;
 - 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 - 4. a certified statement that bridges will meet the standards of Article VI.M.;
 - 5. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee for all minor development and for all new construction or substantial improvements as set forth in the Schedule of Fees shall be paid to the Town Clerk or Code Enforcement Officer and a copy of a receipt for the same shall accompany the application. (amended 10/17/2007)

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 - 1. the base flood and floodway data contained in the "Flood Insurance Study - Town of Scarborough, Maine," as described in Article I.;
 - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
 - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
 - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the

elevation requirements of Article VI, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

ARTICLE VI - DEVELOPMENT STANDARDS

All developments in areas of special flood hazard shall meet the following applicable standards:

- A. All Development - All development shall:
 1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 2. use construction materials that are resistant to flood damage;
 3. use construction methods and practices that will minimize flood damage; and,

4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- B. Water Supply - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
 - C. Sanitary Sewage Systems - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters.
 - D. On Site Waste Disposal Systems - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
 - E. Watercourse Carrying Capacity - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
 - F. Residential - New construction or substantial improvement of any residential structure located within:
 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
 3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
 - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified.
 4. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.
 5. Zones V1-30 shall meet the requirements of Article VI.P.
 - G. Non Residential - New construction or substantial improvement of any non-residential structure located within:
 1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,

- c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
- 2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
- 3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
 - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified; or,
 - c. together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of Article VI.G.1.
- 4. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D., or
 - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
- 5. Zones V1-30 shall meet the requirements of Article VI.P.

H. Manufactured Homes - New or substantially improved manufactured homes located within:

- 1. Zones A1-30 shall:
 - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
 - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
 - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).

- (3) all components of the anchoring system described in Article VI.H.1.c.(1)&(2) shall be capable of carrying a force of 4800 pounds.
2. Zone AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone AO shall have the lowest floor (including basement) of the manufactured home elevated above the highest adjacent grade:
 - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
 - b. at least three feet if no depth number is specified; and,
 - c. meet the anchoring requirements of Article VI.H.1.c.
4. Zone A shall:
 - a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and
 - b. meet the anchoring requirements of Article VI.H.1.c.
5. Zones V1-30 shall meet the requirements of Article VI.P.

I. Recreational Vehicles - Recreational Vehicles located within:

1. Zones A1-30 shall either:
 - a. be on the site for fewer than 180 consecutive days,
 - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
 - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.
2. Zones V1-30 shall meet the requirements of either Article VI.I.1.a. or b., or Article VI.P.

J. Accessory Structures - Accessory Structures, as defined in Article XIV, located within Zones A1-30, AO, and A, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,

6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways -

1. In Zones A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones A1-30 and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study - Guidelines and Specifications for Study Contractors, (FEMA 37/ January 1995, as amended).
3. In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones A1-30, AO, and A that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Article XIV;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. be engineered and certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:

- (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
3. The enclosed area shall not be used for human habitation; and,
 4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. Bridges - New construction or substantial improvement of any bridge in Zones A1-30, AO, A, and V1-30 shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
 2. a registered professional engineer shall certify that:
 - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
 - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- N. Containment Walls - New construction or substantial improvement of any containment wall located within:
1. Zones A1-30, A, and V1-30 shall:
 - a. have the containment wall elevated to at least one foot above the base flood elevation;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.
 2. Zone AO shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.
 3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:
 - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,

- b. at least three feet if no depth number is specified; and,
 - c. shall meet the requirements of Article VI.N.1.b. & c.

- O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30, AO, A, and V1-30, in and over water and seaward of the mean high tide if the following requirements are met:
 - 1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
 - 2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

- P. Coastal Floodplains -
 - 1. All new construction located within Zones A1-30, A, and V1-30 shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.
 - 2. New construction or substantial improvement of any structure located within Zones V1-30 shall:
 - a. be elevated on posts or columns such that:
 - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;
 - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
 - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
 - b. have the space below the lowest floor:
 - (1) free of obstructions; or,
 - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
 - (3) constructed with non-supporting breakaway walls, which have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
 - c. require a registered professional engineer or architect to: (amended 10/17/2007)
 - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55/June, 2000); and,

- (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.
3. The use of fill for structural support in Zones V1-30 is prohibited.
4. Human alteration of sand dunes within Zones V1-30 is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:
 - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
 - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
 - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
 - d. The structure shall have unfinished interiors and shall not be used for human habitation.
 - e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
 - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

Article VII - CONDITIONAL USE REVIEW

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

- A. Review Procedure for a Conditional Use Flood Hazard Development Permit.
 1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
 2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.

3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

ARTICLE VIII - CERTIFICATE OF COMPLIANCE

No land in a special flood hazard area shall be occupied or used and no structure, which is constructed or substantially improved, shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
 1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,
 2. for structures in Zones V1-30, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
 1. review the required certificate(s) and the applicant's written notification; and,
 2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

ARTICLE X - APPEALS AND VARIANCES

The Board of Appeals of the Town of Scarborough may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:

1. a showing of good and sufficient cause; and,
 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
 3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - c. that the granting of a variance will not alter the essential character of the locality; and,
 - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
1. other criteria of Article X and Article VI.K. are met; and,
 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;

2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

ARTICLE XI - ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:
 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;

2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

ARTICLE XII - VALIDITY AND SEVERABILITY

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

ARTICLE XIV - DEFINITIONS

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory Structure:

Means a small detached structure that is incidental and subordinate to the principal structure.

Adjacent Grade:

Means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of Shallow Flooding:

Means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard:

Means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

Base Flood:

Means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement:

Means any area of the building having its floor subgrade (below ground level) on all sides.

Breakaway Wall:

Means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building:

See Structure.

Certificate of Compliance:

A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

Code Enforcement Officer:

A person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances. (amended 10/17/2007)

Conditional Use:

Means a use that because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

Development:

Means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials. (*The new wording of this definition is directly from the FEMA regulations at 44 CFR 59.1*) (amended 10/17/2007)

Elevated Building:

Means a non-basement building

- a. built, in the case of a building in Zones A1-30, A, or AO, to have the top of the elevated floor, or in the case of a building in Zones V1-30 to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A1-30, A, or AO, Elevated Building also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zones V1-30, Elevated Building also includes a building otherwise meeting the definition of elevated

building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

Elevation Certificate:

An official form (FEMA Form 81-31, 02/06, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

Flood or Flooding:

Means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - 1. The overflow of inland or tidal waters.
 - 2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Study:

Means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM):

Means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study:

See Flood Elevation Study.

Floodplain or Flood-prone Area:

Means any land area susceptible to being inundated by water from any source (see flooding).

Floodplain Management:

Means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain Management Regulations:

Means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing:

Means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

Floodway:

See Regulatory Floodway.

Floodway Encroachment Lines:

Mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard:

Means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally Dependent Use:

Means a use, which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic Structure:

Means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;
or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior, or
2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum:

Means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor:

Means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this Ordinance.

Manufactured Home:

Means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision:

Means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level:

Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Minor Development:

Means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD):

Means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)."

New Construction:

Means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

100-year flood:

See Base Flood.

Recreational Vehicle:

Means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway:

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Riverine:

Means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area:

See Area of Special Flood Hazard.

Start of Construction:

Means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or

modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure:

Means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Substantial Damage:

Means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement:

Means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

Variance:

Means a grant of relief by a community from the terms of a floodplain management regulation.

Violation:

Means the failure of a structure or development to comply with a community's floodplain management regulations.

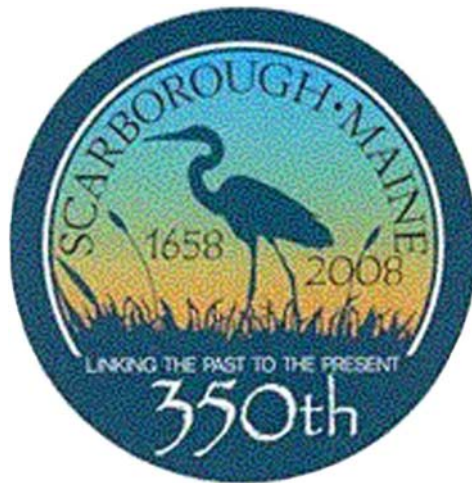
ARTICLE XV - ABROGATION

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

CHAPTER 405B

SITE PLAN REVIEW ORDINANCE

TOWN OF SCARBOROUGH



Revised as of August 17, 2005
Amended November 7, 2007
Amended January 6, 2010
Amended May 5, 2010

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**CHAPTER 405B
TOWN OF SCARBOROUGH
SITE PLAN REVIEW**

I. Purpose

The Town of Scarborough finds that uses and structures for which site plan submissions are required are potentially significant additions to the community's built and natural environment as well as to the residential, commercial or industrial neighborhood in which they are proposed. The purpose of site plan review is to ensure that the design, layout and construction of these additions to the community constitute suitable development and will not result in a detriment to the neighborhood, community or environment. The standards and requirements of this ordinance are intended to assure that adequate provisions are made for: traffic safety, access and circulation; emergency access and response; stormwater management; protection of natural features and the environment; water supply and sewage disposal; and minimizing impacts to abutting properties or uses.

II. Applicability

A. Activities Requiring Site Plan Review

Site Plan approval is required before any building or structure is erected or externally enlarged and before any parking, loading, or vehicular or pedestrian use is established, enlarged or changed, with the exception of the activities found below in Section II(B).

B. Activities Exempt from Site Plan Review [amended 05/05/2010]

The following activities shall not require site plan approval, however such activities may require building permits, plumbing permits or other local or State approvals:

1. The construction of, or addition to, single and two-family dwellings and their accessory buildings, structures and areas for parking and vehicular or pedestrian use.
2. Alterations to a building which in total do not increase the floor area of the building by more than 100 square feet.
3. Municipal buildings or uses, but shall be reviewed by the Planning Board for an advisory opinion to the Town Council or the applicable Town Department.
4. Buildings, structures and areas of impervious surface, the principal use of which is the conduct of accessory agriculture, commercial agriculture, or commercial animal husbandry, as are defined in Section VI. Definitions of the Town of Scarborough Zoning Ordinance.
5. Farm stands with no more than 400 square feet of retail sales area.
6. Temporary use of accessory storage containers.
7. Timber harvesting.

III. Administrative & Review Procedures

The Planning Board shall review and act on all site plans for development requiring review as outlined in Section II(A). The following procedures and application requirements shall govern the submission and review of the site and building plans.

A. Sketch Plan Review

Prior to submitting a formal site plan review application, the applicant may submit a sketch plan for review by the Planning Board. The sketch plan shall be conceptual and sketch plan review shall be considered an informal, informational review and discussion. The purpose of the sketch plan review process is to enable the applicant to present a concept plan for a development to the Planning Board in order for the Board to understand the type and scale of the proposed development as well as the associated on and off-site issues. Further, this process is intended to provide the applicant with preliminary feedback from the Board in order to identify any issues or revisions that should be addressed in the site plan review application.

The following information should be submitted or presented for discussion during sketch plan review:

1. The proposed site, including its boundaries, size, location, and landscape.
2. The environmental characteristics or constraints of the site, such as waterbodies, wetlands, floodways, steep slopes, etc.
3. The proposed use and scale of development, including a conceptual site plan, landscape plan, and building elevations.
4. An overview of any traffic issues or implications.
5. An overview of the local regulations and State permits that may apply to the proposed project and any requested waivers of such regulations.

The sketch plan review shall be conceptual and informational, and there shall be no formal action by the Planning Board. Further, the submittal and review of a sketch plan shall not be considered the creation of a pending proceeding under 1 M.R.S.A. § 302. Following sketch plan review, an applicant must submit a formal site plan review application in order to seek site plan approval.

B. Site Plan Application Procedures & Action

1. An application for site plan review shall be submitted to the Planning Board with the requisite fees and submission requirements, as outlined in Section III(C) of this ordinance. Upon receipt of any application that meets the submission requirements the Town Planner shall schedule the site plan for review on the next available Planning Board meeting agenda. An initial determination as to the completeness of the application shall be made by the Town Planner and Town Engineer, subject to

final determination by the Planning Board. The Planning Board reserves the right to request additional plans or information, as stated in Section III(C)(8), depending on the nature of the proposal and its anticipated impacts. The Planning Board may also engage the services of one or more professional consultants to review the materials submitted by the applicant, the cost of which shall be paid by the applicant as provided in Section VI(B) of this ordinance.

2. No application for site plan review shall be considered complete nor acted upon by the Planning Board until all special exceptions or variances which may be required for a development have been approved. The Planning Board may conduct its shoreland zoning or subdivision review concurrently with a project's site plan review.
3. The Planning Board may make a decision at the initial Planning Board meeting at which a site plan is heard or may request additional meetings to receive revised plans or additional information pertaining to the proposal, and then issue a decision. The Planning Board may deny the application, approve the site plan as submitted, or approve the site plan with such conditions as the Board finds necessary to ensure compliance with the standards of this ordinance and other applicable ordinances of the Town of Scarborough.
4. If a site plan application is denied, a substantially similar application shall not be brought before the Planning Board within one (1) year from the date of the denial of the original application. This limitation may be waived if the majority of the Board finds that substantial new evidence exists or an error or mistake of law or misinformation concerning the original application is identified.
5. Any appeal of a Planning Board decision on an application for site plan review shall be taken directly to Cumberland County Superior Court. Decisions of the Planning Board are not appealable to the Scarborough Board of Appeals.
6. Upon written request, the Town Planner may approve transfer of Site Plan approval granted to the project owner to an alternative developer or property owner, or the Planner may refer any request for transfer to the Planning Board for decision. A transfer shall be approved only if the new developer or owner has the financial and technical capacity to comply with the requirements of the site plan approval.
7. Final approval shall expire one (1) year from the date of such approval unless the applicant has started substantial construction. The Town Planner may extend final approval for one (1) additional year for good cause, provided a written request for extension is submitted before the expiration of the approval. At his option, the Town Planner may refer any request for extension to the Planning Board for decision.
8. The property shown on the approved site plan may be developed and used only as shown on the plan. All elements and features of the plan and all representations made by the applicant which appear in the record of the Planning Board proceedings are conditions of approval. No change from the conditions of approval is permitted unless an amended site plan is approved by the Planning Board.

9. The text of paragraph 8, above, shall be included as a note on the approved site plan.
10. A request to amend an approved site plan shall be processed in the same manner as an application for site plan review, except that the Town Planner may grant preliminary waivers of submission requirements, subject to review of such waivers by the Planning Board when the Board takes up the request for amendment.

C. Submission Requirements

The applicant shall submit to the Planning Board fourteen (14) copies of the following plans and information:

1. A boundary survey prepared by a professional land surveyor licensed by the State of Maine indicating the boundary lines, dimensions, encumbrances, water bodies, water features, zoning designation(s) and topography of the site. This boundary survey shall be prepared at a scale no greater than one (1) inch = forty (40) feet. Plans showing engineering details submitted as part of the site plan application may be prepared by either a professional land surveyor or by a professional engineer.
2. A site plan(s), at a scale no greater than one (1) inch = forty (40) feet, showing all existing and proposed buildings, contour elevations, structures, parking spaces and layout, driveways, driveway openings, service areas, proposed outside display or vending areas, proposed grades and drainage facilities, proposed water and sewage facilities or connections, landscaping plan including proposed trees and planting areas, proposed locations of fences, walls, signs and advertising features, proposed walkways and pedestrian amenities, and a lighting plan. The site plan shall also include a locus map showing the relationship of the project to the surrounding area at a scale no greater than one inch equals 2,000 feet. The site plan shall also show all contiguous land owned by the applicant or the owner of the land proposed for development.
3. Building plans showing the floor plans, an outside access plan, and all elevations. The elevations shall indicate the proposed material and color of all of the proposed principal buildings and structures. The Planning Board may also require elevations of the accessory buildings and structures depending on their size and location.
4. Stormwater management systems, details and calculations.
5. A written statement prepared by a Maine Licensed Professional Engineer that describes the potential traffic flow patterns into and upon the site for both vehicles and pedestrians, the expected peak hour trip generation associated with the proposal, and the measured sight distance of each proposed driveway access. A traffic impact study shall be submitted for any project forecasted to generate 35 or more trip ends during any peak hour or if a project is forecasted to cause an existing access with less than 35 peak hour trip ends to exceed this threshold. The Planning Board or Town staff may also require a traffic study if specific safety or capacity issues have been identified for the general vicinity of the development. The scope of the study shall be determined based on discussions with the Town's Traffic Engineer and be completed

by a Registered Professional Engineer with significant experience in traffic engineering. The study should be appropriate for the level of impact. At a minimum the study shall contain the following information: collision history at the intersection of the proposed street/driveway, capacity evaluation at the proposed driveway, sight distance analysis, Road Impact Fee calculations and the need for improvements such as turning lanes, signalization, etc. In compiling a traffic study, trip generation shall be based upon the most recent edition of the ITE's "Trip Generation" Manual and shall include an evaluation of each peak hour condition.

6. Any proposed off-site improvements to roads, sidewalks, natural areas or other infrastructure as may be necessary to accommodate the proposed development.
7. A lighting plan in compliance with Section IV(H) of this ordinance.
8. Reports from the Police Chief, Fire Chief, and to the extent applicable, from the Water District and Sanitary District, containing their requirements or recommendations.
9. Such other information or plans as may be necessary to enable the Town Planner, Town Engineer, Code Enforcement Officer, and Planning Board to determine that the proposed structure and use of the land will conform to the provisions of this ordinance, the Scarborough Zoning Ordinance and, where applicable, the Scarborough Shoreland Zoning Ordinance.
10. A list of any requested waivers of required submissions and waivers from the standards of this ordinance.
11. A description of method to be used to permanently delineate wetland buffers to prevent encroachment. [08/17/2005]

The Planning Board may waive any of the above submission requirements if the Board finds that the required information is not necessary due to special circumstances of a particular site plan, or the nature or scale of the proposed development.

