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# FLOODPLAIN MANAGEMENT ORDINANCE

## FOR THE

## TOWN OF FRANKLIN, MAINE

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ENACTED: June 30, 2016  
Date

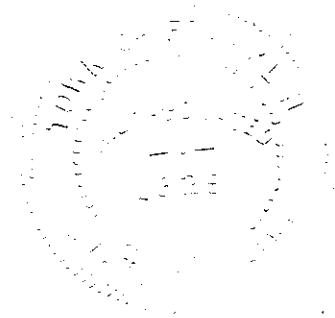
EFFECTIVE: July 20<sup>th</sup>, 2016  
Date

CERTIFIED BY: Robert W. Fernald  
Signature

CERTIFIED BY: ROBERT W. FERNALD  
Print Name

Town Clerk  
Title

Affix Seal



**FLOODPLAIN MANAGEMENT ORDINANCE**

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## **ARTICLE I - PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Franklin, 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 Franklin, 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 Franklin, 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 Franklin 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, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Franklin 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 Franklin, Maine.

The areas of special flood hazard, Zones A, AE, and VE for the Town of Franklin, Hancock County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Hancock County, Maine," dated July 20, 2016 with accompanying "Flood Insurance Rate Map" dated July 20, 2016 with panels: 618D, 619D, 640D, 650D, 780D, 781D, 782D, 783D, 784D, 791D, 792D, 801D, 802D, 803D, 804D, 806D, 808D, 811D, 812D, and 820D, derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Hancock County, Maine," 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 Franklin, 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), North American Vertical Datum (NAVD), 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 AE and VE from data contained in the "Flood Insurance Study - Hancock County, 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), 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, 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;
  - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE, 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 of \$25.00 for all minor development and \$50.00 for all new construction or substantial improvements shall be paid to the Code Enforcement Officer and a copy of a receipt for the same shall accompany the application.

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 - Hancock County, 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.
- 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 prior to any alteration or relocation of a water course 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 a 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 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 flood waters 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 flood waters into the system and discharges from the system into flood waters.
- 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. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
  2. 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.
  3. Zone VE shall meet the requirements of Article VI.P.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:
1. Zone AE 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 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.

3. Zone VE shall meet the requirements of Article VI.P.

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

1. Zone AE 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 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. Zone VE shall meet the requirements of Article VI.P.

I. **Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A and AE 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. Zone VE shall meet the requirements of either Article VI.I.1.a. and b., or Article VI.P.

J. **Accessory Structures** - Accessory Structures, as defined in Article XIV, located within Zones A and AE, 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. have unfinished interiors and not be used for human habitation;
2. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
3. be located outside the floodway;
4. 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,
5. 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 Zone AE 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 AE 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 FEMA's guidelines and standards for flood risk analysis and mapping.
  3. In Zones AE 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 A and AE 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 A, AE, and VE 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 A, AE, and VE 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.

**O. Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A, AE, and VE, 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 AE and VE 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 Zone VE 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 to enclose less than 300 square feet of area with non-supporting breakaway walls that 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:
- (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); 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 Zone VE is prohibited.
4. Human alteration of sand dunes within Zone VE 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 Zone VE, 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 to 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, 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 in order 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 Franklin 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 is deemed 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 other actions, the Code Enforcement Officer may, upon identifying a violation, submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. 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** - a small detached structure that is incidental and subordinate to the principal structure.

**Adjacent Grade** - the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Area of Special Flood Hazard** - 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** – a flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement** - area of a building that includes a floor that is subgrade (below ground level) on all sides.

**Breakaway Wall** - 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.

**Conditional Use** - 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.

**Containment Wall** – wall used to convey or direct storm water or sanitary water from the initial source to the final destination.

**Development** – a manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

**Digital Flood Insurance Rate Map (FIRM)** – see **Flood Insurance Rate Map**

**Elevated Building** - a non-basement building that is:

- a. built, in the case of a building in Zones A or AE, so that the top of the elevated floor, or in the case of a building in Zone VE, 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 to not 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 A or AE, **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 Zone VE, **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, 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**

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

**Flood Insurance Rate Map (FIRM)** - 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 Floodprone Area** - 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** - 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** - 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** - the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard** - 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, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use** - a use that 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;

**New Construction** - 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.

**North American Vertical Datum (NAVD)**- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earths crust, glacial rebound, and subsidence and the increasing use of satellite technology.

**100-year flood** - see **Base Flood**.

**Recreational Vehicle** - a vehicle that 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. 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** - 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** - 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).

60.3 (e) Rev. 01/16  
Prepared by DACF/JP



Shoreland Zoning  
Ordinance  
For The  
Town of Franklin,  
Maine

ADOPTED  
MARCH 28<sup>th</sup>, 2009

AMENDED

2012

2013

2016

SHORELANDS ZONING ORDINANCES FOR THE TOWN OF FRANKLIN, MAINE

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# Shoreland Zoning Ordinance for the

## Town of Franklin, Maine

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 building 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.
2. **Authority.** This Ordinance has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).
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.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

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NOTE: Coastal wetlands, by definition, include all areas affected by tidal action, not just those areas where salt marshes and salt meadows exist. Cobble and sand beaches, mudflats, and rocky ledges, below the highest annual tide are all considered to be coastal wetlands.

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#### 4. Effective Date

**A. Effective Date of Ordinance and Ordinance Amendments.** This Ordinance, which was adopted by the municipal legislative body on March 28<sup>th</sup>, 2009, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be 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 this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

5. **Availability.** A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.
6. **Severability.** Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.
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 Town of Franklin, the more restrictive provision shall control.
8. **Amendments.** This Ordinance may be amended as follows:

- 1) By a majority vote of the governing body if the proposed amendment is recommended by the Planning Board, or
- 2) By 2/3 majority vote of the governing body if the proposed amendment is not recommended by the Planning Board.

In either case, the Planning Board shall hold a public hearing at least 30 days prior to the meeting of the governing body. Notice of the hearing shall be posted in the Town Office at least thirteen (13) days in advance of the Public hearing. The notice shall be published at least two (2) times in a newspaper that complies with Title 1, section 601 and that has a general circulation in the municipality. The date of the first publication shall be at least twelve (12) days before the hearing, and the date of the second publication must be at least seven (7) days before the hearing.

Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her 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 Commissioner.

## 9. Districts and Zoning Map

- A. **Official Zoning Map.** The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Zoning Map(s) which is (are) made a part of this Ordinance:
  - (1) Resource Protection District
  - (2) Shoreland District
  - (3) Stream Protection District

**B. Scale of Map.** The Official Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

**C. Certification of Official Zoning Map.** The Official Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the Office of the Town Clerk. Additional copies of this map may be seen at the Office of the Selectmen.

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

**10. Interpretation of District Boundaries.** Unless otherwise set forth on the Official 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.

**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.

**12. Non-conformance.**

**A. 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.

**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.

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NOTE: See Section 18 for the definitions of non-conforming structures, non-conforming uses and non-conforming lots.

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### 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 (see Land Use Table) as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure, and is in accordance with subparagraphs (a), and (b) below.

(a) Legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Ordinance are met.

- i. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement.
- ii. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement.
- iii. For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.
- iv. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond, the maximum combined total floor area for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the floor area and height limits of division (iii).

For the purposes of Section 12(C)(1)(a), a basement is not counted toward floor area.

(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 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, it shall not be considered to be an expansion of the structure.

(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 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.

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:

- (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.

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.

- (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.
- (3) Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming floor area of the reconstructed or replaced structure at its new location. If the total amount of floor area of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less



than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(2) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 12(C)(2) above, the physical condition and type of foundation present, if any.

- (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.

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, floodplain 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 allowed 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.
- (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.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on March 23<sup>rd</sup>, 1991, 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.

## **13. Establishment of Districts**

**A. Resource Protection District.** The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, and areas that are currently developed which are zoned Shorelands District.

- (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006. For the purposes of this paragraph "wetlands associated with great ponds" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond, and have a surface elevation at or below the water level of the great pond during the period of normal high water. "Wetlands associated with great ponds" are considered to be part of that great pond.

- (2) This district shall also include 100 year floodplains adjacent to coastal wetlands as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- (3) Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- (4) 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.
- (5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to coastal wetlands which are subject to severe erosion or mass movement, such as steep coastal bluffs.

**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 two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, 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 are 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.

**C. Shoreland District .** The Shoreland District includes all land areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond; within two-hundred and fifty (250) feet, horizontal distance, of the upland edge of a coastal or freshwater wetland; or within seventy-five (75) feet of the normal high water line of a stream, which are suitable for residential and recreational development. It includes areas other than those in the Resource Protection and Stream Protection Districts.

**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 Zoning Map.

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.

CEO - Allowed with permit issued by the Code Enforcement Officer

LPI - Allowed with permit issued by the Local Plumbing Inspector

Abbreviations:

RP - Resource Protection

SP - Stream Protection

SD- Shoreland District

Table Notes

<sup>1</sup>In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

<sup>2</sup>Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

<sup>3</sup>In RP not allowed in areas so designated because of wildlife value.

<sup>4</sup>Provided that a variance from the setback requirement is obtained from the Board of Appeals.

<sup>5</sup>Functionally water-dependent uses and uses accessory to such water dependent uses only.

<sup>6</sup>See further restrictions in Section 15( L)(2).

<sup>7</sup>Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

<sup>8</sup>Except as provided in Section 15(H)(3).

<sup>9</sup>Single family residential structures may be allowed by special exception only according to the provisions of Section 16(F), Special Exceptions. Two-family residential structures are prohibited.

<sup>10</sup>Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

<sup>11</sup>Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

<sup>12</sup>Permit not required but must file a written "notice of intent to construct" with CEO.

**NOTE:** A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

**TABLE 1. LAND USES IN THE SHORELAND ZONE**

<u>LAND USES</u>	<u>DISTRICT</u>		
	<u>SP</u>	<u>RP</u>	<u>SD</u>
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes
2. Motorized vehicular traffic on existing roads and trails	yes	yes	yes
3. Forest management activities except for timber harvesting	yes	yes	yes
4. Timber harvesting <u>Contact Maine Forest Service Office</u>	---	---	---
5. Clearing or removal of vegetation for activities other than timber harvesting	CEO	CEO <sup>1</sup>	yes
6. Fire prevention activities	yes	yes	yes
7. Wildlife management practices	yes	yes	yes
8. Soil and water conservation practices	yes	yes	yes
9. Mineral exploration	no	yes <sup>2</sup>	yes <sup>2</sup>
10. Mineral extraction including sand and gravel extraction	no	PB <sup>3</sup>	PB
11. Surveying and resource analysis	yes	yes	yes
12. Emergency operations	yes	yes	yes
13. Agriculture	yes	PB	yes
14. Aquaculture	PB	PB	PB
15. Principal structures and uses			
A. One and two family residential, including driveways	PB <sup>4</sup>	PB <sup>9</sup>	CEO
B. Multi-unit residential	no	no	PB
C. Commercial	no <sup>10</sup>	no <sup>10</sup>	no <sup>10</sup>
D. Industrial	no	no	no
E. Governmental and institutional	no	no	PB
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	PB <sup>4</sup>	PB	CEO
16. Structures accessory to allowed uses	PB <sup>4</sup>	PB	CEO
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 <sup>11</sup>	CEO <sup>11</sup>	CEO <sup>11</sup>
b. Permanent	PB	PB	PB
18. Conversions of seasonal residences to year-round residences	LPI	LPI	LPI
19. Home occupations	PB	PB	PB
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI
21. Essential services			
A. Roadside distribution lines (34.5kV and lower)	CEO <sup>6</sup>	CEO <sup>6</sup>	yes <sup>12</sup>
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	PB <sup>6</sup>	PB <sup>6</sup>	CEO
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB <sup>6</sup>	PB <sup>6</sup>	PB
D. Other essential services	PB <sup>6</sup>	PB <sup>6</sup>	PB
22. Service drops, as defined, to allowed uses	yes	yes	yes
23. Public and private recreational areas involving minimal structural development	PB	PB	PB
24. Individual, private campsites	CEO	CEO	CEO
25. Campgrounds	no	no <sup>7</sup>	PB
26. Road construction	PB	no <sup>8</sup>	PB
27. Parking facilities	no	no <sup>7</sup>	PB
28. Marinas	PB	no	PB
29. Filling and earth moving of <10 cubic yards	CEO	CEO	yes
30. Filling and earth moving of >10 cubic yards	PB	PB	CEO
31. Signs	yes	yes	yes
32. Uses similar to allowed uses	CEO	CEO	CEO
33. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO
34. Uses similar to uses requiring a PB permit	PB	PB	PB

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**15. Land Use Standards.** All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

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**A. Minimum Lot Standards**

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1)		
(a) Residential per dwelling unit		
(i) Within the Shoreland Zone Adjacent to Tidal Areas	30,000	150
(ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
(iii) Within a subdivision in the Shoreland Zone adjacent to Tidal Areas	130,000	200
(b) Governmental, Institutional, Commercial or Industrial per principal structure		
(i) Within the Shoreland Zone Adjacent to Tidal Areas	40,000	200
(ii) Within the Shoreland Zone Adjacent to Non-tidal Areas	60,000	300
(c) Public and Private Recreational Facilities		
(i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	40,000	200
(2) 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 (2) lots shall not be included toward calculating minimum lot area.		
(3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.		
(4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.		
(5) If more than one residential dwelling unit, principal governmental, institutional, commercial 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 dwelling unit, principal structure, or use.

- (6) A lot abutting a public road shall have a minimum road frontage of one hundred (100) feet.
- (7) A lot abutting a public road shall have a minimum setback depth of seventy-five (75) feet from the center line of that road.
- (8) Each property line setback shall be a minimum of ten (10) feet.

