



Old Town

150 BRUNSWICK STREET • OLD TOWN, MAINE 04468

City of Old Town

Zoning Ordinance

Accurate as of:
June 1, 2009

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Appendix A (Zoning)

SECTION 101. PREAMBLE

101. Authority.

This ordinance has been prepared in accordance with the provisions of 30-A M.R.S.A. Chap. 187 and Chapter 424, Title 12 of the Revised Statutes of Maine, as amended.

(Ord. of 12-7-98, § 2)

101.1. Title.

This ordinance and the accompanying official zoning map or maps shall be known as and may be cited as the "Zoning Ordinance, City of Old Town, Maine."

Editor's note--The official zoning maps are not set out herein, but are on file and available for inspection in the city offices.

101.2. Purpose.

The purpose of this ordinance is to promote the health, safety and general welfare of the residents of the city; to encourage the most appropriate use of land throughout the municipality; to promote traffic safety; to provide safety from fire and other elements; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsanitary areas; to provide an adequate street system; to promote the coordinated development of unbuilt areas; to encourage the formation of community units; to provide an allotment of land area in new developments sufficient for all the requirements of community life; to conserve natural resources; and to provide for adequate public services, and an integral part of a comprehensive plan for municipal development.

The shoreland provisions of this ordinance are designed to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to waters and natural beauty.

101.3. Jurisdiction.

The provisions of this ordinance shall govern all structures within the boundaries of the City of Old Town, Maine.

SECTION 102. DEFINITION OF TERMS USED IN THIS ORDINANCE

"City" or "municipality" means the City of Old Town. Words used in the present tense include the future tense; words used in the singular include the plural, and words used in the plural include the singular. The word "shall" is always mandatory. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual. The word "lot" includes the word "plot" or "parcel". The word "used" or "occupied", as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used or occupied."

102. Definitions.

Except as specifically defined herein, all words in this ordinance shall carry

their customary dictionary meanings. For the purpose of this ordinance, certain words or terms used herein are to be construed or defined as follows:

Accessory use or building: A use or structure on the same lot with and customarily incidental and subordinate to the principal use or building. In the R-4 zone an accessory structure may be located on a lot across a road on a different lot if the lot is under the same ownership as the lot with the principal structure and the lot is within 100 feet of the lot with the principal structure.

Area of special flood hazard: The land in the floodplain having a one per cent or greater chance of flooding in any given year, as specifically identified by the Federal Insurance Administration in a report entitled "The Flood Insurance Study for the City of Old Town, Penobscot County", dated April 17, 1978, with accompanying flood insurance rate maps.

Automobile junkyard: A place occupied by two (2) or more unregistered, unserviceable, discarded or junked automotive vehicles, or bodies, engines or other parts thereof sufficient in bulk to equal two (2) vehicles; also referred to as a "motor vehicle junkyard."

Base flood: The flood having a one per cent chance of occurring or being exceeded in any given year, sometimes referred to as the 100-year flood.

Boarding, rooming or lodging house: Any dwelling in which lodging is offered for compensation to three (3) or more persons either individually or as families with or without meals.

Campground: Land upon which one or more tents are erected or trailers are parked for temporary recreational use on sites arranged specifically for that purpose. The words "camp grounds" shall include the words "tenting grounds" and "trailer parks."

Cluster development: A planned development, laid out to utilize the unique characteristics of the land upon which it is located, wherein each principal building does not necessarily occupy a lot meeting the minimum dimensional requirements for the zone in which it is located. Cluster developments are allowed only in zones, and only under the conditions listed in the zones, where the zoning ordinance specifically allows them.

Camper: For the purpose of this ordinance, a "camper" shall be defined as a travel trailer.

Deck: A flat-floored roofless area either attached or adjacent to a principal structure.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Dwelling: A building or part thereof used for living quarters for one or more families.

Dwelling, one-family or single-family: A building containing only one dwelling unit. The term is general, including such specialized forms as one-family, semi-detached and one-family attached (rowhouses, townhouses, and the like). For regulatory purposes, the term is not to be construed to include mobile homes, travel trailers, housing mounted on self-propelled or drawn vehicles, tents, or other forms of temporary or portable housing.

Dwelling, two-family: A building containing only two (2) dwelling units. The term is general, including duplex and two-family detached. For regulatory purposes, the term is not to be construed to include mobile homes.

Multiple dwelling use: A building containing three (3) or more dwelling units. For purposes of determining whether a lot is in multiple-dwelling use, the following considerations shall apply:

- (1) Multiple one-dwelling uses may involve dwelling units intended to be rented and maintained under central ownership or management, or cooperative apartments, condominiums, and the like.
- (2) Where an undivided lot contains more than one building and the buildings are not so located that lots conforming to the requirements for one- or two-family dwellings in the zoning district could be provided, the lot shall be considered to be in multiple-dwelling use if there are three (3) or more dwelling units on the lot, even though the individual buildings may each contain less than three (3) dwelling units.

Dwelling unit: A room or rooms connected together, constituting a separate, independent housekeeping establishment for a family, for occupancy on weekly or longer terms, physically separated from any other rooms or dwelling units that may be in the same structure, and containing independent kitchen-sleeping and bathroom facilities. Units otherwise meeting this definition but occupied by transients on a rental or lease basis for periods of less than one week shall be construed to be lodging units.

Elderly housing: A multi-unit dwelling specifically designed for residential needs of elderly persons conforming to the requirements of state and/or federal programs providing for housing of the elderly and not to be used (by covenant) for any other purposes in the forty (40) years following construction.

Emergency operations: "Emergency operations" shall include 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 and livestock from the threat of destruction or injury.

Essential services: Gas, electrical, communication facilities, steam, fuel or water supply, transmission or distribution systems.

Exception: A use which would not be appropriate generally or without restriction in a particular district, but which, in the opinion of the board of appeals, if controlled as to number, location, relation to neighborhood, or standard of performance, would promote the public safety, health, convenience or welfare. An exception is allowed in a zone only if the regulations for that zone specifically permit it, subject to the approval of the board of appeals, and only when the board finds that such use meets all of the requirements applicable to it as specified in the ordinance.

Family: One or more persons occupying a dwelling unit or lodging unit. Unless all members are related by blood, marriage, or legal adoption, no such family shall contain over three (3) persons. The term "family" shall not be construed to mean fraternity, sorority, club or institutional group. For three (3) or more roomers or boarders, see "rooming house" and "boarding house." For five (5) or more foster children, see "foster home."

Flood insurance rate map (FIRM): The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to Old Town.

Flood insurance study: The official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map and the water surface elevation of the base flood.

Floodway: The channel of a river or other watercourse 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.

Forest management activities: Timber cruising and other forest resources evaluation activities, management, planning activities, insect and disease control, timber stand improvement, pruning, timber harvesting or other forest harvesting, regeneration of forest stands and other similar associated activities, but not the construction or creation of roads.

Foster home: Six (6) or more persons, unrelated by blood or adoption, constituting an integral living unit under common guidance and support occupying a dwelling or lodging unit. The term shall not be construed to mean fraternity, sorority or club.

Frontage: See "Lot Frontage."

Home occupation: An occupation or profession which is customarily carried on in a dwelling unit or in a building by a member of the family residing in the unit that is clearly incidental and secondary to the use of the dwelling unit for residential purposes.

Inland wetland: Areas enclosed by the normal high water mark of inland waters and areas otherwise identified on the basis of soils, vegetation, or other criteria as inland wetlands including but not limited to swamps, marshes or bogs.

Junkyard: An open area where waste, used or secondhand lumber and building materials are bought, stored, baled, packed, disassembled or handled, including but not limited to scrap iron and other metals, paper, rags and bottles.

Lodging units: Living quarters for a family that do not contain independent kitchen facilities, provided, however, that dwelling units occupied by transients on a rental basis for periods of less than one week may be construed to be lodging units even though they contain independent kitchen facilities.

Lot: A parcel of land occupied or capable of being occupied by one building and the accessory buildings or uses customarily incidental to it including such open spaces as are required by this ordinance, and having frontage upon a public street, upon a street in a subdivision which has been approved by the planning board, or, for any parcel of land not located on a public street or in an approved subdivision, upon a private gravel road, built to standards approved by the planning board, and having a minimum travel width of sixteen (16) feet and a minimum right-of-way width of fifty (50) feet. The private gravel road to be allowed only in an R-3 zone as a special exception.

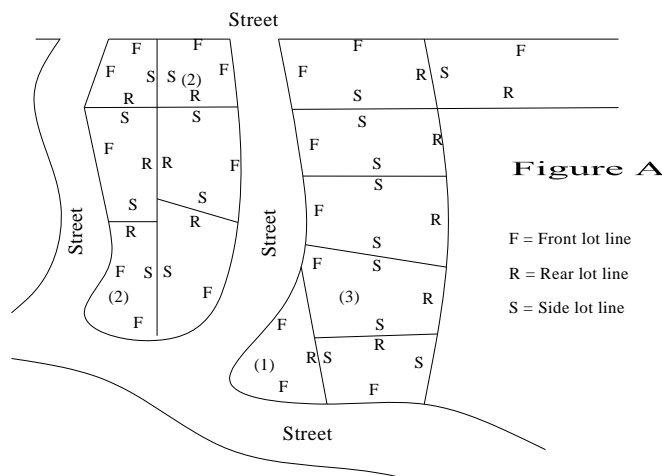
Lot frontage: The distance along the front lot lines of a lot or, in the case of an irregular or curved front lot line, the distance along an imaginary straight line connecting the two (2) ends of the front lot line. That side of a lot facing a major public water body shall be known as the "water front"; the side or sides facing a street shall be known as the "street front." In the case of a lot with frontage on more than one street, frontage on one street shall meet the minimum frontage requirement. Setbacks from both streets shall meet minimum yard requirements. Frontage on a controlled-access highway, example I-95, shall not be counted toward required frontage.

Lot line, front: That line which extends between the two (2) side lot lines and which separates the lot from a street right-of-way or a major public water body (hereby defined as one having an area of at least three (3) acres in Old Town). Every lot shall have at least one front lot line. In the case of a lot with no side lot lines, the front lot line is that line which connects the ends of the rear lot line (1 in Figure A). In the case of a lot with only

one side lot line, the front line is that line which connects the front end of the side line with the rear line (2 in Figure A).

Lot line, side: That line or those lines which extend between the ends of the front and rear lot lines. In the case of irregularly shaped and double or triple frontage lots, there may be only one side lot line or none at all (1 and 2 in Figure A). In some cases, there may be more than two (2) side lot lines (3 in Figure A). Figure A illustrates various applications of the lot line definitions.

Lot line, rear: That line which extends between the two (2) side lot lines and which separates the lot from one or more other lots or parcels. In the case of a lot with no side lines, the rear lot line connects the two (2) ends of the front lot line (1 in Figure A). In the case of a lot with only one side line the rear lot line connects the rear end of the side line with the front lot line (2 in Figure A). Every lot shall have at least one rear lot line.



Lot width: The distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines.

Manufacture housing: A structure or units designed for occupancy, and constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or is utilized for housing and may be purchased or sold by a dealer in the interim.

Mobile home: A structure, transportable in one or more sections, which is eight (8) body feet or more in width and is thirty-two (32) body feet or more in length and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation which connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein.

Mobile home, newer: Those units constructed after June 15, 1976, commonly called "newer mobile homes" which the manufacturer certified are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures, transportable in one or more sections, which, in the traveling mode, are fourteen (14) body feet or more in width and seven hundred fifty (750) or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connection to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained

therein; except that the term shall include any structure which meets all the requirements of this paragraph, except size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.

Mobile home park: A parcel of land under unified ownership approved by the municipality for the placement of mobile homes.

Mobile home space: An area within a mobile home park designed to accommodate one mobile home stand and its related yards and other open spaces.

Mobile home stand: An area within a mobile home space on which a mobile home is to be stationed.

Mobile home subdivision or development: A parcel of land approved by the municipal reviewing authority under Chapter 18 of the Old Town Code of Ordinances for the placement of newer mobile homes on individually owned lots.

Modular homes: Housing units which the manufacturer certified are constructed in compliance with the state's manufactured housing act and regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning or electrical systems contained therein.

Modular home, single-wide: These units shall be considered and treated under this ordinance as newer mobile homes.

Neighborhood general store: An establishment engaged in the retail sale of a combination of general goods which may include groceries, hardware and drygoods. It is characterized from other types of stores in that its economic rationale is found in serving the needs and convenience of the immediate neighborhood residents, rather than a large retail market such as the community.

Neighborhood grocery store: Establishments primarily engaged in selling food for home preparation and consumption. It is further characterized from other types of grocery stores in that its economic rationale is found in serving the needs and convenience of the immediate neighborhood residents, rather than a larger retail market such as the community.

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

Nursing home: Any dwelling in which three (3) or more aged, chronically ill or incurable persons are housed and furnished with meals and nursing care for compensation.

Piers, docks, wharves, breakwaters, causeways, marinas, bridges over twenty feet in length and uses projecting into water bodies:

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

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

Principal structure: The structure in which the primary use of the lot is conducted.

Recent floodplain soils: Recent floodplain soils include the following soils as described and identified by the national cooperative soil survey.

Alluvial land;
Hadley silt loam;
Limerick silt loam;
Ondawa fine sandy loam;
Podunk fine sandy loam;
Rumney fine sandy loam;
Saco silt loam;
Suncook loamy sand;
Winooski silt loam.

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

Rubbish: Any discarded, wornout, abandoned or nonfunctioning article or articles or materials including but not limited to tin cans, bottles, junk appliances, junk automobiles or parts thereof, old clothing or household goods. The word "rubbish" shall include the words "trash," "waste materials" and "refuse."

Shoreland area: All land area within two hundred fifty (250) feet horizontal distance of the normal high water mark of the following bodies of water: Penobscot River, Stillwater River, Pushaw Stream, Birch Stream, Pushaw Lake and Perch Pond.

Sign: An attached or freestanding structure or part of a structure designed to convey to persons not on the premises some information, knowledge or idea by means of letters, words, insignia, color, illuminated or nonilluminated device or illustration provided, however, that paragraphs (1), (2) and (3) shall not be included in the application of the regulations of this ordinance; paragraphs (4) through (18) shall apply.

- (1) Flags or insignia of any government.
- (2) Legal notices, identification, information or directional signs erected or required by governmental bodies.
- (3) Signs not exceeding twelve (12) square feet in area bearing only the identification of, and information concerning, the occupant of the premises used for religious, charitable, educational or philanthropic purposes.
- (4) Address sign: A sign indicating the street address not exceeding one square foot in area.
- (5) Advertising sign: A sign referring to persons, products, businesses, services or activities not on the premises where the sign is located.

- (6) Aggregate sign area: The sum total of sign area shall be that part or surface used to convey a message but shall not include poles, standards, or other parts which perform solely a weight-bearing function.
- (7) Awning or canopy sign: A sign mounted on a movable overhanging shelter perpendicular to the face of a building.
- (8) Business sign: A sign referring to persons, products, businesses, services or activities within the premises where the sign is located.
- (9) Directory sign: A sign on which the names and locations of occupants or the use of a building is given. This shall include office buildings and church directories.
- (10) Ground sign: A freestanding sign not mounted on a building, but does not include trailer-mounted signs.
- (11) Marquee sign: A metal or glass canopy over an entrance.
- (12) Projecting sign: A sign mounted on and extending out more than fifteen (15) inches from the face of a building, but not including awning, canopy, marquee or wall signs.
- (13) Public sign: A sign of a public or noncommercial nature, which shall include community service information signs, public transit service signs, public utility information signs, safety signs, danger signs, trespassing signs, signs indicating scenic or historical points of interest, and all signs erected by a public officer in the performance of a public duty.
- (14) Roof sign: A sign erected or constructed wholly upon and/or over the roof of any building and supported solely on the roof of any structure.
- (15) Temporary sign: A sign whose existence is limited in duration announcing special events or identifying new construction. Signs shall generally be ground signs.
- (16) Trademark: A device pointing distinctly to the origin or ownership of merchandise to which it is applied and legally reserved to the exclusive use of the owner as maker or seller.
- (17) Wall sign: A sign mounted on and parallel to the face of a building.
- (18) Window sign: A sign mounted on a window display or located inside a window and not part of a show window display.

Street: Any public way or thoroughfare for the conveyance of motor vehicles whether in existence as an accepted city street used as a public way or set aside for such use in a plat plan, etc.

Street line: A right-of-way line of a street.

Structure: Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground, including but not necessarily limited to buildings, walls, fences, signs and billboards.

Subdivision: The division of a lot, tract or parcel of land into two (2) or more lots, plats, sites or other division of land for the purpose, whether

immediate or future, of sale or of building development, but not including the division of land for agricultural purposes.

Substantial improvement: Any repair, construction or improvement of a structure, the cost of which equals or exceeds fifty (50) per cent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred.

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.

Travel trailer: A vehicle designed to be moved on wheels and intended as a temporary dwelling for travel, recreation and vacation use.

Variance: A variance is a relaxation of the terms of this ordinance where such will 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 unnecessary and undue hardship.

Yard: On the same lot with a principal building, a space which is open to the sky and unoccupied by any structure from six (6) feet above the general ground level upward, nor any principal structure above grade.

Yard, front: A yard extending all along any front lot line, the depth of which shall be consistent and shall be measured at right angles to such front lot line. Every lot shall have at least one front yard.

Yard, rear: A yard extending all along any rear lot line the depth of which shall be consistent and shall be measured at right angles to such rear lot line. Where a rear yard and a front yard would overlap due to the irregular shape of a lot (as in 1 and 2 in Figure A) the front yard depth requirements shall apply. Every lot shall have at least one rear yard.

Yard, side: A yard extending between the front yard and the rear yard of a lot along a side lot line. The depth of which shall be consistent and shall be measured at right angles to such side lot line.

(Ord. of 12-3-84; Ord. of 7-13-87, § 1; Ord. of 8-6-90; Ord. of 11-7-94, §§ A, B; Ord. of 6-5-95; Ord. of 1-2-96(1); Ord. of 7-6-99, § 2)

SECTION 103. ESTABLISHMENT OF ZONES

103. Classes of zones.

For the purpose of this ordinance, the city is hereby divided into the following classes of zones:

- Low density residence to be known as R-1 zones.
- General residence to be known as R-2 zones.
- Rural residence and farming to be known as R-3 zones.
- Seasonal residence to be known as R-4 zones.
- Low Density Multifamily to be known as R-5 zones
- Downtown commercial to be known as C-1 zones.
- Highway commercial to be known as C-3 zones.
- Shopping center to be known as C-4 zones.
- Industrial to be known as I-1 zones.
- Industry and service district to be known as I-2 zones.
- Resource protection to be known as P zones.

Note: "Shoreland areas," as defined, are supplemental to the above zones and are subject to the provisions of section 104.21, in addition to the provisions of the zone in which they are located.

The boundaries of these zones are shown upon the official zoning map which together with all notations and explanatory material thereon is hereby adopted by reference and made a part of this ordinance, said map being entitled "Zoning Map, City of Old Town, Maine."

103.1. Rules governing zone boundaries.

Where uncertainty exists as to the boundary lines of zones as shown on the official zoning map, the following rules shall apply:

- (a) Where boundaries are shown as approximately following the center lines of streets or railroad rights-of-way they shall be construed to follow such center lines;
- (b) Boundaries shown as approximately following plotted lot lines or town boundary lines shall be construed as following such lines;
- (c) Boundaries shown as following shorelines or the center lines of streams, rivers or water bodies shall be construed to follow such lines;
- (d) Boundaries shown as parallel to or extensions of the features listed in section 103.1(a) through (c) above shall be so construed and distances not specifically indicated shall be determined by the scale of the map;
- (e) Where physical or cultural features existing on the ground differ from those shown on the official zoning map, or uncertainty exists with respect to the location of a boundary, the board of appeals shall interpret said map.

SECTION 104. SUPPLEMENTAL REGULATIONS

104. Zoning affects all structures and land.

Except as hereinafter specified no structure or land shall hereafter be used or occupied and no structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or altered unless in conformity with all the requirements herein specified for the district in which it is located.