IV. Performance & Design Standards

The following minimum performance and design standards shall apply to all site plans and shall serve as the minimum requirements for approval of any application. However, where the Planning Board finds that due to the nature or special circumstances of a particular plan the requirements of certain standards are not requisite to the interest of public health, safety and general welfare, the Planning Board may waive such requirements, subject to appropriate conditions to achieve the intent of this ordinance.

A. Site Utilization & Layout

The primary goal of the site plan review process is to produce attractive and functional sites that compliment and conform to both the natural and built environment in which they are proposed. To this end, the built portions of a site shall be laid out in only the most

environmentally suitable locations for development. Structures and impervious areas shall be designed around, and away from, resource areas such as wetlands, steep slopes, water bodies and other unique natural features. Once the build-able portion of a site is identified, the principal building(s) is the most critical amenity to orient and position, as it is the focal point of the site in regards to use, visitation, and aesthetics. The principal building(s) shall be oriented on the site in a way that is compatible with neighboring structures and the development pattern in the vicinity. The building(s) shall also be positioned to provide an aesthetic and functional relationship with surrounding streets and sidewalks to ensure attractive and efficient vehicle and pedestrian access. Parking areas, driveways, access points and sidewalks shall be designed around, and to serve, the principal building(s) and shall also compliment the neighboring development patterns and transportation networks as well as the Comprehensive Plan guidelines.

B. Site Access

Vehicle access to and from the site shall be safe and convenient, shall minimize conflict with the existing flow of traffic, and shall be from roads that have adequate capacity to accommodate the additional traffic generated by the development. Access management techniques such as limiting the number of driveways and combining driveways preserves mobility and improves safety, and shall be incorporated to the extent feasible.

As used in this Section IV(B), the term “street or driveway” includes both public and private local, collector and arterial streets, as well as entrance roads.

1. Entrance Location & Design

- a. Any street or driveway access shall be separated from any other street or driveway, existing or proposed, on-site or off-site, in accordance with the following table. The Planning Board may relax these standards only upon finding, based on a traffic study, that the location of the street or driveway closer than these minimums is necessary for effective utilization of the site or to enable the sharing of an access with an adjacent lot to reduce the total number of necessary curb cuts, and will not cause unreasonable congestion or unreasonable safety hazards. Driveway separation shall be measured from the edge of the proposed street/driveway entrance to the edge of the alternative entrance, excluding the radii.

The location of the site’s access shall also consider the existing location of driveways and entrances across a road or highway and shall attempt to meet the same separation standards established below. Entrances having the same centerline and situated directly across a road or highway from a proposed street or driveway shall not apply to this spacing requirement.

POSTED SPEED IN M.P.H.	SEPARATION IN FEET
25 or less	90’
30	105’
35	130’

40	175'
45	265'
50	350'
55 or more	525'

- b.** Any street or driveway access shall be so designed in profile and grading and so located as to provide the minimum sight distance measured in each direction as specified in the Maine Department of Transportation’s “Entrance Rules - Chapter 299, Part B.”
- c.** Driveway grades at street intersections shall not be more than five percent (5%) up or down for the first fifty (50) feet from the street, unless otherwise approved by the Planning Board.
- d.** Streets and driveways shall be located not less than 125 feet from the tangent point of the curb radius of any intersection. However, a greater distance or movement restrictions shall be provided if necessary based on the results of a vehicle queuing analysis at the intersection.
- e.** When serving an individual site, no part of any street or driveway shall be located within a minimum of ten (10) feet of a side property line. Alternatively, when a street or driveway serves two (2) or more adjacent sites, the Planning Board may allow the street or driveway to be located on or within ten (10) feet of a side property line between the sites. The sharing of street or driveway accesses between sites should be incorporated whenever feasible to limit curb cuts.
- f.** Where a site has frontage on two or more streets, the Planning Board will require that the access to the site be provide off the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians. For developments with significant traffic volumes of 50 or more peak trips, the Planning Board will consider access to more than one street, providing a traffic study clearly demonstrates a traffic safety and congestion benefit will result.
- g.** There shall be no more than one full service street or driveway connection from any lot to any street, except when an additional entrance/exit must be provided to prevent traffic hazards or congestion. If two curb cuts are found to be necessary for congestion or safety reasons they shall be separated in accordance with the separation requirements in Section IV(B)(1)(a), above.
- h.** Streets and driveways shall intersect the road at an angle as near to ninety (90) degrees as site conditions will permit and in no case less than seventy-five (75) degrees.
- i.** Streets and driveways intersecting collector and arterial roadways shall be adequately lit.

- j. The level of service at a proposed signalized intersection shall be “D” or better. At an existing signalized intersection, the level of service shall not be reduced below “D” by the development. If an existing signalized intersection is operating below a LOS “D” pre-development, then the development shall not increase the delay at the intersection, unless this standard is waived by the Planning Board. At an un-signalized intersection, if the level of service is forecasted to be less than a “D” post-development, then the installation of a traffic signal and/or additional turning lanes shall be investigated. If these improvements are found not to be warranted, than a level of service less than “D” may be acceptable.

C. Internal Vehicular Circulation

The layout and circulation pattern within the site shall provide for the safe and convenient movement of passenger, service, and emergency vehicles through the site. The circulation layout shall also provide a safe, accessible pedestrian environment as well as encourage intra-parcel travel, minimizing curb cuts and unnecessary roadway travel in keeping with the access management goals of section B.

- 1. Street and driveway dimensions. The dimensions of streets and driveways shall be designed to adequately accommodate the volume and character of vehicles anticipated to visit the site on a daily basis. The required minimum and maximum dimensions for driveways are indicated below. Streets and driveways serving large volumes of daily traffic or truck traffic shall be required to establish high to maximum dimensions.

LAND USE	ONE-WAY WIDTH (FEET)	TWO-WAY WIDTH (FEET)
Residential	12 to 14	20 to 24
Commercial & Industrial generating between 10 - 50 truck trips per hour	15 to 25	26 to 30
Commercial & Industrial generating 50 or more truck trips per hour	Maine DOT Criteria to Apply	Maine DOT Criteria to Apply

- 2. A site development access driveway profile shall be designed to conform to the natural topographic features of the site, to the extent feasible. Driveways serving residential development shall be between 0.75% and 15% up or down. Driveways serving commercial or industrial developments shall be between 0.75% and 8% up or down.
- 3. The construction and materials used for a driveway, street, parking lot and drainage infrastructure shall comply with the latest standard specifications issued by The State of Maine Department of Transportation and as approved by the Planning Board. Specific construction details for this infrastructure shall also be approved by the Planning Board.

4. The layout and design of driveways and parking areas shall provide for safe and convenient circulation of vehicles throughout the site and shall provide the necessary curbing, directional markings, and signage to achieve this requirement. The layout, design and circulation pattern must also provide for pedestrians and cyclists as well as emergency, delivery, and service vehicles.
5. Traffic calming measures shall be included where appropriate to discourage speeding within the site and between abutting sites. Measures may include speed tables, on-street parking, raised crosswalks, vertical curbing, curvilinear road alignments, roadside plantings, neck-downs, curbed islands, signage or other traffic calming techniques.
6. Where feasible, connections between parking lots and driveways on adjacent parcels shall be provided to facilitate deliveries and minimize turning movements onto primary roads. Internal connections shall be designed to provide safe, direct access between adjacent lots in a manner that prevents their use as vehicle shortcuts. The site plan shall show stub outs, or other driveway or parking lot linkages, anticipating future vehicular connections to abutting undeveloped property.
7. Identifiable routes of access for emergency and service vehicles shall be provided to and around the buildings on the site.
8. Drive-through lanes shall minimize conflicts with pedestrian circulation routes. Motorists shall be made aware of pedestrians through signage, lighting, raised crosswalks, changes in paving or other devices. The site plan shall be designed to minimize queuing in parking lots or other areas which would cause congestion or unsafe conditions.
9. Service drives shall be separated from internal walkways, parking areas, or pedestrian use areas by landscaped islands, grade changes or other devices to minimize pedestrian contact.

D. Parking Areas

Parking lots shall be designed to complement adjacent buildings, the site, and the neighborhood by not being a dominant visual element. Every effort shall be made to reduce the scale of parking lots for aesthetic and stormwater reasons. Parking areas shall balance the needs of both vehicles and pedestrians. Parking lots shall be accessible and organized to serve the motorist, while being safe and pedestrian-friendly.

1. Off-street parking shall conform to Section XI., Off-Street Parking & Loading Requirements, of the Zoning Ordinance.
 - a. If an applicant can demonstrate to the Planning Board that the nature or operation of the proposed use will not necessitate the minimum parking space requirements found in Section XI., the Planning Board shall have the authority to approve a site plan showing fewer parking spaces than are required. This allowance may only be provided, however, if the site plan incorporates a

landscaped area that is feasible and adequate to accommodate the requisite parking under Section XI., should there be a future change in the nature or operation of the use necessitating the required parking.

- b. The Board of Appeals may also permit a reduction in the required parking spaces as per Section XI(F) of the Zoning Ordinance.
 - c. For uses that experience high turn-over traffic volumes (i.e. typical visitation is less than one-hour) the Planning Board may require the dimensions of parking spaces in close proximity of the building entrance to be 10 feet wide by 20 feet long.
 - d. The Planning Board may approve parking spaces for use by employees or residential parking to be 8 feet wide. All 8 foot wide parking spaces that are provided for employees and residential uses must be in physically segregated parking areas and the design of such parking areas must be shown on an approved site plan. No more than 10% of off-street parking spaces may be designed with a width of less than 9 feet.
2. There shall be adequate provisions for ingress and egress to all parking spaces. The following aisle widths shall be required to ensure adequate and safe access to parking spaces. Only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than ninety (90) degrees.

PARKING ANGLE DEGREE	MINIMUM AISLE WIDTH (FEET)
0° parallel parking	12'
30°	12'
45°	13'
60°	18'
90° perpendicular parking	25'

3. Parking lots shall be designed as part of the overall plan for the site, and shall be coordinated with building entrances, lighting, and landscaping.
- a. Whenever feasible, the majority of parking areas shall be located at the rear or sides of the building(s) being served, except where parking would be located adjacent to a residential neighborhood or when the parking is part of a multi-building site. Where such placement is not possible, the parking area shall be screened with evergreen trees, earth berms, fences, or shrubs.
4. There shall be adequate provisions made for handicap parking in accordance with the ADA Standards for Accessible Design and marked by the international symbol of accessibility. Handicap accessible spaces shall be designated in the closest located spaces on a site to the accessible entrances. Such spaces shall be provided in accordance with the following table and shall be designed in accordance with the ADA Design Standards.

TOTAL SPACES	TOTAL ACCESSIBLE SPACES REQUIRED COLUMN A	SPACES WITH 60" WIDE ACCESSIBLE AISLE	VAN ACCESSIBLE SPACES WITH 96" WIDE ACCESSIBLE AISLE
1 to 25	1	0	1
26 to 50	2	1	1
51 to 75	3	2	1
76 to 100	4	3	1
101 to 150	5	4	1
151 to 200	6	5	1
201 to 300	7	6	1
301 to 400	8	7	1
401 to 500	9	7	2
501 to 1000	2% of total parking provided	7/8 of column A	1/8 of column A
1001 and over	20 plus 1 for each 100 over 1000	7/8 of column A	1/8 of column A

This table is in accordance with the ADA Design Guide, U.S. Department of Justice, Civil Rights Division, Disability Rights Section

- 5.** Parking areas shall be landscaped and screened in accordance with the following standards:
- a.** Paved surfaces of parking areas shall be separated from buildings by a minimum of five (5) feet of landscaping and a five (5) foot walkway. Beyond the 5 foot minimum, the width of the landscaping shall be proportional to the height of the building.
 - b.** The scale and impervious area of parking lots with more than 15 spaces shall be broken up with trees, landscaped islands, grade changes, low walls, or other features.
 - c.** At a minimum, between 10% and 15% of the parking lot shall be landscaped. The higher percentage (15%) shall be used for larger parking lots consisting of 40 or more spaces. The lower percentage of 10% shall be used for smaller parking lots containing fewer than 40 parking spaces. Planting islands shall be a minimum of 9 feet in width. All parking lot landscaping shall be hearty and appropriate for parking lot conditions. Existing natural groupings or clusters of trees shall also be preserved.
 - d.** Where front parking is permitted between the building and the road it shall be screened by trees, berms, fencing, shrubs, low walls, perennial masses, or a combination of these elements. The height of the screening shall be

approximately 3 feet to minimize the view of the parking lot and vehicles, while providing a clear view of the building and signage.

6. Parking areas with a single point of access are strongly discouraged. Dead-end parking lots shall not contain more than ten (10) spaces. Where dead-end lots must be used, adequate space shall be provided to safely turn a vehicle around to avoid backing out.
7. Directional signage and markers shall be utilized in diagonal parking lot arrangements.
8. Provisions shall be made for snow storage in the design of all parking areas. The areas shall be shown on the site plan to avoid conflicts with landscaping, visibility, drainage, or icing during the winter season.

E. Pedestrian Ways, Space & Alternative Transportation [amended 11/07/2007]

Developments shall provide attractive, safe, and functional walkways within the site and for connection of the site to the Town's sidewalk system when a public sidewalk exists or is planned in the vicinity of the site. Walkways shall be designed to direct pedestrians to the main entrances of the buildings from the public right-of-ways, abutting properties and businesses, and the parking areas on the site. Entrances to buildings shall also be designed to provide some outdoor space for pedestrian use, such as seating, dining, or lawn area.

1. Continuous internal walkways shall be provided from any existing or planned public sidewalk in the street(s) adjacent to the site to the principal customer entrances on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as transit stops, street crossings, and building entrances.
2. If a sidewalk does not exist in the street(s) adjacent to the site but the Town has identified the construction of a sidewalk for this portion of the street(s) in the Town Wide Transportation Study (March 2005) the applicant shall be responsible for the construction of a sidewalk along the full width of the frontage or in a location otherwise determined by the Planning Board. The applicant shall not be responsible for the construction of a sidewalk in a location for which the Town Council has already adopted and funded a Sidewalk Capital Improvement Plan.
3. If a sidewalk is required to be constructed, the sidewalk shall be located within the right-of-way of the public street unless the width of the right-of-way will not allow for this. In this case, the sidewalk shall be located on the parcel in the area immediately adjacent to the street right-of-way unless the topography or natural characteristics of the site or existing development make this impractical. When determining the location and alignment of new sidewalks, existing street trees shall be avoided and preserved to the extent possible to further the goals of "subsection F Landscaping, Buffering and Greenspace" of this Ordinance.
4. If the sidewalk will be located outside of the street right-of-way, the applicant shall convey an easement to the Town for the sidewalk area.

5. When a sidewalk is constructed wholly within the street right-of-way it must conform to the design and construction requirements set forth in the Town's Street Acceptance Ordinance (Chapter 701) for the class of street. When a sidewalk is constructed wholly or partly outside of the street right-of-way the location and design of the sidewalk must be approved by the Planning Board as part of the site plan approval.
6. Internal walkways shall be a minimum of 4 feet in width for ADA compliance and shall be raised and separated from vehicular traffic by 6 inch curbing except at crosswalks and access areas.
7. Within larger parking lots where the main building entrance will be 50+ feet from at least half of the parking spaces, a network of walkways shall be provided. These walkways shall be separated from parking bays and travel aisles by raised curbing or landscape buffering and shall be aligned with the main entry or a focal point on the building for way finding. The width of these internal parking lot walkways shall be five feet or more to enable the use of shopping carts or heavy pedestrian traffic.
8. Walkways shall be located where motorists can anticipate pedestrians. Likewise, walkways shall be designed to give pedestrians a view of oncoming vehicles and shall avoid bisecting drive-through lanes, access and service drives, and other high-traffic routes.
9. Internal crosswalks shall be provided and marked by a change in pavement texture, pattern, or color to maximize pedestrian safety. The materials selected shall be highly durable and low maintenance. Raised crosswalks shall be considered at key locations as a traffic calming device as well as to make crosswalks more visible.
10. Areas adjacent to walkways shall be landscaped with trees, shrubs, ground cover, benches or other materials. Walkways in parking areas shall include landscaped islands for visual relief, shade, and scale.
11. All walkways and sidewalks shall be designed for efficient snow removal to enable year-round use.
12. Major entrances to new or renovated buildings shall be complemented with outdoor seating or use areas. Canopies, recessed entrances, seating areas, decorative plantings, lawn areas and other elements may be incorporated around the building entry to serve as pedestrian space or gathering areas.
13. Provisions shall be made for alternative transportation if the site is located on a bus or bicycle route. Such provisions may consist of bus shelters, bicycle racks, or individual travel lanes for either mode of transportation.

F. Landscaping, Buffering & Greenspace

Landscaping shall be used to complement the architecture, enhance the human scale, reinforce circulation paths, highlight entrances, provide shade, and add color and seasonal interest. Buffering shall be used to minimize any adverse impacts or nuisances on the site or from adjacent areas. Greenspace shall be designated to preserve the natural features or resources of a site, to provide areas for active or passive recreation, or for visual and aesthetic benefits.