## **B. Principal and Accessory Structures**

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- (1) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland. 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.

In addition:

- (a) 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.
- (b) 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.
- (c) 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.

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NOTE: All tidal land which is subject to tidal action during the highest annual tide is coastal wetland.

NOTE: A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

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- (2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Shorelands and Stream Protection Districts, shall not exceed thirty-five (35) feet in height.
  - (a) This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
  - (b) The height of a structure shall exclude a non-habitable feature mounted on a structure roof for observation purposes, such as a cupola, a dome, or a widow's walk, provided the following conditions are met:
    - (i) the feature is being added to, or is part of, a conforming structure,
    - (ii) the structure is not located in a Resource Protection or Stream Protection District,
    - (iii) the feature does not extend beyond the exterior walls of the structure,
    - (iv) the feature has a floor area of fifty-three (53) square feet or less, and
    - (v) the feature does not increase the height of the structure, as defined, more than seven (7) feet.
- (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 flood-plain soils. The applicant shall prove that all structures and fill do not encroach on the 100 year flood plain. While the Town of Franklin participates in the National Flood Insurance Program, and maintains the adoption of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
- (4) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed.
- (5) Mobile Homes and Mobile Home Parks
  - (a) Mobile Homes Not in a Mobile Home Park  
Mobile homes not in a mobile home park shall meet all to the requirements of this Ordinance for single family dwellings.
  - (b) Mobile Home Parks  
Mobile home parks are prohibited in the Resource Protection, Shoreland, and Stream Protection Districts.



- (6) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
- (a) The site has been previously altered and an effective vegetated buffer does not exist;
  - (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - (d) The total height of the wall(s), in the aggregate, are no more than 24 inches;
  - (e) Retaining walls are located outside of the 100-year floodplain on streams, coastal wetlands, and tributary streams, 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.
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
  - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
    - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
    - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
    - (iii) Only native species may be used to establish the buffer area;
    - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
    - (v) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;

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NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

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- (7) 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 alternative exists on the property.

**C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below 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 the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
- (5) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending below the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- (6) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- (7) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- (8) Structures built on, over or abutting a pier, wharf, dock or other structure extending below 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.

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NOTE: New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

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**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. The following shall also apply:
  - (a) Each recreational vehicle, tent, or shelter site shall be provided a minimum of two-hundred (200) square feet of off-street parking, plus maneuvering space.
  - (b) Each recreational vehicle, tent, or shelter site shall be provided with a picnic table, trash receptacle, and fireplace.
- (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 one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

**E. Individual Private Campsites.** Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

- (1) One campsite per lot existing on the March 23<sup>rd</sup>, 1991, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
- (2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- (3) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- (4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- (5) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- (6) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

**F. Commercial and Industrial Uses.** The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds, and streams which flow to great ponds:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms
- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

**G. 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.
- (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.
- (3) In determining the appropriate size of proposed parking facilities, the following shall apply:
  - (a) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
  - (b) Internal travel aisles: Approximately twenty (20) feet wide.

**H. 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 one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance from the normal high-water line of other 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.

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.

Section 15 (H)(1) does not apply to approaches to water crossings or 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(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

- (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.
- (3) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District 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.
- (4) 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).
- (5) Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- (6) 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 (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.

(7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

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

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

(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.

(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.

(8) 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.

**I Signs.** The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, and Shoreland Districts:

(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.

(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.

(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.
- (5) Signs relating to public safety shall be allowed without restriction.
- (6) No sign shall extend higher than twenty (20) feet above the ground.
- (7) Signs may be illuminated only by shielded, non-flashing lights.

**J. Storm Water Runoff**

- (1) All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
- (2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

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NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area.

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**K. 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 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.
  - (b) A holding tank is not allowed for a first-time residential use in the shoreland zone.

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NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

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## **L. 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 or Stream Protection 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.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

**M. 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 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)(3) below.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other 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.
- (3) 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.

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NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

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- (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
- (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.
- (4) In keeping with the purposes 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.

## **N. 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).
- (2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond, or within seventy-five (75) feet horizontal distance, of other 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.
- (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.

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NOTE: Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.

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- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, from other 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.
- (5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, of other 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.

## **O. Timber Harvesting**

After January 1, 2013, all timber harvesting standards in the shoreland zone are administered by the State of Maine Forest Service Office.

**P. 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.

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.

- (2) Except in areas as described in Section P(1), above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
  - (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 stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
  - (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(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond, or stream flowing to a great pond, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

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

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

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NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is:

$$(4 \times 1) + (2 \times 2) + (3 \times 4) + (2 \times 8) = 36 \text{ points}$$

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Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 =12) may be removed from the plot provided that no cleared openings are created.

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The following shall govern in applying this point system:

- (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(P)(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 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 the 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(P) paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Section 15(P)(2) does 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.

- (3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other 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.

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.

- (4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- (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(P).

#### **Q. 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:
  - (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 rip-rap.
- (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.

**R. 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.

**S. 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, tributary stream or wetland..

**T. Archaeological Site.** Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

## **16. Administration**

### **A. Administering Bodies and Agents**

(1) Code Enforcement Officer. A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.

(2) Board of Appeals. A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. section 2691, and the most recent amended version of the Zoning Ordinance, Town of Franklin, ME

- (3) Planning Board. A Planning Board shall be created in accordance with the provisions of State law, and the most recent amended version of the Ordinance for the Establishment of the Franklin Planning Board.

**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.

- (1) A permit is not required for the replacement of an existing road culvert as long as:
  - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
  - (b) The replacement culvert is not longer than 75 feet; and
  - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

**C. Permit Application**

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided 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 written 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.
- (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 plumbing permit or a completed application for a 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.
- (5) After-the-fact permits shall not be issued for any use, activity, or construction which violated any section of this Ordinance at the time the use, activity or construction was begun, other than timeliness of application.

#### **D. Fees**

No building, use, subdivision, or special exception permit shall be issued without payment of a fee according to the following schedule:

- (1) Applicants for building permits, change of use permits, special exception permits and/or variances, shall submit a fee to the Code Enforcement Officer at the time of submission of application forms. The fees shall serve as remuneration for the services of the Code Enforcement Officer and as a source of funds for the administration of this Ordinance.
  - (a) Change of use permits, and permits not for a structure shall require the payment of a fee, which shall be \$30.00; said fee being apportioned \$20.00 for the Code Enforcement Officer and \$10.00 for administration.
  - (b) Permits for structures shall require the payment of a fee, which shall be \$.05 per square foot of floor area, to be retained by the Code Enforcement Officer, plus \$10.00 for administration. For the calculation of this fee, floor area shall be considered the total vertical footprint of the structure, not the sum of the floors.
  - (c) Use permits issued by the Code Enforcement Officer as described in Table 1 Land Uses and within the Shorelands, Resource Protection, and Stream Protection Districts, shall be \$100.00; said fee apportioned \$50.00 to the Code Enforcement Officer and \$50.00 for administration.
  - (d) Applicants for a special exception permit shall submit a fee to the Code Enforcement Officer of \$100.00, said fee being apportioned \$20.00 to the Code Enforcement Officer and \$80.00 for administration.
  - (e) After-the-Fact Permits; applicants seeking a permit for a use, activity or construction, which was begun prior to application, shall submit a fee equal to three (3) times the regular fee for that permit, apportioned at the same percentages as the regular fee for that permit.
  - (f) Permit extensions shall require the payment of a fee equal to fifty percent (50%) the original permit fee; the Code Enforcement Officer shall retain said fee as remuneration.
- (2) Applicants for subdivision permits shall follow the requirements set forth in The Subdivision Ordinance of the Town of Franklin Maine.

**E. Procedure for Administering Permits.** Within 30 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall approve, deny, or refer to the Planning Board for special exception, all such applications. The Code Enforcement Officer shall notify the applicant in writing, on a form designed for the purpose 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 30 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 30 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 30 days of the public hearing, 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 floodplain 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.

**F. Special Exceptions.** In addition to the criteria specified in Section 16(E) above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

- (1) There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- (2) The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.



(3) All proposed buildings, sewage disposal systems and other improvements are:

- (a) Located on natural ground slopes of less than 20%; and
- (b) Located outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

**G. Expiration of Permit.** Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial 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.

**H. Installation of Public Utility Service.** A public utility, water district, sanitary district or any utility company of any kind may not 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 or other written arrangements have been made between the municipal officials and the utility.

## **I. 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 administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement

Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

- (b) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(2) Variance Appeals. Variances may be granted 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:
  - (i) 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
  - (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
    - a. That the land in question cannot yield a reasonable return unless a variance is granted;
    - 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;
    - 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.
- (d) Notwithstanding Section 16(I)(2)(c)(ii) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- (e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure 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.

- (f) 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.

### (3) Administrative Appeals

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

### (4) Appeal Procedure

#### (a) Making an Appeal

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(I)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
  - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, 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.

(iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty (30) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) Decision by Board of Appeals

(i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.

(ii) The person filing the appeal shall have the burden of proof.

(iii) The Board shall decide all administrative appeals and variance appeals within thirty (30) days after the close of the hearing, and shall issue a written decision on all appeals.

(iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

(5) Appeal to Superior Court. Except as provided by 30-A M.R.S.A. section 2691(3)(F), 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 (45) days from the date of any decision of the Board of Appeals.

(6) Reconsideration. In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

**J. Enforcement**

(1) Nuisances. Any violation of this Ordinance shall be deemed to be a nuisance.

(2) Code Enforcement Officer

(a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for

such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

- (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.
- (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 authorized 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 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 30-A, M.R.S.A. section 4452.

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NOTE: Current penalties include fines of not less than \$100 nor more than \$2500 per violation for each day that the violation continues. However, in the Resource Protection District the maximum penalty is increased to \$5000 (38 M.R.S.A. section 4452).

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## **17. Construction of Language**

- A. In this Ordinance certain terms or words shall be interpreted as follows:

The word "person" includes a firm, association, organization partnership, trust company or corporation, as well as an individual; the present "tense includes" the future tense, the singular number includes the plural, and the plural includes the singular; the word "shall" is mandatory, and the word "may" is permissive; the words "used" or "occupied" include the words "intended", "designed" or "arranged to be used or occupied", the word "building", includes the word "structure", and the word "dwelling" includes the word "residence", the word "lot" includes the words "plot" or

“parcel”. In case of any difference of meaning or implication between the text of this Ordinance and any map or illustration, the text shall control.

Terms not defined shall have the customary dictionary meaning.

## **18. 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.

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.

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 greenhouse products. Agriculture does not include forest management and timber harvesting activities.

Appellate hearing - A hearing which reviews the prior record.

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.

Basement - any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

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 premises established for overnight use for the purpose of temporary camping and for which a fee is charged.

Canopy – the more or less continuous cover formed by tree crowns in a wooded area.

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 that 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.

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NOTE: All areas below the highest annual tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

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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.

De novo hearing – A new hearing of a matter, conducted as if the original hearing had not taken place.

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.

Dimensional requirements - numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disability - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

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.

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 - 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 of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

Expansion of use - the addition of one or more weeks or months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

Family - one or more persons occupying a premises and living as a single housekeeping unit.

Floodway - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

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.

Forested wetland - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

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.

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 or inland waters and that can not 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 aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.

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 purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner. This classification includes Abrams Pond, Donnell Pond, Duck Pond, Georges Pond, Great Pond, and Little Pond.

Ground cover – small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.



Height of a structure - the vertical distance between the mean original (prior to construction) 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.

Note: See Section 15(B)(2) for additional exemptions on structure height.

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 two (2) persons other than family members residing in the home.

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

Individual private campsite - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

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.

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, bait 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.

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.

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 side lot lines.

Mobile home – a structure designed as a dwelling unit and containing sleeping accommodations, a toilet, a tub or shower bath, and kitchen facilities, including major appliances and furniture, with plumbing and electrical connections provided for attachment to outside systems; and designed to be transported after fabrication on its own wheels. A mobile home shall contain not less than four-hundred fifty (450) square feet of gross floor area.

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.

Native – indigenous to the local forests.

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.

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.

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.

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NOTE: Adjacent to tidal waters, setbacks are measured from the upland edge of the “coastal wetland.”

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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, wharves, bridges and other structures and uses extending over or below 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: Structures 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 floodplain soils - the following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Alluvial	Cornish	Charles
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 homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

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.

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, excluding a driveway as defined.

Salt marsh - Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

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 rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

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.

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.

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 distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

Shoreline - the normal high-water line, or upland edge of a freshwater or coastal wetland.

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted by the most current National Hydrology Dataset maintained by the United States Geological Survey, to the point where the stream meets the Shoreland zone of another water body or wetland.

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.

Substantial start - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Substantially Complete: the stage in the progress of construction or development of a structure or use when all conditions of permit approval are in place and function as intended by the Planning Board, and the structure or use can be legally occupied and/or operated for its declared purpose.

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..

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 highest annual tide.

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 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

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.

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.

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NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

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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 highest annual 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.

Vegetation - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

Velocity zone - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

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 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.

Wetland - a freshwater or coastal wetland.

Woody Vegetation - live trees or woody, non-herbaceous shrubs.

Yard - The area of land on a lot not occupied by the principal building.

Yard Front - The area of land between the front lot line and the nearest part of the principal building.

Yard Side - The area of land between the side lot line and nearest part of the principal building.

Yard Rear - The area of land between the rear lot line and the nearest part of the principal building.



# **SUBDIVISION ORDINANCE OF THE TOWN OF FRANKLIN, MAINE**

## **SECTION I: GENERAL PROVISIONS**

### **SUB-SECTION A: PURPOSE**

The purpose of this ordinance shall be to assure the comfort, health, safety, and general welfare of the people, to protect the environment, maintain community character, and to provide for the orderly growth and development of a sound and stable community. This ordinance also has the purpose of providing uniform procedures and standards for observance by the Planning Board, other municipal officers, and developers in regulating subdivisions in the Town of Franklin.