104.1. Nonconforming buildings and uses.

- (a) Any lawful use of any building or land which is made nonconforming by reason of the adoption of this ordinance, or which shall be made nonconforming by reason of a subsequent amendment may be continued subject to the provisions of this section as follows:
 - (1) A nonconforming use shall be limited to its size and extent existing at the time this ordinance or any amendment thereto is adopted and shall not be expanded.
 - (2) A nonconforming use of a building may be changed to another nonconforming use of the same or more restrictive classification. A nonconforming building shall not be extended or enlarged except for a purpose permitted in the zoning district in which such building or lot is situated. Said change shall be approved by the zoning board of appeals through application duly made in conformance with procedures established herein.

- (3) If a nonconforming use ceases or is abandoned for any reason for a period of one year or more, any future or subsequent use of such building shall be in accordance with the provisions in this ordinance. It shall be the responsibility of the owner of such premises to notify the building inspector of the day of abandonment or cessation within one month from the date of such abandonment or cessation. If the owner fails to give notice required by this paragraph the building inspector shall make a determination of such date, which determination shall be conclusive as to such date.
- (4) Whenever a nonconforming use is changed to a permitted use such use shall not thereafter revert to nonconforming status notwithstanding any other provisions of this ordinance.
- (5) The reconstruction or repair of any nonconforming building or structure which may hereafter be destroyed or damaged by fire or other natural or accidental causes may be permitted provided:
 - a. The reconstruction or repair covers no greater land area and has no greater floor area.
 - b. The reconstruction or repair shall be completed within one (1) year from the date of damage. The planning board may grant additional time for completion if it deems that there is just cause for the delay.
 - c. The extent of the damage is less than seventy-five (75) percent of the assessed value. The extent of damage determination shall include all costs required to fully repair the structure and to bring the structure back to the same level of use and condition as prior to the damage. Costs shall include all materials and labor. All items which are permanently affixed to the structure must be included. The extent of the damage shall not include unattached appliances, furnishings, landscaping, loss of use, or debris removal.
 - d. The planning board may, following a public hearing, allow the repair or reconstruction of nonconforming buildings and structures or buildings containing nonconforming uses [for] which the extent of damage is more than seventy-five (75) percent. In making their determination under this subsection d., the planning board shall consider the following.
 - (i) That the proposed structure, and/or use, although not generally appropriate in the zone for which it is sought, is appropriate for the location for which it is sought because of the peculiar physical characteristics of that location.
 - (ii) That the proposed use/structure will conform to the general character of the neighborhood in which the use would be located.
 - (iii) That the proposed use/structure will not have an unduly adverse effect upon the property values of adjacent properties.
 - (iv) That the use/structure will not place undue burden on municipal services.
 - (v) That the proposed use will not create unreasonable traffic congestion on contiguous or adjacent streets.

- (vi) That the operation of the use will be ensured by providing and maintaining adequate and appropriate utilities, drainage, access, parking and loading and other necessary site improvements.
 - (vii) That the reconstruction or repair of the structure will not result in a greater level of nonconformity.
 - (viii) That the reconstruction of [or] repair will reduce any nonconforming setbacks as much as practical.
- (6) A building or structure which is nonconforming as to the requirements for off-street parking space shall not be enlarged or altered to create additional dwelling units, seats, floor area or rooms as the case may be, unless off-street parking is provided for such addition, enlargement or alteration.

(Ord. of 1-4-93(1))

104.2. Nonconforming lots of record.

In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements applicable in the zone for area or width or both, provided that yard dimensions and other requirements not involving area or width or both of the lot shall conform to the regulations for the zone in which such lot is located. Variance of such yard requirements shall be obtained only through action of the board of appeals.

If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold which does not meet lot width and area requirements established by this ordinance, nor shall any division of the parcel be made which leaves remaining any lot width or area below the requirements stated in this ordinance.

This paragraph shall not affect those subdivisions which have had planning board approval and are properly recorded and on which platted streets have been constructed.

104.3. Restoration of unsafe property.

Nothing in this ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by the building inspector.

104.4. Construction underway may continue.

Nothing herein contained shall require any change in the plans, construction, size or designated use of any building, structure or part thereof upon which construction has been initiated at the time of the adoption of this ordinance.

104.5. One principal building on a lot.

There shall be no more than one (1) principal building and its accessory buildings erected on any one (1) lot, with the following exceptions:

- (1) Cluster developments located in commercial or industrial zones.
- (2) Multifamily developments under single ownership or condominium ownership.

(Ord. of 11-7-94, § C)

Sec. 104.6. Public street frontage.

Any lot containing a dwelling shall abut on a public street. Exceptions are as follows:

- (1) Residences on a subdivision street, when such subdivision received final approval prior to January 1, 1995, and the subdivision streets were built to the road standards in effect at the time the subdivision was approved.
- (2) Residences abutting an approved subdivision street, when the subdivision was approved after January 1, 1995, are subject to the following restrictions:
 - a. The base course of gravel has been installed, and approved by the city engineer, subject to the requirements of the subdivision ordinance of the city;
 - b. The subdivision was approved no more than three (3) years prior to issuance of the building permit; unless an extension has been granted by the planning board. There shall be a maximum of one (1) three-year extension granted;
 - c. A performance bond, in an amount approved by the planning board as adequate to complete the necessary road and utility work as required by the planning board subject to the subdivision ordinance, including a twenty (20) per cent contingency, has been posted.
- (3) Residences on lots existing as of April 1, 1995, on a street which was recorded in the Penobscot County Registry of Deeds prior to the enactment of the Old Town Subdivision Review Ordinance on March 5, 1973, provided that the following conditions are met:
 - a. The access driveway is a minimum of ten (10) feet wide.
 - b. Access driveways serving more than one (1) dwelling shall be a minimum of twenty (20) feet wide.
 - c. Access driveways shall have a minimum of eighteen (18) inches of gravel base with a graded drained subbase.
 - d. Access driveways longer than three hundred (300) feet shall provide an adequate turnaround, as approved by the Old Town Fire Department.
 - e. The owner of the property shall sign a statement, to be recorded in the Penobscot County Registry of Deeds, to the effect that they understand that the city will provide no maintenance to the private road or private utilities unless the road or utilities are accepted by the city as a city street and city utilities according to Chapter 17 of the Old Town Code of Ordinances.

- f. If two (2) or more lots abut each other and are in single ownership at the time of passage or amendment of this ordinance, and they do not contain sufficient frontage on an accepted city street to constitute two (2) lots, the lands involved shall be considered to be an undivided parcel for the purpose of this ordinance, and no division of the parcel shall occur. No lot shall be created under this section which lacks the minimum frontage on an accepted public street required by the Zoning Ordinance.

(Ord. of 7-13-87, § 2; Ord. of 11-7-94, § D; Ord. of 11-6-95(2))

104.7. Vision clearance.

For a distance of twenty-five (25) feet from the intersection of any two (2) streets along street lines no wall, fence, sign or other structure and no hedges, trees or other growth shall be planted or erected in such a manner as to materially impede vision between a height of two and one-half (2 1/2) and ten (10) feet above curb level.

104.8 Parking of Commercial Vehicles in Residential Zones.

In the Low-Density Residence (R-1), General Residence (R-2) and Seasonal Residence R-4) Zones no commercial vehicle as defined in 17 M.R.S.A. 2263 in excess of 3/4 ton or storage trailers shall be parked or stored for more than four consecutive hours in any twenty-four hour period with the following exceptions.

1. Pickups, vans, or panel trucks less than 2 ton or containing no more than two axles (vehicle code 6 and 20 on State of Maine Accident Supplement Form 1392, Rev 4-96) and with **all** the following conditions:
 - A. The driver of the vehicle must be a resident on the lot where the vehicle is parked or stored.
 - B. The vehicle cannot be left running for more than five minutes without the driver in the vehicle.
 - C. The use of the vehicle is not for the storage or transportation of Petroleum Products or Hazardous Materials as defined in M.R.S.A. Title 29A Section 101(27)
2. Vehicles accessory to a permitted commercial use in a R-1 or R-2 zone may be parked on that commercial lot.
3. The Code Enforcement Officer is authorized to issue permits for periods of up to one hundred and twenty (120) days to allow the parking or storage of commercial vehicles or storage trailers for temporary construction or repair purposes.
4. The Police Department may allow the parking of a commercial vehicle (excluding vehicles transporting oil or hazardous materials) for up to a maximum of 72 hours in a 30 day period on the condition the vehicle not be left running at any time.
5. School Buses where the driver of the bus resides on the lot where the bus is stored or parked and only during the school year.

104.9. Reserved.

104.10. Residences excluded from industrial zones.

Residential uses are specifically excluded from industrial zones except for watchman, caretaker or janitor, or other such use clearly incidental to a lawful industrial use.

104.11. Off-street parking and loading requirements.

- (a) *Parking spaces* shall be provided and constructed with a minimum of twelve (12) inches of gravel. No structure hereinafter shall be erected nor shall any use be established unless the minimum number of off-street parking spaces as specified below is provided. In the Downtown Commercial Zone (C-1) the Planning Board may reduce or eliminate the parking requirements if a municipal parking lot is located within four hundred (400) feet of the lot containing the structure and the board finds that the lot has the capacity to handle the additional demand.

Each parking bay, except parallel parking spaces, shall measure at least nine (9) feet wide by eighteen (18) feet deep. Aisles shall be a minimum of twenty-four (24) feet wide. Parallel parking spaces shall measure at least twenty-two (22) feet long and ten (10) feet wide. Parking lots shall be so arranged that vehicles can be turned around within such lots and prevented from backing into the street.

- (1) Automobile repair and filling stations: One (1) space for each regular employee plus one (1) space for each fifty (50) square feet of floor area used for service work.
- (2) Boarding and rooming houses: One (1) space for each guest room.
- (3) Drive-in restaurants and dairy stands; One per seventy (70) square feet of building area, excluding unfinished basement area.
- (4) Funeral parlors: Ten (10) spaces.
- (5) Hospitals and nursing homes: For hospitals: Two (2) spaces per bed. For nursing homes: One (1) space for every three (3) beds.
- (6) Hotels, motels, and inns: One (1) space for each guest bedroom plus one (1) space for each four (4) employees.
- (7) Industrial establishments: One (1) space for each one and two-tenths (1.2) employees at a maximum employment on the two (2) shifts of the highest employment plus one (1) space for each company vehicle operating from the premises.
- (8) Fraternal organizations and clubs: One (1) space for each five (5) members.
- (9) Business and professional offices: One (1) space for each three hundred (300) gross square feet of building area, excluding unfinished basement area.
- (10) Place of amusement or public assembly: One (1) space for each fifty (50) square feet of floor area devoted to patron use.
- (11) Residential: Two (2) developable spaces for each dwelling unit; provided, however, that upon application the planning board may reduce the total number of spaces to be constructed for a particular development but in no case shall there be less than one (1) space constructed per unit. Upon determination by the planning board that any or all of the undeveloped additional parking spaces shall be required to meet the parking needs of present occupants and within thirty (30) days of receipt of notice from the code enforcement officer, said undeveloped spaces shall be made ready for parking purposes. Further, the planning board may alter the parking space requirements under site plan review, section 104.24 to require a maximum of five (5) parking spaces per dwelling unit.

In the case of elderly and congregate housing, there shall be provided one (1) space for every three (3) units.

- (12) Restaurants, cocktail lounges: One (1) space for each seventy (70) square feet of building area, excluding unfinished basement area.
 - (13) Retail business: One (1) space for each three hundred (300) gross square feet of building area, excluding unfinished basement area, except in the shopping center zone.
 - (14) Roadside farm stands: Four (4) spaces.
 - (15) Schools: One (1) space for each thirty (30) pupils in primary school; one (1) space for each four (4) students in secondary school; and one (1) space for each two (2) students in higher education; plus an additional space for each employee.
 - (16) Wholesale business: One (1) space for each one thousand (1,000) square feet of floor space.
 - (17) Churches: One (1) space for each five (5) persons, seating capacity.
 - (18) Quick-lube auto service business. One (1) space for each three hundred (300) gross square feet of building area and one (1) space for each employee anticipated per shift. This type of business to service only customers which wait on the premises for their vehicles.
- (b) *Location on other property.* If the required automobile parking spaces cannot be provided on the same lot where the principal use is conducted, such spaces may be provided on other off-street property provided that such property lies within four hundred (400) feet of the main entrance to such principal use. Such automobile parking space shall be associated with the principal use and shall not thereafter be reduced or encroached upon in any manner; provided, however, that it may serve different principal uses at different times of the day.
- (c) *Loading and unloading space shall be provided.* On every lot which a business, trade or industry is hereafter established, space with access to a public street shall be provided as indicated below for the loading and unloading of vehicles:
- (1) Retail business: One (1) space, twelve (12) feet by fifty-five (55) feet with a minimum overhead clearance of fifteen (15) feet, for the first five thousand (5,000) square feet or fraction thereof of floor space, plus one (1) space for any floor space in excess of five thousand (5,000) square feet.
 - (2) Wholesale and industrial: One (1) space, twelve (12) feet by fifty-five (55) feet with a minimum overhead clearance of fifteen (15) feet, for each eight thousand (8,000) square feet of floor space or fraction thereof. This requirement may be reduced if the planning board finds that the requirement is excessive for that business, but, in no case shall the number be reduced to less than one.
 - (3) Truck and bus terminals: Sufficient space to accommodate the maximum number of buses or trucks that would be stored, loaded and unloaded at the terminal at any one time.

(Ord. of 6-25-84; Ord. of 9-8-92)

104.12. Restrictions on individual mobile homes and travel trailers.

- (a) Any older mobile home in use as a dwelling shall be parked only in a duly authorized mobile home park, or as permitted by section 111.2(b)(13), except that a mobile home may be permitted on the site of a construction project for not more than two (2) consecutive six-month periods provided that a special permit is issued by the building inspector for each six-month period. Such permit may only be issued if the building inspector is satisfied that:
 - (1) The mobile home is a necessary convenience for the construction project and is clearly subordinate to such project.
 - (2) No health hazards or problems of sanitation will be caused by improper disposal of sewage from the mobile home.
- (b) The building inspector may issue a special permit for use of a mobile home for a temporary office for up to three (3) months in zones where offices are permitted or on construction sites anywhere in Old Town.
- (c) A travel trailer or camper shall in no case be used as a mobile home and any travel trailer in use as a temporary dwelling shall be stationed only in an authorized camp ground or trailer park. A travel trailer or camper while not in use may be stored on the premises of the owner.
- (d) A newer mobile home may be permitted on a privately owned lot, provided the following conditions are met:
 - (1) Certification required. No mobile home shall be moved onto a lot unless such a mobile home bears the Department of Housing and Urban Renewal seal of approval certifying compliance with the federal mobile home construction and safety standards, and the mobile home meets all applicable BOCA and other building codes as currently adopted by the City of Old Town, except roof requirement to be limited to forty (40) pounds per square foot and delete removal of subframes.
 - (2) Foundation. A mobile home shall be set upon at least a mobile home pad consisting of at least four (4) inch thickness of reinforced concrete underlain by at least a twelve (12) inch thickness of well-drained gravel base material. The width and length of the mobile home pad shall either match or exceed the dimensions of the mobile home placed upon it. The mobile home shall be anchored to the slab by the following method: frame ties located not more than five (5) feet from the ends of the mobile home and at intervals not to exceed ten (10) feet. All components of the anchoring system shall be capable of carrying a force of four thousand seven hundred (4,700) pounds.
 - (3) Wheels. All wheels and axles shall be completely removed from the mobile home.
 - (4) Enclosure. The area from the ground to the frame of a mobile home shall be enclosed with concrete blocks, plywood or similar weather-resistant building materials installed in a neat workmanshiplike manner. Adequate ventilation will be provided to prevent premature deterioration of structure.
 - (5) A complete copy of the building blueprints are provided, including framing system, plumbing and electrical schematics.

(Ord. of 12-3-84)

104.13. Waste material accumulations regulated.

Deposits or accumulations of rubbish, junk, junk automobiles and parts thereof, discarded articles of any kind, household, industrial or commercial wastes shall not be made in any district except at a dumping place or places designated by the city council; provided, however, that nothing in this section shall be construed to prohibit the establishment or operation of commercial junkyards and automobile junkyards as permitted under the terms of this ordinance.

104.14. Removal of sand, gravel, rock, soil or other earth material.

Topsoil, rock, sand, gravel and similar earth materials may be excavated for commercial purposes from zones where permitted under the terms of this ordinance only after a special permit for such operations has been issued by the building inspector. Such a permit may only be issued provided that:

- (a) A plan is submitted by the applicant and approved by the planning board showing existing grades in the area from which the materials are to be removed and finished grades at the conclusion of the operation.
- (b) When the removal of materials is completed, the finished grades as specified in the plan and approved are covered with not less than four (4) inches of topsoil and seeded with a suitable cover crop except when ledge rock is exposed.
- (c) A bond is posted with the treasurer of the city by the applicant in an amount approved by the planning board as sufficient to guarantee conformance with provisions of this ordinance.
- (d) There is at least seventy-five (75) feet between the digging or quarrying activities and the property lines.
- (e) Dust or other air pollutants are kept to a minimum by appropriate landscaping, paving, oiling or fencing.
- (f) Appropriate fencing or landscaping is provided to screen the site of digging operations from any public right-of-way and from any dwelling within two hundred fifty (250) feet of the property lines of the excavation site.

The planning board may waive any or all of the requirements listed in (b) through (f) above if the proposed excavation or quarrying, in the opinion of the board, will have no adverse effect on the health, safety or welfare of the community or the neighborhood and will have no measurable effect on property values in the neighborhood.

If one thousand (1,000) yards or more of excavation or quarry material is not removed from any existing or future operation in any five-year period, or by January 1, 1997, then further commercial excavation or quarry activity will require a new permit and approval of the planning board under this section. For the purposes of this section, all commercial operations shall keep records as to the amount of material removed in each calendar year.

(Ord. of 2-6-95)

104.15. Regulations and minimum standards for mobile home parks.

In any zone where mobile home parks are permitted under the terms of this ordinance, the following requirements, regulations and minimum standards shall apply:

- (a) It shall be unlawful for any person to construct, maintain or operate within the limits of the City of Old Town any trailer park or mobile home park unless such person shall first obtain a license therefor. Such license shall be issued by the city clerk and shall expire on the thirtieth day of April following the issuance thereof. An application for a trailer park or a mobile home park license shall be filed with the city clerk. Such application shall be in writing and signed by the applicant and shall contain the following information:
- (1) Name and address of applicant;
 - (2) The location of the trailer park or mobile home park, with a clear legal description of its bounds;
 - (3) A plan drawn to scale of the trailer park or mobile home park showing in detail roadways, driveways, trailer sites, service buildings and playground areas;
 - (4) A listing of utilities and sanitation facilities.

The city clerk shall refer the application to the planning board for its consideration and action. Before the board renders a decision upon the application, there must be before it recommendations in writing from the building inspector, health officer, chief of police and chief of the fire department.

Upon receiving the application for license from the planning board with its action endorsed thereon, if such endorsement be favorable, the city clerk shall issue the license upon payment by the applicant of the annual licensing fee of five dollars (\$5.00) for each trailer or mobile home in said park as of the licensing date. An additional fee of five dollars (\$5.00) will be paid for each additional trailer or mobile home using facilities after the licensing date. The licensing year will be from the first of May to the thirtieth of April at midnight of each year. When an original license is issued on or after October first of any year, the license fee for the remainder of the year shall be one-half of the annual fee. Licenses shall be transferable on application to the city clerk upon full compliance with the terms of this ordinance.