1. Native species shall be used to the greatest extent possible in all landscaping designs. If site improvements will create ten (10) or more new parking spaces or create 2,000 sq. ft. or more of new building footprint, a landscape plan shall be prepared by a landscape architect registered in Maine.
2. The applicant shall use plant material and species that require a low degree of maintenance and that are hearty and resistant to insect infestation, drought, disease, road salt, and auto emissions, and are tolerant of local winter conditions.
3. Wherever practical, existing specimen trees, tree clusters or other significant vegetation shall be preserved. The landscape plan shall illustrate which vegetation will be preserved and what protection measures will be implemented. Further, transplanting and reusing on-site trees and other vegetation is strongly encouraged.
4. A varying, but simple, collection of plant materials and species is encouraged to create a distinctive, yet low maintenance environment. A list of suggested plantings in Scarborough is included in an appendix to this ordinance. Plant materials shall meet the following minimum sizes, unless alternative sizes are required given a particular site or location:

VEGETATION	MINIMUM SIZE
Canopy Trees	2 ½" caliper
Flowering Trees	2" caliper
Evergreen Trees	5 to 7' in height
Deciduous Shrubs	24" in height
Evergreen Shrubs	18" height / spread
Perennials	2 year clumps
Ornamental Grasses	2 year clumps
Ground Covers	3" pots

5. Landscaping is necessary in parking lots to enhance their appearance, lessen the scale of paved areas, define edges, and provide shade and cover. The following standards shall apply within parking areas:
 - a. At a minimum, between 10% and 15% of the parking lot shall be landscaped. The higher percentage (15%) shall be used for larger parking lots consisting of 40 or more spaces. The lower percentage of 10% shall be used for smaller parking lots containing fewer than 40 parking spaces. Planting islands shall be

a minimum of 9 feet in width. All parking lot landscaping shall be hearty and appropriate for parking lot conditions and snow storage.

- b. Trees in parking lots shall be planted in informal groups, straight rows, or concentrated in certain areas. Trees shall be planted at least five feet from the end of parking lot islands for both motorist visibility and tree health.
 - c. Plantings, trees, and other landscape elements shall separate parking lots from neighboring streets to minimize views of vehicles and paved areas, while still enabling views of the building.
 - d. Trees and shrubs in and near parking areas shall be trimmed and maintained so that they do not block views needed for safe movement of motorists and pedestrians.
 - 6. Trees and plantings shall be coordinated with the on-site architecture by complementing the building elevations without blocking storefronts, signs, or lighting.
 - 8. Large spreading deciduous trees shall be planted in appropriate locations along town roads and private access drives to define the edge of the travelway, provide shade for pedestrians, clean the air, and add scale to transportation corridors and commercial developments.
 - 9. Landscape plans presented to the Planning Board shall anticipate a 3 to 8 year growing cycle to achieve maturity for shrubs and 15 to 20+ years for trees. The plan shall be designed and plantings selected with due consideration for maintenance requirements.
 - a. A written maintenance plan shall be provided for the landscape elements to be installed on the site. The plan shall include initial installation, guarantee period, replacement policy, annual maintenance, and irrigation provisions. All lawns and plant materials shall be guaranteed for a period of not less than 2 years.
 - b. The use of plant materials and landscape elements that require a low degree of maintenance is strongly encouraged. Vegetation to consider includes drought resistance, tolerance to auto emissions, disease resistance, and relatively light leaf litter.
 - 10. Buffers shall be provided to shield structures and uses from the view of abutting properties, where the abutting properties would otherwise be adversely impacted. In particular, buffers shall be used to screen garbage collection areas, loading areas, waste storage, commercial vehicle parking and the like. Buffers may include fences, plantings, berms, and walls used to minimize any adverse impacts and nuisances on a given site or abutter.

11. Special landscaping and buffer requirements pertain to development along the Route One Corridor. Sites abutting Route One shall provide a green strip buffer along Route One at a depth of no less than 15 feet from the sideline of Route One. This 15 ft. may include trees, grass, plantings, berms, and mounds as well as sidewalks, fences or other landscape elements. The trees and plant materials within this buffer shall also conform to the planting schedule of the document entitled: Guiding Growth & Public Improvement on Route One, Scarborough, Maine, authored by Terrence J. Dewan & Associates, dated June 1993.
12. In cases where the Scarborough Zoning Ordinance requires buffers for commercial or industrial developments that abut residential zoning districts or uses, the Planning Board may require evergreen or deciduous trees within these buffer areas. An evergreen buffer requires three (3) rows of staggered plantings. The rows shall be eight (8) feet apart and the evergreens planted six (6) feet on center. Deciduous buffers require trees with a minimum of 3 inch caliper and rows and spacing to be determined by the Board based on the characteristics of the site and uses.

G. Stormwater Management

Adequate provisions shall be made for the control, collection and disposal of all stormwater runoff from the site. Drainage plans, details, and calculations shall address the two, ten and twenty-five year, twenty-four hour storm events. These plans shall be designed to compliment the hydrology and natural features of the site and shall not cause adverse impacts to abutters, downstream properties, or receiving waters.

1. Stormwater management areas shall be treated as integral, attractive and natural parts of the landscape. Natural areas shall be used to retain and drain stormwater to the extent possible.
2. When areas of the site are to be paved they may be designed and constructed with pervious and semi-pervious alternatives to bituminous pavement. Alternative parking surfaces, such as porous pavement, are intended to minimize storm water run-off and facilitate infiltration and natural hydrological functions to the extent feasible.
3. Stormwater treatment basins shall be patterned after natural features and shall avoid hard geometric shapes. These basins shall be planted with wetland species to improve their aesthetic and habitat values.
4. Abrupt changes to natural drainage ways and grades shall be avoided. Natural drainage ways shall not be filled unless specifically permitted by the Planning Board and transitional grading shall be used to blend all earthworks into the natural contours of the site.
5. Drainage systems shall be designed so as to not impact streets, adjacent properties, downstream properties, and local soils and vegetation. The system shall also consider and incorporate the upstream runoff that may pass over the site.

6. The water quality of receiving waters shall not be degraded by the stormwater runoff from the site. Oil and grease traps, on-site vegetated waterways, drainage swales, and vegetated buffer strips shall be utilized as needed to aid in the prevention of degraded receiving waters.
7. Where ground protection and rip rap is necessary in visible locations it shall be constructed of hand-placed rock or geo-grid, rather than course rip-rap.
8. Wherever feasible, drainage basins shall be designed to be shared between abutting properties to lessen the amount of land area devoted to stormwater management.

H. Lighting

Outdoor site lighting shall be designed to balance visibility and safety on the site, while respecting abutting properties and minimizing light pollution and sky glow. Functional, safety, and aesthetic goals shall be achieved with fixtures and locations that are planned as part of the overall site design.

1. A lighting plan shall be furnished with the site plan application. This plan shall include all lighting fixtures proposed to illuminate the buildings, travelways, loading areas, parking areas, walkways, and landscaping on the site. A photometric diagram shall be provided to show the illumination levels that will result from the proposed lighting. Lighting details and illustrations of the proposed fixtures shall also be included.
2. The location, design, and color of fixtures (poles and luminaries) shall complement the architecture, landscaping, parking areas, and street furnishings of the site to be developed or redeveloped in terms of form, style, and placement.
3. Cut-off fixtures shall be used to control glare, skyglow, and spillover onto adjacent properties. Cut-off fixtures control these impacts by directing light well below the horizontal. Non-cut-off fixtures, such as decorative or historic lamps, may be allowed by the Planning Board where they are designed to be lower luminance, limited in number, or distant from abutting residential uses.
4. The mounting height of light fixtures shall be in scale with adjacent buildings, access drives, and pedestrian ways. In general, the maximum mounting height along driveways or access ways shall not exceed 25 feet, and shall be reduced to 12 – 16 feet where sidewalks are present. Fixture heights in parking lots shall vary depending on the size and configuration of the lot. In general, the maximum mounting height shall be 20 feet, unless an increase in height can significantly reduce the number of fixtures necessary. The final height of fixtures shall be determined by the Planning Board.
5. The location and alignment of fixtures shall be coordinated with the orientation of buildings, the layout of parking and landscaped islands, and the driveway patterns. Light fixtures shall be sited within raised landscaped areas to avoid damage from

vehicles and plows, but shall also be coordinated with the plantings to avoid shadowing and dark spots from mature trees.

6. For safety and energy conservation purposes, illumination levels shall not exceed the minimums to provide safe conditions as currently recommended by the Illuminating Engineering Society of North America (IESNA). The individual IESNA standards shall be followed for roadway lighting, lighting for parking facilities, and pedestrian lighting. The use of metal halide lamps is required for parking lots and driveways for its color rendition and energy efficiency, unless an alternative is specifically approved by the Planning Board.
7. Wherever practical, lighting fixtures shall include timers, photo sensors, and other energy saving devices to lessen both energy consumption and unnecessary lighting.
8. Where commercial development abuts residential uses, cut off fixtures shall be used to eliminate spillover onto adjacent residential properties to less than 0.1 foot-candles. The lighting within the parking lots of commercial uses abutting residential areas shall reduce the lighting to an average of 0.2 foot-candles within one hour after closing.
9. Facade lighting may be used to illuminate buildings or landscaping, but must be properly sited, aimed, and shielded so that the lighting is directed only onto the building façade or plantings. Lighting fixtures shall not be directed toward adjacent streets, sidewalks or properties.

I. Architecture & Signage

The architecture of the building(s) and the aesthetics of the signage on a site shall follow traditional New England building forms and shall be designed to complement the neighborhood or village in which the site is located.

1. The signage for a site shall comply with Section XII, Sign Regulations of the Zoning Ordinance and shall be reviewed in conjunction with the site plan.
2. Buildings shall present an inviting, human-scaled façade to the street, internal drives, parking areas, and abutting properties. Wherever possible, entrances shall be clearly visible from the street and reinforced through site and architectural features designed to direct visitors to the building.
3. Building materials shall be treated as important design elements that define the appearance of the structure and strengthen the sense of identity throughout Scarborough. The use of materials that give the appearance of New England architectural forms are strongly encouraged.
4. Rooflines shall be designed to provide diversity in the form of the building and add visual interest to the streetscape. Specifically, rooflines shall be designed to reduce the mass of large buildings, emphasize building entrances, provide shelter or shade for pedestrians, and incorporate elements unique to Maine and New England.

5. Large retail buildings, linear commercial buildings, national franchise buildings, and service stations shall all comply with the specific requirements for such structures found in the *Design Standards for Scarborough's Commercial Districts, January 27, 2003*.

J. Public & Private Utilities

1. The Planning Board may require electric, cable television, and telephone lines to be underground. If these services are underground in the street or on adjoining properties, the new service shall be placed underground. Any utility installations permitted above ground shall be designed and located so as to have a harmonious relation to both neighboring properties and the site.
2. The site shall be served by an adequate supply of drinking water as well as sufficient flows for fire suppression. If a development intends to be served by a public water supply, the applicant shall furnish a written statement from the water supplier confirming that the project can be served.
3. The project shall provide for an adequate means of sewage disposal, whether it is on-site or tied into the public sewage collection and treatment system. An on-site system shall be in conformance with Scarborough's Local Plumbing Ordinance, Chapter 404A. If a development intends to be served by a public sewage system, the applicant shall furnish a written statement from the sanitary district confirming the project can be served.

K. Outdoor Storage

Outdoor storage shall be permitted only as allowed by the Scarborough Zoning Ordinance. The outside storage of goods, materials, merchandise, automobiles, automobile parts, waste collection facilities, dumpsters, containers, and the like shall be located to the side or rear of sites and screened from view, if feasible.

1. Fencing or vegetation shall be used to screen dumpsters or recycling areas from view. These facilities shall be consolidated where possible.
2. Areas for outdoor storage or containers shall be designed as an integral part of the site, landscaping, and architectural plan and shall be setback and screened from public and private ways, main entrances, public spaces, and abutting residential neighborhoods.

L. Design Standards for Commercial Districts

In addition to complying with the foregoing performance and design standards, all site plans for properties located in the Residence and Professional Office District (RPO), the Local Business District (B-1), the Town and Village Centers District (TVC), the General Business District (B-2), the Highway Business District (B-H), the Haigis Parkway District (HP), and any commercial uses within the Traditional Neighborhood Development Overlay (TND) shall comply with the more specific Design Standards for Scarborough's Commercial

Districts. In determining whether a project is designed in accordance with the Commercial Design Standards, the Planning Board may engage the services of appropriate professionals to review (at the applicant's expense) the materials submitted. In the event of a conflict or inconsistency between any requirement of the Design Standards and a requirement of this Ordinance, the Scarborough Zoning Ordinance, the Scarborough Shoreland Zoning Ordinance, or the Scarborough Subdivision Regulations, the more restrictive requirement shall apply.

V. Site Conditions & Environmental Considerations

Before and during construction, the applicant or developer shall abide by the following conservation, erosion, and sediment control measures as well as the site construction, safety, and hazardous waste standards.

A. Conservation, Erosion, & Sediment Control

1. Stripping of vegetation, re-grading and other development shall be performed in such a way as to minimize erosion.
2. Development shall preserve prominent natural features, keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water run-off.
3. Wherever feasible, natural vegetation shall be retained, protected, and supplemented.
4. The extent of disturbed area and the duration of exposure shall be proposed by the applicant for consideration by the Planning Board. The proposal shall conform to time schedules acceptable to the Planning Board or to the Town Planner and Town Engineer if the Planning Board so directs.
5. Disturbed soils shall be stabilized as efficiently as possible.
6. Temporary vegetation or mulching shall be used to protect exposed critical areas during development.
7. The permanent vegetation and mechanical erosion control measures shall be installed in conformance with a specified schedule as approved by the Planning Board or by the Town Planner and Town Engineer if the Planning Board so directs.
8. Until the disturbed area is stabilized, sediment in the runoff shall be trapped and contained by the use of debris basins, sediment basins, silt traps, silt fencing or other acceptable measures.
9. Whenever sedimentation is caused by stripping vegetation, re-grading or other development, it shall be the responsibility of the developer causing the sedimentation to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any resulting damages in an efficient manner.

10. Any developer conducting an activity on or across a stream, watercourse or swale or upon a floodway or right-of-way thereof shall maintain, as nearly as possible, the state of the stream, watercourse, swale, floodway or right-of-way during the activity. Following the activity, the water feature shall be returned to its original, or equal, condition.
11. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

B. Site Conditions

1. During construction, the site shall be maintained and left each day in a safe and sanitary manner. Any condition which could lead to personal injury or property damage shall be immediately corrected by the developer upon order by the Code Enforcement Officer or other authorized personnel. The developer shall make provisions for the disposal of oil, grease, and any other materials or equipment which may pose a threat to public health and safety. The site shall be regularly sprayed to control dust from construction activity.
2. Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials. Such material shall be removed or destroyed upon the request, and to the satisfaction, of the Code Enforcement Officer and must be accomplished prior to the issuance of an occupancy permit.
3. No substantial change shall be made in the elevation or contour of any lot or site by the removal or addition of earth, except as shown on an approved site plan. Minimal changes in elevations may be made only after approval by the Code Enforcement Officer. All permitted changes necessitated by field conditions shall be shown on the as built plans.
4. Prior to or during construction, the Code Enforcement Officer may require the installation or construction of improvements in order to prevent or correct a temporary condition on the site that could cause personal injury, damage to property, erosion, flooding, heavy construction traffic, creation of steep grades, or pollution. Required improvements may include berms, mulching, sediment traps, detention and retention basins, grading, plantings, retaining walls, culverts, pipes, guardrails, temporary roads, and other improvements specific to a condition. All temporary improvements shall remain in place and operation until otherwise directed by the Code Enforcement Officer.

VI. Fees

A. Application Fee

At the time of submission of a site plan review application, the applicant shall pay to the Town Treasurer an application fee. Said fee shall be non-refundable and shall be computed as specified in the *Schedule of Licenses, Permit and Application Fees* established by the Town Council.

B. Development Review and Construction Inspection Fee

Prior to the issuance of a building permit for the construction authorized by the site plan approval, the applicant shall pay to the Town Treasurer a Development Review and Construction Inspection Fee. Said fee shall be non-refundable and shall be computed and paid as follows:

1. The amount of the fee shall be determined by the Town Engineer, and shall include the actual costs incurred by the Town to engage consultants to undertake review of the applicant's site plan submissions plus the estimated cost to the Town of retaining the services of a qualified construction or site inspector under the employ of a licensed professional engineer to observe and inspect any improvements associated with the site plan approval.
2. If, upon completion of the required improvements, the actual cost of monitoring and inspection exceeds the amount paid at the time of issuance of the building permit, the applicant shall pay the additional amount to the Town Treasurer before the certificate of occupancy for the building or site shall be issued. If, upon completion of the required improvements, the actual cost of monitoring and inspection is less than the amount paid the Town shall return the unused portion to the applicant.

VII. Enforcement, Occupancy and Performance Guaranty

This ordinance shall be enforced by the Town of Scarborough Code Enforcement Officer. It shall be a violation of this ordinance (1) to undertake an activity requiring site plan review without first obtaining site plan approval from the Planning Board, (2) to develop or use any property for which a site plan has been approved except in the manner shown on the approved site plan and as per Section III(B)(8) of this ordinance, or (3) to violate any condition of approval of an approved site plan. Any person who violates this ordinance shall be penalized pursuant to 30-A M.R.S.A. section 4452. Each day a violation exists constitutes a separate violation.

A. Occupancy Permit and Performance Guaranty

An occupancy permit for the use or occupancy of any land, building, structure or part thereof requiring site plan approval shall be issued in accordance with Section IV(G), Certificate of Occupancy, of the Town of Scarborough Zoning Ordinance.

No occupancy for full or partial occupancy shall be issued by the Code Enforcement Officer until the Town Engineer, Town Planner or their designee are satisfied that the property has

been constructed in accordance with the approved site plan and conditions of approval, or that the Town has received a performance guarantee for the completion of specific outstanding site elements within a specified timeframe.

A performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or an irrevocable letter of credit in a form and from an issuer acceptable to the Town Treasurer. The amount of a performance guarantee shall be determined by the Town Engineer or his designee, following the submission of a cost estimate by the applicant, and shall be in an amount at least equal to the total cost of the remaining work to be completed.

VIII. Severability and Conflicts

A. Severability

In the event that any section, subsection or any portion of this ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection, or other portion of this ordinance.

B. Conflict

In the event that any provision of this ordinance is in conflict with or inconsistent with any provision of any other ordinance of the Town of Scarborough, the provision which establishes the most stringent requirement shall prevail.