### **SUB-SECTION B: AUTHORITY**

This ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and Title 30A, MRSA, Section 4404.

### **SUB-SECTION C: TITLE**

This ordinance shall be known and cited as the “Subdivision Ordinance of the Town of Franklin, Maine.

### **SUB-SECTION D: ADMINISTRATION**

The Planning Board of the Town of Franklin shall administer this ordinance.

### **SUB-SECTION E: EFFECTIVE DATE**

This ordinance becomes effective upon its adoption by town meeting.

### **SUB-SECTION F: FILING**

A certified copy of this ordinance shall be filed with the Registry of Deeds, according to the requirements of state law.

### **SUB-SECTION G: APPLICABILITY**

The provisions of this ordinance shall apply to all of the land area of all proposed subdivisions, as defined herein, located within the municipal boundaries of the Town of Franklin, Maine.

### **SUB-SECTION H: EXEMPTIONS**

Subdivisions for which application has been received and reviewed by the Planning Board at a regular or special meeting of the Board prior to the effective date of this ordinance are exempt from the provisions of this ordinance. However, expansions or substantive changes in subdivisions for which application has been received and reviewed prior to the effective date of this ordinance shall be required to comply with the provisions of this ordinance.

### **SUB-SECTION I: VALIDITY**

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



ordinance, and to this end, the provisions of this ordinance are hereby declared to be severable.

**SUB-SECTION J: CONFLICT WITH OTHER ORDINANCES**

This ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, by-law, permit, or provision of law. Where the provisions of this ordinance impose a higher standard for the promotion and protection of health and safety, the provisions of this ordinance shall prevail.

**SUB-SECTION K: CONFORMANCE WITH OTHER APPLICABLE LAWS AND REGULATIONS**

The proposed subdivision shall be in conformance with all applicable local, state, and federal ordinances, statutes, laws and regulations.

**SUB-SECTION L: SITE LOCATION OF DEVELOPMENT ACT APPROVAL REQUIRED**

If the proposed subdivision requires approval pursuant to the Site Location of Development Act (Title 38, MRSA), the following provisions shall apply:

1. EVIDENCE OF APPROVAL REQUIRED: If the Planning Board determines that the proposed subdivision requires review and approval under the Site Location of Development Act (Title 38, MRSA, Sections 481-490), it shall require that evidence of such approval be submitted, prior to any action by the Planning Board on the proposed subdivision.
2. EVIDENCE OF EXEMPTION REQUIRED: If the Planning Board is in doubt as to whether or not the proposed subdivision requires review and approval under the Site Location of Development Act (Title 38, MRSA, Sections 481-490), it shall require that evidence of exemption from the requirements of said Act be submitted, prior to any action by the Planning Board on the proposed subdivision.
3. SITE LOCATION APPROVAL DOES NOT GUARANTEE LOCAL APPROVAL: Department of Environmental Protection approval under the Site Location of Development Act (Title 38, MRSA, Sections 481-490), does not guarantee Planning Board approval.

**SUB-SECTION M: BURDEN OF PROOF**

In all instances, the burden of proof shall be upon the applicant proposing the subdivision.

**SECTION II: PROCEDURES FOR PRELIMINARY SUBDIVISION PLAN REVIEW**

**SUB-SECTION A: PRE-APPLICATION MEETING AND SUBMISSION OF A SKETCH PLAN**

The following provisions apply to Pre-application Meetings and the submission of sketch plans:

1. **PRE-APPLICATION MEETING WITH PLANNING BOARD:** Prior to submitting an application for subdivision approval and the Preliminary Plan, the applicant or his authorized agent should appear informally at a regular meeting of the Planning Board to discuss the proposed subdivision.
2. **SUBMISSION OF SKETCH PLAN:** The applicant shall present to the Board, for informal review and comment, a sketch plan of the proposed subdivision. The sketch plan shall consist of a rough outline of the proposed subdivision, and may be a free-hand penciled sketch of the parcel, showing the proposed layout of streets, lots, and other features that may be of assistance to the Board in making its determinations.
3. **NO BINDING COMMITMENTS MADE DURING PRE-APPLICATION MEETING:** No binding commitments shall be made between the applicant and the Board at this stage. The purpose of the pre-application meeting shall be to understand what is proposed, what is possible, and what is acceptable. The pre-application meeting does not constitute a formal filing of application.

**SUB-SECTION B: SITE INSPECTION**

1. **SITE VISIT RECOMMENDED:** In order for the Planning Board to be more fully informed about the site, the applicant should consider arranging an inspection of the site with the Planning Board, or an individual appointed by the chairman to act as the Board's representative for the inspection. Such on-site inspection should be conducted at or shortly after the time of submission of the sketch plan. The site visit is discretionary. However, the Planning Board reserves the right to make a site visit mandatory.
2. **TEMPORARY MARKERS:** Temporary markers may be required by the Planning Board to readily locate proposed lots and appraise basic lot layout during the site visit.

**SUB-SECTION C: SUBMISSION OF PRELIMINARY PLAN**

Specific requirements will vary according to the size and complexity of the subdivision proposal. In some instances, the Planning Board may waive the requirement for the submission of a Preliminary Plan, in which case the application

form for a Preliminary Plan must be submitted with the Final Plan.

1. PRELIMINARY PLAN SIZE AND SCALE: The Preliminary Plan shall be not less than 8½” by 11”, and shall be drawn to a scale of not greater than 1” equals 100’ nor less than 1” equals 400’, with contour intervals as specified by the Board.
  
2. INFORMATION TO BE SHOWN ON PRELIMINARY PLAN: The following information shall be shown on the Preliminary Plan:
  - a. Proposed name of the subdivision.
  - b. Name of the owner of record.
  - c. Date, north arrow, and graphic map scale.
  - d. Boundary survey of tract to be subdivided, certified by a registered land surveyor, tied to established reference points.
  - e. Total acreage of parcel being subdivided.
  - f. Names of property owners abutting parcel to be subdivided, and property owners on opposite side of any road from the parcel to be subdivided.
  - g. Proposed lot lines with approximate dimensions, lot size, and suggested locations of buildings, common sewage disposal systems, and common wells.
  - h. Contour lines at an interval specified by the Board, referred to U.S. Coastal and Geodetic Survey bench marks if such exist within 500 feet of the subdivision. (Check with Planning Board for required contour intervals.)
  - i. Location and size of existing buildings, watercourses, and other essential existing physical features.
  - j. Location and size of any existing sewers, water mains, culverts, and drains.
  - k. Locations, names, and widths of existing and proposed-streets, highways, easements, building lines, parks and open spaces.
  - l. Location of any parcels to be dedicated to public use and the location of all natural features or site elements to be preserved, if any.
  - m. The location of the soil test pits on each lot.
  - n. The location of any farmland within the lot(s) to be subdivided.
  
3. REQUIRED NUMBER OF COPIES: At least 3 copies shall be provided to the Planning Board.

Note: Farmland is defined in Section X, consistent with PL 2009, c. 356.

**SUB-SECTION D: SUBMISSION OF A PRELIMINARY PLAN APPLICATION**

The following information shall be submitted with the preliminary plan on

application forms supplied by the Planning Board:

1. INFORMATION REGARDING THE APPLICANT: The following information regarding the applicant shall be submitted:
  - a. Name of the owner of record.
  - b. Name of the applicant (if other than owner).
  - c. If applicant is a corporation, evidence that the corporation is licensed to do business in Maine and a copy of a Secretary of State's Certificate of Good Standing.
  - d. Name of applicant's authorized representative.
  - e. Name, address, and registration number(s) of the registered professional engineers, land surveyors, and/or land planners employed by the applicant, for the subdivision.
  - f. Address and phone number of the individual to whom all communications from the Planning Board should be directed.
  - g. The applicant's right, title, option, purchase contract, record ownership, or interest in the parcel to be subdivided.
  - h. The applicant's interest in any property abutting the parcel to be subdivided.
  - i. Evidence that the preliminary plan covers the entire, contiguous holdings of the applicant.
  
2. INFORMATION REGARDING PARCEL PROPOSED TO BE SUBDIVIDED: The following information regarding the parcel proposed to be subdivided shall be submitted:
  - a. Location of property: Book and page numbers from Registry of Deeds.
  - b. Location of property: Tax map and lot numbers from Tax Assessor's Office.
  - c. Present zoning of property.
  - d. Acreage of parcel to be subdivided.
  - e. Names of property owners abutting parcel to be subdivided, and property owners on opposite side of any road from the parcel to be subdivided.
  
3. INFORMATION REGARDING SUBDIVISION PROPOSAL: The following information regarding the subdivision proposal shall be submitted:
  - a. Proposed name of subdivision.
  - b. Number of lots.
  
4. EXHIBITS TO BE ATTACHED TO PRELIMINARY PLAN

APPLICATION: The following information should be attached to the preliminary plan application:

- a. Location map.
  - b. A soils report and/or log, identifying soil types and location of soil test areas (there shall be at least one soil test pit per proposed lot).
  - c. Typical cross-section of proposed grading for roadways, sidewalks, and storm drainage facilities.
  - d. A soil erosion and sedimentation control plan.
  - e. Necessary state and Federal permits not requiring local approval.
  - f. Other information as specified by the Planning Board. (Check with Planning Board and attach to application if required.)
5. ISSUANCE OF DATED RECEIPT: Upon receipt of the preliminary plan, the application and required attachments, the Planning Board shall issue the applicant a dated receipt.

**SUB-SECTION E: PLANNING BOARD ACTION ON THE PRELIMINARY PLAN**

Within 30 days of the date of issuance of the receipt, the Planning Board shall review the preliminary plan and shall notify the applicant in writing either that:

1. NOTIFICATION: APPLICATION IS COMPLETE: With the exception of the submission of a final plan, the application is a complete application; or
2. NOTIFICATION: ADDITIONAL INFORMATION IS REQUIRED: In addition to the submission of a final plan, there are a number of specific additional materials that must be submitted to make a complete application. The Planning Board shall list the specific additional items that must be submitted in order to make the application complete except for the final plan; and/or
3. NOTIFICATION: DEFICIENCIES IN PRELIMINARY PLAN TO BE CORRECTED: The Planning Board has determined that there are a number of apparent deficiencies with the proposal that should be corrected before submission of the final plan. The Planning Board shall indicate in writing the nature of these deficiencies. Submission of the final plan without correcting these deficiencies shall be grounds for disapproval of the application for subdivision approval.

**SUB-SECTION F: PLANNING BOARD RECORD OF ACTION ON PRELIMINARY**

## **PLAN**

The Planning Board shall maintain a permanent record of their action concerning the preliminary plan.

### **SECTION III: PROCEDURES FOR FINAL SUBDIVISION PLAN REVIEW**

#### **SUB-SECTION A: MAJOR REVISIONS TO THE PRELIMINARY PLAN MAY REQUIRE RESUBMISSION**

If the final plan represents a major deviation from that which was shown on the preliminary plan a resubmission of the preliminary plan will be required. Major deviations include, but are not limited to:

- a. An increase in the number of lots or units;
- b. An increase in the amount of sewage or storm water generated;
- c. An increase in traffic;
- d. Any adverse environmental impact; or
- e. Any changes which in the opinion of the Planning Board constitutes a substantive change in character, or design, of the preliminary plan which may result in a negative public or environmental impact.

#### **SUB-SECTION B: COMPLETE APPLICATION**

Applications for subdivision approval will not be considered complete until a final plan, based on a survey, has been submitted to the Planning Board.

#### **SUB-SECTION C: SUBMISSION OF A FINAL PLAN**

1. **FINAL PLAN DUE WITHIN 6 MONTHS OF PRELIMINARY PLAN APPROVAL:** Within 6 months of the date of Planning Board action on the preliminary plan, the applicant shall submit the final plan to the Planning Board. Failure to submit the final plan within the designated time period shall require the submission of a new subdivision application.
2. **REQUIRED FEE:** The applicant shall submit, with the final plan, a check of \$250.00 plus an additional \$25.00 per lot created by the subdivision. In the case of a cluster development, a check of \$250.00 plus \$25.00 per residential dwelling unit shall be submitted. The check shall be payable to the Franklin Planning Board.
3. **NUMBER OF COPIES REQUIRED:** The final plan shall consist of two (2) reproducible copies and three (3) copies of one or more maps or drawings similar to the maps or drawings prepared for preliminary plan submission.
4. **INFORMATION REQUIRED ON FINAL PLAN:** In addition to all of the items required on the preliminary plan, unless otherwise indicated by the Planning Board, the following items shall be

required on the final plan:

- a. The name, registration number, and seal of the registered land surveyor who prepared the final plan.
- b. The lengths of all straight lines, the deflection of angles, radii, length of curves, and central angles of all curves, tangent distances and bearings.
- c. The designation of all easements, areas reserved for or dedicated to public use, and areas reserved by the applicant.
- d. The location, bearing, and length of every line, with all lots to be numbered in accordance with local practices.
- e. The location of permanent markers set at all lot corners, as shown on the plan.
- f. Signature block to record the approval of the final plan similar to the following example:

This plan has been approved with conditions by the Franklin Planning Board in accordance with Title 30A, MRSA, Section 4404, et seq. Approved units may be sold or leased only in accordance with any terms and conditions attached to the Subdivision Permit which is recorded in the Hancock County Registry of Deeds in Book\_\_\_\_\_ on Page\_\_\_\_\_.

Signed \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

**SUB-SECTION D: NOTIFICATION OF COMPLETED SUBDIVISION APPLICATION**

After the Planning Board has received the final plan and all information required to be submitted with it, the Planning Board shall notify the applicant in writing that a completed application has been filed, and shall begin its evaluation.