- (b) A mobile home park shall contain a minimum of ten (10) acres and shall have a minimum frontage on a public street of fifty (50) feet and that portion of the park which contains mobile home spaces shall have a minimum width of two hundred (200) feet. There shall be at least twenty (20) mobile home spaces available at first occupancy.
- (c) A mobile home park site shall be so located as to be free from hazards or environmental factions which could be injurious to the health, welfare or safety of occupants such as objectionable smoke, odors, noise, dust or possibility of flood, erosion, excessive dampness or infestation by rodents or insects.
- (d) Each mobile home space shall measure not less than four thousand (4,000) square feet and shall abut for a distance of not less than fifteen (15) feet on a street at least thirty (30) feet wide. There shall be not more than eight (8) mobile home spaces per gross acre of land in the park.
- (e) There shall be no less than twenty (20) feet of clearance between any two (2) mobile home stands.
- (f) Each mobile home space shall be provided with:

- (1) A sewer connection or sewage disposal system which meets the minimum requirements by the State of Maine Plumbing Code and which is approved by the Old Town plumbing inspector;
 - (2) A continuing supply of safe water for drinking and domestic use;
 - (3) Electricity for lighting and operation of ordinary household electrical equipment;
 - (4) At least one tenant parking space either on-street or off-street;
 - (5) A mobile home stand measuring not less than twelve (12) by forty-five (45) feet and so located on the mobile home space as to permit maneuvering of the mobile home into place from the street, surfaced with a material providing suitable stability to bear the weight of a mobile home at all times of the year and having adequate gradient or crown to provide for surface drainage.
- (g) Streets in the mobile home park shall be privately owned and shall be laid out to provide safe and adequate access to and egress from the park, adequate circulation within the park and access to all mobile home spaces. Streets shall have at least twenty-two (22) feet of paved width plus seven (7) feet of paved width for each parking lane where on-street parking is permitted. Closed ends of dead-end streets shall be provided with a paved turning circle at least one hundred (100) feet in diameter. All streets shall be finished with a twelve-inch compacted gravel base consisting of crushed gravel, clay and calcium chloride in proper amounts to insure stability. Streets shall be adapted to the topography, have proper alignment and gradient for safety of traffic and satisfactory surface and subsurface drainage. Adequate walkways shall be provided for safe and convenient pedestrian circulation in the park. All roadways and walkways shall be lighted at night with electric lamps, spaced at such intervals as to provide not less than one-tenth footcandle of illumination at all points on roadways and walkways. All streets in the park shall be maintained in satisfactory condition for safe use at all times.
- (h) All buildings and grounds in the park shall be maintained in a safe, orderly and sanitary condition at all times. Refuse cans shall be provided which have tight-fitting covers and provision shall be made for the regular removal of refuse from the park and any condition which may provide harborage for rodents shall be prevented. Refuse cans will meet standards of any other municipal ordinances.
- (i) Not less than ten (10) per cent of the gross area of the park site shall be devoted to recreational facilities which may include usable open space, ornamental space, active recreation and sports grounds and community buildings.

(Ord. of 12-2-85)

104.16. Regulations and minimum standards for campgrounds.

In any zone where campgrounds or trailer parks are permitted under the terms of this ordinance, the following regulations and minimum standards shall apply:

- (a) Spaces in campgrounds and trailer parks may be used by travel trailers, equivalent facilities constructed in or on automotive vehicles, tents or other short-term shelter devices as approved by the planning board. Permanent or long-term dwellings or shelter devices including mobile homes are specifically prohibited.
- (b) Service facilities which meet the following specifications shall be provided and continuously maintained in a sanitary condition and in good operating order at all times when the campground is open for business:
 - (1) A continuous adequate, safe and potable supply of water;
 - (2) Not less than two women's toilets and one men's toilet and one urinal for the first 20 spaces which meet the requirements of the Maine Plumbing Code. Plus one additional toilet for each sex for each additional 15 spaces.
 - (3) For any campground at least one service building with one lavatory and one shower with hot and cold running water for each sex for the first very twenty (20) spaces or fraction thereof and one lavatory and shower for every twenty (20) additional spaces or fraction thereof;
 - (4) The storage, collection and disposal of refuse shall not create health hazards, rodent harborage, insect-breeding areas, accident hazards or air pollution.
 - (5) The campground shall meet the requirements set by the Department of Human Services, Bureau of Health, Division of Health Engineering in Rules Relating to Campgrounds, as amended.

104.17. Hotels, motels, inns, boardinghouses, restaurants, nursing homes, medical offices and hospitals in residential zones.

In any residential zone where lodging places, restaurants, nursing homes, medical offices or hospitals are permitted under the terms of this ordinance, the following regulations and minimum standards shall apply:

- (a) All yard space, setback, frontage, height and lot coverage requirements of the zone shall be met.
- (b) Where public sewerage is not available, an adequate septic system shall be provided to serve the maximum number of guests or customers who can be accommodated. Plans or written specifications, or both, for such system shall be submitted to the planning board before final approval is granted by the board. Where any doubt exists as to the adequacy of such proposed system, the board shall obtain the advice of a sanitary engineer or other qualified person and any cost of such service shall be paid by the applicant.
- (c) Any restriction shall be met as to architectural style, positioning of buildings on the site, advertising or identification sign, landscaping or buffering, or other requirement deemed necessary by the planning board to protect the aesthetic qualities of the neighborhood pursuant to the purposes of this ordinance.

104.18. Automobile junkyards.

- (a) No automobile junkyard shall be established, operated or maintained without first obtaining a nontransferable license to do so from the city council which permit [license] shall be valid only until April 1st of the following year.

A license for the establishment of an automobile junkyard shall not be issued by the city council until the proposed location of such junkyard shall have been reviewed under this ordinance by the planning board and unless the application for such license is accompanied by a certificate from the board stating its approval of such location and setting forth such special requirements for fencing, screening, setback, etc., as the board may deem necessary as a condition of its approval in order to adequately serve the public health and welfare, and to protect the appearance of the area.

Any area to be occupied by junk automobiles or parts thereof shall be kept entirely screened to view from highways and streets, residences, and from any place of public assembly or recreation by natural objects or well-constructed and properly maintained fences at least six (6) feet high. Either the planning board or the municipal officers, or both, may require the applicant to submit drawings or written specifications for the fencing or screening to be used and approval by the planning board or issuance of a license by the city council may be made conditional upon the applicant's promise that he will provide fencing or screening as specified. Failure to do so within six (6) months from the date of issuance of the license shall constitute a violation of this ordinance and shall be punishable by law.

- (b) All other pertinent provisions of the state law on automobile junkyards, Chapter 215, Title 30 Revised Statutes of Maine, as amended, shall be observed.

Sec. 104.19. Minimum lot size for dwellings with septic systems.

Except for cluster developments, the minimum lot size for all dwellings with a septic system shall be one (1) acre.

(Ord. of 11-7-94, § E)

104.20. Height requirements.

All height requirements of the Federal Aviation Agency will be met in airport approach areas.

Section 104.21 Shoreland Zoning Ordinance

- 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 freshwater 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 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, 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.

4. Effective Date

A. Effective Date of Ordinance and Ordinance Amendments. This Ordinance, which was adopted by the municipal legislative body on June 1, 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.

B. Repeal of Municipal Timber Harvesting Regulation. The municipal regulation of timber harvesting activities is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5), at which time the State of Maine Department of Conservation’s Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A section 438-B(5), the following provisions of this Ordinance are repealed:

- Section 14. Table of Land Uses, Item 3 (Forest management activities except for timber harvesting), Item 4 (Timber harvesting), and Item 27 (Land management roads);
- Section 15(L), Timber Harvesting, in its entirety; and
- Section 17. Definitions, the definitions of “forest management activities”, “land management roads”, “skid trail”, “slash” and “residual basal area”.

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 municipality, the more restrictive provision shall control.

8. Amendments. This Ordinance may be amended by majority vote of the legislative body. 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 Shoreland Zoning Overlay Map. The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Ordinance:

- (1) Resource Protection
- (2) Low Density Residential – Shoreland (R-1S)
- (3) General Residential – Shoreland (R-2S)
- (4) Rural Residential and Farming – Shoreland (R-3S and R-3A)
- (5) Seasonal Residential – Shoreland (R-4S)
- (6) Commercial-Business – Shoreland (C-1S)
- (7) Highway Commercial – Shoreland (C-3S)
- (8) Industrial – Shoreland (I-1S)
- (9) Industry and Service – Shoreland (I-2S)
- (10) Landfill – Shoreland (L-1S)

B. Scale of Map. The Official Shoreland 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 Shoreland Zoning Map. The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office. In the event the municipality does not have a municipal office, the Municipal Clerk shall be the custodian of the map.

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

10. Interpretation of District Boundaries. Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Planning Board 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.

C. Non-conforming Structures

- (1) **Expansions.** A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure, 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 classified as GPA or a river flowing to a great pond classified as GPA, 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 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.
- (1-A) Special expansion allowance. Existing principal and accessory structures that exceed the floor area or height limits set in Section 12(C)(1)(a)(iii) and Section 12(C)(1)(a)(iv) above, may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met.
- (a) The principal structure is set back at least 50 feet, horizontal distance, from the normal high-water line of a water body, tributary stream or upland edge of a wetland.
 - (b) A well-distributed stand of trees and other natural vegetation as defined in Section 15(M)(2)(b), extends at least 50 feet, horizontal distance, in depth as measured from the normal high-water line or upland edge for the entire width of the property.

If a well-distributed stand of trees and other vegetation meeting the requirements of Section 15(M)(2)(b) is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a scaled site drawing, by the property owner, and approved by the Planning Board or its designee, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline or tributary stream.

- (c) Adjacent to great ponds classified GPA and rivers flowing to great ponds classified GPA, except for the allowable footpath, there exists complete natural ground cover, consisting of forest duff, shrubs and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the normal high-water line. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of stormwater.

- (d) A written plan by the property owner, including a scaled site drawing, is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the shoreland zone.
 - (i) Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams, and wetlands.
 - (ii) Roofs and associated drainage systems, driveways, parking areas, and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water runoff from reaching a water body, tributary stream or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or similar device.
- (1-B) Planting requirements. Any planting or revegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, be implemented at the time of construction, and be designed to meet the rating scores and the ground cover requirements of Section 15(M)(2)(b) when the vegetation matures within the 50 foot strip. At a minimum, the plan must provide for the establishment of a well-distributed planting of saplings spaced so that there is at least one sapling per 80 square feet of newly established buffer. Planted saplings may be no less than three (3) feet tall for coniferous species and no less than six feet tall for deciduous species. The planting plan must include a mix of at least three native tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted unless otherwise approved by the Planning Board or its designee, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.
- (1-C) Filing and reporting requirements. Written plans required pursuant to Section 12(C)(1A)(d) must be filed with the registry of deeds of the county in which the property is located. A copy of all permits issued pursuant to this section must be forwarded by the municipality to the department within 14 days of the issuance of the permit
- (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 of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume 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 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, road frontage and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width, road frontage 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 the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

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

13. Establishment of Districts

- A. **Resource Protection Zone.** The Resource Protection Zone includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This zone shall include the following areas when they occur within the limits of the shoreland zone, except that areas which are currently developed, and areas which meet the criteria for the Commercial-Business-Shoreland, Highway Commercial-Shoreland, and Industry-Shoreland, Industry and Service-Shoreland and Landfill -Shoreland need not be included within the Resource Protection District. Section 111.11 of the Zoning Ordinance also applies to these areas.
 - (1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value 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 December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river
 - (2) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the one hundred-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps.
 - (3) Areas of two (2) or more contiguous acres with sustained slopes of twenty (20) percent or greater.
 - (4) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during normal spring high water.
 - (5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement.

(6) 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 river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a 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.

- B. *Low-Density Residential-Shoreland.*** The Low-Density Residential-Shoreland Zone includes those areas primarily suitable for single-family residential development. It includes areas other than those in the Resource Protection Zone, or Stream Protection Zone. Other uses permitted in the zone are those which are harmonious with the traditional pattern of development in residential neighborhoods in Old Town. This zone is limited to the shoreland area of the R-1 zone.
- C. *General Residence-Shoreland.*** The General Residence-Shoreland Zone encompasses most of the older residential neighborhoods located within the shoreland zone and are located within convenient reach of central business facilities, exclusive of the stream protection zone. The R-2S zones are expected to contain most of the multifamily or apartment type dwellings likely to be needed by the community, which are located in the shoreland zone. However, in harmony with the established neighborhoods, the predominate land use will probably continue to be single-family residences. Certain additional uses which meet the requirements of this ordinance may be permitted, which contribute to balanced neighborhoods and enhance the attractiveness of the community. This zone is limited to the shoreland areas of the R-2 zone.
- D. *Rural Residence and Farming-Shoreland.*** Encompassing most of the developable area located in the shoreland zone which is outside of the urban center, this zone is intended for the kinds of uses which have traditionally predominated in rural New England: forestry and farming, farm residence, and a scattering of varied uses not inconsistent with a generally open, nonintensive pattern of land use. This zone is limited to the shoreland areas of the R-3 and R-3/A zones.
- E. *Seasonal Residence-Shoreland.*** This zone encompasses land bordering Pushaw Lake and Perch Pond and is designed to provide for the most appropriate use and future development of this land, and to preserve to the greatest extent possible the natural beauties and features of the land. This zone is limited to the shoreland areas of the R-4 zone.
- F. *Commercial-Business-Shoreland.*** The Commercial-Business-Shoreland zone is established to accommodate those retail, service, and office uses which are of city-wide significance. Within this area of concentrated activity and intensive development is the shoreland zone section of the central business district, offices of professional and nonprofessional persons offering a variety of specialized services, and important public facilities. New construction and any alteration of existing building or land use should be consistent with the objective to develop and maintain the central business district. This zone is limited to the shoreland areas of the C-1 zone.

- G. *Highway Commercial-Shoreland.*** The Highway Commercial-Shoreland zones, located outside the central business district along highways, are designed to provide appropriate locations for commercial uses which require a large amount of open space for sales or storage, or for maneuvering and parking of automobiles. This zone is limited to the shoreland area of the C-3 zone.
- H. *Industrial-Shoreland.*** The purpose of the Industrial-Shoreland zone is to provide land which is conveniently located with respect to transportation and municipal services and where other conditions are favorable to the development of industry and which at the same time is located as to prevent undesirable conflict with residential and business uses. This zone is limited to the shoreland areas of the I-1 zone.
- I. *Industrial and Service-Shoreland*** The purpose of the I-2 zone is to provide land which is conveniently located to transportation facilities for business activities which require extensive land area, but do not require close proximity to residential areas of the community and to promote such land use in the community while at the same time locating such activity as to prevent undesirable conflict with residential areas. The zone is limited to the shoreland area of the I-2 zone.

There shall be no newly established Commercial-Business-Shoreland or Industrial-Shoreland Zones, Industrial and Service Shoreland Districts or expansions in area of such zones adjacent to Pushaw Lake or Perch Pond.

- J. *Landfill-Shoreland*** The purpose of the Landfill-Shoreland Zone is to provide an area for the state-owned solid waste landfill and activities accessory to and compatible with a solid waste landfill to occur in such a way that neither the solid waste landfill nor the accessory uses unreasonably impact the surrounding neighborhood; to balance the operational needs of the solid waste landfill with neighborhood concerns; and to reduce the conflicts that often occur between a solid waste landfill and neighboring residential areas. This zone is limited to the shoreland area of the L-1 zone.
- K. *Stream Protection Zone.*** The Stream Protection District includes

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

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
R-1S	Low Density Residential Shoreland
R-2S	General Residential Shoreland
R-3/3A	Rural Residential and Farming Shoreland
R-4S	Seasonal Residential Shoreland
C-1S	Commercial-Business Shoreland
C-3S	Highway Commercial Shoreland
I-1S	Industrial Shoreland
I-2S	Industrial and Service Shoreland
L-1S	Landfill Shoreland
SP	Stream Protection

Use	Low Density Residential	General Residential	Rural Residential & Farming	Seasonal Residential	Low Density Multifamily	Commercial-Business	Highway Commercial	Industrial	Industrial & Service	Landfill	Resource Protection	Stream Protection
	R-1	R-2	R-3	R-4	R-5	C-1	C-3	I-1	I-2	L-1	RP	SP
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
3. Forest management activities except for timber harvesting & land management roads	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
4. Timber harvesting	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	CEO	yes
5. Clearing or removal of vegetation for activities other than timber harvesting	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	CEO 1	CEO
6. Fire prevention activities	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
7. Wildlife management practices	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
8. Soil and water conservation practices	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
9. Mineral exploration	yes2	yes2	yes2	yes2	yes2	yes2	yes2	yes2	yes2	yes2	yes2	no
10. Mineral extraction including sand and gravel extraction	no	no	PB	PB	PB	no	no	PB	PB	PB	PB3	no
11. Surveying and resource analysis	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
12. Emergency operations	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
13. Agriculture	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	PB	yes
14. Aquaculture	PB	PB	yes	PB	PB	yes	yes	yes	yes	yes	PB	PB
15. Principal structures and uses												
A. One and two family residential, including driveways	CEO	CEO	CEO	CEO	CEO	no	no	no	no	no	no	PB4
B. Multi-unit residential	no	PB	PB	PB	PB	no	no	no	no	no	no	no
C. Commercial	no	no	PB	no	no	PB	PB	PB	PB	PB	no	no
D. Industrial	no	no	no	no	no	no	no	PB	PB	PB	no	no
E. Governmental and institutional	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	no	no

F.Small non-residential facilities for educational, scientific, or nature interpretation purposes	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB4	
16. Structures accessory to allowed uses	CEO	CEO	CEO	CEO	CEO	yes	yes	yes	yes	yes	PB	PB4	
18. Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI	no	no	no	no	no	no	LPI	
19. Home occupations	PB	CEO	CEO	no	CEO	CEO	CEO	no	no	no	no	PB	
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	
21. Essential services													
A. Roadside distribution lines (34.5kV and lower)	yes¹²	yes¹²	yes¹²	yes¹²	yes¹²	yes¹²	yes¹²	yes¹²	yes¹²	yes¹²	yes¹²	CEO⁶	CEO⁶
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	PB⁶	PB⁶
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB⁶	PB⁶
D. Other essential services	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB⁶	PB⁶
22. Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
23. Public and private recreational areas involving minimal structural development	no	no	CEO	no	no	no	no	no	no	no	PB	PB	
24. Individual, private campsites	no	no	no	no	no	no	no	no	no	no	no	no	
25. Campgrounds	no	no	PB	no	no	no	no	no	no	no	no	no	
26. Road construction	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	No⁸	PB
27. Land management roads	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	PB	yes
28. Parking facilities	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	no	no
29. Marinas	no	no	no	no	no	PB	PB	PB	PB	no	no	no	
30. Filling and earth moving of <10 cubic yards	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	CEO	CEO
31. Filling and earth moving of >10 cubic yards	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	PB	PB
32. Signs	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring a PB permit	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB

TABLE 1. LAND USES IN THE SHORELAND ZONE

- ¹ In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.
- ² Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.
- ³ In RP not allowed in areas so designated because of wildlife value.
- ⁴ Provided that a variance from the setback requirement is obtained from the Board of Appeals.
- ⁶ See further restrictions in Section 15(1)(2).
- ⁸ Except as provided in Section 15(E)(3).
- ¹¹ Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- ¹² 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 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.

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

A. Minimum Lot Standards

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1)		
(a) Residential per dwelling unit.	1 acre ¹	200
(b) Governmental, Institutional, Commercial or Industrial per principal structure or 20,000 sq. ft. if on city water and sewer	60,000 ²	300
(c) Public and Private Recreational Facilities or 10,000 sq. ft. if on city water and sewer	40,000 ³	200

- 1 or the requirements of the zone if city water and sewer are used.
- 2. or 20,000 sq. ft. if city water and sewer are used.
- 3. or 10,000 sq. ft. if city water and sewer are used.

- (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.

B. Principal and Accessory Structures

- (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 classified GPA and rivers that flow to great ponds classified GPA, 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, except that in the Commercial-Business Shoreland, Industrial Shoreland and Industrial and Service Shoreland the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance. In the Resource Protection Zone 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. Expansion or replacement of existing nonconforming structures or replacement structures for nonconforming structures shall be governed by Section 12.C.

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) 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.
- (2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Low Density Residential Shoreland, General Residential Shoreland, Rural Residential and Farming Shoreland, Seasonal Residential, and Stream Protection Zones, 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 lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent floodplain soils.
 - (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, except in the Commercial-Business (C-1S)

and Industrial (I-1S and I-2S) zones adjacent to rivers that do not flow to great ponds classified GPA, where lot coverage shall not exceed seventy (70) percent.

- (5) 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 rivers, streams, 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(M)(2)(a), may traverse the buffer;
- (6) 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. Campgrounds. Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

- (1) Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
- (2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, 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.

D. 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 in Zones other than the Commercial-Business (C-1S), Industrial (I-1S) and Industry and Service (I-2S) zones 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.

E. 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 classified GPA or a river that flows to a great pond classified GPA, 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 (E)(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(E)(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 Zone except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the Zone. A road or driveway may also be approved by the Planning Board in a Resource Protection Zone 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 Zone 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(N).
- (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.