IX. Meanings of Words

Where words or terms used in this ordinance are defined in the Town of Scarborough Zoning Ordinance, the Town of Scarborough Subdivision Ordinance or the Town of Scarborough Shoreland Zoning Ordinance, such definitions shall apply to this ordinance as well. Words or terms not so defined shall have their ordinary, customary meanings.

Appendix – Plant Materials List

The plants on this list have been derived from a number of sources to inspire a greater landscape variety in Scarborough. The final selection of materials shall consider the specific growing requirements and characteristics of each plant and the conditions of the site.

STREET TREES		ORNAMENTAL TREES	
Aesculus hippocastan	Baumanii Horsechest	Acer campestre	Hedge Maple
Acer campestre	Hedge Maple	Acer ginnala	Amur Maple
Acer ginnala	Amur Maple	Aesculus carnea	Red Horsechestnut
Acer x. freemanii	Armstrong Maple	Amelanchier canadensis	Serviceberry
Acer x. freemanii	Autumn Blaze Maple	Carpinus betulus	European Hornbeam
Acer rubrum	Red Maple	Carpinus carolineanum	American Hornbeam
Acer saccharum	Sugar Maple	Celtis occidentalis	Hackberry
Acer tataricum	Tartarian Maple	Cornus kousa	Kousa Dogwood
Acer triflorum	Three-flower Maple	Cornus mas	Cornealiancherry Dogwood
Amelanchier	Shadblow	Cotinus obovatus	American Smoketree
Betula nigra	River Birch	Crataegus crus-galli	Cockspur Hawthorne
Carpinus betula fastig.	Upright Hornbeam	Crataegus viridis	Winter King Hawthorne
Carpinus caroliniana	American Hornbeam	Halesia carolina	Carolina Silverbell
Cercidiphyllum japon.	Katsura Tree	Maacki amurensis	Maackia
Cladrastis lutea	Yellowwood	Magnolia loebneri	Loebner Magnolia
Corylus columna	Turkish Filbert	Magnolia stellata	Star Magnolia
Crataegus crusgalli	Cockspur Hawthorn	Malus species	Crabapple
Fraxinus americana	White Ash	Nyssa sylvatica	Tupelo
Ginko biloba	Maidenhair Tree	Ostrya virginiana	Ironwood
Gleditsia triacanthos	Thornless Honey Locust	Phellodendron arboretum	Amur Corktree
Gymnocladus dioicus	Kentucky Coffee Tree	Prunus sargentii	Sargent Cherry
Liriodendron tulipifera	Tulip Poplar Tree	Prunus subhirtell	Higan Cherry
Magnolia acuminate	Cucumber Tree	Pyrus calleryana	Bradford Pear
Prunus accolade	Accolade Cheery	Sorbus alnifolia	Korean Mountain Ash
Prunus maackii	Amur Chokecherry	Syringa reticulata	Tree Lilac 'Ivory Silk'
Quercus alba	White Oak		
Quercus bicolor	Swamp White Oak	EVERGREEN TREES	
Quercus coccinea	Scarlet Oak	Abies concolor	White Fir

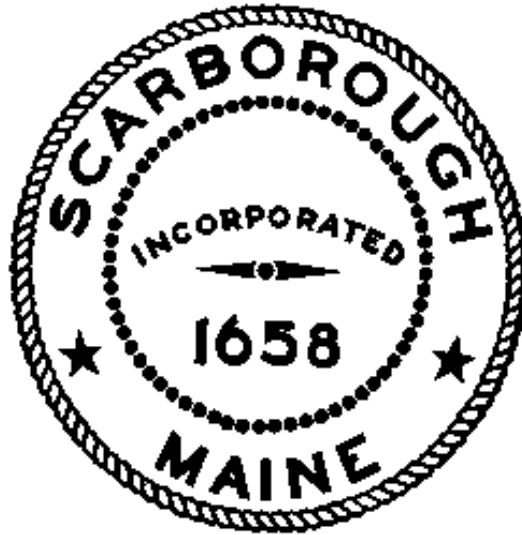
<i>Quercus imbricaria</i>	Shingle Oak	<i>Abies fraseri</i>	Fraser Fir
<i>Quercus palustris</i>	Pin Oak	<i>Picea abies</i>	Norway Spruce
<i>Quercus robur</i>	Upright English Oak	<i>Picea glauca</i>	White Spruce
<i>Quercus rubra</i>	Red Oak	<i>Picea omorika</i>	Serbian Spruce
<i>Quercus shumardi</i>	Shumard Red Oak	<i>Picea pungens</i>	Colorado Spruce
<i>Sophora japonica</i>	Regent Scholartree	<i>Pinus resinosa</i>	Red/Norway Pine
<i>Tilia cordata</i>	Littleleaf Linden	<i>Pinus strobus</i>	Eastern White Pine
<i>Ulmus parvifolia</i>	Lacebark Elm	<i>Thuja occidentalis</i>	American Arborvitae
<i>Ulmus americana</i>	Princeton American Elm	<i>Tsuga canadensis</i>	Canadian Hemlock
<i>Zelkova serrata</i>	Greenvase Zelkova	<i>Tsuga caroliniana</i>	Carolina Hemlock

FLOWERING & ORNAMENTAL SHRUBS		PERENNIALS	
<i>Aesculus parviflora</i>	Bottlebrush Buckeye	<i>Achillea millefolium</i>	Yarrow
<i>Aronia arbutifolia</i>	Red Chokeberry	<i>Aster x frikartii</i>	New England Aster
<i>Cotinus coggygia</i>	Common Smoketree	<i>Astilbe varieteis</i>	Astilbe
<i>Cotoneaster adpressa</i>	Creeping Cotoneaster	<i>Coreopsis verticillata</i>	Moonbeam Coreopsis
<i>Deutzia gracilis</i>	Slender Deutzia	<i>Echinacea purpurea</i>	Purple coneflower
<i>Enkianthus campanulat.</i>	Redveined Enkianthus	<i>Hemerocallis species</i>	Daylilies
<i>Forsythia 'Sunrise'</i>	Sunrise Forsythia	<i>Liatris spicata</i>	Gayfeather
<i>Hydrangea paniculata</i>	Panicle Hydrangea	<i>Malva alcea</i> 'fastigiata'	Hollyhock Mallow
<i>Ilex verticillata</i>	Winterberry	<i>Perovskia atriplicifolia</i>	Russian Sage
<i>Myrica pensylvanica</i>	Bayberry	<i>Rudbeckia</i> 'Goldsturm'	Black-Eyed Susan
<i>Potentilla fruticosa</i>	Bush Cinquefoil	<i>Sedum telephium</i>	Autumn Joy Sedum
<i>Prunus maritima</i>	Beach Plum		
<i>Rhododendron species</i>	Rhododendron Species	ORNAMENTAL GRASSES	
<i>Rosa rugosa</i>	Beach Rose	<i>Deschampsia caespitosa</i>	Tufted hair Grass
<i>Viburnum prunifolium</i>	Blackhaw Viburnum	<i>Miscanthus sinensis</i>	Purple Silver Grass
<i>Viburnum sargentii</i>	Sargent Viburnum		
<i>Viburnum trilobum</i>	Amer. Cranberrybush		
<i>Xanthorhiza simplicissima</i>	Yellowroot		

CHAPTER 405C

TOWN OF SCARBOROUGH

SHORELAND ZONING ORDINANCE



Adopted August 5, 1992
Amended July 5, 1995
Amended December 15, 2004
Amended February 6, 2008
Amended July 15, 2009
Amended May 5, 2010
Amended September 5, 2012

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CHAPTER 405C
SHORELAND ZONING ORDINANCE
FOR THE TOWN OF
SCARBOROUGH, MAINE

Section 1. Purposes

The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control buildings sites, placement of structures and land uses; to conserve shore cover, and 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 impacts of development in shoreland areas.

Section 2. Authority

This Ordinance has been prepared in accordance with and adopted pursuant to the provisions of Title 38 Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

Section 3. Applicability

This Ordinance applies to all land areas within 250 feet, horizontal distance, of the

- normal high-water line of any great pond or river
- upland edge of a coastal wetland, including all areas affected by tidal action, or
- upland edge of a freshwater wetland and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream. (amended 07/15/2009)

This Ordinance also applies to all land areas within the Stream Protection 2 District as shown on the Official Zoning Map and as further described in Section 13(C) Stream Protection 2 District. This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending below the normal high-water line of a water body or within a wetland. (amended 02/06/2008)(amended 07/15/2009)

In the Shoreland Overlay District, this Ordinance applies in addition to the Zoning Ordinance of the Town of Scarborough, Maine ("Scarborough Zoning Ordinance"). In the Resource Protection District, Stream Protection District, and Stream Protection 2 District this Ordinance applies in place of the Scarborough Zoning Ordinance. (amended 02/06/2008)

Section 4. Effective Date of Ordinance and Ordinance Amendments

The effective date of this Ordinance is the date of approval, automatic approval or approval with conditions by the Commissioner of the Department of Environmental Protection as provided in 38 M.R.S.A. subsection 438-A(3). On the effective date of this Ordinance, or Ordinance

Amendment, any shoreland zoning provisions previously adopted by the Town of Scarborough are hereby repealed. Any application for a permit submitted to the Town of Scarborough within 45 days prior to the date the Commissioner of the Department of Environmental Protection determines that he has received the Ordinance, or Ordinance Amendment, pursuant to 38 M.R.S.A. subsection 438-A(3) shall be governed by the terms of this Ordinance, or Ordinance Amendment, if this Ordinance, or Ordinance Amendment, is approved pursuant to 38 M.R.S.A. subsection 438-A(3). (amended 07/15/2009)

Section 5. Availability

This Ordinance is on file in the office of the Town Clerk, who will make copies available to the public on request upon payment of the Town's reasonable expenses of reproducing the Ordinance.

Section 6. Severability

Should any section or provisions of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

Section 7. Conflicts with Other Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control. (amended 07/15/2009)

Section 8. Amendments

This Ordinance may be amended according to the procedures set forth in Section II.G of the Scarborough Zoning Ordinance. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Board of Environmental Protection following the adoption by the municipal legislative body and shall not be effective unless approved by the Board of Environmental Protection. If the Board of Environmental Protection fails to act on any amendment within forty-five (45) days of the Board's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Board.

Section 9. Districts and Zoning Map

A. Official Shoreland Zoning Map

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

1. Resource Protection
2. Stream Protection
3. Stream Protection 2 (amended 02/06/2008)
4. Shoreland Overlay

The Official Shoreland Zoning Map is the document entitled “Town of Scarborough Maine GIS Zoning Map,” as such may be amended from time to time pursuant to Section 8 of this Ordinance, which document shall be maintained in digital electronic form in the Town’s geographic information system database and in printed form in the office of the Town Clerk. Additional printed copies shall also be available in the Planning and Code Enforcement offices.

B. Certification of Official Shoreland Zoning Map

The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office.

C. Changes to the Official Shoreland Zoning Map

If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Board of Environmental Protection.

Section 10. Interpretation of District Boundaries

The depiction of the boundaries of the shoreland zone and of the individual shoreland districts on the Official Shoreland Zoning Map is merely illustrative of their general locations. The exact boundaries shall be determined by on-site inspection and measurement from the normal high-water line or upland edge of a wetland. Such on-site inspection and measurement may be requested by the property owner at any time or by the applicant at the time of filing an application for a permit or approval under this Ordinance. As part of such on-site inspection and measurement, the property owner or the applicant for any permit or approval may present evidence from persons with training and/or experience relevant to the identification, delineation and classification of wetlands and/or the delineation of the high-water line or upland edge of a wetland. Such evidence shall be presented to the Code Enforcement Officer (or to the Planning Board if an application for a Planning Board permit or approval is pending) and the Code Enforcement Officer (or the Planning Board if an application for a Planning Board permit or approval is pending) shall make a determination as to the exact boundaries, subject to review by the Board of Appeals pursuant to section 16(G)(1)(a) of this Ordinance.

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines, of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

Section 11. Land Use Requirements

Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

Section 12. Non-conformance

A.

1. Purpose:

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming. (amended 07/15/2009)

2. Applicability:

The provisions of this Section 12 govern only non-conforming conditions which result from non-compliance with the requirements of this Ordinance. As to such non-conforming conditions, the provisions of this Section 12 supersede the provisions of Section III of the Scarborough Zoning Ordinance. As to non-conforming conditions which result from non-compliance with the requirements of the Scarborough Zoning Ordinance, the provisions of the Scarborough Zoning Ordinance shall govern.

B. General

1. Transfer of Ownership:

Non-conforming structures, lots and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

2. Repair and Maintenance:

This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require. (amended 07/15/2009)

C. Non-conforming Structures

1. Expansions:

A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure except as provided for below. (amended 02/06/2008)

Further Limitations:

- a. After January 1, 1989 if any portions of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during the lifetime of the structure. This limitation does not apply to structures in the Stream Protection 2 District that are greater than seventy-five (75) feet from the normal high-water line of the stream,

provided that the structure was in existence as of January 31, 2008. (amended 02/06/2008)

b. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(2) Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 12(C)(1)(a) above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

c. No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland. This limitation does not apply to existing structures in the Stream Protection 2 District that are more than seventy-five (75) feet from the high-water line of the stream provided that the entire structure will be at least seventy-five (75) feet from the stream after it is expanded. (amended 02/06/2008) (amended 07/15/2009)

2. Relocation:

A non-conforming 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 Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (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 in a manner that causes the structure to be more non-conforming. (amended 07/15/2009)

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee 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 and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows: (amended 07/15/2009)

(a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. (adopted 07/15/2009)

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed. (adopted 07/15/2009)

(b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof. (adopted 07/15/2009)

3. Reconstruction or Replacement:

Should any nonconforming building or structure be destroyed or damaged by any means beyond the control of the owner, it shall be rebuilt or restored within a period of one year or thereafter conform with the requirements of Section 15.B of this Ordinance unless a variance from such requirements is granted by the Board of Appeals pursuant to Section 16.G.2 of this Ordinance. If a nonconforming building or structure is demolished or removed by or for its owner, it shall not be rebuilt or replaced except in conformity with the requirements of Section 15.B of this Ordinance unless a variance from such requirements is granted by the Board of Appeals pursuant to Section 16.G.2 of this Ordinance.

4. Change of Use of a Non-conforming Structure

The use of a non-conforming structure may not be changed to another use unless the Planning Board after receiving a written application determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use. (amended 07/15/2009)

In determining that no greater adverse impact will occur, the Planning Board shall 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, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Non-conforming Uses

1. Expansions:

Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as permitted in Section 12(C)(1)(a) above.

2. Resumption Prohibited:

A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. 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 non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(4) above.

E. Non-conforming Lots

1. Non-conforming Lots:

A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, 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 Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals. (amended 07/15/2009)

2. Contiguous Built Lots:

If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.S.R.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with. (amended 07/15/2009)

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

3. Contiguous Lots - Vacant or Partially Built:

If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

Section 13. Establishment of Districts

A. Resource Protection District

The Resource Protection District includes areas in which developments would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. In developing the Official Shoreland Zoning Map, areas of the following types were included in the Resource Protection District unless such areas were already developed at the time of mapping.

1. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on the Geographic Information System (GIS) data layer maintained by either Maine Department of Inland Fisheries and Wildlife or the Maine Department of Environmental Protection as of December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river. (amended 07/15/2009)
2. Areas within 250 feet, horizontal distance, of the upland edge of salt marshes and salt meadows which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973. (adopted 07/15/2009)
3. Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plan as designated 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 flood plain soils. This district shall also include 100-year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
4. Areas of two or more contiguous acres with sustained slopes of 20% or greater.
5. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water. (adopted 07/15/2009)
6. 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.
7. Freshwater wetlands not rated "moderate" or "high" by the Maine Department of Inland Fisheries and Wildlife but substantially surrounded by areas included in the Resource Protection District because of other characteristics described in this Section 13 (A).

B. Stream Protection District

The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within the Stream

Protection 2 District and those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river, or within two-hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area is located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland. (amended 02/06/2008) (amended 07/15/2009)

C. Stream Protection 2 District

The Stream Protection 2 District includes all land areas within two hundred fifty (250) feet of the normal high water line of Stuart Brook east of the Maine Turnpike excluding the area within the travel way of Lucky Lane and the area upland of this way as shown on the Official Zoning Map and the normal high water line of the Nonesuch River as shown on the Official Zoning Map and the normal high water line of the Nonesuch River as shown on the Official Zoning Map. (amended 02/06/2008; amended 05/08/2010' amended 05/05/2010)

D. Shoreland Overlay District

All land areas in the shoreland zone which are not in the Resource Protection District, the Stream Protection District, or the Stream Protection 2 District are in the Shoreland Overlay District. Areas in the Shoreland Overlay District are subject to the requirements of the Scarborough Zoning Ordinance as well as to the requirements of this Ordinance. (amended 02/06/2008)

Section 14. Table of Land Uses

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map (amended 05/05/2010).

Key to Table 1:

Yes - Allowed (no permit required but the use must comply with all applicable land use standards).