**SUB-SECTION E: PUBLIC HEARING**

1. PUBLIC HEARING SHALL BE MANDATORY: The Planning Board shall hold such hearing within thirty (30) days of having received a completed subdivision application.
2. NOTIFICATION: The Planning Board shall cause notice of the date, time, and place of such hearing to be given, by regular mail, to the applicant and all abutting property owners, within 500 feet, of the proposed subdivision.
3. PUBLIC NOTICE: The Planning Board shall cause public notice

of the date, time, and place of the public hearing for the proposed subdivision to be published at least two (2) times in a newspaper of general circulation in the Franklin area. The date of the first publication shall be at least seven (7) days prior to the hearing.

#### **SUB-SECTION F: PLANNING BOARD DECISION ON FINAL PLAN**

1. REVIEW CRITERIA: The Planning Board shall consider the following criteria and, before granting approval, must determine that:

A. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

- 1). The elevation of the land above sea level and its relation to the flood plains.

- 2). The nature of soils and subsoils and their ability to adequately support waste disposal.

- 3). The slope of the land and its effect on effluents.

- 4). The availability of streams for disposal of effluents.

- 5). The applicable state health and water resource rules and regulations.

B. Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.

C. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.

D. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

E. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the 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 of an urban compact municipality 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 other rules adopted under that section.

F. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

G. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the Town's ability to dispose of solid waste, if municipal services are to be utilized.

H. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse affect 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 the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the Shoreland.

I. Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans.

J. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section.

K. Surface waters; outstanding river sediments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

1). When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision must require principal structures to have a combined lot shore frontage and setback from normal high-water mark of 500 feet.

a). To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a Shoreland strip narrower than 250 feet which is lotted, the proposed

subdivision shall be viewed as if lot lines extended to the shore.

b). The frontage and setback provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under Shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983.

L. Ground Water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

M. Flooded areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant 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. Freshwater wetlands. All freshwater 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 freshwater wetlands may be done with the help of the local soil and water conservation district.

O. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For the purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

P. Storm water. The proposed subdivision will provide for adequate storm water management.

Q. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, 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. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.

S. Impact on adjoining municipality. 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.

T. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner (under whose ownership the harvest occurred) acquired the parcel. The Planning Board may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or may accept a determination provided by a forester licensed pursuant to Title 32, chapter 76.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6, and "parcel" means a contiguous area within the Town of Franklin, owned by one person or a group of persons, in common or joint ownership. This section takes effect on the effective date of rules adopted pursuant to Title 12, section 8869, subsection 14.

2. **PLANNING-BOARD DECISION:** The Planning Board shall, within 30 days of a public hearing, or within 60 days of having received a completed application if no hearing is held or within such other time limit as may be mutually agreed to, issue an order denying or granting approval of the proposed subdivision, or granting approval on such terms and conditions as it may deem advisable to satisfy the provisions of this ordinance and the criteria for approval contained in 30-A MRSA section 4404, and to preserve the public's health, safety, and general welfare.

3. WRITTEN FINDING OF FACTS REQUIRED: In issuing its decision, the Planning Board shall make written findings of fact establishing that the proposed subdivision does or does not meet the provisions of this ordinance and 30-A MRSA section 4404
4. PLANNING BOARD SIGNING OF FINAL PLAN: Upon approval of the final plan, a majority of the Board shall sign all five copies. One reproducible copy shall be filed with the Registrar of Deeds. One reproducible copy and one paper copy shall be filed with the Planning Board. One copy shall be retained by the applicant, and one copy shall be filed with the Board of Assessors.

**SUB-SECTION G: PLANNING BOARD RECORD OF ACTION ON FINAL PLAN**

The Planning Board shall maintain a permanent record of their action concerning the final plan.

**SUB-SECTION H: FILING BY APPROVED FINAL PLAN**

Upon approval and signing of the final plan by a majority of Planning Board the original and a copy of the subdivision permit, including all conditions of approval shall be filed by the applicant with the Hancock County Registry of Deeds. One copy of the final plan and subdivision permit shall be stamped and dated by the Registry of Deeds and returned by the applicant to the Planning Board within 90 days of approval.

**SUB-SECTION I: PLAN REVISIONS AFTER APPROVAL SHALL BE RE-SUBMITTED**

1. REVISIONS TO APPROVED FINAL PLANS REQUIRE PRIOR APPROVAL: No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Planning Board and endorsed in writing on the plan, unless the plan is first re-submitted and the Planning Board approves such modifications.
2. PLAN TO BE VOIDED IF CHANGED WITHOUT PRIOR REVIEW AND APPROVAL In the event that the final plan is recorded without complying with paragraph 1, above, the plan shall be considered null and void, and the Planning Board shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.

**SUB-SECTION J: TRANSFER OF APPROVAL**

If the transfer in ownership of an approved subdivision involving public improvements or private road construction is anticipated prior to the successful completion of such improvements, the owner shall notify the Planning Board. The new owner shall submit a subdivision plan amendment for Board review and action.

**SUB-SECTION K: OFF-SITE IMPROVEMENTS**

Should the Planning Board find, after consultation with the appropriate municipal official(s) that a proposed subdivision will place unreasonable demands upon public facilities, the Board may require the applicant to participate in upgrading the public facilities impacted as a condition of approval.

**SUB-SECTION L: ACCEPTANCE OF PUBLIC IMPROVEMENTS**

The approval by the Board of the final subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the Town of Franklin of any road, street, easement or other open space shown on such plan.

**SECTION IV: GENERAL REQUIREMENTS**

**SUB-SECTION A: CONSTRUCTION PRIOR TO APPROVAL PROHIBITED**

No utility installations, no ditching, grading, or construction of roads, no grading of land or lots, and no construction of buildings for a subdivision shall be done on any part of the subdivision pending before the Planning Board until a final plan of the subdivision has been prepared, submitted, reviewed, approved, and endorsed as provided by this ordinance, nor until an attested copy of the final plat plan so approved and endorsed has been recorded by the applicant in the Registry of Deeds.

**SUB-SECTION B: IMPACT ON COMMUNITY SERVICES AND FACILITIES**

Proposed subdivisions shall be reviewed by the Planning Board with respect to its effect upon existing community services and facilities.

**SUB-SECTION C: LAND NOT SUITABLE FOR DEVELOPMENT**

The Planning Board shall not approve such portions of any proposed subdivision as individual lots or for building purposes that are located on land below sea level, within the 100 year frequency flood plan, or on wetland which must be filled or drained or on land created by diverting a watercourse. In no instance shall the Board approve any part of a subdivision located on filled tidal land or filled or drained Great Ponds.

**SUB-SECTION D: OPEN SPACE PROVISIONS**

LANDSCAPE PLAN MAY BE REQUIRED: The Planning Board may require that a proposed subdivision design include a landscape plan that will show the preservation of existing trees (24” or more in diameter), the replacement of trees and vegetation, graded contours, streams, and the preservation of scenic, historic, or environmentally desirable areas.

**SUB-SECTION E: LOTS AND DENSITY**

1. LOTS TO COMPLY WITH PROVISIONS OF ZONING ORDINANCE: The lot size, width, depth, shape, orientation and the minimum setback lines shall comply with the provisions of

the Franklin Zoning Ordinance.

2. **LOTS TO COMPLY WITH PROVISIONS OF STATE PLUMBING CODE:** Where individual, on-site sewage disposal systems are to be utilized, the size of each lot shall be based on soil characteristics, and shall conform to the Minimum Lot Size Guide contained in the current edition of the State of Maine Plumbing Code, however, such lots shall not be less than the lot size required by the Franklin Zoning Ordinance.
3. **LOT DESIGN STANDARDS:** The following standards shall apply to the location layout and design of all subdivision lots:
  - a. The lot size, width, depth, shape, orientation, and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.
  - b. Whenever possible, side lot lines shall be perpendicular to the street.
4. **CLUSTER DEVELOPMENT:** For cluster developments, overall net density shall not be greater than the density that would result from the creation of individual, non-clustered lots. Such density shall be calculated by dividing the total acreage within the subdivision (including open spaces or common recreational areas) by the number of proposed units.

#### **SUB-SECTION F: LOT ACCESS**

Every lot shall have access to it that is sufficient to afford a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.

#### **SUB-SECTION G: BUFFER STRIPS**

The Planning Board may require a buffer strip, such as natural vegetation, when the proposed subdivision will be located adjacent to a use where separation is desirable.

#### **SUB-SECTION H: SURFACE WATER DRAINAGE**

1. **ADEQUATE SURFACE WATER DRAINAGE REQUIRED:** Adequate drainage shall be provided so as to reduce the danger of flooding and erosion.
2. **SURFACE WATER DRAINAGE PLAN:** The applicant may be required to provide a statement from a civil engineer, registered in the State of Maine, that the proposed subdivision will not create erosion, drainage or runoff problems either in the

subdivision, or in adjacent properties. The applicant may also be required to provide a surface drainage plan to control the ten year storm event showing ditching, culverts, easements, and other proposed improvements for the conveyance, control, or disposal of surface waters.

**SUB-SECTION I: BASEMENT DRAINAGE**

If lots are being created to accommodate structures with basements, the subdivider shall show that the basement can be drained by gravity to the ground surface, or storm sewers, if they are required to be installed, or that the water table is below the level of the basement. Principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least on foot above the 100-year flood elevation.

**SUB-SECTION J: EASEMENTS**

The Planning Board may require easements for sewage, drainage, or other utilities.

**SUB-SECTION K: NO MORE THAN ONE PRINCIPAL DWELLING PER LOT PERMITTED**

No more than one principal dwelling, designed for single family occupancy together with the usual and necessary accessory buildings, shall be erected per lot.

**SUB-SECTION L: FURTHER SUBDIVISION REQUIRES PRIOR APPROVAL**

No lot in an approved subdivision may be further subdivided except with the review and approval of the Planning Board.

**SUB-SECTION M COMMERCIAL LOTS REQUIRE A CONDITIONAL USE PERMIT**

The following commercial uses may be allowed only upon the review and authorization of a conditional use permit by the Planning Board:

1. Home occupations of a non-hazardous, non-pollutant nature; and
2. Commercial businesses of a non-hazardous, non-pollutant nature.

**SUB-SECTION N: TEMPORARY DWELLINGS**

Temporary dwellings shall not be permitted to exist on any lot for more than 60 days. Extensions of time may be granted by the Planning Board upon demonstration of reasonable cause.

**SECTION V: SUBDIVISION ROAD DESIGN AND CONSTRUCTION**

**SUB-SECTION A: ROADS TO BE SPECIFIED AS EITHER PUBLIC OR PRIVATE**

All proposed subdivision roads shall be specified on the plan as either private or public roads.

## **SUB-SECTION B: ROADS TO BE ACCESSIBLE FOR PUBLIC SAFETY EQUIPMENT**

Proposed subdivision roads shall be designed and constructed so that they are sufficient to afford a reasonable means of ingress and egress for public safety equipment and emergency vehicles.

### **1. ROAD WIDTH**

The minimum road surface width, of the travel way and the surface of both shoulders, level with the travel way, shall be twenty (20) feet.

### **2. TURN AROUNDS**

Any dead end road longer than 400 feet must have one of the following types of turn arounds:

- a. Circular turn arounds with a travel surface of at least 100 feet in diameter.
- b. Right angle turn arounds shall be a minimum of 40 feet deep (from the edge of the travel way on the adjacent shoulder), a minimum of 20 feet wide at the rear, and a minimum of 30 feet wide at the mouth.
- c. Any road more than ½ mile in length shall have a minimum of one of the above turn arounds, and one for every additional ½ mile or portion thereof, every other alternative must be approved by the Planning Board.

### **3. MINIMUM RIGHT OF WAY**

The minimum right of way for all subdivision roads shall be (fifty) 50 feet.

## **SECTION VI: REQUIRED IMPROVEMENTS**

### **SUB-SECTION A: STORM WATER DRAINAGE**

The subdivider may be required to construct storm water drainage facilities. All such facilities are to be of adequate design to hydraulically accommodate the ten year storm event using techniques as stated in the Sod Conservation Service Engineering Field Manual. Storm drainage facilities shall be so designed as to present no hazard to life or property.

### **SUB-SECTION B: PRIVATE SANITARY SEWAGE**

The subdivider shall construct private sanitary sewers in such a manner as to make adequate sanitary sewerage service available to each lot within the subdivision unless it has been agreed with the Planning Board that such lots will be served with private disposal systems. The size, type, and installation of all sanitary sewers shall be in accordance with plan and standard specifications approved by the appropriate



municipal official.

### **SUB-SECTION C WATER SUPPLY FACILITIES**

The subdivider shall construct water mains in such manner as to make adequate water service available to each lot within the subdivision unless it has been agreed with the Planning Board that such lots will be served by privately owned supply systems. The size, type and installation of all water mains shall be in accordance with plans and standard specifications as approved.

## **SECTION VII: PERFORMANCE GUARANTEE**

### **SUB-SECTION A: CONDITIONAL AGREEMENT**

The Planning Board may, at its discretion, recommend a properly executed conditional agreement with the board. Such agreement, if executed, shall be a condition of approval and shall provide that the Planning Board may approve the final plan or any part thereof, on the condition that no lot in the subdivision may be sold and no permit shall be issued for construction of any building on any lot in the subdivision until it shall have been certified in the manner set forth in Sub-Section B below that all improvements have been made within 2 years of the date of executing such conditional agreement.

### **SUB-SECTION B: INSPECTION OF IMPROVEMENTS REQUIRED**

Before an applicant is released from any obligation requiring his guarantee of performance, the Planning Board will require certification from the Code Enforcement Officer that all improvements have been satisfactorily completed in accordance with all applicable standards (State, Federal, and local codes, ordinances, laws, and regulations).