F. Signs. The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Low Density Residential Shoreland, General Residential Shoreland, Rural Residential and Farming Shoreland, and Seasonal Residential.

- (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. In the Rural Residence and Farming Shoreland Zone, however, such signs shall not exceed sixteen (16) square feet in area. 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.

G. 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.

H. 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 and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

I. 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 Zones, except to provide services to a permitted use within said Zones, 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.

J. 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 (J)(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 classified GPA or a river flowing to a great pond classified GPA, 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.
 - (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.

K. 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 classified GPA or a river flowing to a great pond classified GPA, 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.
- (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 classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams and 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 classified GPA; within seventy-five (75) feet, horizontal distance, of other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

L. Timber Harvesting [will be repealed pursuant to Section 4B]

- (1) In a Resource Protection Zone abutting a great pond, timber harvesting shall be limited to the following:
 - (a) Within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:
 - (1) The ground is frozen;
 - (2) There is no resultant soil disturbance;
 - (3) The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;
 - (4) There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and
 - (5) A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.

- (b) Beyond the 75 foot strip referred to in Section 15(L)(1)(a) above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 ½ inches in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.
- (2) Except in areas as described in Section 15(L)(1) above, timber harvesting shall conform with the following provisions:
 - (a) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:
 - (i) Within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - (ii) At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clearcut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.
 - (b) Timber harvesting operations exceeding the 40% limitation in Section 15(L)(2)(a) above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the planning board's decision.
 - (c) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
 - (d) Timber harvesting equipment shall not use stream channels as travel routes except when:
 - (i) Surface waters are frozen; and
 - (ii) The activity will not result in any ground disturbance.
 - (e) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

- (f) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- (g) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

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

- (1) In a Resource Protection Zone 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 Zone 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 M(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 classified GPA or a river flowing to a great pond classified GPA, 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(M)(2)(b) a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, 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 to less than 4 in.	1
4 to less than 8 in.	2
8 to less than 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..

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:

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

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.

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 is 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(M)(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(M) 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(M)(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 classified GPA or a river flowing to a great pond classified GPA, 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. This provision shall not apply to the Commercial-Business Zone, Industrial Zone or Industrial and Service Zone.

- (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(M).

N. 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 riprap.
- (2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- (3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- (4) Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
 - (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

(5) Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

O. 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.

P. 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.

Q. 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 as described in Section 2-107 of the Old Town Code of Ordinances.

(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.

(3) Planning Board. A Planning Board shall be created in accordance with the provisions of State law.

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 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.

D. Procedure for Administering Permits. Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if 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 waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will avoid problems associated with floodplain development and use; and
- (8) 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.

E 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.

F. 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.

G. Appeals

- (1) Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:
 - (a) Administrative Appeals: To hear and decide 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(H)(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.

Appeals of the Planning Board will be made to Superior Court.

(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, except for enforcement-related matters as described in Section 16(H) 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, 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-five (35) 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 five (35) 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 or Planning Board 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.

H. 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 ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
 - (c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.
- (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.

17. Definitions.

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

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 green-house products. Agriculture does not include forest management and timber harvesting activities.

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 area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

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

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.

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 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.

Forest management activities - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Forested wetland - a 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, 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 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,

Great pond classified GPA - any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds. In Old Town they are Pushaw Pond and Perch 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.

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.

Land Management Road - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

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.

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 - 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.

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.

Residual basal area - the average of the basal area of trees remaining on a harvested site.

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

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

Road - a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

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 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 wetland.

Skid Road or Skid Trail - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

Slash - the residue, e.g., treetops and branches, left on the ground after a timber harvest.

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series

topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

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.

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.

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 (M), *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.

Upland edge of a wetland - the boundary between upland and wetland. 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.

Water body - any great pond, river or stream.

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

Wetland - a freshwater wetland.

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

(Ord. of 6-1-92; Ord. of 6-1-09)

Section 104.22 Regulations Relating to Flood Hazard Areas

(A) PURPOSE AND ESTABLISHMENT

Certain areas of the City of Old Town, 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 City of Old Town, 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 City of Old Town, 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 City of Old Town 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 and 4401-4407.

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

The areas of special flood hazard, Zones A and A1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - City of Old Town, Maine, Penobscot County," dated October, 1977 with accompanying "Flood Insurance Rate Map" dated April 17, 1978 and "Flood Boundary and Floodway Map" dated April 17, 1978, which are hereby adopted by reference and declared to be a part of this Ordinance.

(B) PERMIT REQUIRED

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

(C) APPLICATION FOR PERMIT

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

- (1) The name, address and phone number of the applicant, owner, and contractor;
- (2) An address and a map indicating the location of the construction site;

- (3) 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;
- (4) A statement of the intended use of the structure and/or development;
- (5) A statement of the cost of the development including all materials and labor;
- (6) A statement as to the type of sewage system proposed;
- (7) Specification of dimensions of the proposed structure and/or development;

[Items 8-11b) apply only to new construction and substantial improvements.]

- (8) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
 - a. base flood at the proposed site of all new or substantially improved structures, which is determined:
 - 1. in Zones A1-30, from data contained in the "Flood Insurance Study - City of Old Town, Maine," as described in Section (A); or,
 - 2. in Zone A:
 - (a) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Section (F)(11) and Section (H)(4);
 - (b) 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,
 - (c) 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.
 - b. highest and lowest grades at the site adjacent to the walls of the proposed building;
 - c. lowest floor, including basement; and whether or not such structures contain a basement; and,
 - d. level, in the case of non-residential structures only, to which the structure will be floodproofed;
- (9). A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Section (F);
- (10) 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;
- (11) The following certifications as required in Section (F) by a registered professional engineer or architect:

- a. a Floodproofing Certificate (FEMA Form 81-65, 08/99, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Section (C)(8)d.; Section (F)(7).; and other applicable standards in Section (F);
 - b. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section (F)(12)b.1.;
 - c. a certified statement that bridges will meet the standards of Section (F)(13).;
 - d. a certified statement that containment walls will meet the standards of Section (F)(14).;
- (12) A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- (13) A statement of construction plans describing in detail how each applicable development standard in Section (F) will be met.

(D) APPLICATION FEE AND EXPERT'S FEE

A non-refundable application fee of \$50.00 shall be paid to the City Clerk 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.

(E) REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Code Enforcement Officer shall:

- (1) 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 Section (F) (Development Standards) have been, or will be met;
- (2) Utilize, in the review of all Flood Hazard Development Permit applications:
 - a. the base flood data contained in the "Flood Insurance Study - City of Old Town, Maine," as described in Section (A);
 - b. in special flood hazard areas where base flood elevation 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 Section (C)(8)a.2.; Section (F)(11).; and Section (H)(4)., in order to administer Section (F) of this Ordinance; and,
 - c. when the community establishes a base flood elevation in a Zone A by methods outlined in Section (C)(8)a.2., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.

- (3) Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section (A) of this Ordinance;
- (4) 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;
- (5) Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- (6) 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:
 - a. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction , "as built", for verifying compliance with the elevation requirements of Section (F) , paragraphs 6,7,or 8. 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,
 - b. 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 Section (F)(7)a 1,2,and 3. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 - c. 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 Section (F)(10)., 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.
- (7) 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 Section (I) of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Sections (C), (F) and (G) of this Ordinance.

(F) DEVELOPMENT STANDARDS

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

- (1) **All Development** - All development shall:

- a. 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;
 - b. use construction materials that are resistant to flood damage;
 - c. use construction methods and practices that will minimize flood damage; and,
 - d. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- (2) **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- (3) **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.
- (4) **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.
- (5) **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.
- (6) **Residential** - New construction or substantial improvement of any residential structure located within:
- a. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 - b. 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 Section (C)(8)a.2.; Section (E)(2) or Section (H)(4).
- (7) **Non Residential** - New construction or substantial improvement of any non-residential structure located within:
- a. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - 1. 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;
 - 2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - 3. 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 Section(C)(11). and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

- b. 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 Section (C)(8)a2.; Section (E)(2); or Section (H)(4)., or
 - 1. together with attendant utility and sanitary facilities meet the floodproofing standards of Section (F)(7)a.
- (8) **Manufactured Homes** - New or substantially improved manufactured homes located within:
- a. Zones A1-30 shall:
 - 1. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
 - 2. 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,
 - 3. 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:
 - a 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,
 - b 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).
 - c all components of the anchoring system described in Section (F)(8)a.3 a and b shall be capable of carrying a force of 4800 pounds.
 - b. Zone A shall:
 - 1. be elevated on a permanent foundation, as described in Section (F)(8)a.2, 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 Section (C)(8)a.2.; Section (E)(2); or Section (H)(4).; and
 - 2. meet the anchoring requirements of Section (F)(8)a.3.
- (9) **Recreational Vehicles** - Recreational Vehicles located within:
- a. Zones A1-30 shall either:
 - 1. be on the site for fewer than 180 consecutive days,
 - 2. 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,
 - 3. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Section (F)(8)a.
- (10) **Accessory Structures** - Accessory Structures, as defined in Section (M), located within Zones A1-30 and A, shall be exempt from the elevation

criteria required in Section (F) (6) and (7). above, if all other requirements of Section (F) and all the following requirements are met. Accessory Structures shall:

- a. be 500 square feet or less and have a value less than \$3000;
- b. have unfinished interiors and not be used for human habitation;
- c. have hydraulic openings, as specified in Section (F)(12)b., in at least two different walls of the accessory structure;
- d. be located outside the floodway;
- e. 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,
- f. 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.

(11) **Floodways -**

- a. In Zones A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Boundary and Floodway 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.
- b. In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Section (F)(11)c. 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:
 1. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 2. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
- c. In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

(12) **Enclosed Areas Below the Lowest Floor -** New construction or substantial improvement of any structure in Zones A1-30 and A that meets the development standards of Section (F), including the elevation requirements of Section (F), paragraphs 6, 7, or 8 and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

- a. Enclosed areas are not "basements" as defined in Section (M);

- b. 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:
 - 1. be engineered and certified by a registered professional engineer or architect; or,
 - 2. meet or exceed the following minimum criteria:
 - (a) 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;
 - (b) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - (c) 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;
 - c. The enclosed area shall not be used for human habitation; and,
 - d. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- (13) **Bridges** - New construction or substantial improvement of any bridge in Zones A1-30 and A shall be designed such that:
- a. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
 - b. a registered professional engineer shall certify that:
 - 1. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Section (F)(11).; and
 - 2. 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.
- (14) **Containment Walls** - New construction or substantial improvement of any containment wall located within:
- a. Zones A1-30 and A shall:
 - 1. have the containment wall elevated to at least one foot above the base flood elevation;
 - 2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - 3. 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 Section (C)(11).

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

(G) 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:

- (1). For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Section (F), paragraphs 6, 7, or 8.
- (2). The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- (3). Within 10 working days, the Code Enforcement Officer shall:
 - a. review the Elevation Certificate and the applicant's written notification; and,
 - b. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

(H) REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

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

- (1). All such proposals are consistent with the need to minimize flood damage.
- (2). All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- (3). Adequate drainage is provided so as to reduce exposure to flood hazards.
- (4). 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.
- (5). 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 Section (F) 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.

(I) APPEALS AND VARIANCES

The Board of Appeals of the City of Old Town 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:

- (1). Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (2). Variances shall be granted only upon:
 - a. a showing of good and sufficient cause; and,
 - b. 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,
 - c. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
 - d. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 1. that the land in question cannot yield a reasonable return unless a variance is granted; and,
 2. 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,
 3. that the granting of a variance will not alter the essential character of the locality; and,
 4. that the hardship is not the result of action taken by the applicant or a prior owner.
- (3). Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- (4). Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - a. other criteria of Section (I) and Section (F)(11). are met; and,
 - b. 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.

- (5). Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
 - a. the development meets the criteria of Section (I), paragraphs (1). through (4). above; and,
 - b. 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.
- (6). Any applicant who meets the criteria of Section (I), paragraphs (1). through (6). shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
 - a. 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;
 - b. such construction below the base flood level increases risks to life and property; and,
 - c. 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.
- (7). Appeal Procedure for Administrative and Variance Appeals
 - a. 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.
 - b. 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.
 - c. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
 - d. The person filing the appeal shall have the burden of proof.
 - e. 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.
 - f. 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.
 - g. 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.

(J) ENFORCEMENT AND PENALTIES

- (1). It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.

- (2). The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- (3). In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
 - a. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
 - b. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
 - c. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 - d. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
 - e. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

(K) 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.

(L) 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.

(M) DEFINITIONS

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

Accessory Structure - means a small detached structure that is incidental and subordinate to the principal structure.

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

Area of Special Flood Hazard - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Section (A) of this Ordinance.

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

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

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 - any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

Development - means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements 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, public or private sewage disposal systems or water supply facilities.

Elevated Building - means a non-basement building

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

In the case of Zones A1-30 or A, **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 Section (F)(12).

Elevation Certificate - An official form (FEMA Form 81-31, 07/00, as amended) that:

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

Flood or Flooding - means:

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

Flood Elevation Study - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) - means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see **Flood Elevation Study**.

Floodplain or Flood-prone Area - means any land area susceptible to being inundated by water from any source (see flooding).

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

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

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

Floodway - see **Regulatory Floodway**.

Floodway Encroachment Lines - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

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

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

Historic Structure - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior, or
 2. Directly by the Secretary of the Interior in states without approved programs.

Locally Established Datum - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic

Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

Lowest Floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Section (F)(12). of this ordinance.

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

Manufactured Home Park or Subdivision - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

Minor Development - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Section (F)(10)., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

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

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

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

Recreational Vehicle - means a vehicle which is:

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

Regulatory Floodway -

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Boundary and Floodway Map, it is considered to be the channel of a river or other water course and the adjacent

land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

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

Special Flood Hazard Area - see **Area of Special Flood Hazard**.

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

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

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

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

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

(N) 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).

(Ord. of 6-8-87; Ord. of 6-15-92; Ord. of 12-5-94; Ord. of 2-7-05)

104.23. Sign regulations.

The intent of this subsection is to preserve the value of property, protect the public health, safety and welfare, and promote the visual quality of the urban environment. It is the further intent of this subsection to provide for the integration of all signs with the architectural character of any structure to which they are attached and to make all signs a harmonious complement and appropriate in scale and appearance to the structure to which they are attached. This subsection shall pertain to all commercial zones. All signs public and private, shall not obstruct or otherwise disrupt the vision of drivers on public or private roadways because of sign location, size or illumination.

- (a) *Public signs.* Public signs, including but not limited to community service information signs, transit service signs, safety and traffic signs, directional and historic signs, are allowed and shall be eligible within distances consistent with their functions. They shall be unified, where appropriate, in use of theme, symbols, lettering, color, size, location and mounting.
- (b) *Business signs.* Business signs are allowed and shall be constructed, installed and maintained so as to ensure public safety. Such signs shall be clearly incidental, customary to, and commonly associated with and in the same site as the building or establishment to which it refers and shall be limited in subject matter to name, design, picture or trademark of the establishment. It shall not include any general commercial advertising materials unrelated to a principal within the building. Signs not directly related to the business shall be prohibited. All such signs shall be appropriate in scale and appearance. Business signs on adjacent buildings located on the same reuse parcel shall be of compatible design and character. Business signs may be of the following type: Canopy, painted, projecting, double-faced, hanging or wall signs. In addition, business signs may be affixed to a building wall and conform to relative facade lines or may be a freestanding ground sign. There shall be no more than one shopping center identification sign not to exceed twenty-five (25) square feet located in the front yard.
- (c) *Advertising signs.* Advertising or roof signs shall not be permitted.
- (d) *Temporary signs.*
 - (1) *Building construction.* One sign per street frontage of a building which is under construction or repair announcing the name of the enterprise or the purpose for which the building is intended is permitted. Such sign may be up to thirty-two (32) square feet in area and no more than fifteen (15) feet in height. Said signs may be permitted by the building inspector for the duration of the construction project. Extensions of six-week intervals not to exceed three (3) months after an occupancy permit is issued may be permitted by the building inspector.
 - (2) *Announcements.* Signs announcing public and semi-public events are permitted for up to six (6) weeks prior to the event. Said signs shall not exceed thirty-two (32) square feet in area and shall be a distance such as not to block sight lines or the flow of traffic. Said signs shall also be removed within forty-eight (48) hours after the event.
 - (3) *Advertising.* One sign per property to advertise the sale, lease or rental of the property on which it is located may be permitted by the building inspector. Said sign shall not exceed sixteen (16) square feet in area.

- (4) Subdivision. A single sign, advertising for sale, lease or rental of property within a land subdivision may be permitted by the building inspector. Such sign shall not exceed thirty-two (32) square feet in area nor more than fifteen (15) feet in height. Said signs may be permitted by the building inspector for four (4) years after the final plan approval.
- (5) Start up signs. A single illuminated sign with changeable letters used to advertise special promotional sales pertaining to the new business. Such signs may be permitted by the building inspector, for up to three (3) months, after date of certificate of occupancy provided they are on private property and they do not interfere with traffic or cause a safety hazard.
- (6) Political signs. Signs announcing political campaigns and candidates are permitted for up to six (6) weeks prior to the election. Said signs shall not exceed thirty-two (32) square feet in area and shall be a distance such as not to block sight lines or the flow of traffic. Said signs shall also be removed within forty-eight (48) hours after the election.
- (e) *Special signs and displays.* Special signs and displays are allowed as follows:
 - (1) Time or temperature signs including those provided by a business and including the businesses' name or symbol.
 - (2) Spot and floodlights which are shielded so as to be invisible to the pedestrian off the property on which the sign is located.
 - (3) Address signs indicating street addresses not exceeding one square foot in area.
 - (4) One exterior directory sign per street level entrance, provided that no individual listing may exceed one square foot in area.
- (f) *Illuminated signs.* Illuminated signs are allowed except, no illuminated sign in any zone shall be of the blinking, alternating or rotating type and no sign shall constitute a safety hazard to any public right-of-way by reason of unshielded or glaring lights or for any other reason.
- (g) *Changeable letter signs.* Permanently mounted changeable letter signs up to thirty (30) square feet are allowed except:
 - (1) No changeable letter sign shall be permitted in C-4 zones without zoning board approval.
 - (2) The sign must be properly maintained and designed so as not to detract from adjacent property.
 - (3) Signs on trailers or movable signs are prohibited in all zones except as noted in section 104.23, subsection (d) (5).
- (h) *Height clearance and project limits of signs.*
 - (1) Ground signs. Ground signs shall be less than or equal to a height of sixteen (16) feet above ground level. The sign area shall be less than or equal to thirty (30) square feet.
 - (2) Projecting signs. Any sign mounted on and extending out more than fifteen (15) inches from the face of the building, but not including awning, canopy, marquee or wall signs shall not protrude above the roof level and shall provide at least ten (10) feet of clearance between the sign and the ground level. Such projecting

signs shall not exceed a distance greater than four (4) feet into any public right-of-way, or extend to within eighteen (18) inches of the curbline of the street. Projecting signs shall be less than or equal to twenty-five (25) feet in height.

- (i) *Size and number limits of signs.* Business signs. Primary business signs shall not exceed an area of one square foot per linear foot of principal street frontage or per ground floor establishment; secondary signs shall not exceed an area of one square foot per linear foot of secondary street frontage; in no case, however, shall the total sign area exceed one hundred (100) square feet per street frontage. In the case of a building with more than one tenant, the gross surface area limitation shall apply to the aggregate total surface of individual signs.

In the case of structures in C-1 zones, the allowable sign area shall be one (1) foot per linear foot of street frontage or per linear foot of ground floor width facing the street, whichever is greater, with a maximum of one hundred (100) square feet. Freestanding signs for properties without street frontage shall be within twenty (20) feet of the right-of-way serving the premises, with an easement provided.

In the case of two-sided signs having the same wording on both sides, only the area of one side shall be counted when determining total sign area. The total sign area of all external signs (combination of all types) shall not exceed one hundred (100) square feet per street frontage.

- (j) *Insurance.*

- (1) Applicants for permits to erect signs shall file a certificate of insurance with the code enforcement officer showing that public liability insurance to the extent of one hundred thousand dollars (\$100,000.00) bodily injury to any one person, three hundred thousand dollars (\$300,000.00) bodily injury in any one accident and twenty-five thousand dollars (\$25,000.00) property damage is in effect so long as the sign is affixed over the sidewalk.
- (2) Such insurance shall indemnify the municipality against all loss, cost, damage or expense incurred or sustained by or recovered against the city by reason of the construction or maintenance of such signs.