No - Prohibited

PB - Allowed with permit issued by the Planning Board (amended 07/15/2009)

CEO - Allowed with permit issued by the Code Enforcement Officer (amended 07/15/2009)

LPI - Allowed with permit issued by the Local Plumbing Inspector (amended 07/15/2009)

Abbreviations:

RP - Resource Protection

SP - Stream Protection and Stream Protection 2 (amended 02/06/2008)

SP2 - Stream Protection 2

SO - Shoreland Overlay

TABLE 1. LAND USES IN THE SHORELAND ZONE				
LAND USES	DISTRICTS			
	SO¹	SP	SP2	RP
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	Yes	Yes	Yes	Yes
2. Motorized vehicular traffic on existing roads and trails	Yes	Yes	Yes	Yes
3. Forest management activities except for timber harvesting	Yes	Yes	Yes	Yes
4. Timber harvesting	Yes	Yes	Yes	CEO ²
5. Clearing or removal of vegetation for activities other than timber harvesting (amended 07/15/2009)	Yes	CEO	CEO ¹¹	CEO ²
6. Fire prevention activities	Yes	Yes	Yes	Yes
7. Wildlife management practices	Yes	Yes	Yes	Yes
8. Soil and water conservation practices	Yes	Yes	Yes	Yes
9. Mineral exploration	Yes	No	No	Yes ³
10. Mineral extraction including sand and gravel extraction	CEO/PB	No	No	PB ⁴
11. Surveying and resource analysis	Yes	Yes	Yes	Yes
12. Emergency operations	Yes	Yes	Yes	Yes
13. Agriculture	Yes	Yes	Yes	CEO
14. Aquaculture (amended 07/15/2009)	PB	PB	PB	PB
15. Principal structures and uses				
A. One and two family residential, including driveways (amended 07/15/2009)	CEO	PB ⁵	CEO ¹²	No
B. Multi-unit residential	PB	No	No	No
C. Commercial	PB	No	No	No
D. Industrial	PB	No	No	No
E. Governmental and Institutional	PB	No	No	No
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	CEO/PB	PB ⁵	PB ^{5, 11}	PB
16. Structures accessory to allowed uses	CEO	PB ⁵	CEO ¹²	PB
17. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland				
a. Temporary	CEO	CEO	CEO	CEO
b. Permanent	PB	PB	PB	PB
18. Conversions of seasonal residences to year-round residences (amended 07/15/2009)	CEO	CEO	CEO	No
19. Home occupations (amended 07/15/2009)	CEO	CEO	CEO	No
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	No
21. Essential services	CEO	PB ⁶	Yes ¹¹	PB ⁶
22. Service drops, as defined, to allowed uses	Yes	Yes	Yes	Yes
23. Public and private recreational areas involving minimal structural development	PB	PB	Yes ¹¹	PB ¹⁰

TABLE 1. LAND USES IN THE SHORELAND ZONE				
LAND USES	DISTRICTS			
	SO¹	SP	SP2	RP
24. Campgrounds	PB	No	No	No ⁷
25. Road construction (amended 07/15/2009)	PB ⁸	PB ⁸	Yes ^{8,11}	No ⁹
26. Parking facilities	CEO/PB	No	CEO/P B ¹¹	No ⁷
27. Marinas	PB	PB	Yes ¹¹	No
28. Filling and earthmoving of < 10 cubic yards	Yes	CEO	Yes ¹¹	CEO
29. Filling and earthmoving of > 10 cubic yards but less than 500 cubic yards (amended 07/15/2009)	CEO	PB	Yes ¹¹	PB
30. Filling and earthmoving > 500 cubic yards (adopted 07/15/2009)	PB	PB	PB	PB
31. Signs	Yes	Yes	Yes	Yes
32. Uses similar to allowed uses	CEO/PB	CEO	CEO	CEO
33. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring a PB permit (amended 07/15/2009)	PB	PB	PB	PB

¹In the Shoreland Overlay District, uses are governed by the district regulations of the Scarborough Zoning Ordinance for the district in which the property is located. (amended 07/15/2009)

²In RP not permitted within 75 feet of the normal high-water line of great ponds, except to remove safety hazards.

³Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

⁴In RP not permitted in areas so designated because of wildlife value.

⁵Provided that a variance from the setback requirement is obtained from the Board of Appeals.

⁶See further restrictions in Section 15(L)(2).

⁷Except when area is zoned for resource protection due to flood plain criteria in which case a permit is required from the PB.

⁸Except that no permit is required for the repair or maintenance of an existing road culvert or for the replacement of an existing road culvert, as long as the replacement culvert is:

- (1) not more than one standard culvert size wider in diameter than the culvert being replaced;
- (2) not more than 25% longer than the culvert being replaced; and
- (3) not longer than 75 feet.

Ancillary culverting activities, including excavation and filling, are included in this exception. The person repairing, replacing or maintaining an existing culvert pursuant to this exception shall ensure that erosion control measures are taken to prevent sedimentation of the water and that the crossing does not block fish passage in the water course.

⁹Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required from the PB.

¹⁰May include no more than one accessory food concession stand, cart or booth located inside a structure existing on August 5, 1992, provided no on-site waste water disposal is required for the operation of the concession. [Planning Board review is not required to operate such a concession

at a recreational area which lawfully existed on August 5, 1992]. (amended 07/05/95)
¹¹ Uses located greater than 75 feet, horizontal distance, from the normal high water line shall be allowed. Uses less than 75 feet, horizontal distance from the normal high water line shall be regulated by the authority established in the SP column.

¹² See further restrictions in Section 15(B)(1)

Section 15. Land Use Standards

All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

A. Minimum Lot Standards

1.
 - a. The minimum lot area in the Resource Protection District shall be 30,000 square feet.
 - b. The minimum lot area in the Stream Protection and Stream Protection 2 Districts shall be the same as in the adjacent zoning district under the Scarborough Zoning Ordinance. If more than one district adjoins the land in the Stream Protection or Stream Protection 2 Districts, the minimum lot area for the least restricted adjacent zoning district shall govern. (amended 02/06/2008)
 - c. The minimum lot area in the Shoreland Overlay District shall be the same as in the underlying district pursuant to the Scarborough Zoning Ordinance.
2. The minimum shore frontage for all lots in the Shoreland Zone shall be 100 feet, measured in a straight line between the points of intersection of the side lot lines with the shore line at the normal high water line. The minimum width of any portion of any lot within 100 feet, horizontal distance of the normal high water line of a water body or upland edge of a wetland shall be equal to or greater than 100 feet.
3. Land below the normal high water line of a water body or upland edge of a wetland and land beneath roads serving more than two lots shall not be included toward calculating minimum lot area.
4. If a property owner voluntarily transfers the fee simple ownership of land within the Stream Protection 2 District to the Town of Scarborough or to a land trust or other conservation organization approved by the Planning Board for the purpose of public open space and public access to or along the stream, the property owner shall be entitled to a density bonus. The amount of the bonus shall be one and a half times the number of the dwelling units that could have been built on the transferred land within the Stream Protection 2 District without consideration of the stream setback requirement based upon the net residential area and density for the zone that determines the applicable density and lot area for the land based upon the requirements as set out in the Zoning Ordinance. This bonus shall be in addition to any other density bonus provided for in the Zoning Ordinance including the density bonus for the transfer of development rights. The units resulting from this density bonus may be:
 - a) Developed on another portion of the same parcel on which development is permitted that is not located within the Stream Protection 2 District, or
 - b) Transferred to another parcel in accordance with the Development Transfer Provisions of Section VIII of the Zoning Ordinance.

Units resulting from this density bonus must be built or transferred in accordance with Section VIID of the Zoning Ordinance within ten (10) years of the date of the transfer of the land to the Town, land trust, or conservation organization. The right to build or transfer a unit shall lapse at the conclusion of the ten (10) year period. The Planning Department shall establish and maintain a registry of any bonus units created under this provision and shall track the utilization of those units over time to ensure compliance with these provisions. (amended 02/06/2008)

5. If more than one residential dwelling unit is constructed or established on a single parcel as part of a residential development, all dimensional requirements shall be met for each additional dwelling unit. If more than one principal governmental, institutional, commercial, mixed-use or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional principal structure or use except in the Shoreland Overlay District when the underlying district is the TVC-4 or I-O District, the dimensional requirements shall be met for each additional principal structure rather than each principal use. (amended 09/05/2012)

B. Principal and Accessory Structures

1. All new principal and accessory structures shall be set back from the normal high water line of water bodies, tributary streams, or the upland edge of a wetland in accordance with the following:

a. In the Shoreland Overlay and Stream Protection District, at least seventy-five (75) feet, horizontal distance, except as provided in the following subsection b.

b. In the Shoreland Overlay District, when the property is located east of the railroad right-of-way and the underlying zoning district is the Town and Village Centers Pine Point District – TVC-4 and/or the Industrial Overlay District – I-O, the setback may be reduced to no less than twenty-five (25) feet provided that a vegetated buffer strip at least twenty-five (25) feet in width is provided and maintained adjacent to the upland edge of the wetland. If a natural buffer does not currently exist, the vegetated buffer shall include a well-distributed stand of native vegetation including shrubs, plants, and ground cover appropriate to the specific environment. The buffer shall be designed by an appropriate professional and shall be approved by the Planning Board. If a vegetated buffer strip is not provided, the setback shall be seventy-five (75) feet.

c. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

d. In the Stream Protection 2 District all new principal structures shall be set back at least two hundred fifty (250) feet from the normal high water line, except as provided for under subsection B.1.h. below. Accessory structures in the Stream Protection 2 District shall be allowed in accordance with subsection B.1.i. below.

In addition:

e. The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational

necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses. For these uses there is no required shoreland setback.

f. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals. (adopted 07/15/2009)

g. On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure. (adopted 07/15/2009)

h. The Code Enforcement Officer may issue a permit for a new principal structure within the Stream Protection 2 District provided the following standards are met:

i. There is no location on the property, other than a location within the Stream Protection 2 District, where the structure can be constructed.

ii. The lot on which the structure is proposed was created and recorded in the Cumberland County Registry of Deeds prior to (date of ordinance amendment).

iii. The structure is setback from the normal high water line to the greatest practical extent and is located at least 75 feet from the normal high water line. In determining the greatest practical extent the Code Enforcement Officer shall consider the size of the lot, the depth of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed. (adopted 05/05/2010)

i. In the Stream Protection 2 District new accessory structures shall be permitted within the 250 foot setback to the normal high water line, provided the structure is located at least 75 feet from the normal high water line. (adopted 05/05/2010)

2. Principal or accessory structures and expansions of existing which are permitted in the Resource Protection and Stream Protection Districts shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills,

wind energy systems, antennas, and similar structures having no floor area. (amended 07/15/2009)

3. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils. (amended 07/15/2009)

4. The total footprint area of all structures, parking lots, driveways and other nonvegetated surfaces within the Shoreland Zone shall not exceed twenty (20) percent of the lot or portion thereof located within the Shoreland Zone, including land area previously developed except as provided for in the following subsections:

a. In the Shoreland Overlay District, when the property is located east of the railroad right-of-way and the underlying zoning district is the Town and Village Centers Pine Point District – TVC-4 and/or the Industrial Overlay District – I-O, the total footprint area shall not exceed seventy-five (75) percent of the lot or portion thereof located within the Shoreland Zone, including land area previously developed. (amended 09/05/2012)

b. The total footprint area for functionally water-dependent uses shall not exceed seventy (70) percent of the lot or portion thereof located within the Shoreland Zone, including land area previously developed. (amended 09/05/2012)

5. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils 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 upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A., section 480-C); and that the applicant demonstrates that no reasonable access alternatives exists on the property. (amended 07/15/2009)

C. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or within a Wetland

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

2. The location shall not interfere with existing developed or natural beach areas.

3. The facility shall be located so as to minimize adverse effects on fisheries.

4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.

5. 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.

6. 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 any district.

7. 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.

D. Campgrounds

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

1. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of seventy-five (75) feet from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland.

E. [Reserved]

F. Parking Areas

1. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream. (amended 07/15/2009)
2. 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, tributary stream or wetland and where feasible, to retain all runoff on-site. (amended 07/15/2009)
3. Size and configuration of parking spaces shall comply with the requirements of the Scarborough Zoning Ordinance and, where applicable, the Scarborough Site Plan Review Ordinance.

G. 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. Roads and driveways shall be set back at least seventy-five (75) feet, horizontal distance, from the normal high water line of water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. 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. (amended 07/15/2009)

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent. (amended 07/15/2009)

Section 15(G)(1) does not apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(G)(1) except for that portion of the road or driveway necessary for direct access to the structure.(amended 07/15/2009)

2. Existing public roads may be expanded within the legal road right-of-way regardless of their setback from a water body, tributary stream, or wetland. (amended 07/15/2009)

3. [Reserved]

4. New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or 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.

5. Road and driveway 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 for erosion and sedimentation control contained in Section(15)Q. (amended 07/15/2009)

6. Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet. (amended 07/15/2009)

7. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams, or wetlands roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet plus two 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 upland edge of a wetland. 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. (amended 07/15/2009)

8. 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 gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply: (amended 07/15/2009)

a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road, or driveway, at intervals no greater than indicated in the following table: (amended 07/15/2009)

Grade (Percent)	Spacing (Feet)
0-2	250

Grade (Percent)	Spacing (Feet)
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less. (amended 07/15/2009)

c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway. (amended 07/15/2009)

d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.

9. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning. (amended 07/15/2009)

H. Signs

Signs in the Resource Protection and Stream Protection Districts shall comply with the applicable requirements of the Scarborough Zoning Ordinance and, in addition, with the following requirements.

1. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Signs relating to goods or services not sold or rendered on the premises shall be prohibited. (amended 07/15/2009)

2. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate. (amended 07/15/2009)

3. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

4. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area. (amended 07/15/2009)

5. Signs relating to public safety shall be allowed without restriction. (amended 07/15/2009)

6. No sign shall extend higher than twenty (20) feet above the ground.

7. Signs may be illuminated only by shielded, non-flashing lights.

I. Storm Water Runoff

1. All new construction and development shall be designed to ensure storm water runoff from the site will be less than or equal to that 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. (amended 07/15/2009)
2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

J. Septic Waste Disposal

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and the requirements of the Scarborough Plumbing Ordinance, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone. (amended 07/15/2009)

K. Essential Services

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, other than road side distribution lines, is not allowed in a Resource Protection, Stream Protection, or Stream Protection 2 District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts. (amended 02/06/2008) (amended 07/15/2009)
3. Damage or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.(adopted 07/15/2009)

L. 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 Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15(M) below. (amended 07/15/2009)
2. No part of any extraction operation, including drainage and runoff control features shall be permitted within seventy-five (75) feet, horizontal distance, of the normal

high-water line of any water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property. (amended 07/15/2009)

3. [Reserved]

4. 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 two and one half to one (2 1/2:1) slope or flatter. (amended 07/15/2009)
- c. Top soil or loam shall be retained to cover all disturbed land 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.

5. In keeping with the purpose of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

6. Mineral extraction shall also comply with all applicable requirements of the Extractive Industry, Waste Control, Landfill and Land Reclamation Ordinance of the Town of Scarborough.

M. Agriculture

1. All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209). (amended 07/15/2009)

2. Manure shall not be stored or stockpiled within seventy-five (75) feet horizontal distance, of water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water. (amended 07/15/2009)

3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance. This requirement shall not apply to agricultural activities in the Stream Protection 2 District that are occurring at least 75 feet, horizontal distance, from the normal high water line. (amended 07/15/2009) (amended 05/05/2010)

4. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, from water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of

tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained. (amended 07/15/2009)

5. Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance of water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater 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. (amended 07/15/2009)

N. Timber Harvesting (revised and adopted 07/15/2009)

(1) Shoreline integrity and sedimentation. Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.

(2) Slash treatment. Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. Section 15(N)(2) does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.

(a) Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.

(b) Adjacent to great ponds, rivers and wetlands:

(i) No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and

(ii) Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.

(3) Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options. This requirement shall not apply to timber harvesting activities in the Stream Protection 2 District that are occurring at least 75 feet, horizontal distance, from the normal high water line: (amended 05/05/2010)

(a) Option 1 (40% volume removal), as follows:

- (i) Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;
- (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
- (iii) Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.

(b) Option 2 (60 square foot basal area retention), as follows:

- (i) The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
- (ii) A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and,
- (iii) Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

(c) Option 3 (Outcome based), this option shall only become effective on the statutory date established under 38 M.R.S.A. section 438-A(5), until such time Section 15(N)(3)(c) is not in effect.

Option 3 requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. Chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

(4) Skid trails, yards, and equipment operation. This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.

(a) Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.

(b) Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.

(c) Setbacks:

(i) Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.

(ii) Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(5) Land Management Roads. Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15(N)(7) of this rule.

(a) Land management roads and associated ditches, excavation, and fill must be set back at least:

(i) 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland; (ii) 50 feet, horizontal distance, from the normal high-water line of streams; and

(iii) 25 feet, horizontal distance, from the normal high-water line of tributary streams

(b) The minimum 100 foot setback specified in Section 15(N)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(N- 1)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. 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 to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(c) On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.

(d) New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

(e) Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section 15(N)(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(f) Road closeout and discontinuance. Maintenance of the water control installations required in Section 15(N)(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or

other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.

(g) Upgrading existing roads. Extension or enlargement of presently existing roads must conform to the provisions of Section 15(N). Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.

(h) Exception. Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15(N)(5)(a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. 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 to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) Additional measures. In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.

(6) Crossings of waterbodies. Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.

(a) Determination of flow. Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 15(N): The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.

(b) Upgrading existing water crossings. Extension or enlargement of presently existing water crossings must conform to the provisions of Section 15(N). Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 15(N).

(c) Other Agency Permits. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Department of Environmental Protection, or the US Army Corps of Engineers.

(d) Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.

(e) Notice to Bureau of Forestry. Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:

- (i) a map showing the location of all proposed permanent crossings;
- (ii) the GPS location of all proposed permanent crossings;
- (iii) for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
- (iv) a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.

(f) Water crossing standards. All crossings of rivers require a bridge or culvert sized according to the requirements of Section 15(N)(6)(g)) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:

- (i) concentrated water runoff does not enter the stream or tributary stream;
- (ii) sedimentation of surface waters is reasonably avoided;
- (iii) there is no substantial disturbance of the bank, or stream or tributary stream channel;
- (iv) fish passage is not impeded; and,
- (v) water flow is not unreasonably impeded.

Subject to Section 15(N)(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

(g) Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:

- (i) Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross-sectional area at least equal to 2 1/2 times the cross-sectional area of the river, stream, or tributary stream channel.
- (ii) Temporary bridge and culvert sizes may be smaller than provided in Section 15(N)(6)(g)(i) if techniques are effectively employed such that in

the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

1. use of temporary skidder bridges;
2. removing culverts prior to the onset of frozen ground conditions;
3. using water bars in conjunction with culverts;
4. using road dips in conjunction with culverts.