## **SECTION VIII: AMENDMENTS AND WAIVERS**

### **SUB-SECTION A: AMENDMENTS**

The following provisions shall govern amendments to this ordinance:

1. **ALL PROPOSED AMENDMENTS TO BE REVIEWED BY PLANNING BOARD:** All proposed amendments to this ordinance shall be reviewed and voted on by the Planning Board.
2. **SELECTMEN SHALL PLACE AMENDMENT ON WARRANT:** The selectmen shall upon the receipt of a proposed amendment supported by a 2/3rds vote of the Planning Board or in the event that 2/3rds of the Planning Board does not support the proposed amendment, a petition signed by 20% of the voters voting in the last gubernatorial election shall cause an article to be placed in the warrant of the next regular or special town

meeting.

3. **MAJORITY VOTE REQUIRED FOR AMENDMENTS SUPPORTED BY PLANNING BOARD:**  
A simple majority of the voters voting is required to enact amendments supported by 2/3rds of the Planning Board.
4. **2/3RDS VOTE REQUIRED FOR AMENDMENTS SUBMITTED BY PETITION:** Articles submitted by petition but not supported by 2/3rds of the Planning Board require a favorable vote by 2/3rds of the voters present and voting for enactment.

#### **SUB-SECTION B: WAIVERS**

The following provisions shall govern Planning Board waivers to the provisions of this ordinance:

1. **WAIVERS PERMITTED:** Where the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with the provisions of this ordinance, or where there are special circumstances of a particular plan, it may waive any of the provisions of this ordinance provided that such waiver will not have the effect of nullifying the purpose of this ordinance, the Comprehensive Plan, the Zoning Ordinance, or any other ordinance.
2. **CONDITIONS ATTACHED TO WAIVERS:** In granting any waiver, the Planning Board shall require such conditions as will, in its judgment, secure substantially the objectives of the provisions so waived.

### **SECTION IX: VIOLATIONS ENFORCEMENT, PENALTIES, AND APPEALS**

#### **SUB-SECTION A: VIOLATIONS**

The following provisions define actions and activities that are considered violations of this ordinance:

1. **PRIOR OFFERINGS, SALES, LEASES, OR DEVELOPMENT PROHIBITED:** Any person, firm, corporation, or other legal entity who sells, leases, develops, builds upon, or conveys for consideration, offers or agrees to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision which has not been approved by the Planning Board is in violation of this ordinance.

2. **CONVEYANCE WITHOUT A PERMANENT MARKER PROHIBITED:** Any person, firm, corporation, or other legal entity who sells or conveys any land in an approved subdivision without at least one permanent marker set at one lot corner of the lot sold or conveyed is in violation of this ordinance. The term “permanent marker” includes but is not limited to the following:  
A granite monument, a concrete monument, an iron pin or a drill hole in ledge.

**SUB-SECTION B: ENFORCEMENT**

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this ordinance.

**SUB-SECTION C: PENALTIES**

Any person who violates any provision of this ordinance shall be fined a minimum of \$100.00 and a maximum of \$2,500.00 for each violation.

**SUB-SECTION D: APPEALS**

The following provisions shall govern appeals from the decisions, actions, or inaction of the Planning Board and Board of Appeals under this ordinance:

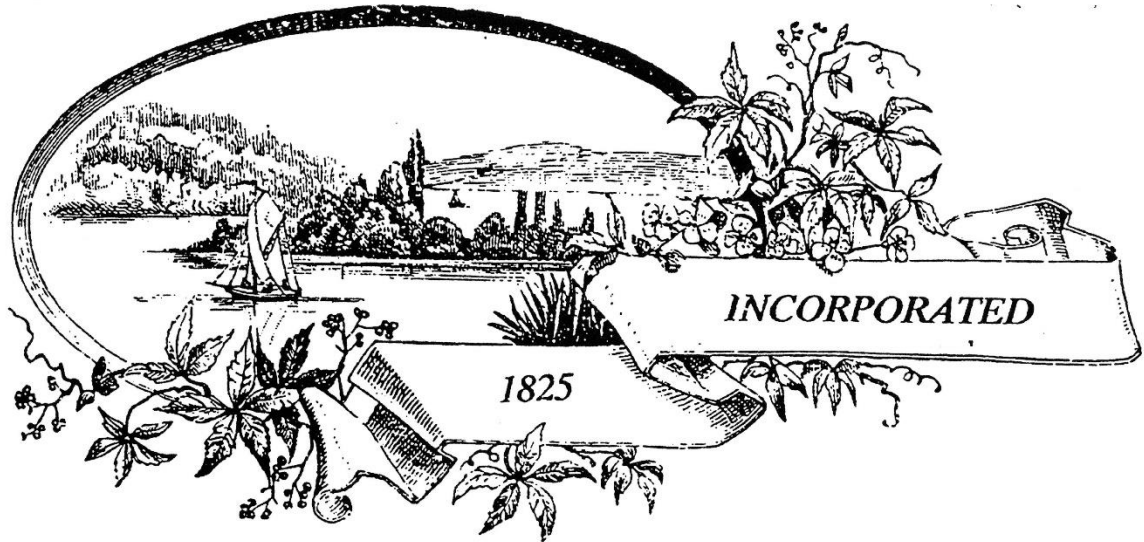
1. **APPEALS TO BOARD OF APPEALS:** An appeal may be taken, within 30 days from a decision, action, or inaction of the Planning Board or Code Enforcement Officer, by any party to the Board of Appeals.
2. **APPEALS TO SUPERIOR COURT:** An appeal may be taken, within 30 days from a Board of Appeals decision, action, or inaction, by any party to Superior Court in accordance with Rule 808 of the Rules and Civil Procedure.

**SECTION X DEFINITIONS**

**FARMLAND:** A parcel of five (5) or more acres of land that is (1) classified as prime farmland, unique farmland, or farmland of statewide or local importance by the Natural Resources Conservation Service of the U.S. Department of Agriculture, or (2) used for the production of agricultural products.

**SUBDIVISION:** A subdivision shall mean the division of a tract or parcel of land as defined in Title 30A. MRSA, Section 4404.

*FRANKLIN*



SUBDIVISION ORDINANCE  
OF THE  
TOWN OF FRANKLIN, MAINE

SUBDIVISION ORDINANCE OF THE TOWN OF FRANKLIN, MAINE

**REVISIONS**

Original Acceptance	March 22. 1989
Revised	1990
	2007
	2013

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## ARTICLE 1, GENERAL

### 1.1 Short Title

This Ordinance shall be known as the “**Zoning Ordinance of the Town of Franklin, Maine**”, and will be referred to herein as this “Ordinance.”

### 1.2 Purpose -

To further the maintenance of safe and healthful conditions and the general welfare, prevent and control water pollution, protect spawning grounds, fish aquatic life, bird and other wildlife habitat to control building sites, placement of structures and land uses, to protect visual as well as actual points of access to inland and coastal waters and natural beauty; to protect buildings and lands from flooding and-accelerated erosion; to protect archaeological and historic resources, to protect commercial fishing and maritime industries, to conserve open space, and to anticipate and respond to the impacts of development.

This Ordinance does not grant any property rights; it does not authorize any person to trespass, infringe upon or injure the property of another; it does not excuse any person of the necessity of complying with other applicable laws and regulations; it does not replace the “Shoreland Zoning Ordinance for the Town of Franklin, Maine”

### 1.3 Basic Requirements

All buildings or structures hereinafter erected, reconstructed, enlarged, or moved, and uses of premises in the Town of Franklin shall be in conformity with the provisions of this Ordinance. No building, structure, land area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, or land area is located. No new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located.

### 1.4 Non-conforming Uses

#### 1.4.1 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 shall be allowed to continue, subject to the requirements set forth in this section.

#### 1.4.2 General -

- A. 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 nonconforming structure or lot, subject to the provisions of this Ordinance.

- B. Repair and Maintenance: This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures, including repairs and renovations which 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.

NOTE: See Article 3 for the definitions of non-conforming structures, non-conforming uses and non-conforming lots.

#### 1.4.3 Non-conforming Structures

- A. 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 nonconformity of the structure, and is in accordance with the subparagraph below.

1. Legally existing non-conforming principal and accessory structures located fully within the General District, and which do not meet the setback requirements may be expanded or altered, as long as all other applicable standards contained in this Ordinance are met.

- B. Construction or enlargement of a foundation beneath the existing non-conforming structure is not considered an expansion of the structure provided: that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or it's designee, basing it's decision on the criteria specified in paragraph C, Relocation, below.

Note: The maximum allowable structure height is described in Section 4 of this Ordinance.

- C. 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 relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, 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.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board 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 systems, and the type and amount of vegetation to be removed to accomplish the relocation.

- D. **Reconstruction or Replacement:** Any non-conforming structure which is located less than the required setback and which is removed, damaged or destroyed by more than fifty percent (50%) of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

Any non-conforming structure which is damaged or destroyed by fifty percent (50%) or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place, with a permit from the code enforcement officer.

- E. **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 subject or adjacent properties and resources than the existing use.

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.

#### 1.4.4 Non-Conforming Uses

- A. **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- 1.4.3. (E) above.
- B. **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.

- C. 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, including water dependent uses, 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 1.4.3. (E) above.

#### 1.4.5 Non-conforming Lots

- A. 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 and frontage can be met. Variances relating to setback or other requirements not involving lot area or frontage shall be obtained by action of the Board of Appeals.
- B. 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 and Subsurface Wastewater Disposal Rules are complied with.

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.

- C. 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.

#### 1.4.6 Restoration of Unsafe Property

Nothing in this Ordinance shall prevent the strengthening or restoring to safe condition any part of any building or structure declared unsafe by the Code

Enforcement Officer.

#### 1.4.7 Pending Application for Building Permits

Nothing in this Ordinance shall require any designated use for any building, structure or part thereof for which application for building permit has been made or a building permit has been issued or upon construction commenced prior to the adoption or amendment of this Ordinance, provided construction shall start within 60 days after the issuance of such permit.

#### 1.5 Validity and Severability-

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

#### 1.6 Conflict with Other Ordinances -

This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other rule, regulation, by-law, 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.

#### 1.7 Amendment

This Ordinance may be amended as follows:

- 1) By a majority vote of the governing body if the proposed amendment is recommended by a majority vote of the Planning Board
- 2) By 2/3 majority vote of the governing body if the proposed amendment is not recommended by the Planning Board.

In either case, the Planning Board shall hold a public hearing at least 30 days prior to the meeting of the governing body. Notice of the hearing shall be posted in the Town Office at least thirteen (13) days in advance of the Public hearing. The notice shall be published at least two (2) times in a newspaper that complies with Title 1, section 601 and that has a general circulation in the municipality. The date of the first publication shall be at least twelve (12) days before the hearing, and the date of the second publication must be at least seven (7) days before the hearing.

Note: any proposed amendment(s) which would place a landowner's property into a Resource Protection District requires additional notice and notifications under Title 30-A, section 4352.

1.8 Effective Date

The effective date of this ordinance is March 26<sup>th</sup>, 2011.

1.9 Authority

This Ordinance has been prepared in accordance with State law.

1.10 Availability

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

ARTICLE 2, ESTABLISHMENT OF DISTRICTS

2.1 Zoning Districts

To implement the provisions of this Ordinance, the Town of Franklin is hereby divided into the following Districts:

- 1) Resource Protection District
- 2) Shoreland District
- 3) General Purpose District
- 4) Stream Protection District

The Shoreland District, Resource Protection District and Stream Protection District are managed under the provisions of the Shoreland Zoning Ordinance for the Town of Franklin, Maine

2.2 Location of District

The General Purpose district is located and bounded as shown on the Official Zoning Map, which is made a part of this Ordinance, entitled "Zoning Map of Franklin, Maine" dated and on file in the Office of the Municipal Clerk, and includes all areas of the Town of Franklin not within the Shoreland, Resource Protection or Stream Protection Districts. The Official Map shall be signed by the Municipal Clerk and chairman of the Planning Board at the time of adoption or amendment of the Ordinance certifying the date of such adoption or amendment. Additional copies of this map may be seen in the Office of the Selectmen.

2.3 Interpretation of District Boundaries

Unless otherwise set forth in the Official Zoning Map, District boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the Shoreland Zone as defined herein. Where

uncertainty exists as to exact location of District boundary lines, the Board of Appeals shall be the final authority as to location.

2.4 Division of Lots by District Boundaries

2.4.1 Where a zoning district boundary line divides a lot or parcel of land of the same ownership of record at the time such line is established by adoption or amendment of this Ordinance, the regulations applicable to the less restricted portion of the lot may be extended no more than fifty (50) feet into the more restricted portion of the lot. Less restrictive district regulations shall not be extended into any Resource Protection District.

2.4.2 Extension of use shall be considered special exception, subject to approval of the Planning Board and in accordance with the criteria set forth in Paragraph 6.8.3(4) factors applicable to special exceptions.

ARTICLE 3, CONSTRUCTION OF LANGUAGE AND DEFINITIONS

3.1 Construction of Language

In this Ordinance certain terms or words shall be interpreted as follows:

The word "person" includes a firm, association, organization partnership, trust company or corporation. as well as an individual; the present tense includes the future tense, the singular number includes the plural, and the plural includes the singular; the word "shall" is mandatory, and the word "may" is permissive; the words "used" or "occupied" include the words "intended", "designed" or "arranged to be used or occupied", the word "building", includes the word "structure", and the word "dwelling" includes the word "residence", the word "lot" includes the words "plot" or "parcel". In case of any difference of meaning or implication between the text of this Ordinance and any map or illustration, the text shall control.