- (k) *Nonconforming signs.* Signs not conforming to the provisions of this subsection on the date of enactment shall be considered nonconforming signs.

- (1) Nonconforming signs may continue to exist if they are maintained in a safe, neat and clean condition.
- (2) Any nonconforming sign that is altered, relocated or replaced must be made to conform with the provisions of this subsection at the time of the alteration, relocation or replacement.
- (3) Any nonconforming sign that is in need of repair must be made to conform with the provisions of this subsection if the repair takes place on more than fifty (50) per cent of the aggregate sign area.

- (l) *Removal of signs.* Within three (3) weeks after a structure is vacated and/or a business ceases to operate, all business signs shall be removed from said structure.

- (m) *Appeals to the board of appeals.* An appeal may be taken from any decision of the building inspector to the board of appeals in accordance with 107.2(a).

(Ord. of 8-19-85; Ord. of 5-4-92; Ord. of 4-1-96; Ord. of 5-6-96)

Section 104.24 SITE PLAN REVIEW

The site plan review provisions set forth in this *section* are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

A. Applicability

1. A person who has right, title, or interest in a parcel of land must obtain site plan approval prior to commencing any of the following activities on the parcel, obtaining a building or plumbing permit for the activities, or undertaking any alteration or improvement of the site including grubbing or grading:
 - a. The construction or placement of any new building or structure for a nonresidential use, including accessory buildings and structures, if such buildings or structures have a total area for all floors of one thousand five hundred (1,500) square feet or more, except three thousand (3000) square feet in the R-3 and R-3A zones
 - b. The expansion of an existing nonresidential building or structure, including accessory buildings, if the enlargement increases the total area for all floors within a five (5) year period by more than twenty (20) percent of the existing total floor area or one thousand five hundred (1,500) square feet, whichever is greater.
 - c. The conversion of an existing building in which one thousand five hundred (1,500) or more square feet of total floor area are converted from residential to nonresidential use.
 - d. The establishment of a new nonresidential use even if no buildings or structures are proposed, including uses such as gravel pits, cemeteries, golf courses, and other nonstructural nonresidential uses.
 - e. The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use, whenever the new use will result in an increase in pedestrian or motor vehicle traffic, hours, noise, storm water flows, lot coverage, or other on or off site impacts. If there is an approved site plan for the existing use, the site plan application for the proposed new use may be processed as a site plan amendment under subsection 104.24(1) below.
 - f. The construction of a residential building containing three (3) or more dwelling units.
 - g. The modification or expansion of an existing residential structure that increases the number of dwelling units in the structure by three (3) or more in any five (5) year period.
 - h. The conversion of an existing nonresidential building or structure, in whole or in part, into three (3) or more dwelling units within a five (5) year period.

- i. The construction or expansion of paved areas or other impervious surfaces, including walkways, access drives, and parking lots involving an area of more than two thousand five hundred (2,500) square feet within any three (3) year period.
 - j. Marinas and telecommunications facilities.
 - k. The construction of any nonresidential building which will be divided into three (3) or more leased or sold units within a five year period.
2. The following activities shall not require site plan approval. Certain these activities will, however, require the owner to obtain a building permit, plumbing permit or other state or local approvals:
- a. The construction, alteration, or enlargement of a single family or two-family dwelling, including accessory buildings and structures.
 - b. The placement, alteration, or enlargement of a single manufactured housing or mobile home dwelling, including accessory buildings and structures on individually owned lots.
 - c. Timber harvesting and forest management activities.
 - d. Activities involving nonresidential buildings or activities that are specifically excluded from review by the provisions of this ordinance.

B. Review and Approval Authority

The Planning Board is authorized to review and act on all site plans for development requiring site plan review as defined above. In considering site plans under this provision, the Planning Board may act to approve, disapprove, or approve the project with conditions as are authorized by these provisions.

C. Review Procedures

The Planning Board shall use the following procedures in reviewing applications for site plan review.

1. Preapplication

Prior to submitting a formal application, the applicant or his/her representative may request a preapplication conference with the Planning Board. A preapplication conference is strongly advised. The preapplication conference shall be informal and informational in nature. There shall be no fee for a preapplication review, and such review shall not cause the plan to be a pending application or proceeding under Title 1 M.R.S.A. §302. No decision on the substance of the plan shall be made at the preapplication conference.

a. Purpose

The purposes of the preapplication conference are to:

- (1) Allow the Planning Board to understand the nature of the proposed use and the issues involved in the proposal,
- (2). Allow the applicant to understand the development review process and required submissions,
- (3). Identify issues that need to be addressed in future submissions, and

- (4). Make the applicant aware of any opportunities for coordinating the development with community policies, programs, or facilities.
- (5). In addition, the Board may schedule a site inspection if deemed necessary and discuss any requests for waivers from the submission requirements. If a site visit is scheduled a public notice of the visit will be published in the same manner as a meeting, Section 104.24(C)(2)(c).

b. Information Required

There are no formal submission requirements for a preapplication conference. However, the applicant should be prepared to discuss the following with the Board:

- (1). The proposed site, including its location, size, and general characteristics,
- (2). The nature of the proposed use and potential development,
- (3). Any issues or questions about existing municipal regulations and their applicability to the project, and
- (4). Any requests for waivers from the submission requirements.

2. Application Submission and Review

- a. The applicant shall prepare and submit a site plan review application on a form approved by the Planning Board. The application also to include a development plan and supporting documentation that meets the submission requirements set forth below. This material shall be submitted to the Code Enforcement Office or the secretary of the Planning Board.
- b. Within thirty (30) days of the filing of an application for site plan review, the clerk or a designate of the planning board shall notify the applicant in writing either that the application is a complete application or, if the application is incomplete, the specific additional materials needed to make a complete application. If the applicant disagrees with the completeness review they can appeal and the final decision will be made by the chairman of the Planning Board.
- c. Within thirty (30) days of the notification of a completed application the planning board shall hold a public hearing on the application. The planning board shall notify interested parties of the public hearing by placing a notice of hearing in one (1) newspaper with local circulation at least seven (7) days prior to the hearing stating the nature of the hearing and the time and place of the public hearing thereon. In addition, owners of abutting property shall be notified by direct mail. The public hearing may be adjourned to a different time or place without further notification, providing that it is so-journed at the hearing which has been noticed.
- d. The Planning Board may hold an on-site inspection of the site to review the existing conditions, field verify the information submitted and investigate the development proposal. The Board may schedule this visit during the public hearing at which the

application is considered. The site visit will be considered a continuation of the public hearing. The Board may decide not to hold an on-site inspection when the project is very simple or if the site is snow covered. If an application is pending during a period when there is snow cover, the deadline by which the Planning Board shall take final action on the application as specified in may be extended, which extension shall not exceed thirty (30) days after the Board is able to conduct an on-site inspection. The board members individually or in groups of not more than two may visit the site at any time.

- e. Within thirty-five (35) days of the completion of the public hearing the planning board shall approve, approve with condition, the criteria set forth in section 104.24(b). The board may consult with the applicant or any other party in making its decisions. All decisions of the board shall contain a statement setting forth the exact reason for the finding. A copy shall be forwarded to the applicant and the building inspector

3. *Final Approval and Filing*

Upon completion of the requirements of this Section and an approval vote by the majority of the Planning Board, the application shall be deemed to have final approval and the site plan shall be signed by a majority of the members of the Board and must be filed with the Code Enforcement Officer. Any plan not so filed within thirty (30) days of the date upon which such plan is approved and signed by the Board shall become null and void. The Planning Board, by vote, may extend the filing period for good cause.

4. *Fees*

a. *Application Fee*

An application for site plan review must be accompanied by an application fee. This fee is intended to cover the cost of the administrative processing of the application, including notification, advertising, mailings, and similar costs. The fee shall not be refundable. This application fee shall be paid to the City and evidence of payment of the fee shall be included with the application. The amount of the fee shall be determined by the City Council and may be amended from time to time.

b. *Technical Review Fee*

In addition to the application fee, the Board shall require the owner or the owner's authorized agent to deposit in escrow an amount of money sufficient to cover the costs of any professional review of the application, which the Board finds is reasonably necessary to protect the general welfare of the City. The amount for this escrow payment is established by the Code Enforcement Officer or the secretary of the Board. If the applicant feels the amount is excessive the applicant may appeal to the Board. This to undertake this review to make recommendations to the Board and prior to the board considering the application. When 75% of the escrow has been disbursed, review of the application shall cease until the applicant replenishes the escrow in an amount to be determined by the Board.

The technical review fee may be used by the Planning Board to pay reasonable costs incurred by the Board, at its discretion, which relate directly to the review of the application pursuant to the review criteria. Such services may include, but need not be limited to, consulting, engineering or other professional fees, attorney

fees, recording fees, and appraisal fees. The municipality shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with condition of the application. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the Board for any enforcement purposes.

5. Submission Requirements

- a. Applications for site plan review must be submitted on application forms provided by the City. The complete application form, evidence of payment of the required fees, and the required plans and related information must be submitted to the Code Enforcement Officer. The submission must contain at least the following exhibits and information unless specifically waived in writing. The Planning Board may waive any of the submission requirements based upon a written request of the applicant. Such request must be made at the time of the preapplication conference or at the initial review of the application if no preapplication conference is held. A waiver of any submission requirement may be granted only if the Board makes a finding that the information is not required to determine compliance with the standards.
- b. All applications for site plan review must contain a fully executed and signed copy of the application for site plan review and evidence of payment of the application and technical review fees. The applications submitted following the completion review must include ten (10) copies of written materials plus ten (10) sets of maps or drawings containing the information listed below. It is suggested the written materials be contained in a bound report. The maps or drawing must be at a scale sufficient to allow review of the items listed under the approval standards and criteria, but in no case shall be more than one hundred (100) feet to the inch for that portion of the tract of land being proposed for development:
 - c. General Information
 - (1). Record owner's name, address, and phone number and applicant's name, address and phone number if different. If person signing the application is not the owner, the application must include a letter authorizing the person to act on the owner's behalf.
 - (2). The area of the project parcel and the location of all required building setbacks, yards, and buffers.
 - (3). Sketch map showing general location of the site within the municipality based upon a reduction of the tax maps.
 - (4). Boundaries of all contiguous property under the total or partial control of the owner or applicant regardless of whether all or part is being developed at this time.
 - (5). The tax map and lot number of the parcel or parcels on which the project is located.

- (6). Information to demonstrate right, title or interest in the property on the part of the applicant
- (7). Copies of any existing covenants, deed restrictions, easements, rights-of-way or other encumbrances affecting the property and delineated on the site plan.
- (8). The name, registration number, and seal of the person who prepared the plan, if applicable.
- (9). Evidence of the applicant's technical and financial capability to carry out the project as proposed.

d. Existing Conditions

- (1). Zoning classification(s), including overlay and/or subdistricts, of the property and the location of zoning district boundaries if the property is located in two (2) or more zoning districts or subdistricts or abuts a different district.
- (2). The bearings and length of all property lines of the property Planning Board may waive this requirement of a boundary survey when sufficient information is available to establish, on the ground, all property boundaries.
- (3). Location and size of any existing sewer and water mains, culverts and drains, on-site sewage disposal systems, wells, underground tanks or installations, and power and telephone lines and poles on the property to be developed, on abutting streets, or land that may serve the development, and an assessment of their adequacy and condition to meet the needs of the proposed use. Appropriate elevations must be provided as necessary to determine the direction of flow.
- (4). Location, names, and present widths of existing public and/or private streets and rights-of-way within or adjacent to the proposed development.
- (5). The location, dimensions and ground floor elevation of all existing buildings on the site.
- (6). The location and dimensions of existing driveways, parking and loading areas, walkways, and sidewalks on or immediately adjacent to the site.
- (7). Location of intersecting roads or driveways within two hundred (200) feet of the site.
- (8). The location of open drainage courses, wetlands, stonewalls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together with a description of such features.
- (9). The direction of existing surface water drainage across the site.

- (10). The location, front view, dimensions, and lighting of existing signs.
- (11). The location of the nearest fire hydrant, dry hydrant or other water supply for fire protection.

e. Proposed Development Activity

- (1). Estimated demand for water supply and sewage disposal together with the location and dimensions of all provisions for water supply and wastewater disposal, and evidence of their adequacy for the proposed use, including soils test pit data if on-site sewage disposal is proposed.
- (2). The direction of proposed surface water drainage across the site and from the site, with an assessment of impacts on downstream properties.
- (3). Provisions for handling all solid wastes, including hazardous and special wastes and the location and proposed screening of any on-site collection or storage facilities.
- (4). The location, dimensions, and materials to be used in the construction of proposed driveways, parking and loading areas, and walkways and any changes in traffic flow onto or off-site.
- (5). Proposed landscaping and buffering. The applicant shall submit a site landscaping plan that presents the location and quantity of all project plantings. The applicant shall also submit a planting schedule keyed to the site landscaping plan that lists the botanical and common names, size at planting and quantity of all project plantings. The plans shall include provisions for buffering of incompatible adjacent structures and uses and screening of ground-, wall-, and rooftop-mounted equipment, refuse containers, storage structures and loading facilities.
- (6). The location, dimensions, ground floor elevation, exterior materials and colors of all proposed buildings or building expansions proposed on the site.
- (7). Location, front view, materials, and dimensions of proposed signs together with the method for securing the sign.
- (8). Location and type of exterior lighting. Unless otherwise required by the Planning Board plans shall be submitted for all proposed exterior lighting drawn to a scale of 1" = 20' and shall include the location and type of lighting equipment, manufacturer's specification sheets and point-by-point calculated luminance values noted on a 10-foot grid.
- (9). The location of all utilities, including fire protection systems.
- (10). A general description of the proposed use or activity.
- (11). An estimate of the peak hour and daily traffic to be generated by the project using the latest edition of Trip Generation, published by the Institute of Transportation Engineers. If the project is estimated to generate fifty (50) or more peak hour trips, the applicant shall submit a traffic impact study prepared by a professional engineer with experience in traffic engineering.

- (12). Stormwater calculations, erosion and sedimentation control measures, and water quality and/or phosphorous export management provisions, if the project requires a stormwater permit from the Maine Department of Environmental Protection or if the Planning Board determines that such information is necessary based upon the scale of the project or the existing conditions in the vicinity of the project.
- (13). A grading plan showing the existing and proposed topography of the site at two (2) foot contour intervals, or such other interval as the Planning Board may determine.
- (14). Location and method of screening of outdoor storage.
- (15). List of any state or federal permits required for the proposed project, including those required under the Site Location of Development Act, the Stormwater Management Law or the Natural Resources Protection Act or other permits under the jurisdiction of the Maine Departments of Environmental Protection or Transportation. Final approval of the Site Plan is not valid until such permits are issued and no changes to the plan have occurred.

6. *Approval Block*

Space must be provided on the plan drawing for the signatures of the Planning Board and date together with the following words, "Approved: City of Old Town Planning Board."

D. Approval Standards and Criteria

The following criteria shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

1. Utilization of the Site

Utilization of the Site - The plan for the development must reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities must be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. Natural drainage areas must also be preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

2. Traffic Access and Parking

Vehicular access to and from the development must be safe and convenient.

- a. Any driveway or proposed street must be designed so as to provide the maximum sight distance as practical for vehicles leaving the site.
- b. Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.

- c. The grade of any proposed drive or street must be not more than $\pm 3\%$ for a minimum of two (2) car lengths, or forty (40) feet, from the intersection.
- d. The intersection of any access/egress drive or proposed street must function: (a) at a minimum Level of Service of D following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period; or (b) at a level which will allow safe access into and out of the project if less than one thousand (1,000) trips are generated.
- e. Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot should be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote shortcutting through the site.
- f. Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, sidewalks and traffic controls within public streets.
- g. Access ways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
- h. The following criteria must be used to limit the number of driveways serving a proposed project:
 - (1). No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two (2) way driveway or two (2) one (1) way driveways onto a single roadway. Such driveway must be no greater than thirty (30) feet wide.
 - (2). No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways must not exceed sixty (60) feet."
- i. Access ways must meet the following standards:
 - (1). Driveways must be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
 - (2). Driveways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.
- J. The layout of the site must provide for the safe movement of passenger, service and emergency vehicles through the site.
- k. Nonresidential projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of WB-40 vehicles.
- l. Parking shall comply with the requirements of section 104.11. Parking areas shall provide safe, convenient, and efficient access for vehicles and pedestrians.

- m. Parking lots over 100 spaces shall be segmented visually and functionally into distinct parking areas of no more than 60 spaces by landscaped and curbed medians with a minimum curb to curb width of 10 feet. Curbed landscaped islands shall be sited at the end of each parking aisle and within parking aisles at intervals no greater than one island per every twenty (20) spaces. Islands at the ends of aisles shall be counted toward meeting this requirement. Each required landscaped island shall be a minimum of three hundred sixty (360) s.f. in landscaped area.
- n. An attempt shall be made to limit off-street parking sited between the front façade of the principal building and the primary abutting streets with the exception of parking areas used for the display of vehicles for sale.

3. Pedestrian Circulation

The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system must connect the major building entrances/exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system must be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect with amenities such as parks or open space on or adjacent to the site.

4. Stormwater Management

The site must be designed so that the post-development storm water runoff does not exceed the pre-development storm water runoff for the 24-hour duration, 2-,10-, and 25-year frequency storm events. The storm water plan shall be prepared in accordance with *Stormwater Management for Maine: Best Management Practices*, latest edition, prepared by the Maine Department of Environmental Protection, which is incorporated herein by reference and made a part thereof. The storm water plan shall include the following information for the pre- and post-development conditions: drainage area boundaries, hydrologic soils groups, ground cover type, time of concentration flow paths, modeling methodology, calculations, and background data. The Board may require review and endorsement of the stormwater plan and calculations by the Penobscot Soil and Water Conservation District.

If the development requires a Stormwater Permit from the Department of Environmental Protection (DEP), the Board may accept the Stormwater Permit issued by DEP as evidence that this section has been satisfied and that an additional submission required under this section is not required.

5. Erosion Control

The erosion and sediment control plan must be prepared by a professional civil engineer or by a Certified Professional in Erosion and Sediment Control (CPESC) in accordance with the *Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices*, latest revision, prepared by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, which is incorporated herein by reference and made a part thereof, and include the following items:

- a. The name, address, and telephone number of the person responsible for implementation of the plan.

- b. A vicinity map showing the location of waterbodies that may be affected by erosion and sedimentation from the project.
- c. Existing and proposed drainage patterns, including drainage channels that drain to surrounding waterbodies.
- d. A sequence of work that outlines how the project will be constructed and specifically addressing how soil disturbance will be minimized during the construction process.
- e. Clear definition of the limits of work and any buffer areas that will remain undisturbed and an indication of how these areas will be protected during construction.
- f. Description of temporary and permanent erosion control practices that will be used.
- g. Identification of the locations of the temporary and permanent erosion control practices.
- h. Identification of how and where collected sediment will be disposed.
- i. Dust control measures.
- j. Inspection and maintenance procedures, including schedule and frequency.

The Board may require the review and endorsement of this plan by the Penobscot Soil and Water Conservation District.

6. Water Supply Provisions

The applicant must demonstrate that the project will have an adequate water supply. If the project is to be served by a public water supply, the applicant must secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

If the project is to be served by a private water supply, the Board may require the applicant to submit evidence that the water supply will be adequate and will not adversely affect existing users. In addition, the applicant must demonstrate that adequate water will be available for fire suppression. The Planning Board may require either installation of sprinklers with an on-site water supply or installation of a minimum ten thousand (10,000) gallon underground tank with dry hydrant. -

7. Sewage Disposal Provisions

The development must be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code.

- a. All sanitary sewage from new or expanded uses must be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation. Compliance with this section shall be by written approval of the Superintendent of Pollution Control Department.
- b. If the public collection system is not at the lot line, but can be extended in the public right-of-way, the collection system must be

extended by the owner and the new or expanded use connected to the public system. Such extension shall be required if the public system is within one hundred (100) feet of a new use with a design sewage flow of less than five hundred (500) gallons per day or within three hundred (300) feet of a new use with a design sewage flow of five hundred (500) or more gallons per day and the system has adequate capacity to accommodate the additional flow. The Planning Board may waive this requirement if the use is already served by a properly functioning subsurface disposal system that is properly sized for the projected flows, provided that connection to the public system must occur if and when the subsurface system needs to be replaced.