(iii) Culverts utilized in river, stream and tributary stream crossings must:

1. be installed at or below river, stream or tributary stream bed elevation;
2. be seated on firm ground;
3. have soil compacted at least halfway up the side of the culvert;
4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

(iv) River, stream and tributary stream crossings allowed under Section 15(N), but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100- year flood event.

(v) Exception. Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

(h) Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:

(i) Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 15(N)(6)(i) below.

(ii) Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.

(iii) River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(i) Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

(i) Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.

(ii) Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.

(iii) Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:

1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;

2. it shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the river, stream or tributary stream channel; or 3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

(7) Slope Table

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in Section 15(N), but in no case shall be less than shown in the following table.

Average slope of land between exposed soil and the shoreline (percent)	Width of strip between mineral soil and shoreline (feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

O. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

1. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. (amended 07/15/2009)

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district. (amended 07/15/2009)

2. Except in areas as described in Section 15(O)(1), above, and except to allow for the development of permitted uses, within a strip of land extending seventy-five (75) feet, horizontal distance, from any water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows: (amended 07/15/2009)

a. There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub is allowed provided that a cleared line of sight to the water through the buffer strip is not created. (amended 07/15/2009)

b. Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(O)(2)(b) a "well-distributed stand of trees" shall be defined as maintaining a rating score of 16 or more in any 25-foot by 50-foot rectangle (1250 square feet) area as determined by the following rating system. (amended 07/15/2009)

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2 - < 4 in.	1
4 - <8 in.	2
8 - <12 in	4
12 in. or greater	8

The following shall govern in applying this point system: (adopted 07/15/2009)

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15(O)(2)(b) “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above the ground level may be removed in any ten (10) year period.

c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15(O) paragraphs 2 and 2a above. (adopted 07/15/2009)

d. Pruning of tree branches, on the bottom 1/3 of the tree is allowed. (amended 07/15/2009)

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 as soon as seasonally practical, not to exceed one (1) calendar year, with native tree species unless existing new tree growth is present. (amended 07/15/2009)

Section 15(O)(2) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary. (amended 07/15/2009)

3. At distances greater than seventy-five (75) feet, horizontal distance, from the normal high-water line of any water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area. . This requirement shall not apply to vegetation removal activities in the Stream Protection 2 District that are occurring at least 75 feet, horizontal distance, from the normal high water line. (amended 07/15/2009) (amended 05/05/2010)

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. (amended 07/15/2009)

4. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance. (amended 07/15/2009)

5. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section (15)(O). (amended 07/15/2009)

P. 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 also 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: (amended 07/15/2009)

- 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 control 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 last 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 at 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 drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways 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.

Q. Soils

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or 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, and 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 state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. 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.

R. Water Quality

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances will impair designated uses or the water classification of the water body.

S. Archaeological Sites

Any proposed land use activity involving structural development or soil disturbances 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.

Section 16. Administration

A. Administrating Bodies and Agents

The Code Enforcement Officer, Board of Appeals and Planning Board charged with administering this Ordinance shall be the same Code Enforcement Officer, Board of Appeals and Planning Board as administer the Scarborough Zoning Ordinance.

B. Permits Required

After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed. (amended 07/15/2009)

C. Permit Application

1. Every applicant for a permit shall submit a written application, including a scaled plan, on a form provide by the municipality, to the appropriate official as indicated in Section 14.
2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct. (amended 07/15/2009)
3. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
4. If the property is not served by a public sewer, a valid external plumbing permit or completed application for an external plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system. (amended 07/15/2009)

D. Procedure for Administering Permits

Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;

4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
6. Will protect archaeological and historic resources as designated in the comprehensive plan;
7. Will not adversely affect existing commercial fishing or maritime activities.
8. Will avoid problems associated with flood plain development and use; and
9. Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the municipality. (amended 07/15/2009)

E. Expiration of Permit

Permits shall expire one year from the date of issuance if a substantial start is not made in construction or (where no construction is involved) commencement of the use does not occur during that period. If a substantive start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire. (amended 07/15/2009)

Upon good cause shown, the person or board issuing the original permit or approval may extend its effectiveness for an additional six months. As used in this Section 16.E, "substantial start of construction" means completion of all of the following operations for all of the buildings or structures authorized by the permit or approval:

- implementation of erosion and storm water control measures
- installation of footings
- installation of foundations
- waterproofing (if necessary) of the foundations
- construction of the drainage systems
- completion of all back filling (but not including final grading and landscaping)

F. Installation of Public Utility Service

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance, has been issued by the appropriate municipal officials. Following installation of service, the company or district shall forward the written authorization to the municipal officials, indicating that installation has been completed.

G. Appeals

1. Powers and Duties of the Board of Appeals

The Board of Appeals shall have the following powers:

- a. Administrative Appeals: To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the enforcement or administration of this Ordinance.
- b. Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

2. Variance Appeal

Variances may be permitted only under the following conditions:

- a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- c. The Board shall not grant a variance unless it finds that:

(1) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

(2) The strict application of the terms of this Ordinance would result in undue hardship.

The term "undue hardship" shall mean:

- (i) That the land in question cannot yield a reasonable return unless a variance is granted;
- (ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
- (iii) That the granting of a variance will not alter the essential character of the locality; and
- (iv) That the hardship is not the result of action taken by the applicant or a prior owner.

- d. The Board of Appeals shall limit any variances granted as strictly as possible in order to insure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

3. Appeal Procedure

The appeals procedures under this Ordinance shall be as provided in Section V.C. of the Scarborough Zoning Ordinance. Appeals may be granted only by a majority vote of those members present and voting. Administrative appeals from decisions of the Code Enforcement

Officer or Planning Board shall be filed within 30 days of the date of written notification to the applicant of the decision, ruling or order appealed from.

A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals. (adopted 07/15/2009)

H. Enforcement

1. Nuisances

Any violation of this Ordinance shall be deemed to be a nuisance.

2. Code Enforcement Officer

a. The Code Enforcement Officer shall enforce the provisions of this Ordinance as provided in Section IV.A of the Scarborough Zoning Ordinance.

b. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected. On a biennial basis, beginning in 1992, a summary of this record shall be submitted by March 1 to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection. (amended 07/15/2009)

3. Legal Actions

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorize municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health to public health and safety or will result in substantial environmental damage.

4. Fines

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with Title 30-A, M.R.S.A section 4452. (amended 07/15/2009)

Section 17. Definitions

Accessory structure or use:

A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Agriculture:

The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

Aggrieved party:

An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Aquaculture:

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

Basal area:

The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Boat Launching Facility:

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

Campground:

Any area or tract of land to accommodate one or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Canopy:

The more or less continuous cover formed by tree crowns in a wooded area. (adopted 07/15/2009)

Coastal wetland:

All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. (amended 07/15/2009)

Commercial use:

The use of lands, buildings, or structures, other than a "home occupation", defined below the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

DBH:

The diameter of a standing tree measured 4.5 feet from ground level. (adopted 07/15/2009)

Development:

A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring. (adopted 07/15/2009)

Dimensional requirements:

Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disruption of shoreline integrity:

The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions. (adopted 07/15/2009)

Driveway:

A vehicular access-way less than five hundred (500) feet in length serving two single family dwellings or one two-family dwelling, or less. (amended 07/15/2009)

Emergency operations:

Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential services:

The construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

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: 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 or ground area devoted to a particular use.

Family:

One or more persons occupying a premise and living as a single housekeeping unit.

Floor area:

The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

Forest management activities:

Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, 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.

Forested wetland:

A fresh water wetland dominated by woody vegetation that is 6 meters tall or taller.

Forest stand:

A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit. (adopted 07/15/2009)

Foundation:

The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material. (amended 07/15/2009)

Freshwater wetland:

Freshwater swamps, marshes, bogs and similar areas other than forested wetlands which are:

1. of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and
2. inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Functionally 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. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters. (amended 07/15/2009)

Great pond:

Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purpose of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner. (amended 07/15/2009)

Ground cover:

Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor. (adopted 07/15/2009)

Harvest area:

The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest. (adopted 07/15/2009)

Height of a structure:

The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area. (amended 07/15/2009)

Home occupation:

An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than one person other than family members residing in the home.

Industrial:

The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Institutional:

A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes. (adopted 07/15/2009)

Land management road:

A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads. (adopted 07/15/2009)

Licensed forester:

A forester licensed under 32 M.R.S.A. Chapter 76. (adopted 07/15/2009)

Lot area:

The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Marina:

A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities.

Market value:

The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Minimum lot width:

The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be the side lot lines. (amended 07/15/2009)

Mineral exploration

Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral extraction:

Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

Multi-unit residential:

A residential structure containing three (3) or more residential dwelling units.

Native:

Indigenous to the local forest. (adopted 07/15/2009)

Non-conforming condition:

Non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect. (adopted 07/15/2009)

Non-conforming lot:

A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming structure:

A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-conforming use:

Use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Nonvegetated surfaces:

The area covered by structures and associated constructed facilities, areas which have been or will be covered by 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 impermeable surfaces include 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 water. (adopted 07/15/2009)

Normal high-water line (non-tidal waters):

That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. (amended 07/15/2009)

Person:

An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

Piers, docks, wharfs, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland:

Temporary:

Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent:

Structure which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Principal structure:

A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

Principal use:

A use other than one which is wholly incidental or accessory to another use on the same premises.

Public facility:

Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Recent flood plain soils:

The following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial	Cornish	Charles
Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

Recreational facility:

A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational vehicle:

A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement system:

A system intended to replace: 1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2) any existing overboard wastewater discharge.

Residential dwelling unit:

A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile home, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units. (amended 07/15/2009)

Residual basal area:

The sum of the basal area of trees remaining on a harvested site. (adopted 07/15/2009)

Residual stand:

A stand of trees remaining in the forest following timber harvesting and related activities.

Riprap:

Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River:

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

Road:

A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

Salt marsh:

Areas of a coastal wetland that support salt tolerant species, and where at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed. (amended 07/15/2009)

Salt meadow:

Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is really inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three square occurs in fresher areas. (amended 07/15/2009)

Service drop:

Any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. in the case of electric service

- a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
- b. the total length of the extension is less than one thousand (1,000) feet.

2. in the case of telephone service

- a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
- b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

Setback:

The nearest horizontal distance from the normal high-water line of a water body, or tributary stream, or upland edge of a wetland to the nearest part of a structure, road, parking space or other regulated object or area. (amended 07/15/2009)

Shore frontage:

The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.(amended 07/15/2009)

Shoreland zone:

The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal feet, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet, horizontal distance, of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream. (amended 07/15/2009)

Shoreline:

The normal high-water line, or upland edge of a fresh water or coastal wetland. (adopted 07/15/2009)

Skid road or skid trail:

A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation. (adopted 07/15/2009)

Slash:

The residue, e.g., treetops and branches, left on the ground after a timber harvest. (adopted 07/15/2009)

Stream:

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 a shoreland zone.

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, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes. (amended 07/15/2009)

Subsurface sewage disposal system:

Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system. (amended 07/15/2009)

Sustained slope:

A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal Waters:

All waters affected by tidal action during the maximum spring tide. (adopted 07/15/2009)

Timber harvesting:

The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (O), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*. (amended 07/15/2009)

Timber harvesting and related activities:

Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. (adopted 07/15/2009)

Tributary stream:

Means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. (amended 07/15/2009)

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland edge of a wetland:

The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller. (amended 07/15/2009)

Vegetation:

All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 ½ feet above ground level. (amended 07/15/2009)

Vernal Pool:

A vernal pool is a natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs, spotted salamanders, blue-spotted salamanders, and fairy shrimp, as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species. (adopted 07/15/2009)

Volume of a structure:

The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water body:

Any great pond, river or stream.

Water crossing:

Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities. (amended 07/15/2009)

Wetland:

A freshwater or coastal wetland.

Windfirm:

The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage. (adopted 07/15/2009)

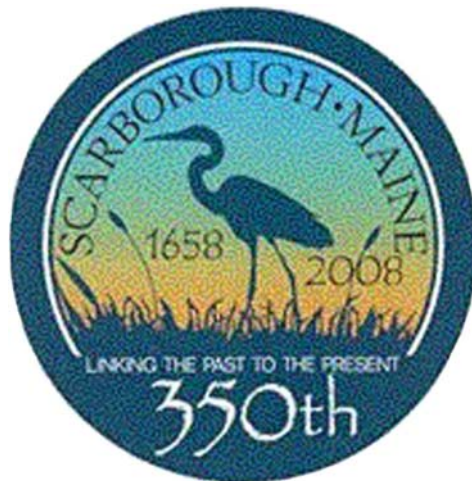
Woody vegetation:

Live trees or woody, non-herbaceous shrubs. (adopted 07/15/2009)

CHAPTER 406

TOWN OF SCARBOROUGH

SUBDIVISION ORDINANCE



ENACTED AUGUST 18, 1971
EFFECTIVE SEPTEMBER 17, 1971
AMENDED APRIL 8, 1976
AMENDED APRIL 14, 1982
AMENDED MAY 18, 1988
AMENDED FEBRUARY 2, 1994
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AMENDED DECEMBER 3, 2003
AMENDED AUGUST 20, 2008

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CHAPTER 406
SUBDIVISION ORDINANCE
TOWN OF SCARBOROUGH, MAINE

SECTION 1. TITLE

This ordinance shall be known and may be cited as the “Scarborough Subdivision Ordinance.” It is adopted under the authority of 30-A M.R.S.A. § 4403(2) and 30-A M.R.S.A. § 3001.

SECTION 2. PREAMBLE

This ordinance regulates the subdivision of land within the Town of Scarborough; defines subdivision; requires the approval of any subdivision by the Planning Board of the Town of Scarborough before any work may be commenced, and establishes procedures therefore; states the contents required for preliminary and final subdivision plans; establishes minimum standards for subdivision design and construction; and prescribes penalties for the violation of its provisions.

SECTION 3. DEFINITIONS

For the purposes of this ordinance, certain terms used herein are defined below. Terms not defined in this Ordinance have the same meaning as in 30-A M.R.S.A. § 4401, as amended from time to time.

AFFILIATE OF THE SUBDIVIDER:

Any person or entity which (a) is a direct or indirect corporate parent or subsidiary of the subdivider, (b) is a spouse, parent or child of the subdivider, or (c) directly or indirectly (i) owns or controls the subdivider, (ii) is owned or controlled by the subdivider or (iii) is under common ownership or control with the subdivider. For purposes of this definition, control shall mean the power to direct the management or policies of such entity, whether through ownership of voting shares, by contract or otherwise.

DEFAULT:

A subdivider is in default of the performance guarantee provided under section 9 of this Ordinance if the required improvements have not been completed within the time limits established under section 9 or if any of the required improvements which have been constructed fail to comply with the plans and specifications submitted with the subdivision application.

LOT:

A parcel of land in single ownership occupied or capable of being occupied by one building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by the Zoning Ordinance of the Town of Scarborough.

PRIVATE STREET:

Any way that meets the design and construction standards of the Town of Scarborough Street Acceptance Ordinance but which is not dedicated for acceptance by the Town and which is intended to remain privately owned.

REPRODUCIBLE MEDIUM:

A material and format acceptable for recording in the Cumberland County Registry of Deeds and approved by the Town Planner.

STREET:

A public way which affords the principal means of access to abutting properties, or a proposed way that is intended to be accepted by the Town as a public way in accordance with the Street Acceptance Ordinance, or a private street as defined in this ordinance.

SUBDIVIDER:

An individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity, or agent thereof, that undertakes the activities governed by this ordinance. The term "subdivider" is intended to include the term "developer" and "builder."

WETLANDS:

For the purpose of this ordinance the term "wetlands" encompasses both freshwater and coastal wetlands.

SECTION 4. PURPOSE, AND INTERPRETATION, AND REVIEW CRITERIA

The purposes of this ordinance are to promote the development of an economically stable and sound community; to provide safe and adequate streets, utilities and other services to new land development; to provide convenient and safe traffic circulation and access; to assure generally the development of areas in a manner consistent with any comprehensive plan for the Town of Scarborough; to clarify the approval criteria of the state Subdivision Law, found in Title 30-A M.R.S.A. § 4404, to protect the environment and conserve the natural and cultural resources identified in the Scarborough Comprehensive Plan as important to the community; to minimize the potential impacts from new subdivisions on neighboring properties and on the town; and to provide uniform procedures and standards for observance by the Planning Board and Subdividers. In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements for the protection of public health, safety and welfare. To this end, in evaluating any proposed subdivision of land within the Town of Scarborough, Maine the Planning Board shall determine that such subdivision will meet the design standards set forth in this Ordinance, will comply with all other pertinent State and Local codes and ordinances, and will comply with the following review criteria:

- A. The proposed subdivision will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the

- availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations;
- B. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;
 - C. The proposed subdivision will not cause an unreasonable burden on an existing water supply if one is to be utilized;
 - D. The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
 - E. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;
 - F. The proposed subdivision will provide for adequate sewage waste disposal;
 - G. The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;
 - H. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
 - I. The proposed subdivision is in conformance with this Subdivision Ordinance, the Scarborough Comprehensive Plan, the Scarborough Zoning Ordinance, the Scarborough Shoreland Zoning Ordinance (if applicable), the Scarborough Site Plan Review Ordinance (if applicable) and all applicable State and Local codes and regulations; in making this determination, the Planning Board may interpret the Comprehensive Plan and applicable local ordinances, codes and regulations;
 - J. The subdivider has adequate financial and technical capacity to meet the standards of this Ordinance;
 - K. Whenever situated in whole or in part, within 250 feet of any pond, lake, stream, river, wetland or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or wetland or unreasonably affect the shoreline of such body of water or wetland;
 - L. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;
 - M. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant, the Planning Board shall determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their

- lowest floor, including the basement, at least one foot above the 100-year flood elevation;
- N. All wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of wetlands may be done with the help of the local soil and water conservation district;
 - O. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in Title 38 M.R.S.A., section 480-B, subsection 9;
 - P. The proposed subdivision will provide for adequate storm water management;
 - Q. If any lots in the proposed subdivision have shore frontage on a river, stream, brook or coastal wetland as these features are defined in Title 38 M.R.S.A., section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;
 - R. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

SECTION 5. ADMINISTRATION

5:1 The Planning Board of the Town of Scarborough, hereinafter called the Board, shall administer this ordinance.