Terms not defined shall have the customary dictionary meaning.

3.2 Definitions:

In this Ordinance the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed.

Accessory Use or Structure: A use or structure of a nature customarily incidental and subordinate to those of 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.

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 injuries result of granting or denial of such permit or variance.

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

Automobile Graveyard: a yard, field or other outdoor area used to store three (3) *or* more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

Basement: A portion of the building partly underground but having less than half its clear height below the average grade of the adjoining ground.

Billboard: A sign, structure or surface larger than six (6) square feet which is available for advertising purposes for goods or services rendered off the premises, excluding directional signs.

Boathouse: A non-residential structure designed for the purpose of protecting or storing boats for non-commercial purposes.

Building: A structure built for the support or shelter of persons, animals, goods or property of any kind.

Campground: Any premises established for overnight use for the purpose of temporary camping and for which a fee is charged.

Cellar: A portion of the building partly underground, but having half or more of its clear height below the average grade of the adjoining ground.

Channel: A natural or artificial watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow is water flowing within the limits of the defined channel.

Code Enforcement Officer: A person appointed by the Municipal Officers to administer and enforce this Ordinance. Reference to the Code Enforcement Officer shall be construed to include Building inspector, Electrical Inspector, and the like where applicable.

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 goods and/or services exclusive of rental of residential buildings and/or dwelling units.

Conforming Use: A. use of building, structures or land which complies with all applicable provisions in this Ordinance.

Constructed: Includes built, erected, reconstructed moved upon or any physical operations on the premises which are required for construction excavation fill, drainage, and the like, shall be considered a part of construction .

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

District: A specified portion of the municipality delineated on the Official Zoning Map, within which in regulations and requirements or various combinations thereof apply under the provisions of this ordinance.

Driveway: A vehicle access-way less than five hundred (500) feet in length serving two lots or less.

Dwelling: A fixed structure, containing one or more dwelling units.

Dwelling Unit: A room or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking, and eating. The term shall include mobile homes, but shall not include trailers or recreational vehicles.

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.

Excavation: Any removal of earth or material from its original position.

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 one or more 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 premises and living as a single housekeeping unit as distinguished from a group occupying a boarding house, lodging house or hotel such unit shall not exceed five (5) persons not related by blood or marriage.

Filling: Depositing or dumping any matter on or into, the ground or water.

Flood: A temporary rise in stream flow or tidal surge that results in water overtopping its banks and inundating adjacent areas.

Flood Plain: The land adjacent to a water body which have been or may be covered by the regional flood.

Floodway: The channel of a stream and those portions of the flood plain adjoining the channel that are required to carry and discharge the flood water or flood flows of any river or stream.

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.

Foundation: The supporting substructure of a building or other structure including but not limited to basements, slabs, siffs, posts, or frost walls.

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 which have no floor area. Cupolas, domes, widow's walks and similar features that are not inhabited, and are mounted on a building roof for observation and/or decorative purposes are also excluded under the following conditions, all of which must apply:

1. The feature is on a legally existing conforming structure.
2. The feature does not extend beyond the exterior walls of the existing structure.

3. The feature has a floor area of fifty-three (53) square feet or less.
4. The feature does not increase the height of the existing structure by more than seven (7) feet.

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 two (2) persons other than family members residing in the home. Home occupation shall not include activities which do not necessitate permanent alteration and, to structures on or about the premises.

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

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

Lot Area: The area of land enclosed within the boundary lines of a lot, minus areas beneath roads serving more than two lots.

Lot Coverage: The percentage of the plot or lot covered by all buildings.

Lot interior: Any lot other than a corner lot.

Lot Lines: The lines bounding a lot as defined below:

Front Lot line: On an interior lot, the line separating the lot from the street. On a corner or through lot, the line separating the lot from either street.

Rear Lot line: The lot line opposite the front line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines, parallel to the front lot line, not less than ten (10) feet long, lying farthest from the front lot line corner lot. The rear lot line shall be opposite the front lot line of least dimensions.

Side lot Line: Any lot line other than the front lot line or rear line.

Lot Width: The horizontal distance between the side lot lines, measured at the frontage setback line.

Lot of Record: A parcel of land, the dimensions of which are shown on a document or map on file with the County Register of Deeds or in common use by

the Town or County Officials.

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.

Methadone Clinic: A program or facility operated for the purpose of providing treatment for persons with heroin or other opiate addictions, when treatment provided includes administration or prescription of methadone or other opiate replacements for either detoxification or maintenance purposes. For the purposes of this ordinance, the term “methadone clinic” includes but is not limited to substance abuse treatment programs licensed by the State of Maine Department of Behavioral and Developmental Services Office of Substance Abuse to provide opioid supervised withdrawal and maintenance treatment services under 14-118 Code of Maine Regulations section 4.16.

Minimum Lot Width: The closest distance between the side lot lines of a lot.

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.

Mobile Home: A structure designed as a dwelling unit for location on permanent foundation, and containing sleeping accommodations, a toilet, a tub or shower bath, and kitchen facilities, including major appliances and furniture, with plumbing and electrical connections provided for attachment to outside systems; and designed to be transported after fabrication on its own wheels. A mobile home shall contain not less than four hundred fifty (450) square feet of gross floor area.

Mobile Home Park: A plot of land laid out to accommodate at least three (3) mobile homes.

Multi-unit residential: A residential structure containing three (3) or more residential dwelling units.

Non-Conforming Building or Use: A building, structure, use of land, or portion thereof existing at the effective date of adoption or amendment of this Ordinance which does not conform to all applicable provisions of this Ordinance.

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 requirement 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 permitted 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.

Open Space Use: A use not involving: A structure; earth-moving activity or the removal or destruction of vegetative cover, spawning grounds, or fish, aquatic, life, bird and other wildlife habitat.

Parking Space: A minimum area of two hundred (200) square feet, exclusive of drives, aisles or entrances, fully accessible for the storage or parking of vehicles.

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.

Planned Unit Development: Land under unified management, planned and developed as a whole according to comprehensive and detailed plans, including streets, utilities, lots or building sites, site plans and design principles for all buildings intended to be located, constructed, used and related to each other, and for other uses and improvements on the land. Development may be a single operation or a programmed series of provisions for operation and maintenance of such areas and improvements and facilities necessary for common use by the occupants of the development.

Premises: One or more lots which are in the same ownership and are contiguous, separated only by a road or water body including all buildings, structures and improvements.

Principal Building: The building in which the primary use of the lot is enclosed.

Principle Use: The primary use to which the premises are devoted, and the main purpose for which the premises exist.

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.

Public Utility: My person, firm, corporation, municipal department, board or commission authorized to furnish gas, steam electricity, waste disposal, communication facilities, transportation or water to the public.

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 living quarters for only one family. The term shall include mobile homes, but not recreational vehicles.

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.

Road: A route or track longer than five hundred (500) feet and serving more than two (2) principle uses, 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.

Service Drop: Any utility 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 (1000) 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 minimum horizontal distance from a lot line to the nearest part of a structure.

Shoreline: As defined in the “Shoreland Zoning Ordinance for the Town of Franklin, Maine”.

Signs: A name, identification, description, display or illustration which is affixed to painted or represented; directly or indirectly upon a building, structure; parcel or lot- and which relates to an object, product, place, activity, person, institution, organization or public business.

Special Exception: A use permitted only after review and approval by the Planning Board. A special exception is a use that would not be appropriate without restriction but which, if controlled under the provisions of this Ordinance, would promote the purpose of this Ordinance. Such uses may be permitted if specific provision for such special exceptions is made in this Ordinance.

Special Exception Permit: A permit issued by the Planning Board for a special exception use. A special exception permit may be issued only after the applicant has followed the procedures of this Ordinance..

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

Subdivision: A subdivision is the division of a tract or parcel of land into three (3) or more lots within any five (5) year period as defined in M.R.S.A. 30A, Sec. 4401, whether accomplished by sale, lease, development, building or otherwise, except when the division is accomplished by inheritance, order of court or gift to a relative, unless the intent of such gifts is to avoid the objectives of this section.



In determining whether a parcel of land is divided into three (3) or more lots, land retained by the sub divider for his own use as a single family residence for a period of at least five (5) years shall not be included.

No sale or lease of any lot or parcel shall be considered as being a part of subdivision if such a lot or parcel is forty (40) acres or more in size, except where the intent of such sale or lease is to avoid the objectives of this statute.

Substantial Start: Completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Substantially Complete: the stage in the progress of construction or development of a structure or use when all conditions of permit approval are in place and function as intended by the Planning Board, and the structure or use can be legally occupied and/or operated for its declared purpose.

Subsurface Sewage Disposal System: A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es) alternative toilet(s), or other devices and associated piping designed to function as a unit for the, purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 MRSA Section 414; any surface wastewater disposal system licensed under 38 MRSA Section 413 Subsection 1-A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous wastes defined in 38 MASA Chapter 13, subchapter 1.

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

Timber Harvesting: The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

Variance: A relaxation of the terms of this Ordinance where such variance would not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in undue hardship. A financial hardship shall not constitute grounds for granting a variance. The crucial points of variance are undue hardship and unique circumstances applying to the property.

Vegetation: All live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under four (4) inches in diameter, measured at 4 1/2

feet above ground level.

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 Crossing: Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cable as well as maintenance work on these crossings.

Yard: The area of land on a lot not occupied by the principal building.

Yard Front: The area of land between the front lot line and the nearest part of the principal building.

Yard Side: The area of land between the side lot line and nearest part of the principal building.

Yard Rear: The area of land between the rear lot line and the nearest part of the principal building.

## ARTICLE 4, LAND USE DISTRICT REQUIREMENTS

### 4.1 General Purpose District

#### 4.1.1 Purpose

To allow a maximum diversity of uses, while protecting the public health and safety, environmental quality and economic well-being of the town, by imposing minimum controls on those uses which, by virtue of their external effects (waste discharge, noise, glare, fumes, smoke, dust, odors, or auto, truck, or rail traffic) could otherwise create nuisances or unsafe or unhealthy conditions.

#### 4.1.2 Basic Requirement

Permitted uses and special exceptions shall conform to all dimensional requirements and other applicable requirements of this Ordinance. A Plumbing Permit and Building or Use Permit shall be required for any buildings, uses, and sanitary facilities, according to the provisions of Article 6 of this Ordinance.

#### 4.1.3 Permitted Uses

The following uses are permitted in the General Purpose District

(1) Rural

Open Space Use

Agriculture and Gardening

Sale of produce and plants raised on the premises, or seasonal public or private recreation facilities including parks, playgrounds, golf courses, driving ranges, and swimming pools, but excluding campgrounds

Accessory uses and structures

Timber harvesting

(2) Residential

Single family dwelling, including single camp, tent or mobile home

Two family dwelling

Home Occupations

Accessory uses and structures

(3) Commercial and Industrial

Facilities having less than twenty-five hundred (2500) square feet of gross floor area and employing less than five (5) full time employees or equivalent thereof. Facilities offering food and beverages prepared on the premises and auto service stations or repair garages are exempt from these limits, and may be located in the General Purpose District.

Accessory uses and structures

(4) Public, Semi-Public, and Institutional

Church or other place of worship, parish house, rectory, convent and other religious institutions

Public, private and parochial schools

Public buildings, such as libraries, museums, civic centers

Cemeteries

Accessory uses and structures.

Uses which are similar to the above uses

(5) Other

Filling, grading, lagooning, dredging or other earth-moving activity operated in accordance with State laws

Signs

(6) General Purpose District Subdivision

The subdivision shall be divided into lots of no less than forty thousand (40,000) square feet, with the minimum frontage of not less than one hundred (100) feet.

4.1.4 Special Exceptions

The following uses may be allowed only upon the granting of a special exception permit by the Planning Board, in accordance with the provisions of Article 6:

(1) Rural

Campgrounds  
Accessory uses and structures  
Uses which are similar to the above uses

(2) Residential

Multi-family dwelling  
Planned Unit Development or Cluster Development  
Mobile home park  
Accessory uses and structures  
Uses which are similar to the above uses

(3) Commercial and Industrial

Commercial and Industrial facilities not meeting the criteria for permitted uses  
Automobile graveyards and Junkyards operated in accordance with State law (note: also requires a permit from the Board of Selectmen)  
Waste processing or disposal facility  
Accessory uses and structures

(4) Public, Semi-Public, and Institutional

Utilities, including sewage collection and treatment facilities  
Waste processing or disposal facilities other than sewage collection and treatment facilities  
Accessory uses and structures  
Uses which are similar to the above uses

(5) Other

Filling, grading, lagooning, dredging, or other earth-moving activity which does not meet the criteria for permitted filling, grading, lagooning, dredging, or other earth-moving activity including extractive uses such as gravel pits, quarries, mines and dredging operations  
Billboards  
Accessory uses and structures  
Uses which are similar to the above uses

4.1.5 Prohibited Uses

The following uses are prohibited in the General Purpose District:

Uses and structures which would create a public nuisance, endanger the public health, safety, or welfare, result in substantial environmental deterioration or threaten the quality of any lake, pond, river, stream, tidal water, or ground water.

Any fill, deposit, obstruction, excavation storage of materials or structure which acting alone or in combination with existing or future similar works could adversely affect the efficiency or the capacity of the floodway or adversely affect existing drainage courses or facilities

Uses which are specifically prohibited by Federal or State law, or Municipal Ordinance

4.1.6 Dimensional Requirement

- (1) Lots In the General Purpose District shall meet or exceed the following minimum dimensional requirements unless additional area is required by other provisions of this Ordinance.