- c. If the public system cannot serve or be extended to serve a new or expanded use, the sewage must be disposed of by an on-site sewage disposal system meeting the requirements of the Subsurface Wastewater Disposal Rules.
- d. When two (2) or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system must be owned and maintained in common by an owners' association. Covenants in the deeds for each lot must require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.
- e. Industrial or commercial wastewater may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The pretreatment standards shall be determined by the Old Town Pollution Control Authority.

8. Utilities

The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.

9. Natural Features and Landscaping

- a. The landscape must be preserved in its natural state insofar as practical by minimizing tree removal, disturbance, compaction of soil and water bodies, including wetlands, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling must be avoided as far as possible. Existing trees with diameters greater than six (6) inches shall be retained in buffer and landscape areas to the maximum extent possible unless a licensed forester, arborist, or landscape architect can show that the tree or trees are diseased or are declining.
- b. Minimum of 30% of a principal building's total foundation, including a minimum of 50% along the building's front façade, shall be planted with landscaping consisting of one 1.5" caliper tree native to Maine and 4 shrubs per ten (10) linear feet of foundation. This landscaping shall be near entrances and facades facing public streets as well as in parking areas.

- c. One 2.5" caliper canopy tree native to Maine, one 4-foot high understory tree native to Maine, and five 12" high evergreen or 15" high deciduous shrubs shall be planted within each parking lot island.
- d. Landscaping consisting of three 2.5" caliper street trees, six 4-foot high understory trees, ten 12" high evergreen or 15" high deciduous shrubs and five 3-foot evergreen trees shall be planted every 50' along and within a minimum 30-foot wide green strip buffer adjacent to all public street and along and within a minimum 20-foot wide green strip buffer adjacent to all private streets and drives including parking lot connectors, circulation drives (including those adjacent to building) and loading areas.
- e. Trees and or shrubs to be planted should be chosen for their compatibility with existing or deposited soils to enhance their potential survival and vigor. A licensed forester, arborist, or Landscape architect may be required to assure such compatibility if the board requests.
- f. Landscaping shall be considered an integral component of the approved project. The applicant shall replace within 30 days any landscaping that dies, is removed or otherwise requires replacement. Such replacement landscaping shall be equivalent in species and size to the original landscaping unless the applicant can demonstrate to the satisfaction of the code enforcement officer that site conditions require an alternative species of comparable size.

10. Groundwater Protection

The proposed site development and use must not adversely impact either the quality or quantity of groundwater available to abutting properties or to public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater must demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.

11. Water Quality Protection

All aspects of the project must be designed so that:

- a. No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.
- b. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshall's Office.
- c. If the project is located within the direct watershed of a 'body of water most at risk from development' or 'a sensitive or threatened region or watershed' as identified by the Maine Department of Environmental Protection (DEP), and is of such magnitude as to require a stormwater permit from the DEP, the project must comply with the standards of the DEP with respect to the export of total suspended solids and/or phosphorous. If the project does not require a

stormwater permit from the DEP, it must be designed to minimize the export of phosphorous from the site to the extent reasonable with the proposed use and the characteristics of the site.

12. Hazardous, Special, and Radioactive Materials

The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive must be done in accordance with the standards of these agencies. No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials must be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

13. Shoreland Relationship

The development must not adversely affect the water quality or shoreline of any adjacent water body. The development plan must provide for access to abutting navigable water bodies for the use of the occupants of the development as appropriate.

14. Capacity of the Applicant

The applicant must demonstrate that he/she has the financial and technical capacity to carry out the project in accordance with this ordinance and the approved plan.

15. Solid Waste Management

Solid Waste Disposal - The proposed development must provide for adequate disposal of solid wastes. All solid waste must be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.

16. Historic and Archaeological Resources

If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

17. Floodplain Management

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the Old Town floodplain management provisions.

18. Exterior Lighting

a. The following lighting criteria shall not be exceeded:

- (1). Parking lots: an average of one (1.0) foot-candles throughout, a maximum of six (6) foot-candles and a maximum-to-minimum uniformity ratio of twenty to one (20:1) foot-candles
- (2). Intersections: an average of three (3) foot-candles throughout, a maximum of six (6) foot-candles and a maximum-to-minimum uniformity ratio of twenty to one (20:1) foot-candles
- (3). Maximum at property lines: 0.1 foot-candles

b. The maximum height of freestanding lights shall be the same as the principal building, but shall not exceed twenty (20) feet

- c. All lights shall have shielding to provide a beam cut-off at no more than seventy-five (75) degrees nadir.
- d. The applicant shall demonstrate to satisfaction of the Planning Board that the proposed lighting is appropriate for the intended use. The Board shall consider the hours of operation, characteristics of the neighborhood and the specific activities proposed in making its determination. When the activity is not in use, lighting shall be turned off or turned down to security level as determined by the Old Town Police Chief.
- e. Lighting shall be located along streets, parking areas, at intersections and crosswalks and where various types of circulation systems merge, intersect or split. Pathways, sidewalks and trails shall be lighted with low or mushroom-type standards

19. Screening

- a. Ground- and wall-mounted mechanical equipment, refuse containers and permitted outdoor storage must be fully concealed from on- and off-site ground level views with materials identical to those on building exterior. All trash collection areas that are not within an enclosed building or underground must be screened or recessed so that they are not visible from public streets, public sidewalks, internal pedestrian walkways, or adjacent residential properties and at least fifty (50) feet from any lot line. Screening and landscaping of these areas shall conform to the predominant materials used on the site.
- b. Rooftop equipment must be screened by parapets, upper stories or exterior walls from view from public streets within one thousand (1,000) feet. Gates and fencing may be used for security and access but not for screening. Chain link, wire mesh or wood fencing is not acceptable.
- c. Loading docks must be screened from surrounding roads and properties by walls matching the building's exterior or fully opaque landscaping

20. Outdoor Sales (applicable to retail establishments greater than ten thousand (10,000) s.f.) The Planning Board may modify or waive one or more of the following standards for vehicle display areas if it finds that the application of such standards is impractical or inappropriate.

- a. Areas for outdoor sales of products must be extensions of the sales floor into which patrons are allowed free access. Such areas shall be incorporated into the overall design of the building and the landscaping and shall be permanently defined and screened with walls and/or fences. Materials, colors and design of screening walls and/or fences shall conform to those used as predominant materials and colors on the building. If such areas are to be covered, then the covering shall be similar in materials and colors to those that are predominantly used on the building facade. Outdoor sales areas shall be considered as part of the gross floor area of the retail establishment.
- b. Except for agricultural, landscaping, nursery and similar products normally stored outdoors, outdoor storage of products for sale in an area where customers are not permitted is prohibited unless it is visually buffered from adjacent streets and abutting developed properties. This prohibition includes outdoor storage sheds and containers.

- c. Outdoor sales areas must be clearly depicted on site plan. They must be at least ten (10) feet from motor vehicle routes and protected by a physical barrier.

E. Post Approval Activities

1. Limitation of Approval

- a. Substantial construction of the improvements covered by any site plan approval must be substantially initiated within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially initiated and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to the expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to two (2), six (6) month extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.
- b. The planning board may approve a phased plan, however construction must not be interrupted for a period of more than two years.

2. Incorporation of Approved Plan

One copy of the approved site plan must be included with the application for the building permit for the project and all construction activities must conform to the approved plan, including any conditions of approval and minor changes approved by the Code Enforcement Officer to address field conditions.

F. Improvement Guarantees

1. *The Planning Board may require the posting of an improvement guarantee in such amount and form as specified in subsection 2 below as is reasonably necessary to ensure the proper installation of all off-site improvements required as conditions of approval. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the applicant.*
2. Upon substantial completion of all required improvements, the developer must notify the Code enforcement Officer of the completion or substantial completion of improvements, and must send a copy of such notice to the appropriate municipal officials. The respective municipal officials shall inspect all improvements and shall file a report indicating either approval, partial approval, or rejection of such improvements with a statement of reasons for any rejection.
3. The Code Enforcement Officer shall approve, partially approve, or reject the improvements on the basis of the report of the municipal officials.
4. If the improvements are approved, the guarantee shall be released. Where partial approval is granted, the developer shall be released from liability only for that portion of the improvements approved.
5. Performance guarantees may be provided by a variety of means including, but not limited to, the following, which must be approved as to form and enforceability by the Finance Director.
 - a. Security Bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.

- b. Letter of Credit. The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution.
- c. Escrow Account. The applicant may deposit cash, or other instruments readily convertible into cash at face value, either with the municipality, or in escrow with a bank. Any such account must require City approval for withdrawal and must stipulate that the City can withdraw the money upon forty-eight (48) hour advance notice to the applicant to complete the guaranteed improvements.

G. Submission of As-Built Plans

Any project involving the construction of more than twenty thousand (20,000) square feet of gross floor area or fifty thousand (50,000) square feet of impervious surface, must provide the Code Enforcement Officer with a set of construction plans showing the building(s) and site improvements as actually constructed on the site. These "as-built" plans must be submitted within thirty (30) days of the issuance of a certificate of occupancy for the project or occupancy of the building.

H. Minor Changes to Approved Plans

Minor changes in approved plans necessary to address field conditions may be approved by the Code Enforcement Officer provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal. Any such change must be endorsed in writing on the approved plan by the Code Enforcement Officer.

I Amendments to Approved Plans

Approvals of site plans are dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals, and supporting documents, except minor changes that do not affect approval standards, is subject to review and approval.

J Administrative Provisions

1. Appeals

Appeal of any actions taken by the Planning Board with respect to this section shall be to Superior Court. Any such appeal must be filed within thirty (30) days of the date upon which the Planning Board voted to take action on the application. Any aggrieved party may appeal the action of the Planning Board.

2. Administration and Enforcement

The Code Enforcement Officer (CEO) shall be responsible for administering the provisions of this ordinance with respect to approved site plans, including all issues relating to compliance of a project with the approved plans.

Any aggrieved party who believes that the CEO has made an error in administering the provisions of this ordinance with respect to an approved site plan, including enforcement determinations by the CEO, may appeal the CEO's decision or determination to the City of Old Town Board of Appeals in accordance with the provisions of Section 107 of the Zoning Ordinance, as an administrative appeal.

An appeal of the CEO's decision or determination under this subsection may not be used to challenge the Planning Board's findings or decision with respect to the original site plan permit application or site plan mendments. A determination by the CEO that a requested change to an approved site plan

must be submitted to the Planning Board for approval may not be appealed under this subsection.

(Ord. of 9-5-89; Ord. of 9-8-92; Ord. of 6-1-09)

104.25. Wellhead protection.

- (a) *Purpose.* The purpose of the Wellhead Protection Overlay Zone is to protect the public water supplies in the City of Old Town from land uses which pose a threat to the quality and/or quantity of the groundwater being extracted from wells which serve the public water system.
- (b) *Authority.* This ordinance has been established in accordance with the provisions of Title 22 Section 2642 of the Maine Revised Statutes Annotated (M.R.S.A.).
- (c) *Applicability.* This ordinance applies to all lands located within the area delineated as the Wellhead Protection Overlay Zone on the official zoning map of the City of Old Town.
- (d) *Land uses.* The following Wellhead Protection Overlay Zone Table supplements the land uses which are allowed in each zone. When a land use is not permitted in this zone, it is not permitted. When a land use is permitted in a specific zone, but is prohibited or regulated under this section, this section shall control.

	Agricultural chemical spreading, spraying	SP-1
	Agricultural chemical storage	SP-2
	Auto or vehicle repair facilities	SP-3
	Auto washes	SP-3
	Beauty shops	SP-3
	Body shops	SP-3
	Chemical reclamation	N
	Chemical bulk storage	N

	Concrete, asphalt, tar, coal companies	N
	Sand or sand/salt storage piles	SP-3
	Dry cleaners	SP-3
	Feed lots	N
	Fuel oil distributors, fuel oil storage	N
	Furniture strippers	N
	Gas stations, service stations	N
	Parks	SP-3
	Graveyards	SP-3
	Hazardous or special waste disposal	N
	Heat treaters, smelters, annealers, descalers	N
	Heating oil storage	SP-4
	Industrial manufactures	SP-3
	Industrial waste disposal	N
	Junk and salvage yards	N
	Landfills or dumps	N
	Transfer stations and recycling facilities	SP-3

	Laundromats	SP-3
	Machine shops	SP-3
	Manure piles	N
	Meat packers, slaughter houses	N
	Metal plating/electroplating	N
	Nurseries (hothouses)	SP-3
	Painters/finishers	N
	Pesticide, herbicide, wholesale, retail or bulk storage	N
	Photo processors	N
	Printers	SP-3
	Residential homes	A
	Rust proofing	N
	Sand and gravel mining	SP-3
	Septic systems - < 500 gpd flow	A
	Septic systems - > 500 gpd flow	SP-3
	Small engine repair shop	SP-3
	Snow dumps	N
	Truck terminals	SP-3

	Wastewater treatment plants	N
	Wood preserving operations	N

	A	Allowed.
	N	Not allowed.
	SP-1	Activity allowed if operation uses state approved best management practices.
	SP-2	Activity allowed if operation uses state approved best management practices and quantity is limited to no more than what is used during a single application.
	SP-3	Use allowed with approval of the planning board following wellhead protection review.
	SP-4	Storage limited to product used on the property.

- (e) *Lot specifications.* Lot size and lot coverage shall be as required for the underlying zoning district.
- (f) *Application requirements for wellhead protection review.*
 - (1) *Procedure.* Persons seeking approval for a use in the Wellhead Protection Overlay Zone shall submit to the planning board an application, on a form

provided by the planning board. The application shall include, at a minimum:

- (a) Applicant's name.
 - (b) Applicant's address.
 - (c) Property owner's name.
 - (d) Property owner's address.
 - (e) Tax map and lot numbers.
 - (f) Detailed description of the proposed activity.
 - (g) Any other information needed by the planning board to review the activity and determine the potential impact of the proposed activity on the groundwater.
 - (h) Map showing the location of the property and the boundaries of the Wellhead Protection Overlay Zone.
 - (i) A letter from the superintendent of the Old Town Water District describing the potential impact of the activity on the quantity or quality of the water supply to the district.
 - (j) A fee which shall be promulgated by the city council.
- (2) *[Information.]* Other information may be required by the planning board. The level of effort and detail requested by the planning board for such additional submissions shall depend upon the size and potential impact to groundwater of the proposed land use or activity.
- (a) On-site sewage disposal report from a licensed site evaluation or information from local sewer district indicating capacity.
 - (b) Special reports (if relevant):
 - (1) Soils.
 - (2) Engineering design.
 - (3) Erosion and sediment control plan.
 - (4) Stormwater management plan.
 - (5) Long-term maintenance provisions, including financial capabilities.
 - (6) Hydrogeologic assessment.
 - (c) Existing water bodies, water courses, wetlands and other significant natural features relevant to the property or proposed activity.
 - (d) Location and design of existing and proposed culverts, drains and other stormwater control structures.
 - (e) Location and design of existing and proposed sewer and water lines.
 - (f) Engineering plans and cross-sections.
 - (g) Any other information deemed relevant by the planning board.

Filing of the above listed documents with the planning board clerk shall constitute filing of an application for wellhead protection review.

Within thirty (30) days of the filing of an application for site plan review, the clerk or a designate of the planning board shall notify the applicant in writing either that the application is a complete application or, if the application is incomplete, the specific additional materials needed to make a complete application.

Within thirty (30) days of the notification of a completed application, the planning board shall hold a public hearing on the application. The planning board shall notify interested parties of the public hearing by placing a notice of hearing in one (1) newspaper with local circulation at least seven (7) days prior to the hearing stating the nature of the hearing and the time and place of the public hearing thereon. In addition, owners of abutting property shall be notified by direct mail. Also, the superintendent of the Old Town Water District shall be notified of the hearing. The public hearing may be adjourned to a different time or place without further notification, providing that it is so adjourned at the hearing which has been noticed.

Within thirty-five (35) days of the completion of the public hearing, the planning board shall approve, approve with conditions or disapprove the application. The board may consult with the applicant or any other party in making its decisions. All decisions of the board shall contain a statement setting forth the exact reason for the finding. A copy shall be forwarded to the applicant and the code enforcement officer.

(g) *Criteria for review.* The following criteria shall be used when reviewing the application. The planning board shall make findings of fact for each criteria listed. A positive finding on each criteria is required in order for the planning board to approve the application. If the planning board finds that all of the criteria have been met, then the application shall be approved. Conversely, if the planning board fails to make positive findings on each of the listed criteria, then the application shall be denied. It is the responsibility of the applicant to provide sufficient information for the board to make its decision. The planning board may impose reasonable conditions based on the listed criteria:

(1) The proposed use does not pose a threat to the quality or quantity of the groundwater being extracted from the Old Town Water District wells. The applicant must meet one (1) or more of the following criteria:

- (a) Demonstrate that the activities or land uses proposed by the applicant will have no measurable effect on water table levels or recharge to the aquifer and will cause no contamination to groundwater or will cause contamination of such minute quantities as to be undetectable at the wellhead for the municipal wells.
- (b) Demonstration of a confining layer in the subsurface, but above the water table sufficient to prevent any activity proposed by the applicant from contaminating the groundwater beneath the confining layer.
- (c) The applicant can demonstrate that groundwater beneath his site flows away from the Old Town Water District wells even under the maximum realistically expected pumping rate for the well during a time of drought.

(2) The operator has sufficient financial and technical capabilities to ensure the safe operation of the use and can detect and remediate any groundwater contamination before such reaches the 400-day time of travel boundary.

(h) *Appeals.* Any person who believes that he or she is adversely affected by a decision deriving from that ordinance may make an appeal to the Old Town board

of appeals. Such an appeal shall follow established rules and procedures of the board of appeals. Further appeals to the superior court shall follow established procedures of local and state laws. Two (2) types of appeals are considered by the board of appeals: administrative appeals and variances. Administrative appeals shall be handled as per current rules and procedures as set forth in section 107. Variances shall not be granted.

- (i) *Nonconforming uses.* Any use which exists at the adoption of this ordinance and which does not conform to the wellhead protection uses shall be allowed to continue provided the use is not expanded, changed, or discontinued for more than one (1) year.

(Ord. of 1-2-96(2))

SECTION 105. MODIFICATIONS

105. Height limits.

The height limits of this ordinance shall not apply to church spires, belfries, cupolas, domes, monuments, water towers, transmission towers, chimneys, conveyors, derricks, radio and television towers, and similar structures not intended for human occupancy.

105.1. Reserved.

(Ord. of 11-7-94, § F)

105.2. Front yard setbacks for dwellings.

The front yard setback requirements of this ordinance for dwellings shall not apply to any lot where the average setback on developed lots located wholly or in part within one hundred (100) feet on each side of such lot and within the same block and zoning district and fronting on the same street as such lot, is less than the minimum setback required. In such cases the front yard setback on such lot may be less than the required setback but not less than the average of the existing setbacks on the developed lots.

SECTION 106. ADMINISTRATION, ENFORCEMENT AND PENALTIES

106. Zoning enforcing officer.

The provisions of this ordinance shall be administered and enforced by the building inspector. The building inspector will be appointed by the city manager and his compensation, if any, will be fixed by the city manager, subject to the approval of the city council.

In areas of special flood hazard, all forms of development shall require a permit from the building inspector.

106.1. Building permit required.

It shall be unlawful for any person(s) to start work for the purpose of construction, alteration or removal of any building unless a building permit has been issued in conformity with this ordinance.

106.2. Application for building permit.

Any application for a building permit shall be in writing and in duplicate signed by the applicant. Such application shall include such information as lawfully

may be required by the building inspector and shall include a site plan at a suitable scale showing:

- (a) The shape, size and location of the lot to be built upon; and
- (b) The shape, size, height and location of the buildings to be erected, altered or removed; and
- (c) Any buildings already on the lot; and
- (d) Setback lines of buildings on adjoining lots; and
- (e) Any other information needed by the building inspector, planning board or the board of appeals to determine whether the provisions of this ordinance are being observed.