5:2 Whenever any subdivision is proposed or before any contract for the sale or offer to sell such subdivision or any part thereof shall have been negotiated, or before any permit for the erection of any structure within such subdivision shall be granted, or before any utility installations, ditching, grading, construction of roads, grading of land or lots shall be done on any subdivision, the subdividing owner or his authorized agent shall apply formally to the Board for approval of a Final Plan of such subdivision, which plan shall be in conformance with all of the requirements, design standards and specifications set forth in this ordinance, and shall record an attested copy of the Final Plan so approved and so endorsed in the Cumberland County Registry of Deeds.

5:3 When an application for subdivision approval is received and accepted by the Town Planner, the Planner shall give a dated receipt to the applicant and shall notify by mail all property owners within 500 feet of the proposed subdivision, and the clerk and the planning boards of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and including a general description of the project. The Town Planner shall also notify by mail a public drinking water supplier if the subdivision is within its source water protection area. The Town Planner shall not accept the application if the subdivider or an affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears on any fees owed to the Town of Scarborough in connection with any other development within the Town. When the Town Planner has accepted the application and determines that thirteen (13) copies of all material apparently required to constitute the application have been submitted, he shall promptly so advise the Planning Board

and schedule consideration of the application for its next following meeting. He shall promptly notify the applicant of the time and place for such meeting, and he shall transmit to each Planning Board member a copy of the application material. He shall advise the Board of his comments and recommendations regarding additional information which might be useful to the Board, other permits or approvals which the subdivision might require, and the apparent timetable for Planning Board action.

5:4 As to any intended subdivision of land, the subdivider shall prepare and formally submit to the Board both a Preliminary Plan for study, and modification where required, and a Final Plan. The Final Plan shall not be prepared until the subdivider has received from the Board written notice that a majority of the Board has approved the Preliminary Plan of such subdivision.

5:5 The Director of Public Works and the Engineer shall make reports to the Planning Board with respect to the adequacy of the design standards and specifications of the proposed street or private street, including the need for street lighting and storm drains. Said report must be submitted before any approval is granted. The Planning Board may also engage the services of one or more professional consultants to conduct peer review of the materials submitted by the subdivider, the costs of which shall be paid by the subdivider as provided in Section 11 of this Ordinance.

5:6 Prior to submission of the subdivision application and the Preliminary Plan, an applicant may choose to present a sketch plan for review by the Planning Board at a pre-application meeting. At such meeting, the Planning Board and the applicant may discuss the lot layout, road design and other features of the proposed plan, as well as the format, procedures and process for reviewing the subdivision. Any such pre-application meeting shall be scheduled by the Town Planner once the Town Planner has determined that the applicant has submitted sufficient information for the Planning Board to consider, including a sketch plan containing the following information:

- (1) Subdivision name, boundaries, acreages, tax map and lot numbers, magnetic and grid north point, date and graphic scale.
- (2) Location Plan – A location plan of the subdivision, at a scale of 1000-2000 feet to the inch, showing right of way lines of all proposed streets in the subdivision and their location in relation to existing streets and readily identifiable as to locus on the Scarborough Zoning Map.
- (3) Name and address of record owner, subdivider, and engineer, surveyor, firm, or individual who prepared the plan.
- (4) Existing and proposed lines of streets, ways, easements, lots and any public or common areas within the subdivision.
- (5) Location, name, and present width of each street and public or private way bounding or within 500 feet of the subdivision.
- (6) Approximate locations of existing buildings and site features such as wooded areas, wetlands, and water bodies within or adjacent to the proposed subdivision.

A plan considered by the Planning Board in pre-application meeting is not considered a complete or pending application and creates no vested rights. Submittal of the pre-application sketch plan

and review of the pre-application sketch plan by the Planning Board shall not be considered to create a pending proceeding under 1 M.R.S.A. § 302.

SECTION 6. GENERAL REQUIREMENTS

6:1 Any proposed subdivision shall be in conformity with any Comprehensive Plan of the Town of Scarborough and with the provisions of all pertinent State and Local codes and ordinances.

6:2 Land designed for public use may not be subdivided for any other purpose.

6:3 Any proposed subdivision shall be reviewed by the Board with respect to its effect upon existing community services and facilities including schools and recreational areas. The Board shall consider open space for future community facilities and may withhold approval of final plans pending such designation.

6:4 any proposed subdivision shall be so designed that every lot has access to a street.

6:5 Any natural drainageways and their easements shall be utilized so that no flooding will occur and all storm water can be disposed of properly.

6:6 The Board may require that a proposed subdivision design conserve such features as trees, streams, topography, and other natural assets.

6:7 Street trees, esplanades and open spaces may be required at the discretion of the Board. When such improvements are required they shall be incorporated in the Final Plan.

SECTION 7. PRELIMINARY PLAN REQUIREMENTS AND PROCEDURES

7:1 A request for approval of a subdivision shall be made to the Board in writing and shall be accompanied by a Preliminary Plan, that shall be drawn at a scale between 20 and 100 feet to the inch. The Preliminary Plan shall be accompanied by a location map showing the relationship of the proposed subdivision to adjacent properties and public access and drawn at no smaller scale than 500 feet to the inch.

7:2 When practical, a standard sized sheet 24" x 36" shall be used for all plans and shall contain the following information:

- (a) Name of Subdivision, owner(s), engineer(s), and surveyor(s).
- (b) Graphic scale, date and grid point.
- (c) Existing Zoning.
- (d) Ownership and location of abutting properties.
- (e) Name, location, width, profile, cross-section, radius of curves, angles or change in direction and center line, length of all existing and/or proposed public or private streets, other public ways, building lines and easements in the subdivision. All street names shown for proposed streets located in a subdivision shall be checked against local records

to assure that none are duplicates of existing street names or so similar as to cause confusion.

(f) Type, location, profile and cross-section of all existing and/or proposed surface water drainage.

(g) Location of all existing and/or proposed utilities - water, gas, electricity or other.

(h) Location of all existing and/or proposed sanitary sewers showing size, profile, and cross-section; or description, plan, location, if other means of sewage disposal with evidence of the nature of soils and subsoils and their ability to adequately support sewage waste disposal as required by the Scarborough Plumbing Ordinance and the Maine State Plumbing Code, Part II, and that the land is suitable for subsurface sewage disposal systems.

(i) Topography at two (2) foot contour intervals, unless otherwise prescribed by the Planning Board and Town Engineer. In addition, the location of existing natural or manmade features and soils conditions influencing the layout of the proposed subdivision shall be shown.

(j) Lot lines and approximate dimensions.

(k) Proposed uses of property.

(l) Proposed public areas, if any.

(m) Location and boundaries of wetlands.

(n) 100-year flood elevations.

(o) Any requested waivers from the standards of this Ordinance.

7:3 In addition to the Preliminary Plan, the Board may require the subdivider or others to undertake studies where deemed necessary or desirable to protect the public convenience, safety, health and welfare.

7:4 An application for approval of a Preliminary Plan shall be considered at a regular meeting of the Board within 30 days of receipt of such application. The Board shall, after such consideration and within 30 days of receipt of an application and Preliminary Plan, issue a written statement informing the subdivider or his authorized agent of approval, disapproval or conditional approval or of any changes required prior to the submission of the Final Plan.

7:5 No final plan shall be approved by the Board unless submitted by the subdivider or his authorized agent within 12 months from the issuance of Preliminary Approval.

SECTION 8. FINAL PLAN REQUIREMENTS AND PROCEDURES [Amended 08/20/2008]

8:1 A request for Final Approval of a subdivision shall be made to the Board in writing and shall be accompanied by a Final Plan of such subdivision legibly drawn in black ink on a permanent reproducible medium. The Plan shall be drawn at such scale as may be prescribed by the Board as being adequate to show all details clearly.

8:2 The Plan shall be presented on one or more sheets of standard 24" x 36" size and shall contain the following information:

- (a) All the information required for the Preliminary Plan and amendments thereto requested by the Planning Board.
- (b) Existing and final proposed lines of streets, ways, lots, easements for utilities and/or drainage and public areas within the subdivision.
- (c) Sufficient data to determine the exact location, direction, and length of every street line, easement, lot lines and boundary line and to reproduce these lines upon the ground.
- (d) Location of all permanent monuments existing and/or proposed wherever in the opinion of the Board, such monuments are necessary to properly determine the location on the ground.
- (e) Lot and map numbers and letters in accordance with the prevailing policy on existing tax maps.
- (f) Designation of the location, size, planting and landscaping of such parks, esplanades or other open spaces as may be proposed or prescribed.
- (g) The seal(s) and/or appropriate stamps of the Professional Land Surveyors and, Professional Engineers, responsible for the preparation of the subdivision proposals.
- (h) Any waivers from the standards of this Ordinance.

8:3 The Final Plan shall be accompanied by certification from authorized local public officials and/or agencies that the design of sewer and drainage facilities, streets and utilities in the proposed subdivision conform to the requirements of all pertinent State and Local codes and ordinances. The cost of certification and/or inspection shall be borne by the subdivider.

8:4 The Board shall consider a Final Plan at a regular meeting within thirty days of submission of such Final Plan.

8:5 The Board shall determine by vote whether to approve the Final Plan, approve the Final Plan with conditions or deny approval of the final plan. The Board's vote shall constitute the Board's decision and order on the subdivision application. The approval of a Final Plan shall be attested on the original plan on reproducible medium and three copies by the signatures of a legal majority of the members of the Board. Signing of the Final Plan may occur subsequent to approval of the Plan, and does not require a meeting of the Board. In addition, the subdivider shall provide a copy of the recording plan in digital format in compliance with the current specifications for placement in the Town's GIS database which is based on the Maine State Grid. Specifications are on file with the Town Planning Office.

8:6 A Final Plan on reproducible medium shall be retained by the Board. The subdivider shall record the approved Final Plan with the Cumberland County Registry of Deeds within ninety days after the date on which the Board vote to approve the subdivisions. The Town Planner shall not release the attested final plan on reproducible medium to the subdivider for recording until the subdivider has provided the performance guarantee required by section 9 of this Ordinance, and all fees required under section 11 of this Ordinance. In addition, the Town Planner shall not release the attested final plan on reproducible medium for recording if the subdivider or an affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears on any fees owed to the Town of Scarborough in connection with any other development within the Town.

SECTION 9. PERFORMANCE GUARANTEES

9:1 In order to insure completion of all improvements required by the Town of Scarborough, Maine the subdivider shall furnish to the Town Treasurer a performance guarantee prior to the recording of the Final Plan. Said performance guarantee may be in the form of cash, certified check payable to the Town of Scarborough, or an irrevocable letter of credit in a form and from an issuer acceptable to the Town Treasurer. In determining the acceptability of the issuer, the Town Treasurer may rely on any published information available concerning the issuer's financial condition and projected financial condition during the term of the letter of credit. The determination of the Town Treasurer on the acceptability of the issuer is final and not appealable. The amount of such performance guarantee (the "Stated Amount") shall be approved by the Board and the Town Treasurer, and shall be in an amount at least equal to the total cost of furnishing, installing, connecting and completing all of the street grading, paving, storm drainage and utilities or other improvements specified and shall be conditioned on the completion of all such specified improvements within 30-months of the date the Performance Guarantee is furnished. The performance guarantee may allow for, but shall not require, periodic reductions of the State Amount as portions of the specified improvements are determined by the Town Engineer to be complete, provided that each such reduction shall be limited to 85 percent of the cost of the improvements for which the reduction is allowed. In no event shall the performance guarantee be reduced to less than 15 percent of the Stated Amount until all the specified improvements have been completed and inspected and all fees due under Section 11 below or pursuant to any conditions of approval have been paid in full.

9:2 The Board may grant one or more extensions of up to exceed 12 months beyond the guaranteed performance period when the subdivider can demonstrate, to the satisfaction of the Board good cause for such extension; provided, however, that the performance guarantee shall remain in full force and effect during any such extension period and that the total duration of the original performance guarantee and any extensions granted under this Section 9.2 shall not exceed five years from the date on which the original performance guarantee was furnished. The Planning Board may not grant an extension if the subdivider or an affiliate of the subdivider is in default on any performance guarantee on any other development within the Town or is in arrears on any fees owed to the Town of Scarborough in connection with any other development within the Town.

9:3 Before a subdivider may be released from any obligation required by his guarantee of performance, the Board shall require certification from the various departments and agencies concerned to the effect that all improvements have been satisfactorily completed in accordance with all applicable standards, State and Local codes and ordinances.

9:4 At the time of approval of the final plan, the Planning Board may approve the construction of the subdivision in specifically identified phases and allow the subdivider to furnish separate performance guarantees for each phase prior to commencement of construction of each phase, provided that the performance guarantee furnished for any individual phase must secure the construction of all required improvements within such phase plus any improvements located in other phases which are necessary in order for the phase being constructed to comply with the requirements of this Ordinance should subsequent phases not be constructed. The time limits of

sections 9:1 and 9:2 shall apply separately to each phase. In addition, the time limits of section 9:1 and 9:2 may be modified for a phased subdivision pursuant to a contract zoning agreement approved by the Scarborough Town Council under the Scarborough Zoning Ordinance.

SECTION 10. STREET INFRASTRUCTURE DESIGN STANDARDS

10:1 The design of streets shall provide for proper continuation of streets from adjacent subdivisions and built-up areas and proper projection of streets into adjacent unsubdivided and open land.

10:2 All public streets constructed after December 4, 2003 shall comply with the appropriate design standards and specifications set forth in the Street Acceptance Ordinance of the Town of Scarborough, Maine.

10:3 If access to the street or streets within the subdivision is from an existing private street which does not meet such design standards and specifications, the subdivider shall cause such existing road to be brought into compliance with such standards and specification.

10:4 When considering private street proposals the Planning Board shall require that the developer clearly identify the party responsible for maintenance of the private street. A note shall be placed on the final plan and incorporated into each deed stating that the proposed street is not dedicated for acceptance by the Town.

SECTION 11. FEES

a. Prior to the submission of a preliminary plan the subdivider shall pay to the Town Treasurer an application fee. Said fee shall be non-refundable and shall be computed as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council. For subdivisions involving attached single-family dwellings, multi-family dwellings or condominiums, the fee shall be calculated by the number of units rather than the number of lots.

b. Prior to the release of the Final Plan to the subdivider for recording, the subdivider shall pay to the Town Treasurer a Peer Review and Construction Inspection fee. Said fee shall be non-refundable and shall be computed and paid as follows:

1. The amount of the fee shall be determined by the Town Engineer, and shall include the actual costs incurred by the Town to engage consultants to undertake peer review of the subdivider's submissions plus the estimated cost to the Town of retaining the services of a qualified construction monitor under the employ of a licensed professional engineer to observe and monitor all construction of required improvements. In fixing the amount, the Town Engineer may consider the complexity of the improvements, the overall cost of the subdivision, the anticipated construction schedule, and any other factors relevant to estimating the cost of monitoring.
2. If, upon completion of the required improvements, the actual cost of monitoring and inspection exceeds the amount paid at the time of submission of the final plan, the

subdivider shall pay the additional amount to the Town Treasurer before the subdivider shall be released from his obligations under the Performance Guarantee provided under Section 9 of this Ordinance, such additional amount being deemed a required improvement under the Performance Guarantee. If, upon completion of the required improvements, the actual cost of monitoring and inspection is less than the amount paid at the time of submission of the final plan, the Town shall return the unused portion to the subdivider.

SECTION 12. VALIDITY AND CONFLICT OF ORDINANCES

12:1 In the event that any section, subsection or any portion of this Ordinance shall be declared by any competent court to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection, or other portion of this Ordinance.

12:2 In the event that any provision of this ordinance is in conflict with any provision of any other federal, state or local statute, ordinance or regulation, the provision which establishes the most stringent requirement shall prevail.

SECTION 13. WAIVERS

13:1 Waivers of Submission Requirements Authorized.

Where the Planning Board determines there are special circumstances relating to a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, except any submission requirements as to which the Ordinance specifically prohibits waiver. For a waiver to be granted, the applicant must demonstrate in writing that the Planning Board can evaluate the proposed subdivision under the standards of 30-A M.R.S.A. §4404 and of this Ordinance without the information contained in the submissions for which the applicant requests a waiver.

13:2 Waivers of Standards Authorized.

Where the Planning Board makes written findings of fact that, due to special circumstances of a particular parcel proposed to be subdivided, compliance with certain of the standards of 30-A M.R.S.A. §4404 or of this Ordinance is not required, the Board may waive such requirement of standard, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the Scarborough Comprehensive Plan, the Zoning Ordinance, or this Ordinance, and provided that the public health, safety, and welfare will not be compromised by the waiver.

13:3 Conditions.

Waivers may only be granted in accordance with Sections 13:1 and 13:2. When granted waivers the Board may set conditions so that the purposes of these regulations are met.

13:4 Waivers to be Shown on the Recording Plan.

When the Planning Board grants a waiver from any of the improvements required by the Ordinance or from any of the standards of 30-A M.R.S.A. §4404 or of this Ordinance, the

reproducible medium to be recorded at the Registry of Deeds shall indicate the waivers granted and the dates on which they were granted.