Without Sanitary Sewers (sq/ft)	With Sanitary Sewers (sq/ft)	Minimum Yard Dimensions (ft.).			Lot Coverage (%)
		Front Frontage (ft.)	Side (setback)	Rear	
20,000	10,000	100	10	10	20

- a. A lot abutting a public road shall have a minimum road-frontage of one hundred (100) feet.
- b. A front yard abutting a public road shall have a minimum setback depth of seventy-five (75) feet from the center line of that road.

(2) Principal Building

If more than one principal building is constructed on a single lot, all dimensional requirements shall be met separately for each such principal building.

(3) Required Yard Spaces Shall Serve Only One Lot

No part of the yard or other open space required on any lot for any building shall be Included as part of the yard or open space similarly required for another building or lot.

(4) Building Height

No building shall exceed 2 1/2 stories or thirty-five (35) feet in height.

- (a) Features of buildings and structures, such as chimneys, towers, ventilators, and spires may exceed thirty-five (35) feet in height, but shall be set back from the nearest lot line distance not less than the height of such a feature or structure, unless a greater setback is required by other provisions of this Ordinance.
- (b) Cupolas, domes, widow's walks and similar features that are not inhabited, and are mounted on a building roof for observation and/or decorative purposes are also excluded under the following conditions, all of which must apply:
  - 1. The feature is on a legally existing, conforming or non-conforming structure.
  - 2. The feature does not extend beyond the exterior walls of the existing structure.
  - 3. The feature has a floor area of fifty-three (53) square feet or less.
  - 4. The feature does not increase the height of the existing structure by more than seven (7) feet.

Note: See Section 3.2, Definitions, Height of a structure, for additional information on allowable features.

#### 4.1.7 Performance Standards

Permitted uses and uses permitted by special exceptions shall conform to the performance standards delineated in Article 5 of this Ordinance.

### ARTICLE 5, PERFORMANCE STANDARDS

5.1 All land use activities within the General District shall conform with the following:

- (A) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (B) If more than one residential dwelling unit or more than one principal commercial structure is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure.

5.2 Principal and Accessory Structures

- (1) No principal structure, garage or other accessory building shall be located in a required front yard. When located to the rear of the main building, the accessory building shall be set back at least 10 (ten) feet from the side or rear lot lines.
- (2) Principal or accessory structures and expansions of existing structures shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
- (3) The first 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 as defined by soil types identified as recent flood plain soils. The applicant shall prove that all structures and fill do not encroach on the 100 year flood plain.
- (4) Front and Side Yard Requirements

A front yard abutting a public road shall have a minimum depth of fifty (50) feet from the right of way line or seventy-five (75) feet from the center line whichever distance is greater. The depth of any yard abutting a public road or any water body shall conform to the front yard requirements. Combined width of both side yards shall be twenty (20) feet.

Required Yard Spaces Shall Serve Only One Lot

No part of the yard or other open space required on any lot for any building shall be included as part of the yard or open space similarly required for another building or lot.

### 5.3 Campgrounds

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

- (1) Recreational vehicle and tenting areas containing approved water-carried sewage facilities shall meet the following criteria:
  - a. Each recreational vehicle, tent, or shelter site shall contain a minimum of five thousand (5000) square feet, not including roads and driveways.
  - b. A minimum of two hundred (200) square feet of off-street parking plus maneuvering space shall be provided for each recreational vehicle, tent, or shelter site,
  - c. Each recreational vehicle, tent, or shelter site shall be provided with a picnic table, trash receptacle, and fireplace.
- (2) The area intended for placement of the recreational vehicle, tent, or shelter and utility and service buildings, shall be set back a minimum of one hundred (100) feet from the exterior lot lines of the camping area.

### 5.4 Individual Private Campsites -

Individual, private campsites not associated with campgrounds are permitted provided the following conditions are met:

- (1) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year all requirements for residential structures shall be met including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

### 5.5 Filling, Grading, Lagooning, Dredging, or other Earth-Moving Activity

#### (1) General

The following shall apply to Filling, Grading, Lagooning, Dredging, excavation, processing and storage of soil, earth, loam, sand, gravel, rock, and other mineral deposits. Filling, grading, lagooning, dredging, and other earth-moving activity which would result in



erosion, sedimentation, or impairment of water quality or fish and aquatic life is prohibited.

(2) Earth-Moving Not Requiring a Special Exception Permit

The following earth-moving activity shall be allowed in the General Purpose District without a special exception permit from the Planning Board:

- a. The removal or filling of less than two hundred (200) cubic yards of material from or on any lot in any one (1) year
- b. The removal or filling of material incidental to construction, alteration or repair of a building or in the grading and landscaping incidental thereto and
- c. The removal of filling or transfer of material incidental to construction alteration or repair of a public or private way or essential services.

All other earth moving processing and storage shall require a special exception permit issued by the Planning Board.

In keeping with the purposes 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.

(3) Application for Special Exception Permit

Application for a permit from the Planning Board for excavation, processing and storage of soil, loam, and sand, gravel, rock, and other mineral deposits shall be required.

- a. The name and current address of the owner of the property involved;
- b. The location and boundaries of the lot for which the permit is requested;
- c. The existing contours of the land within and extending beyond the above boundaries for two hundred (200) feet interval not to exceed five (5) feet referred to Mean Sea Level;
- d. The contours as proposed following completion of the operation at intervals not to exceed five (5) feet referred to Mean Sea Level;
- e. The location of all proposed access roads and temporary structures;

- f. The proposed provisions for drainage and erosion control, including drainage calculations; and
  - g. Other information necessary to indicate the physical characteristics of the proposed operation.
- (4) Conditions of Permit

The Planning Board may issue a permit providing the following conditions shall be met:

- a. The smallest amount of bare ground shall be exposed for the shortest time feasible. The Planning Board shall set a specific date after which bare ground shall not be exposed.
  - b. Temporary ground cover such as mulch shall be used. The Planning Board shall set a specific date by which permanent ground cover shall be planted.
  - c. Diversions, silting basins, terraces and other methods to trap sediment shall be used.
  - d. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The applicant shall submit written approval from the Dept. of Sea and Shore Fisheries or Inland Fish and Game, as applicable, prior to consideration by the Planning Board.
  - e. The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.
  - f. Fill shall not restrict a floodway, channel, or natural drainage.
  - g. To prevent slumping and erosion, sides of cuts, fills, channels, or artificial water courses, except where ledge is present, shall be constructed with side slopes of two (2) units horizontal distance, and one unit vertical or flatter, unless bulkheads, retaining walls, or rip-rapping are provided.
  - h. No below-grade excavation except for drainage ways shall be allowed within fifty (50) feet of any lot line or public road;
  - i. Topsoil or loam shall be restored to a depth of not less than four (4) inches.
- (5) Optional Conditions of Permit

The Planning Board may impose reasonable conditions to safeguard the neighborhood and the Municipality which may include those relating to:

- a. methods of removal or processing;
- b. hours of operation;
- c. type and location of temporary structures;
- d. routes for transporting material;
- e. area and depth of excavations;
- f. provision of temporary or permanent drainage;
- g. disposition of stumps, brush and boulders, and,
- h. cleaning, repair and/or resurfacing of streets used in removal activity which have been adversely affected by said activity.

#### 5.6 Mobile Homes and Mobile Home Parks

- (1) Mobile Homes Not in a Mobile Home Park  
Mobile homes not in a mobile home park shall meet all to the requirements of this Ordinance for single family dwellings.
- (2) Mobile Home Parks  
Mobile home Parks shall meet State requirements for mobile home parks and all of the following criteria:
  - a. Mobile home parks shall conform to M.R.S.A. 30-A Sec 4358, and all applicable State laws and local ordinances.
  - b. All mobile homes in a mobile home park shall be connected to a sanitary sewer system if available, or to a central collection and treatment system, in accordance with the sanitary provisions of this Ordinance.

#### 5.7 Multi-family Dwelling Units

- (1) Two-Family Dwelling Units

Lots for two family dwelling shall meet all of the dimensional requirements for single family units, except that the lot area and shoreline frontage shall be equal to that required for an equivalent number of single-family dwelling units, and the road frontage shall exceed by fifty percent (50%) the requirement for an equivalent number of single family dwelling units.

- (2) Multi-Family Dwelling Units

Multi-family (3 or more) dwelling units shall meet all of the following

criteria:

- a. Lot area shall be equal to that required for the equivalent number of single-family dwelling units.
- b. The minimum road frontage shall be two hundred (200) feet.
- c. Lots for multi-family dwelling units shall meet all other dimensional requirements for single-family dwellings.
- d. No building shall contain more than ten (10) dwelling units.
- e. All multi-family dwelling units shall be connected to a public sewer system if available or to a central collection and treatment system in accordance with the sanitary provisions of this Ordinance.
- f. No parking area shall be located within the required yard area.

## 5.8 Planned Unit Development and Cluster Development

### (1) Purpose

The purpose of these provisions is to allow for new concepts of housing development where maximum variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the District in which the development is proposed.

### (2) Basic requirements

Planned unit developments and cluster developments shall meet all of the following criteria:

- a. All planned unit developments, and cluster developments shall meet all requirements for residential subdivision.
- b. The minimum area of land in a planned unit development or cluster development shall be ten (10) acres.
- c. Any lot abutting an accepted road shall have a frontage and area no less than that normally required in the General Purpose District. On other than accepted roads, lot area and road frontage may be

reduced by not more than thirty percent (30%) from the requirements of the General Purpose District, provided that:

- 1) No building lot shall have an area of less than ten thousand (10,000) square feet.
  - 2) All lots except those abutting a circular turn-around shall have a minimum frontage of seventy-five (75) feet. The frontage of lots abutting a circular turn-around may be reduced to fifty (50) feet, provided that the minimum lot width at the face of the building shall be seventy-five (75) feet.
- d. In no case shall frontage be reduced below the minimum frontage normally required in the district.
  - e. Lots in a planned unit development or cluster development shall meet all other dimensional requirements for the General Purpose District.
  - f. The total area of common land within the development shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the General Purpose District.
  - g. Every building lot that is reduced in area below the amount normally required shall abut such common land for a distance of at least fifty (50) feet.
  - h. All common land for recreational or conservation purposes only, shall be owned jointly or in common by the owners of the building lots: by a trust or association which has as its principal purpose the conservation or preservation of land in essentially its natural conditions or by the Municipality.
  - i. Further subdivision of common land or its use for other than non-commercial recreation or conservation, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to noncommercial recreational or conservation uses may be erected on the common land.
  - j. All residential structures in a planned unit development or cluster development shall be connected to a public sewer system, if available or to a central collection and treatment system in accordance with the sanitary provisions of this Ordinance.

- k. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage area, in accordance with an overall plan for site development.

## 5.9 Sanitary Provisions

### (1) Purpose:

To promote health, safety and general welfare, and to protect ground and surface waters and public and private water supplies from contamination or nutrient enrichment, the following provisions shall be applicable to the installation of sanitary waste disposal facilities in all Districts.

### (2) Connection to Public Facilities

All plumbing shall be connected to public collection and treatment facilities when such facilities are available.

### (3) Subsurface Sewage Disposal

- a. The installation of all subsurface disposal systems shall be accomplished in accordance with the Maine State Plumbing Code.

- b. Setbacks

The minimum setback for underground sewage disposal facilities is listed in Section (6) a. below. Where daily sewage flows exceed two thousand (2,000) gallons, the minimum setback shall be three hundred (300) feet from any shoreline. Setbacks from shorelines for all subsurface sewage disposal facilities shall not be reduced by variance.

### (4) Privies

Privies may be permitted in areas not served by community sewer facilities and where other means of sewage disposal are not feasible under the following conditions:

- a. No plumbing of any kind shall be connected to or discharge into the privy.
- b. The privy shall be located at minimum horizontal distances of:
  - 1) Twenty-five (25) feet from the nearest property line
  - 2) One hundred (100) feet from a private well
- c. The bottom of the privy pit shall be at least (2) two feet above bedrock

and the ground water table at its highest point or have a watertight vault.

- d. Privies shall not be permitted in areas subject to frequent flooding.
- (5) Other systems of sanitary waste disposal may be permitted in the General Purpose District as a special exception only after approval by the Planning Board.
  - a. Alternative systems shall be presented to the Planning Board on a plan prepared by a registered engineer and shall be subject to review and approval of the Maine Department of Environmental Protection and/or the Maine Department of Health and Welfare.
- (6) Setbacks
  - a. Underground sewage disposal facilities, where permitted, shall be subjected to the following additional setback provisions.

Components:	Daily sewage flow less than 2,000 Gallons		Daily sewage flow in excess of 2,000 Gallons	
	Septic Tank Feet	Disposal Trench Feet	Septic Tank Feet	Disposal Trench Feet
Property	10	10	20	20
Buildings	8	20	20	40
Well or spring used as a domestic water supply	100	100	100	100
Well or spring used as a domestic water supply with a daily water use in excess of 2,000 gallons	100	300	100	300
Water supply line	10	10	10	25

- c. Setbacks from shorelines and water supplies for all subsurface sewage disposal facilities shall not be reduced by variance.

## 5.10 Water Quality Protection

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately liquid, gaseous, or solid materials of such nature, quantity obnoxiousness, toxicity, or temperature that run off, seep; percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or harmful to human, animal, plant, or aquatic life. No activity shall by itself or in combination with other activities impair designated uses or the water classification of a waterbody.

#### 5.11 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, and 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.

#### 5.12 Archaeological Sites

Any proposed land use, activity involving structural development or soil disturbance on or adjacent to sites listed on or eligible to be listed on the national Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

#### 5.13 Opioid Treatment Programs (i.e. Methadone Clinics)

Any opioid treatment program (OTP) registered under 21 U.S.C. 823(g) shall comply with the following requirements:

1. Approved by the Planning Board as a Conditional Use regardless of size;
2. Be part of an acute care hospital's main campus (hospital based clinic);



3. Be only one OTP per acute care hospital;
4. Be restricted to a maximum of five (5) patients- active case load at any one time for the entire OTP;
5. OTP cannot operate in part, or in whole out of a mobile unit;
6. May only be located in the General District;
7. Must be at least one thousand (1000) feet from the nearest public or private school serving minors.