One copy of the application and plans shall be returned to the applicant by the building inspector who shall have marked such copy either approved or disapproved and attested to same by his signature on such copy. The second copy of such application and plans, similarly marked, shall be retained by the building inspector and shall be kept on file as a public record. Failure of the building inspector to issue written notice of his decision within thirty (30) days of the date of filing of the application shall constitute refusal of the permit.

If no significant progress of construction has been made within one (1) year beginning with the date the permit is issued, the permit shall expire.

(Ord. of 3-4-85)

106.3. Fees.

Before a building permit may be issued, the applicant shall pay a fee in accordance with the rate schedule of Chapter 6, Buildings, Sections 118.2 through 118.6 (see section 6-4) as applicable.

106.4. Occupancy permit.

- (a) Prior to the sale, lease or occupancy of any new building or buildings, the builder or developer (person who received a valid building permit) will secure an occupancy permit from the city manager stating that such new structure is in conformity with the codes and ordinances of the City of Old Town. Prior to his issuance of the permit the city manager will check to see that all requirements under this ordinance and other city ordinances have been met.
- (b) Any person who sells, leases or occupies a new building in the City of Old Town prior to the issuance of an occupancy permit by the city manager is in violation of this ordinance and is subject to its penalties.

106.5. Use permit.

Special exception uses granted by the planning board or allowable uses granted by the board of appeals or planning board in accordance with this Code shall require a use permit, and prior to construction, alterations, renovations or occupancy, the applicant shall secure a permit at the following rates:

Use permit fee \$ 10.00

106.6. Penalties for violation.

Any person violating any provision of this ordinance shall be subject to the penalties and provisions set forth in section 1-8 of the Revised Code of Ordinances of the City of Old Town.

(Ord. of 6-15-92)

106.7. Remedies.

If any building is erected, constructed, reconstructed, altered, repaired, converted or maintained or, any building or land is used in violation of this ordinance, the building inspector or any other appropriate authority of any adjacent or neighboring property owner who would be damaged by such violation, in addition to other remedies may institute injunction, mandamus or any other appropriate action in proceeding to prevent such violation.

SECTION 107. BOARD OF APPEALS

107. Establishment and organization.

There shall be a board of appeals of five (5) members and one associate member appointed by the municipal officers as provided in 30-A M.R.S.A. §§ 2691 and 4353. The term of members shall be such that the term of one member will expire each year. The term of the associate member shall be five (5) years. The associate member shall act on the board in place of any member who may be unable to act due to personal involvement, absence or physical incapacity.

The members of the board shall annually elect one of their number chairman to preside at all meetings of the board. At any meeting in which the chairman is not present the members in attendance will elect an acting chairman to preside at the meeting. Meetings shall be held at the call of the chairman and at such times as the board may determine. All meetings of the board shall be open to the public, minutes of proceedings shall be kept by a staff clerk appointed by the city manager and all shall be public records.

A quorum shall consist of three (3) members. Municipal officers and officials and their spouses are hereby disqualified from and shall not be appointed to membership on the board of appeals. A member of the board may be dismissed for cause by the municipal officers before the expiration of his term.

(Ord. of 12-7-98, § 2)

107.1. Appeals to the superior court.

Appeals may be taken from the board of appeals to the superior court. The appeal to the superior court shall be taken within thirty (30) days after the decision of the board. Notice of the appeal shall be ordered by the court, and the appeal shall be tried and determined by the court without a jury in the manner and with rights provided by law in other actions so heard. Costs may be awarded to the prevailing party by the court as justice requires.

107.2. Powers and duties of the board of appeals.

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 the provisions of 30-A.M.R.S.A § 4353.

The board shall have the following powers and duties:

- (a) *Administrative review.* To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the code enforcement officer in the enforcement of this ordinance. The action of the code enforcement officer may be modified or reversed by the board of appeals by majority vote.
- (b) *Variance appeals:* Except as provided in subsections (c), (d) and (e), the board is authorized to grant a variance only when strict application of

this ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship," as used in this ordinance, means:

- (1) The land in question can not yield a reasonable return unless a variance is granted; and
 - (2) The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood; and
 - (3) That the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other properties in the same zone and would not be injurious to the neighborhood or contrary to the intent of this ordinance; and
 - (4) That the hardship is not the result of action taken by the applicant or a prior owner.
- (c) *Disability variance.* In accordance with 30-A M.R.S.A § 4353 (4-A), the board may grant a variance to an owner of a 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 only to the installation of equipment or the construction of structures necessary for access to, or egress from, the dwelling from [of] 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. For purposes of this ordinance, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. § 4553, and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall, or roof systems necessary for the safety or effectiveness of the structure.
- (d) *Yard variance for single-family dwellings.* The board is authorized to grant a yard variance for a single-family dwelling. The granting of a variance under this section from a yard requirement is only authorized when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship," as used in this subsection, means:
- (1) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - (2) The granting of a variance will not alter the essential nature of the locality;
 - (3) The hardship is not the result of action taken by the applicant or a prior owner;
 - (4) The granting of a variance will not substantially reduce or impair use of abutting properties; and
 - (5) The granting of variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

The variance under this subsection may only be granted for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this provision may not exceed twenty (20) percent of a yard requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The board is further authorized to grant a variance under this section to exceed twenty (20) percent of a yard requirement except for minimum yards on a wetland or water body requirement within shoreland zones by rules adopted pursuant to 38 M.R.S.A. § 435 et seq. if the

petitioner has obtained the written consent of a non-affecting abutting land owner.

- (e) *Variance from dimensional standards.* In accordance with 30-A M.R.S.A. § 4353 (4-C), the board is authorized for one-family or single-family dwellings only, as defined in this ordinance, to grant a variance from the dimensional standards of the zoning ordinance when strict application to the ordinance by the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:
- (1) The need for a variance is due to unique circumstances of the property and not the general condition of the neighborhood;
 - (2) The granting of a variance will not produce undesirable changes in the character of the neighborhood and will not unreasonably detrimentally affect the use or marketability of abutting properties;
 - (3) The practical difficulty is not the result of action taken by the petitioner or a prior owner;
 - (4) No other feasible alternative to a variance is available to the petitioner;
 - (5) The granting of a variance will not unreasonably adversely affect the natural environment; and
 - (6) The property is not located in whole or in part within shoreland areas as described in 38 M.R.S.A. § 435.

As used in this section, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage, and yard requirements. As used in this ordinance, "practical difficulty" means the strict application of the ordinance to the property precludes the ability of a petitioner to pursue a use permitted in the zone in which the property is located and results in significant economic injury to the petitioner.

- (f) *Additional appeals.* In addition to the authority granted to the board of appeals by virtue of the foregoing provisions, the board shall hear and decide appeals in accordance with 30-A M.R.S.A. § 2691(4) concerning any matter for which the board has been granted jurisdiction under any ordinance of the City of Old Town.

(Ord. of 12-7-98, § 1; Ord. of 7-6-99)

107.3. Appeal procedure.

- (a) In all cases a person aggrieved by a decision of the building inspector shall commence his appeal within thirty (30) days after receipt of a written decision from the building inspector. The appeal shall be filed with the board of appeals on forms to be approved by the board, and the aggrieved person shall specifically set forth on said form the grounds for said appeal.
- (b) Before taking action on any appeal the board of appeals shall hold a public hearing. All applicants shall pay a fee of which will be promulgated by the city council. The city council will review the fee from time to time. The application shall be submitted to the board of appeals at least thirty (30) days prior to a regularly scheduled meeting.

The board of appeals shall notify interested parties by placing a notice of hearing in one (1) newspaper with local circulation at least seven (7) days prior to the hearing stating the nature of the appeal and the time and place of the public hearing thereon. Owners of abutting property shall be notified by direct mail.

- (c) For the purposes of this section, the owners of property shall be considered to be the parties listed by the assessor of taxes for the City of Old Town as those against whom taxes are assessed. Failure of any property owner to receive notice of public hearing shall not necessitate another hearing or invalidate any action by the board of appeals.
- (d) Following the filing of an appeal, the board of appeals for the City of Old Town shall notify forthwith the building inspector, the planning board and the city council, and the appeal shall be in order for hearing at the next meeting of the board of appeals.
- (e) At any hearing a party may appear by agent or attorney. Hearings shall not be continued to other times except for good cause.
- (f) The clerk of the board or his designated representative shall attend all hearings and may present to the board of appeals all plans, photographs or other material he deems appropriate for an understanding of the appeal.
- (g) The appellant'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.
- (h) The concurring vote of three (3) members of the board in official meeting shall be necessary to reverse any order or decision of the building inspector, or to decide in favor of the applicant on any matter on which it is required to pass under this ordinance or to effect any variation in the application of this ordinance.
- (i) A right of appeal under the provisions of this chapter secured by vote of the board of appeals shall expire if the work or change involved is not commenced within one year of the date of which the appeal is granted.
- (j) If the board of appeals shall deny an appeal, a second appeal of a similar nature shall not be brought before the board within one year from the date of denial by the board of the first appeal unless in the opinion of a majority of the board substantial new evidence shall be brought forward, or unless the board finds, in its sole and exclusive judgment, that an error or mistake of law or misunderstanding of facts shall have been made.
- (k) 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.
- (l) The chairman shall call meetings of the board as required. The chairman shall also call meetings of the board when requested to do so by a majority of the members or by the municipal officers.
- (m) The clerk shall maintain a permanent record of all board meetings and all correspondence of the board. The clerk shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the clerk are deemed public, shall be filed in the municipal offices and may be inspected at reasonable times.
- (n) The board may provide by rule, which rule shall be recorded by the clerk, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the chairman upon good cause shown.
- (o) The board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true

disclosure of the facts. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

- (p) The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of facts, law or discretion presented and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the planning board and the municipal officers within seven (7) days of their decision.
- (q) The board shall render a decision on each appeal within thirty (30) days following the public hearing on such appeal.
- (r) An appeal may be taken, within thirty (30) days after the decision is rendered, by any party to superior court from any order, relief or denial in accordance with Rule 80B. The hearing before the superior court shall be a trial de novo without a jury.

(Ord. of 5-7-84; Ord. of 8-19-85; Ord. of 9-5-89)

SECTION 108. SPECIAL EXCEPTIONS

108. Authority.

The planning board may approve the issuance of a special exception permit in strict compliance with this ordinance.

108.1. Powers and duties.

The planning board shall hear and decide only those special exceptions which are authorized by this ordinance and which are specifically listed in the various zoning districts as special exceptions.

The planning board shall decide such questions as are involved in determining whether such special exceptions should be granted, and by majority vote, to grant such conditions and safeguards as are appropriate under this ordinance or to deny such special exception when not in harmony with the purposes and intent of this ordinance.

108.2. Conditions.

In hearing requests for special exceptions under this section the planning board shall consider the following:

- (a) That the requirements of the zone in which the property in question is located have been complied with.
- (b) That the proposed use, although not generally appropriate in the zone for which it is sought, is appropriate for the location for which it is sought because of the peculiar physical characteristics of that location.
- (c) That the proposed use will conform to the general character of the neighborhood in which the use would be located.
- (d) That there would be no significant adverse effect resulting from such use upon the public health, safety and general welfare of the neighborhood in which the use would be located.
- (e) That the proposed use will not have an unduly adverse effect upon the property values of adjacent properties.
- (f) That the proposed use will not place an undue burden on municipal services.

- (g) That the proposed use will not create unreasonable traffic congestion on contiguous or adjacent streets.
- (h) That the proper operation of the special exception will be ensured by providing and maintaining adequate and appropriate utilities, drainage, access, parking and loading and other necessary site improvements.
- (i) Private roads as listed in section 111.2(c) (20) may be required to provide the following:
 - (1) Evidence that the road is owned by a nonprofit corporation subject to bylaws of a road homeowners association.
 - (2) Map of property to include roads.
 - (3) Written stipulation recorded on map that road will not be submitted to city for acceptance as a public street unless it is built to city standards for public streets.
 - (4) Description of any provision for utility access and public services.

In granting an exception, the board may prescribe appropriate conditions or safeguards. In most cases where review by the planning board is required for the granting of an exception the planning board may suggest appropriate conditions or safeguards and these may be incorporated in the terms under which exception is granted. Violation of such conditions shall be deemed a violation of this ordinance.

Before granting an exception in a resource protection zone or in shoreland areas, as defined, the board may request pertinent information from the applicant and shall determine that, except as specifically exempted in this ordinance, the proposed use:

- (1) Will not result in unsafe or unhealthful conditions.
- (2) Will not result in erosion or sedimentation.
- (3) Will not result in water pollution.
- (4) Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat.
- (5) Will conserve shoreland vegetation.
- (6) Will conserve visual points of access to waters as viewed from public facilities.
- (7) Will conserve actual points of public access to water.
- (8) Will conserve natural beauty.
- (9) Will avoid problems associated with the floodplain development and use.
- (10) Is in conformance with the provisions of section 104.21 of this ordinance.

(Ord. of 7-13-87 § 2)

108.3. Application and granting procedures.

- (a) Before taking action on any application for special exception the planning board shall hold a public hearing. The application shall be received by the planning board at least thirty (30) days prior to a regularly scheduled meeting

of the planning board. The applicant will pay a fee which will be promulgated by the city council. The fee will be reviewed by the city council from time to time.

The planning board shall notify interested parties by placing a notice of hearing in one (1) newspaper with local circulation at least seven (7) days prior to the hearing stating the nature of the appeal and the time and place of the public hearing thereon. Owners of abutting property shall be notified by direct mail.

- (b) For the purposes of this article, the owners of property shall be considered to be the parties listed by the assessor of taxes for the City of Old Town as 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.
- (c) The request shall be in order for hearing at the next meeting of the planning board.
- (d) At any hearing a party may appear by agent or attorney. Hearings shall not be continued to other times except for good cause.
- (e) The appellant'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.
- (f) A right of appeal under the provisions of this chapter secured by vote of the planning board shall expire if the work or change involved is not commenced within one year of the date of which the special exception is granted.
- (g) If the planning board shall deny a request for special exception, a second request of a similar nature shall not be brought before the board within two (2) years from the date of the denial by the board of the first request, unless in the opinion of a majority of the board, substantial new evidence shall be brought forward, or unless the board finds in its sole and exclusive judgment, that an error or mistake or law or misunderstanding of facts shall have been made.

(Ord. of 8-19-85; Ord. of 9-5-89)

108.4. Expansion or enlargement of use and or special exception permit.

It shall be unlawful for any structure, building or use of premises previously authorized by special exception permit to be enlarged or expanded without securing, prior to such enlargement or expansion, a new permit therefor pursuant to the provisions of this section.

SECTION 109. AMENDMENTS

109. Authority.

The regulations, restrictions and boundaries set forth in this ordinance may from time to time be amended, supplemented or repealed in accordance with the provisions of 30-A M.R.S.A. § 4401 et seq.

(Ord. of 12-7-98, § 1)

109.1. Procedure on amendments.

- (a) Proposed amendments must first be submitted to the planning board for their consideration no less than thirty (30) days prior to a regularly scheduled meeting of the planning board.

- (b) The planning board shall hold a public hearing on the proposed amendment and shall at the regularly scheduled meeting fix a time and place of the hearing.
- (c) At least seven (7) days before the hearing, the city clerk shall advertise the date, time, place and purpose of the hearing in a newspaper of general circulation in the city.
- (d) The planning board shall make its official report at the next meeting of the legislative body which is held at least ten (10) days after the public hearing.
- (e) An amendment which has been disapproved by the planning board may be enacted only by a two-thirds vote of the legislative body.

(Ord. of 8-19-85; Ord. of 9-5-89)

SECTION 110. LEGAL STATUS PROVISIONS

110. Conflict with other ordinances.

- (a) All ordinances or parts of ordinances inconsistent with or contrary to the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.
- (b) Specifically, this ordinance replaces Chapter 19 of the Laws and Ordinances of the City of Old Town of 1961 and Chapter 20 of the Laws and Ordinances of the City of Old Town of 1957, which are hereby repealed except that they shall remain in full force for the trial and punishment of all past violations of them and for the recovery of penalties and forfeitures already incurred.
- (c) The regulations of this ordinance shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare provided, however, that where this ordinance is found to be in conflict with any other lawfully adopted ordinances, codes, covenants or regulations, the provision which imposes the higher standard or is the more restrictive shall prevail.

110.1. Validity.

If any section, subsection, clause or phrase of this ordinance shall be held to be invalid or unconstitutional, such invalidity shall not affect the remaining provisions of this ordinance and to that end the provisions of this ordinance are hereby declared to be severable.

SECTION 111. ZONE REGULATIONS

111.0. Low-Density Residence R-1 zones.

- (a) *Description and purpose.* The R-1 zone is established as a zone primarily for single-family dwellings. Other uses permitted in the district are those which are harmonious with the traditional pattern of development in residential neighborhoods in Old Town.
- (b) *Uses permitted.*
 - (1) Single-family dwellings.
 - (2) Public and private schools.
 - (3) Churches.
 - (4) Public facilities and grounds.
 - (5) Signs consistent with section 104.23.
 - (6) Agriculture, but not including the raising of livestock or poultry.

(7) Accessory uses or buildings, including private garages.

(c) *Special exceptions permitted by approval of the planning board:*

- (1) Home occupations, which are compatible with the neighborhood in which it is located provided that:
 - a. There is no external evidence of such occupation except a business sign not more than two (2) square feet in area.
 - b. The occupation or profession shall be conducted wholly within the principal building by not more than one person outside the business proprietor's family living therein.
 - c. The occupation shall not use more than twenty-five (25) per cent of the first floor area of the dwelling unit.
 - d. No nuisance shall be generated, including but not necessarily limited to, offensive noise, vibration, smoke, dust, odors, heat, glare, traffic or parking.
 - e. Sufficient space for parking shall be provided in compliance with section 104.11, but in no case in a required front yard.
- (2) Public utility or communications facilities provided that:
 - a. Any structures are placed not less than fifty (50) feet from any property line.
 - b. No vehicles or equipment are stored on the premises.
 - c. The lot is suitably landscaped.
- (3) Noncommercial greenhouses, provided they are not closer than ten (10) feet to any lot line and including private, noncommercial stables or kennels providing that no enclosure for animals is nearer than one hundred (100) feet to any property line.
- (4) Two-family dwellings provided that it shall find that such two-family use will not lead to overcrowding in the area and that adequate access and parking for such two-family dwelling be provided. The area and dimension requirements of the zone will be met in all such cases.
- (5) Elderly housing.
- (6) Accessory structures with less than the minimum side or rear yard requirements, provided that:
 - a. Side and rear yards are at least three (3) feet.
 - b. Front yard is at least twenty (20) feet.
 - c. No accessory structure is within six (6) feet of another structure on adjacent property.
 - d. Accessory structure greater than eighteen (18) feet in height (to the peak of the roof) or with more than one story shall meet the setback for principal structures. Limited storage above the main garage by is allowed.

(d) *Area, yard, and coverage requirements.*

- (1) Minimum lot size.

- a. Residence: Nine thousand (9,000) square feet plus one thousand five hundred (1,500) square feet additional for two-family dwellings except elderly housing, seven thousand (7,000) square feet plus seven hundred (700) square feet for each additional unit.
- b. Other uses: twelve thousand (12,000) square feet.
- (2) Minimum frontage: Eighty-five (85) feet plus ten (10) feet for two-family dwellings, except that for elderly housing located on corner lots the frontage requirement shall be only for the street on which the building fronts.
- (3) Minimum yard depths for principal structures:
 - a. Front yard: Twenty (20) feet.
 - b. Side yards: Ten (10) feet.
 - c. Rear yard: Twenty (20) feet.
- (4) Maximum height of building: Thirty-five (35) feet.
- (5) Maximum lot coverage: Thirty (30) per cent.
- (6) Reserved.
- (7) In elderly housing there shall be no more than four (4) dwelling units per structure.
- (e) *Site plan review.* Any use allowed in a R-1 zone involving new construction and conversion of existing in excess of three thousand (1,500) square feet of floor area shall be subject to site plan review requirements of section 104.24; provided that this section shall not apply to single-family detached dwellings or their accessory buildings.