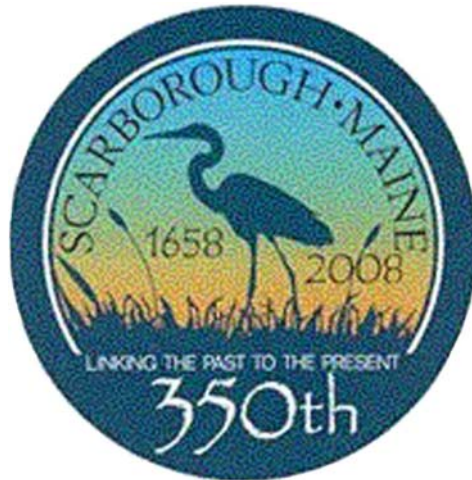
SECTION 14. EFFECTIVE DATE

This ordinance shall take effect and be in force from and after the date of its official adoption by the Town of Scarborough.

CHAPTER 413

TOWN OF SCARBOROUGH

GROWTH MANAGEMENT ORDINANCE



ADOPTED FEBRUARY 27, 2001
AMENDED NOVEMBER 20, 2002
AMENDED DECEMBER 18, 2002
AMENDED JUNE 13, 2003 - EFFECTIVE JANUARY 1, 2005
AMENDED NOVEMBER 17, 2004 – EFFECTIVE JANUARY 1, 2005
AMENDED JULY 16, 2008 – EFFECTIVE JANUARY 1, 2009

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**CHAPTER 413
TOWN OF SCARBOROUGH
GROWTH MANAGEMENT ORDINANCE**

1. TITLE

This ordinance shall be known as the “Growth Management Ordinance of the Town of Scarborough, Maine” and shall be referred to herein as the “Ordinance.”

2. LEGAL AUTHORITY (Amended 07/16/2008 – Effective 01/01/2009)

This Ordinance is adopted pursuant to the home rule powers as provided for in VIII-A of the Maine Constitution and 30-A M.R.S.A. § 3001, 30-A M.R.S.A. § 4323, and 30-A M.R.S.A. § 4360.

3. PURPOSE (Amended 07/16/2008 – Effective 01/01/2009)

The purpose of this Ordinance is to protect the health, safety and general welfare of the residents of Scarborough through placing reasonable and appropriate limitations on residential development in accordance with the 2006 Update of the Comprehensive Plan, more specifically:

- a. to provide for the immediate housing needs of the existing residents of the Town of Scarborough.
- b. to ensure fairness in the allocation of building permits.
- c. to plan for continued residential population growth in Scarborough which will be not limited to, education, public safety, transportation infrastructure, waste disposal and health services.
- d. to avoid circumstances in which the rapid development of new residences, potentially housing many families with school age children, would outpace the Town’s capability to expand its schools and other necessary services soon enough to avoid serious school overcrowding and a significant reduction in the level and quality of other municipal services.

4. DEFINITIONS (Amended 07/16/2008 – Effective 01/01/2009)

Terms not specifically defined in this Ordinance shall have the same meaning as in the Zoning Ordinance.

A. Affordable housing:

A dwelling unit that may be purchased or leased by a household with low or moderate income. As used in this ordinance, the term “affordable housing” has the same meaning as in the Zoning Ordinance.

B. Building Inspector:

Code Enforcement Officer.

C. Building permit:

A permit issued by the Building Inspector pursuant to Section IV(D) of the Zoning Ordinance.

D. Code Enforcement Officer:

The Town of Scarborough Code Enforcement Officer, an assistant code enforcement officer or an authorized agent of either.

E. Dwelling unit:

A dwelling unit as defined in Section VI of the Zoning Ordinance.

F. Family gift lot:

A lot which is not within a subdivision and which has been created by a gift from a parent to a child (including an adopted child or stepchild) or from a child to a parent (including an adoptive parent or stepparent).

G. Gift:

The conveyance of property for which the grantor receives no money, property or any other value as consideration for the conveyance.

H. Growth permit:

A permit, issued in accordance with the provisions of this Ordinance, which allows the issuance of a building permit for the construction, creation or placement of one new dwelling unit within the Town of Scarborough.

I. Multiplex:

A multiplex dwelling as defined in Section VI of the Zoning Ordinance, except that, for purposes of this Ordinance only, the term multiplex includes two family dwellings in a subdivision which also contains multiplex buildings. (Amended 12/18/02).

J. Subdivision:

A subdivision as defined in 30-A M.R.S.A. § 4401, as such may be amended from time to time, and approved by the Scarborough Planning Board pursuant to the Town of Scarborough Subdivision Regulations on or after August 18, 1971.

K. Zoning ordinance:

The Zoning Ordinance of the Town of Scarborough, Maine, as such may be amended from time to time.

5. APPLICABILITY

Except as provided in Section 6 below, this Ordinance shall apply to the construction, creation or placement of any new dwelling unit within the Town of Scarborough.

6. EXEMPTIONS (Amended 06/18/2003; Amended 11/17/2004 – Effective 01/01/2005; Amended 07/16/2008 – Effective 01/012/2009)

This Ordinance shall not apply to:

- a. the repair, replacement, reconstruction or alteration of an existing dwelling unit.
- b. a dwelling unit on a family gift lot, provided that no person may obtain more than one building permit pursuant to this exemption during the time this ordinance is in effect.

7. ADMINISTRATION (Amended 06/18/2003; Amended 11/17/2004 – Effective 01/01/2005; Amended 07/16/08 – Effective 01/01/09)

A. Share of growth permit required per dwelling unit.

- 1) The creation of each new dwelling unit shall require one (1) growth permit except as provided for in 2.
- 2) If the dwelling unit is located in a two-family dwelling, multifamily dwelling, or mixed use building, the creation of a new dwelling unit shall require a fraction of a growth permit in the same proportion as the density requirement for the type and size of unit set forth in Section VII C. A. Residential Density of the Zoning Ordinance regardless of whether the density provision applies to the dwelling unit (For example, a unit that could be counted as half a dwelling unit for density purposes requires half of a growth permit).
- 3) If any dwelling unit that was constructed based upon receiving a fraction of a growth permit in accordance with 2) is subsequently expanded such that the dwelling unit after expansion would require a larger fraction of a growth permit, the owner shall obtain a fractional permit for the difference between the pre-and post expansion requirements.

B. Two sources of growth permits.

Growth permits are available from two sources, from an annual allocation of growth permits, and from a reserve pool of growth permits.

- 1) The number of growth permits allocated annually and the process for the issuance of growth permits from this annual allocation are set forth in sub-sections C, D, and E.
- 2) The operation of the reserve pool of growth permits is set forth in sub-sections F and G.

- C. Annual allocation of growth permits per calendar year.
- 1) Commencing on January 1, 2005, the maximum number of growth permits issued between January 1st and December 31st each year shall be one hundred thirty-five (135). Any growth permits from the annual allocation that are not issued in the calendar year shall expire and shall not be carried forward to the next year.
 - 2) During each calendar year, no more than fifty (50) growth permits shall be issued from the annual allocation for dwelling units located in the Rural Residence and Farming District R-F and the Rural Residence, Farming, and Manufactured Housing District R-F-M west of the Maine Turnpike in the area designated as a Limited Growth Area in the 2006 Update of the Comprehensive Plan.
 - 3) During each calendar year, no more than twenty percent (20%) of the growth permits available from the annual allocation shall be issued for dwelling units within any one subdivision or other development.
- D. Application procedure for growth permits.
- 1) A growth permit application must be completed and signed by a record owner of the lot for which the growth permit is sought, on a Growth Permit Application form provided by the Code Enforcement Officer.
 - 2) The growth permit application shall be accompanied by: (i) a nonrefundable application fee as specified in the Schedule of License, Permit and Application Fees established by order of the Town Council, which shall be credited toward the building permit fee if the growth permit is replaced by a building permit under Section 7(E)(2) below; (ii) a deed or other instrument establishing the applicant's ownership interest in the property; and (iii) either a copy of the completed subsurface wastewater disposal system application (Form HHE-200) for the lot for which the growth permit application is sought or evidence that the lot will be served by public sewer.
 - 3) The growth permit application shall be submitted to the Code Enforcement Officer either by mail or in hand during normal business hours at the Town Office. The Code Enforcement Officer shall endorse each application with the date and time of receipt. In the event two or more growth permit applications are received simultaneously, the Code Enforcement Officer shall determine their order by random selection.
 - 4) The Code Enforcement Officer shall review growth permit applications for completeness and accuracy in the order in which they are received. If an application is incomplete, the Code Enforcement Officer shall notify the applicant of the additional information or material needed to complete the application and shall resume review of the application only when such additional information or materials are provided. Once the Code

Enforcement Officer determines that an application is complete, he shall approve the application as complete, endorsing the date and time of such approval on the application.

- 5) A separate growth permit application is required for each dwelling unit.
- 6) No growth permit application shall be accepted by the Code Enforcement Officer until the effective date of this Ordinance.

E. Issuance procedure for growth permits from the annual allocation.

- 1) Growth permits from the annual allocation shall be issued on a first-come, first-served basis according to the dates and times the applications are approved as complete by the Code Enforcement Officer under Section 7(D)(4) above. If a growth permit is available under Section 7(C A) on the date the Code Enforcement Officer approves an application as complete, the Code Enforcement Officer shall issue the growth permit by endorsing the date of issuance on the application and mailing a copy to the applicant at the address provided by the applicant on the application. If no growth permit is available from the annual allocation at the time the application is approved as complete, the application shall remain pending, and as growth permits subsequently become available, the Code Enforcement Officer shall issue permits in the order in which the applications were approved as complete, mailing the issued permits to the applicants as provided above.
- 2) Once issued, a growth permit must be replaced by a building permit for construction, placement or creation of the dwelling unit or units authorized by the growth permit on the specific lot for which the growth permit was issued, no later than 180 days after the date of issuance. A growth permit which is not replaced by a building permit within such 180 day period shall expire, except that the Code Enforcement Officer may approve one extension for one additional period of 90 days if a request for the extension is made prior to the expiration of the original 180 day period. If a growth permit expires, a subsequent application for a growth permit on the same lot shall be processed and ranked as a new application pursuant to Section 7(D) above. Expired growth permits shall not be counted in determining the maximum number of permits which may be issued during any calendar year.
- 3) At the end of each calendar year, if the number of approved applications for growth permits from the annual allocation exceeds the number of permits available for issuance, such approved applications shall remain pending into the next calendar year and shall retain their ranking according to the order in which they were approved as complete.

F. Establishment of the reserve pool of growth permits.

- 1) Un-issued growth permits as of December 31, 2007 that were carried forward to 2008 shall be placed in a reserve pool and shall be allocated in accordance with the provisions of subsection G below.
- 2) Each growth permit for a single-family dwelling that was carried forward to 2008 shall be counted as one growth permit under the amended system.
- 3) Each growth permit for a multi-plex that was carried forward to 2008 shall be counted as five (5) growth permits under the amended system.
- 4) The growth permits in the reserve pool shall remain available until used and un-issued permits shall carry over from year-to-year.
- 5) Twenty (20) of the growth permits in the reserve pool at the beginning of each calendar year shall be set aside for affordable housing units and may be used during the year as set forth in subsection G. If any of these growth permits are not used during the year they shall not be carried forward but the affordable housing set aside for the following year shall be reset at twenty (20) growth permits.
- 6) The Town Council may add growth permits to the reserve pool by formal vote of the Council following public hearing as part of its periodic review of the Ordinance or if the number of units in the reserve pool drops below fifty (50) or if the available growth permits are not adequate to allow the construction of a project in accordance with subsection G below.
- 7) If the number of growth permits in the reserve pool at the end of a calendar year is less than twenty (20), additional growth permits shall be automatically be added to the pool so that a minimum of twenty (20) growth permits are available and these twenty (20) permits shall be set aside for affordable housing units.

G. Allocation of growth permits from the reserve pool.

- 1) The Code Enforcement Officer may issue up to five (5) growth permits from the reserve pool each calendar year for detached single family dwellings that are located on lots that are not part of a subdivision provided that there are no growth permits available from the annual allocation.
- 2) Except as provided in 1 above, the Planning Board shall be responsible for determining if a subdivision or other development is eligible for the allocation of growth permits from the reserve pool.
- 3) A property owner or his/her representative may request that the project be designated as eligible to receive growth permits from the reserve pool at the time of subdivision or site plan review for new or expanded projects. An approved subdivision or project as of the date of adoption of this provision may also be determined to be eligible to receive growth permits

from the reserve pool. This request shall be in writing on forms provided by the Code Enforcement Officer and shall demonstrate how the project conforms to the requirements of this subsection.

- 4) If the Planning Board determines that a subdivision or other development is eligible to receive growth permits from the reserve pool, it shall notify the Code Enforcement Officer in writing of this determination.
- 5) The Planning Board shall determine that a subdivision or other development is eligible to receive growth permits from the reserve pool only if it finds that at least one of the following are met:
 - a) The dwelling units to which the growth permits may be allocated are part of a contract zone in which the provisions of the zoning provide for some or all of the growth permits needed for the project to come from the reserve pool.
 - b) The dwelling units to which the growth permits may be allocated are part of an affordable housing project in which at least fifty (50) percent of the dwelling units are affordable housing.
 - c) The dwelling units to which the growth permits may be allocated are part of a housing project or mixed-use development that will use either the affordable housing density bonus provisions or the development transfer provisions of the Zoning Ordinance.
 - d) The dwelling units to which the growth permits may be allocated are part of an approved subdivision or other project as of the date of adoption of this provision and will be located in two-family, multifamily, or mixed-use buildings.
- 6) The growth permits in the reserve pool are intended to allow the construction of housing that is not easily accommodated within the annual allocation or that could unreasonably reduce the availability of growth permits to other property owners because of the scale or type of development. Therefore, in considering requests for the eligibility of projects to receive growth permits from the reserve pool, the Planning Board shall approve such requests only if it finds that the use of growth permits from the annual allocation (see subsection C above) may not permit the dwelling units to be constructed in a timely and efficient manner or that the use of the growth permits from the annual allocation may unreasonably reduce the availability of growth permits to other property owners due to the scale of the project and the number of permits available through the annual allocation.
- 7) If a project is determine to be eligible to receive growth permits from the reserve pool, the record owner of the property shall apply for a growth permit for each dwelling unit in accordance with subsection D above.
- 8) The Code Enforcement Officer shall process the application for a growth permit(s) in accordance with subsection E above except as follows:

- a) If no growth permits from the annual allocation are available at the time of application, the Code Enforcement Officer shall issue the growth permits from the reserve pool.
- b) If the subdivision or development has not previously received twenty percent (20%) of the available growth permits from the annual allocation during the current calendar year, the Code Enforcement Officer shall issue the growth permits from the annual allocation until the twenty percent (20%) limit is reached and any additional growth permits shall be issued from the reserve pool.
- c) The issuance of growth permits for a subdivision or other project that is subject to contract zoning shall occur in accordance with these provisions unless the contract zoning contains specific alternative provisions. In this case, the Code Enforcement Officer shall issue the growth permit in accordance with the terms of the contract zone.
- d) If the subdivision or other project utilizing growth permits from the reserve pool is an affordable housing project or includes affordable housing units, the growth permits for the affordable units shall first be taken from the twenty (20) permit set aside for affordable housing. If the growth permits available in the affordable housing set aside are not adequate to allow construction of the project, the balance of the growth permits shall be taken from the permits in the reserve pool that are not set aside for affordable housing.

H. Transferability.

Growth permits are issued only for the specific lot identified in the growth permit application. A growth permit may be transferred to a new owner of the lot, provided notice of the transfer of ownership is given in writing to the Code Enforcement Officer before the growth permit is replaced by a building permit. Transfer of ownership does not change the date of issuance or the ranking of an issued growth permit. An application for a growth permit is not transferable.

8. PERIODIC REVIEW OF ORDINANCE (Amended 06/18/2003; Amended 11/17/2004 – Effective 01/01/2005; Amended 07/16/08 – Effective 01/01/09)

The Town Council shall conduct a periodic review of this Ordinance to evaluate whether the rate of residential growth remains consistent with the Town's ability to absorb the growth, and shall determine whether the number of growth permits available under this Ordinance should be adjusted by amendment to this Ordinance. The Town Council shall conduct a review at least once every three (3) years. The Town Council may seek assistance or advice from the Planning Board in connection with such review. This

section does not limit the Council's authority to review and/or amend the Ordinance at any other time.

9. VIOLATION, PENALTIES AND ENFORCEMENT

Any person who constructs, creates or places a dwelling unit within the Town of Scarborough without a growth permit required by this Ordinance or who owns or occupies a dwelling unit constructed, created or placed within the Town of Scarborough without a growth permit required by this Ordinance commits a civil violation and is subject to the fines, penalties and remedies provided in 30-A M.R.S.A. § 4452. Each day a violation continues to exist after notice of the violation constitutes a separate violation. This Ordinance shall be enforced by the Town of Scarborough Code Enforcement Officer in the manner provided for enforcement of violations of the Zoning Ordinance under Section IV, subsections (A) and (B) of the Zoning Ordinance.

10. APPEALS (Amended 07/16/08 – Effective 01/01/09)

An applicant for a growth permit who is adversely affected by a decision or action of the Code Enforcement Officer in the administration of this Ordinance may appeal to the Scarborough Board of Appeals under the provisions governing administrative appeals in Section 5 of the Zoning Ordinance. Decisions of the Code Enforcement Officer to approve a growth permit application as complete or to issue a growth permit are not appealable.

An applicant requesting that a subdivision or other development be determined to be eligible to receive growth permits from the reserve pool who is adversely affected by a decision of the Planning Board may appeal to Superior Court in accordance the Maine Rules of Civil Procedure, Rule 80B. Actions of the Planning Board with respect to this Ordinance are not appealable to the Scarborough Board of Appeals.

Be it further ordained, that these amendments shall take effect on January 1, 2009. Any growth permit applications submitted and any growth permits issued prior to January 1, 2009, shall be governed by the ordinance provisions in effect prior to January 1, 2009.