## ARTICLE 6, ADMINISTRATION

### 6.1 Enforcement

This ordinance shall be enforced by a Code Enforcement Officer appointed annually by July 1<sup>st</sup> by the Municipal Officers.

### 6.2 Building or Use Permit

- (1) All applications for building or use permits shall be submitted in writing to the Code Enforcement Officer on forms provided for the purpose.

All applications shall be signed by the owner or owners of the property or other person authorizing the work, certifying that the information in the applications is complete and correct. If the person signing the application is not the owner or lessee of the property then that person shall submit a letter of authorization from the owner or lessee.

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.

- (2) Within seven days of the filing of a complete an application for a building or use permit, the Code Enforcement Officer shall approve, deny, or refer to the Planning Board for special exception, all such applications. His decision shall be in writing on a form designed for the purpose and communicated directly to the applicant. One copy of the Code Enforcement Officer's decision shall be filed in the municipal office. In cases where the Code Enforcement Officer deems that a special exception permit is required, he shall also provide a copy of his decision to the Planning Board.

- (3) No building permit for a building or structure on any lot shall be issued except to the owner of record thereof; or his authorized agent, until the proposed construction or alteration of a building or structure, shall comply in all respects with the provisions of this Ordinance or with a decision rendered by the Board of Appeals or the Planning Board. Any application for such a permit shall be accompanied by a plan, accurately drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact location and size of all buildings or structures already on the lot, the location of new buildings to be constructed together with the lines within which all buildings and structures are to be constructed, the existing and intended use of each building or structure and such other information as may be necessary to provide for the execution and enforcement of this Ordinance.
- (4) Applications for permits with their accompanying plans and building permits shall be maintained as a permanent record by the Municipal Officers or the Code Enforcement Officer.
- (5) Following the issuance of a permit, if no substantial start is made in construction within one year of the date of the permit, the permit shall lapse and become void. A one (1) year permit extension may be obtained from the Code Enforcement Officer prior to lapse of the original permit.
- (6) Any increase in habitable living space shall require a building permit.
- (7) Any change of use shall require a building permit.

### 6.3 Plumbing Permit Required

No building permit shall be issued for any structure or use involving the construction, installation or alteration of plumbing facilities unless a valid plumbing permit has been secured by the applicant or his authorized agent in conformance with the sanitary provisions of this Ordinance.

### 6.4 Fee: no building permit or use permit shall be issued without payment of a fee according to the following schedule:

- a. Applicants for building permits, change of use permits, special exception permits and/or variances, shall submit a fee to the Code Enforcement Officer at the time of submission of application forms. The fees shall serve as remuneration for the services of the Code Enforcement Officer and as a source of funds for the administration of this Ordinance.
  1. Change of use permits, and permits not for a structure shall require the payment of a fee, which shall be \$30.00; said fee being apportioned \$20.00 for the Code Enforcement Officer and \$10.00 for administration.

2. Permits for structures shall require the payment of a fee, which shall be \$.05 per square foot of floor area, to be retained by the Code Enforcement Officer, plus \$10.00 for administration. For the calculation of this fee, floor area shall be considered the total vertical footprint of the structure, not the sum of the floors.
  3. Use permits issued by the Code Enforcement Officer as described in Table 1 Land Uses and within the Shorelands, Resource Protection, and Stream Protection Districts, shall be \$100.00; said fee apportioned \$50.00 to the Code Enforcement Officer and \$50.00 for administration.
  4. Applicants for a special exception permit shall submit a fee to the Code Enforcement Officer of \$100.00, said fee being apportioned \$20.00 to the Code Enforcement Officer and \$80.00 for administration.
  5. After-the-Fact Permits; applicants seeking a permit for a use, activity or construction, which was begun prior to application, shall submit a fee equal to three (3) times the regular fee for that permit, apportioned at the same percentages as the regular fee for that permit. After-the-fact permits shall not be issued for any use, activity, or construction which violated any section of this Ordinance at the time the use, activity or construction was begun, other than timeliness of application.
  6. Permit extensions shall require the payment of a fee equal to fifty percent (50%) the original permit fee; the Code Enforcement Officer shall retain said fee as remuneration.
- b. The subdivision application fee shall be \$250.00 plus \$25.00 per lot created by the subdivision.

6.5 Enforcement officer

- A. Any violation of this Ordinance shall be deemed to be a nuisance.
- B. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures, removal of illegal buildings, structures additions or work being done, or abatement of nuisance conditions or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. A copy of such notification shall be submitted to the municipal officers and be

maintained as a permanent record.

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

## 6.6 Legal Action and violations

When any violation of any provision of this Ordinance shall be found to exist, the Municipal attorney, as designated by the Municipal Officers, either on his own initiative, or upon notice from the Code Enforcement Officer, is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, 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 authorized 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 and safety or will result in substantial environmental damage.

## 6.7 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 30-A, M.R.S.A. section 4452.

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NOTE: Current penalties include fines of not less than \$100 nor more than \$2500 per violation for each day that the violation continues. However, in the Resource Protection District the maximum penalty is increased to \$5000 (38 M.R.S.A. section 4452).

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## 6.8 Appeals and Special Permits

### 6.8.1 Procedure

- a. All appeals or applications for special exception permits shall be based upon a written decision from the Code Enforcement Office.
- b. Administrative appeals and variance appeals shall be heard and decide upon by the Board of Appeals in accordance with the provisions of this ordinance.
- c. Applications for special exception permits shall be heard and decided upon by the Planning Board in accordance with the provisions of this Ordinance.
- d. Appeals shall lie from the decision of the Code Enforcement Officer to the Board of Appeals and from the Board of Appeals to the Superior Court according to state law.
- e. Special exception shall lie from the decision of the Code Enforcement Officer to the Planning Board and from the Planning Board to the Superior Court according to state law.

## 6.8.2 Board of Appeals

### (1) Establishment

A Board of Appeals is hereby established in accordance with state law and the provisions of this Ordinance.

### (2) Appointment and Composition

- a. The Board of Appeals shall be appointed by the Municipal Officers and shall consist of 5 members, all of whom shall be legal residents of the municipality, serving staggered terms of 5 years. Initial appointments shall be for 1,2,3,4, and 5 years respectively. The Board shall elect annually a chairman from its membership. Minutes shall be kept of the proceedings of the Board of Appeals, which shall show the vote of each member upon each question. All minutes of the Board shall be public record.  
A quorum shall consist of 3 members.
- b. A Municipal Officer may not serve as a member.
- c. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member

who is being challenged.

- d. A member of the Board may be dismissed for cause by the Municipal Officers upon written charges and after public hearing.

(3) Powers and Duties of the Board of Appeals.

The Board of Appeals shall have the following powers:

- (a) Administrative Appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.
- (b) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(4) Variance Appeals. Variances may be granted 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:
  - (i) The proposed structure or use would meet the provisions of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and
  - (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
    - a. That the land in question cannot yield a reasonable return unless a variance is granted;
    - 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;

- 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.

(d) Notwithstanding 6.8.2(4)(c)(ii) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

(e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure 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.

#### (5) Administrative Appeals

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board of Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings is inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact

finding.

(6) Appeal Procedure

(a) Making an Appeal

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in 6.5B above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
  - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
  - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, 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.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty (30) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) Decision by Board of Appeals

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
- (ii) The person filing the appeal shall have the burden of proof.
- (iii) The Board shall decide all administrative appeals and variance appeals within thirty (30) days after the close of the hearing, and shall issue a written decision on all appeals.
- (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions



reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

- (7) Appeal to Superior Court. Except as provided by 30-A M.R.S.A. section 2691(3)(F), 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 (45) days from the date of any decision of the Board of Appeals.
- (8) Reconsideration. In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

### 6.8.3 Special Exception Permits

- (1) Authorization

The Planning Board is hereby authorized to hear and decide upon applications for special exception permits in accordance with state law and the provisions of this Ordinance.

- (2) Powers and Duties: The Planning Board shall hear and approve with modifications or conditions, or disapprove all applications for special exception permits. No special exception permit shall be granted unless specific provision for such special exception is made in this Ordinance.

- (3) Application Procedure

- a. A person informed by the Code Enforcement Officer that he

requires a special exception permit shall file an application for the permit with the Planning Board on forms provided for the purpose.

- b. A non-refundable application fee of **\$20.00\*** shall be paid to the C.E.O. and a copy or a receipt for the same shall accompany each application, in addition all costs incurred by the Planning Board under Article 6, Section 6.8.3 subsection (3) paragraphs c. and e. shall be paid by the applicant. An additional fee may be charged if the C.E.O. and/or the Board of Appeals needs the assistance of a professional engineer or other expert. The experts fee shall be paid in full by the applicant within ten (10) days after the town submits a bill for payment Failure to pay the bill shall constitute a violation of the ordinance and be grounds for issuance of a stop work order. An expert shall not be hired 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 of the Code Enforcement Officer may appeal that decision to the Board of Appeals.

***\*Changed to \$100 by amendment to section 6.4.a.4, (Fee) in 2012. This section was missed. BLA***

- c. Before taking action on any application, the Planning Board shall hold a public hearing. The Board shall notify by certified mail, the owners of all property within five hundred (500) feet of the property involved, at least ten (10) days in advance of the hearing, of the nature of the application and of the time and place of the public hearing.
- d. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board.
- e. Following the filing of an application, the Planning Board shall hold a public hearing on the application within thirty (30) days. The Planning Board shall notify the Code Enforcement officer, Municipal Officers, and the Board of Appeals, at least twenty (20) days in advance, of the time and place of the hearing, and shall publish notice of the hearing at least ten (10) days in advance in a newspaper of general circulation in the area.
- f. At any hearing a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.
- g. The Code Enforcement Officer or his designated assistant shall

attend all hearings and may present to the Planning Board all plans, photographs, or other material he deems appropriate for an understanding of the application.

- h. The applicant's case shall be heard first, to maintain orderly procedure; each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.
- i. Within thirty (30) days of the public hearing, the Planning Board shall reach a decision on a special exception and shall inform, in writing, the applicant, the Code Enforcement Officer and Municipal Officers of its decision.
- j. Upon notification of the decision of the Planning Board the Code Enforcement Officer as instructed shall: immediately issue, issue with conditions prescribed by the Planning Board, or deny a building permit.  
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 any State law which the municipality is responsible for enforcing.
- k. A special exception permit secured under the provision of this Ordinance by vote of the Planning Board shall expire if the work or change involved is not commenced within one (1) year of the date on which the special exception is granted, and if the work or change is not substantially complete within two (2) years of the date on which the special exception is granted. Permit extensions may be granted for commencement of the work or change, or for substantial completion.
- l. 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

(4) Factors applicable to Special Exceptions

- a. In passing upon a special exception permit the Planning Board shall evaluate the immediate and long-range effects of the proposed use upon:
  - 1) The maintenance of safe and healthful conditions.
  - 2) The prevention and control of water pollution and sedimentation
  - 3) The control of building sites, placement of structures, and land uses.

- 4) The protection of spawning grounds, fish, aquatic life, bird, and other wildlife habitat.
- 5) The conservation of visual as well as actual points of access to inland and coastal waters, and natural beauty.
- 6) Archaeological historic resources as designated in the comprehensive plan.
- 7) Existing commercial fishing or maritime activities.

b. The Planning Board shall also consider the following factors:

- 1) The compatibility of the proposed use with adjacent land use.
- 2) The need of a particular location for the proposed use.
- 3) Access to the site from, existing or proposed roads.
- 4) The location of the site with respect to flood plains and floodways of rivers or streams.
- 5) The amount and type of wastes to be generated by the proposed use and the adequacy of the proposed disposal systems.
- 6) The impact of the proposed use, on the land and adjacent water bodies and the capability of the land and water to sustain such use without degradation.
- 7) Existing topographic and drainage features and vegetative cover on the site.
- 8) The erosion potential of the site based upon degree and direction of slope, soil type, and vegetative cover.
- 9) The impact of the proposed use on transportation facilities.
- 10) The impact of the proposed use on local population and community facilities.
- 11) The impact of the proposed use on local water supplies.
- 12) The proposed use in conformance with Article 5, Performance standards,

#### (5) Conditions Attached to Special Exceptions

- a. Upon consideration of the factors listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purposes of this Ordinance. Violation of any of these conditions shall be a violation of this Ordinance. Such conditions may include, but not be limited to, specifications for type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational controls; professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of parking and signs; type of construction; or any other conditions necessary to fulfill the purposes of this Ordinance.
- b. In order to secure information upon which to base its determination, the

Planning Board may require the applicant to furnish, in addition to the information required for a special exception permit, the following information:

- 1) A plan of the area showing contours at intervals to be determined by the Planning Board and referred to Mean Sea Level, high-water elevation, groundwater conditions, bedrock slope and vegetative cover.
- 2) A soils report identifying the soils boundaries and names in the proposed development with the soils information super-imposed upon the plot plan in accord with the USDA Soil Conservation Service National Cooperative Soil Classification.
- 3) Location of existing and proposed buildings, parking areas, traffic access, driveways, walkways, piers, open spaces, and landscaping.
- 4) Plans of buildings, sewage disposal facilities, and water supply systems.
- 5) Other pertinent information necessary to determine if the proposed use meets the provisions of this Ordinance. In evaluating each application, the Planning Board may request the assistance of the Regional Planning Commission, County Soil and Water Conservation District and any other State or Federal agency which can provide technical assistance.