(Ord. of 6-25-84; Ord. of 11-7-94, § G; Ord. of 12-2-96; Ord. of 2-1-99)

111.1. General Residence R-2 zones.

- (a) *Description and purpose.* Encompassing most of the older residential neighborhoods and located within convenient reach of central business facilities the R-2 zones are expected to contain most of the multifamily or apartment-type dwellings likely to be needed by the community. However, in harmony with the established neighborhoods, the predominant land use will probably continue to be single-family residences. As in the R-1 zones, certain additional uses which meet the requirements of this ordinance may be permitted, which contribute to balanced neighborhoods and enhance the attractiveness of the community.
- (b) *Uses permitted:*
 - (1) Any use permitted in an R-1 zone and subject to the same restrictions.
 - (2) Multifamily dwellings.
 - (3) Boardinghouses.
 - (4) Any use permitted by special exception in an R-1 zone, subject to the same conditions and restrictions.
- (c) *Special exceptions permitted by approval of the planning board:*
 - (1) Private clubs provided that off-street parking spaces are provided in accordance with section 104.11, that planting or fencing is used to

buffer such uses from adjacent properties and that the board shall find that such use on its proposed site will not be detrimental to the area.

- (2) Semi-public and private recreation buildings and grounds provided that the conditions of section 111.1 subsection (c) (1) above are met and provided that no noisemaking devices are to be employed.
- (3) Nursing home, hospital, medical offices, hotel, motel or inn meeting the requirements of supplementary regulations, section 104.17.
- (4) Decks consistent with section 104.21(1) (3).
- (5) Professional offices, education, conferences and training centers and laboratories in that portion of R-2 zones abutting major city arteries as follows: South Main, North Main and Center Streets and that portion of Stillwater Avenue west of the easterly boundary of Map 22 Lot 17, including both sides of Stillwater Avenue in the R-2 zone.
- (6) Accessory structures with less than the minimum side or rear yard requirements, provided that:
 - a. Side and rear yards are at least three (3) feet.
 - b. Front yard is at least twenty (20) feet.
 - c. No accessory structure is within six (6) feet of another structure on adjacent property.
 - d. Accessory structure greater than eighteen (18) feet in height (to the peak of the roof) or with more than one story shall meet the setback for principal structures. Limited storage above the main garage by is allowed.
- (7) Neighborhood general Stores (grocery stores) established after July 1, 2000 with the following conditions.
 - a. The store will not sell any fuel for any type of vehicle.
 - b. There will be no consumption of food on the premise.
 - c. No more than 10% of the gross sales floor area will be devoted to food preparation for food to be consumed off of the premise.
 - d. Parking - one space will be provided for each employee on duty and one space for each 200 square feet of building area.
 - e. The sales floor and display area is not to exceed 1200 square feet.

(d) *Area, yard, and coverage requirements.*

- (1) Minimum lot size:
 - a. Residences: Nine thousand (9,000) square feet plus one thousand (1,000) square feet for each additional dwelling unit over one, except elderly housing, seven thousand (7,000) square feet plus seven hundred (700) square feet for each additional unit over one.
 - b. Other uses: Nine thousand (9,000) square feet.
- (2) Minimum frontage: Seventy-five (75) feet plus ten (10) feet for each dwelling unit over one, except that for elderly housing located on corner lots the frontage requirements shall be only for the street on which the building fronts.

- (3) Minimum yard depths for principal structures:
 - a. Front yard: Twenty (20) feet.
 - b. Side yards: Ten (10) feet.
 - c. Rear yard: Twenty (20) feet.
 - (4) Maximum height of buildings: Thirty-five (35) feet.
 - (5) Maximum lot coverage: Thirty (30) per cent, except that in elderly housing maximum lot coverage shall be fifty (50) per cent.
 - (6) Reserved.
 - (7) Density in elderly housing shall be no more than twelve (12) dwelling units per structure.
- (e) *Site plan review.* Any use allowed in a R-2 zone involving new construction and conversion of existing in excess of three thousand (1,500) square feet of floor area shall be subject to site plan review requirements of section 104.24; provided that this section shall not apply to single-family detached dwellings or their accessory buildings.

(Ord. of 6-4-84; Ord. of 6-25-84; Ord. of 8-2-93; Ord. of 11-7-94, § G; Ord. of 12-2-96; Ord. of 2-1-99)

111.2. Rural Residence and Farming R-3/R-3A zones.

- (a) *Description and purpose.* Encompassing most of the area outside the urban center, the R-3 zones are intended for the kinds of uses which have traditionally predominated in rural New England; forestry and farming, farm residence and a scattering of varied uses not inconsistent with a generally open, nonintensive pattern of land use. The minimum lot size requirement is high in order to prevent overdevelopment where public sewers are not feasible and where a full range of urban services cannot be provided economically.
- (b) *Uses permitted:*
 - (1) Forestry, agriculture including roadside stands for the sale of produce, poultry or animal raising, riding stable, veterinary hospital or boarding kennel, provided that any building housing animals is located and not less than one hundred (100) feet from any property line.
 - (2) Single-family dwellings and customary home occupations.
 - (3) Commercial greenhouses.
 - (4) Professional offices.
 - (5) Public utility and communications structures.
 - (6) Semi-public and private recreation facilities and grounds.
 - (7) Cemetery.
 - (8) Sawmill or facilities for the storage and processing of agricultural products but not including slaughter houses.
 - (9) Schools.
 - (10) Public facilities and grounds.

- (11) Accessory uses including signs consistent with section 104.23.
 - (12) Allow newer mobile homes in R-3A zones as designated on the official zoning map in compliance with section 104.12 and Chapter 18 of the City Code of Ordinances.
- (c) *Special exceptions permitted by approval of the planning board:*
- (1) Hotels, motels, inns, boardinghouses, restaurants, nursing homes, hospitals meeting the requirements of supplementary regulations, section 104.17.
 - (2) Sand, gravel or earth materials removal meeting the requirements of supplementary regulations, section 104.14.
 - (3) Campgrounds or trailer parks meeting the requirements of supplementary regulations, section 104.16.
 - (4) Mobile home parks meeting the requirements of supplementary regulations, section 104.15.
 - (5) Art gallery, pottery barn or ceramics studio, auction barn, antique sales providing such use will provide off-street parking, is not within fifty (50) feet of any residential structure and will not create any traffic hazards due to access points, etc.
 - (6) Airport provided that such airport is not nearer than five hundred (500) feet to any dwelling and will not create any nuisance in the immediate neighborhood.
 - (7) Automobile junkyards meeting the requirements of supplementary regulations, section 104.18.
 - (8) Gasoline service stations provided that such use meets the area, yard and height requirements of the zone and provided that there are no residential structures within three hundred (300) feet in any direction from any structure, sign, pump, etc., on the proposed use parcel.
 - (9) Slaughterhouse provided that said use will have no buildings within five hundred (500) feet of any existing residential structure and provided that such use will be screened from view of any street or adjacent property.
 - (10) Storage and sale of building materials provided that no structure will be within three hundred (300) feet of any residential use and provided that such use is set back fifty (50) feet from any street right-of-way.
 - (11) Neighborhood general store or grocery store designed primarily to serve the residents of surrounding rural neighborhoods provided such use meets the area, yard and height requirements of the R-3 zone, has no more than one thousand six hundred (1,600) gross square feet for selling, storage and office space combined and provides at least three (3) and not more than eight (8) off-street customer parking spaces.
 - (12) Multifamily dwellings, providing the minimum lot size is five (5) acres and the minimum frontage is two hundred fifty (250) feet. Maximum density shall be determined at a rate of one (1) unit per forty thousand (40,000) square feet of lot area. Minimum setbacks from property lines for buildings, dumpsters, and parking areas shall be forty (40) feet.
 - (13) Business offices providing that such use will provide off-street parking and no structure shall be located closer than fifty (50) feet from any

property line and will not create any traffic hazards due to access points.

(14) Maintenance shop providing that such use will provide off-street parking and no structure shall be located closer than seventy-five (75) feet from any property line and will not create any traffic hazards due to access points.

(15) The planning board may allow the conversion of an existing single-family dwelling into a two-family dwelling provided that:

- a. The board shall find that such two-family use will not lead to overcrowding.
- b. No conversion shall be allowed which will result in living space in the primary apartment of less than seven hundred fifty (750) square feet; nor shall the resulting apartment be less than six hundred (600) square feet.
- c. There shall be clear ceiling heights of at least five (5) feet over the minimum floor area, and at least seven (7) feet over one-half of the same.
- d. The lot shall measure at least two (2) acres, and must have at least two hundred (200) feet of frontage.
- e. Adequate access and off-street parking for at least four (4) vehicles for such two-family dwelling shall be provided.

(16) Churches.

(17) Elderly housing.

(18) Mobile homes. The planning board may allow mobile homes as single-family dwellings provided that:

- a. The mobile home owner provides his name and proof of ownership of the mobile home to the board.
- b. The property on which the mobile home is to be placed is either owned by the mobile home owner in part or in whole or by an immediate member of the mobile home owner's family and such proof of land ownership is presented together with written authority of the landowner, if other than the mobile home owner, to locate the mobile home on the land.
- c. The mobile home owner provides to the board the number of occupants to live in the mobile home and affirms in writing that the mobile home is not and will not be used as a rental unit.
- d. The intent of the special exception is met, said intent being to allow persons owning farmland which is registered under the Farm and Open Space Tax Law (Title 36, Section 1101 to 1118, M.R.S.A.) the opportunity to turn control and/or ownership over to their child or children while reserving for themselves, the right to live on a portion of the property in a mobile home for the remainder of their lifetime or as long as the property remains enrolled in the Farm and Open Space Tax Law. The prime purpose of this special exemption is to permit a temporary use which will enable the long-term preservation of farmland.
- e. This special exception extends only to the original mobile home owner requesting the exception, and it shall be so recorded with the secretary of the planning board.

- f. The original parcel of land being considered shall have a minimum of three hundred (300) feet frontage, the intent being to adhere to the lot frontage requirements of an R-3 zone for residential use.
- (19) Structures on privately owned lots with less than the required street frontage provided:
- a. The lot is at least two (2) acres in size with a minimum buildable, non-wetland rectangle measuring one hundred fifty (150) feet by two hundred (200) feet. If city sewerage is provided, one (1) acre is required. The main structure shall be located within this minimum rectangle, with a minimum setback of thirty (30) feet from its edges.
 - b. The access is across a deeded, fee simple right-of-way at least thirty (30) feet wide for residential lots and fifty (50) feet for all other lots. The access drive shall be at least twelve (12) feet wide for residential lots and 18 feet wide for all other uses. The planning board may vary the access drive width requirements for due cause, however, in no case shall the access drive be less than twelve (12) feet.
 - c. Eighteen (18) inches of gravel base with a graded drained subbase is required.
 - d. Curve radii will be one hundred (100) feet minimum.
 - e. Access roads longer than three hundred (300) feet shall provide an adequate access and turnaround for emergency vehicles, as approved by the fire department.
- (20) Reserved.
- (21) Residential cluster developments. A planned development, laid out to utilize the unique characteristics of the land upon which it is located, and to preserve natural characteristics, wherein each principal building does not necessarily occupy a lot meeting minimum dimensional requirements. A cluster development may be permitted by special exception providing that the following conditions are met:
- a. Minimum original parcel size, five (5) acres.
 - b. Maximum number of lots shall be determined by dividing the parcel area located within the R-3 or R-3A zone by forty thousand (40,000).
 - c. The planning board shall find that the proposal preserves unique characteristics of the property. Examples of unique natural characteristics include, but are not limited to, stream and river access, outstanding stands of trees, farmland, and wetlands.
 - d. Minimum lot size shall be based on soil capability for septic systems, but shall not be less than twenty thousand (20,000) square feet. Lots shall have an identified location for the leach field and the reserve area. If public sewers are provided, minimum lot size shall be twenty thousand (20,000) square feet.
 - e. Minimum frontage shall be one hundred (100) feet. Lots with less than the minimum frontage shall meet the requirements of section 111.2(c) (19), with a minimum lot size of one (1) acre.
 - f. Minimum front, rear, and side setbacks: As outlined in section 111.2(d) (3).

- f. The identified unique natural characteristics shall be set aside by deed restrictions as permanent open space. Ownership of the open space can take one (1) of the following forms:
 - 1. The open space may be deeded to the city, with the approval of the planning board and city council.
 - 2. The ownership may be held by a homeowners' association. The minimum requirements of the association are that membership must be mandatory, and that the association have the power to assess dues and place liens. The articles incorporating the association shall be approved by the planning board.
- g. As it is the intent of cluster developments to take advantage of unique characteristics of the land upon which it is located, and to preserve natural characteristics, cluster developments without common open space shall not be considered.
- h. Uses permitted on lots in the cluster development shall be limited to single-family dwellings and accessory buildings, customary home occupations and seasonal residences.
- i. Uses of the common open space may include, but are not limited to, recreation, forestry, agriculture, and wildlife habitat. A management plan for the open space may be required by the planning board as a part of the approval.

(d) *Area, yard and height requirements.*

- (1) Minimum lot size: One acre, except for elderly housing which shall be five (5) acres.
- (2) Minimum frontage: One hundred fifty (150) feet, except for elderly housing which shall be two hundred fifty (250) feet principal frontage, one hundred (100) feet second frontage (corner lot).
- (3) Minimum yard depths:
 - a. Front yard: Thirty (30) feet, except for elderly housing which shall be forty (40) feet.
 - b. Side yards: Fifteen (15) feet; elderly housing, fifteen (15) feet.
 - c. Rear yard: Thirty (30) feet; elderly housing, thirty (30) feet.
- (4) Maximum height of buildings: Thirty-five (35) feet.
- (5) Maximum lot coverage: Thirty (30) per cent.
- (6) Density in multifamily, cluster subdivisions and elderly housing will not exceed four (4) dwelling units per acre.

(e) *Site plan review.* Any use allowed in a R-3 zone involving new construction and conversion of existing in excess of three thousand (3,000) square feet of floor area shall be subject to site plan review requirements of section 104.24; provided that this section shall not apply to single-family detached dwellings or their accessory buildings.

(Ord. of 6-4-84; Ord. of 6-25-84; Ord. of 12-3-84; Ord. of 8-19-85; Ord. of 7-13-87, § 3; Ord. of 12-2-91, § 2; Ord. of 11-7-94, §§ H--K)

111.3. Seasonal Residence R-4 zones.

- (a) *Description and purpose.* The R-4 zone encompasses land bordering Pushaw Lake and Perch Pond and is designed to provide for the most appropriate use and future development of this land, to preserve to the greatest extent possible the natural beauties and features of the land and to retard overdevelopment in the absence of public sewerage and water.
- (b) *Uses permitted.*
 - (1) Single-family dwellings.
 - (2) Public recreation facilities and grounds.
- (c) *Special exceptions permitted by approval of the planning board.*
 - (1) Semi-public or private recreation facilities and grounds provided such ventures are nonprofit and do not create a nuisance in the area.
 - (2) Public utility provided it meets the requirements of section 111.0(c)(2).
 - (3) Signs consistent with section 104.23.
 - (4) Decks consistent with section 104.21(1)(3).
- (d) *Area, yard and height requirements.*
 - (1) Minimum lot size: One acre for year-round, single-family dwelling and thirty thousand (30,000) square feet for seasonal dwelling; all other uses, one acre.
 - (2) Minimum frontage:
 - Waterfront: One hundred (100) feet.
 - Street front: One hundred (100) feet.
 - (3) Minimum yard depth:
 - Side yards: Fifteen (15) feet.
 - Front and rear yards: Twenty (20) feet.
 - (4) Maximum height of buildings: Thirty-five (35) feet.

Sec. 111.4 Low density multifamily zone R-5

- (a) *Description and purpose:* The R-5 zone is established as a zone for lower density multifamily dwellings and condominiums which will be serviced by city water and sewer.
- (b) *Permitted uses:*
 - (1) Multifamily dwellings with at least two units per structure which are served by water and sewer..
- (c) *Reserved*
- (d) *Area, yard and coverage requirements.*
 - (1) *Minimum lot size:* 20,000 square feet and 10,000 square feet for each additional unit.
 - (2) *Minimum frontage:* 150 feet plus 25 feet for each additional units up to 400 feet.

- (3) *Minimum yard depts.* For principal structures and parking:
 - a. Front yard: 30 feet for structures and 15 feet for parking.
 - b. Rear yard: 30 feet for structures and 15 feet for parking
 - c. Side yard: 30 feet for structures and 15 feet for parking
- (4) *Maximum height of buildings:* 60 feet
- (5) *Maximum lot coverage:* 30%
- (e) *Site Plan Review:* All new construction in the R-5 zone and conversion of existing in excess of 1500 square feet of floor area shall be subject to site plan review requirements of section 104.24.

111.5. Commercial-Business C-1 zones.

- (a) *Description and purpose.* The C-1 zone is established to accommodate those retail, service and office uses which are of city-wide significance. Within this area of concentrated activity and intensive development is the central business district, offices of professional and nonprofessional persons offering a variety of specialized services, and important public facilities. New construction and any alteration of existing building or land use should be consistent with the objective to develop and maintain the central business district.
- (b) *Uses permitted:*
 - (1) Any business or professional office.
 - (2) Parking garage or outdoor parking lot.
 - (3) Indoor commercial recreation and amusement facilities.
 - (4) Hotel or motel.
 - (5) Schools conducted as a gainful business, such as business schools or dance schools.
 - (6) Private membership social and fraternal clubs.
 - (7) Community service organizations.
 - (8) Cultural uses such as museums, libraries.
 - (9) Public and governmental facilities.
 - (10) Any other retail or service business (except as referred to in subsection (c) or (d) conducted within a building with no goods or materials stored outdoors, except goods or materials of a seasonal nature displayed for retail sale with outdoor display limited to one per cent of the gross floor area of the building. Retail businesses which include the incidental manufacture of goods on the premises (such manufacturing activity shall not occupy more than fifty (50) per cent of the enclosed floor area of the building nor employ more than five (5) persons on a single shift) are permitted if such manufactured items are also sold at retail on the premises.
 - (11) Accessory uses on the same lot with and customarily incidental and subordinate to the above uses.
 - (12) Signs consistent with section 104.23.
- (c) *Special exceptions permitted by approval of the planning board.*

- (1) Clinic or hospital.
- (2) Wholesale business which is conducted as a secondary activity to a retail business on the same premises and entirely indoors.
- (3) Any retail use involving outdoor sales or services such as gasoline service stations or involving the outdoor display or storage of merchandise such as building supply sales places, nursery sales, mobile home or other vehicle sales place (but specifically excluding automobile junkyards) provided that outdoor displays, parking and circulation do not extend into required front and rear yards and provided that automobile access points to the property are not closer than fifty (50) feet to one another or public or private streets or ways having access to the abutting street.
- (4) Newspaper and printing plant.
- (5) New multifamily dwellings, apartments, or mixed-use structures, providing that the proposed uses in mixed-use structures are otherwise permitted in this zone. Yard, height and lot coverage requirements shall be as set forth in section 111.1, general residence R-2 zones. The number of residential units allowed shall be one (1) for the first six thousand (6,000) square feet of lot area and one (1) additional for each additional one thousand (1,000) square feet of lot area.
- (6) Subsection (6) is reserved for elderly housing with language as in present addenda.
- (7) Conversion of structures to residential use in structures existing as of March 1980, providing that the ground level story and basement, if any, shall not be converted to residential use if located along North Main Street, South Main Street, or Water Street. Expansions of such structures up to thirty (30) percent shall be permitted for conversion.

Conversion of such structures in excess of one thousand five hundred (1,500) square feet shall require site plan review.

- (d) *Uses not cited.* Uses not cited in subsections (b) and (c) are not permitted in this zone.
- (e) *Area, yard, height and lot coverage requirements.*
 - (1) Minimum lot size: None.
 - (2) Minimum yard depth:
 - a. Front yard: None.
 - b. Side yards: None.
 - c. Rear yard: None.
 - (3) Maximum height of buildings: Forty-five (45) feet.
 - (4) Maximum lot coverage: Seventy-five (75) percent.
- (f) *Site plan review.* Any use allowed in a C-1 zone involving new construction and conversion of existing in excess of one thousand five hundred (1,500) square feet of floor area shall be subject to site plan review requirements of section 104.24; provided, that this section shall not apply to single-family detached dwellings or their accessory buildings.

(Ord. of 6-25-84; Ord. of 1-4-93(2); Ord. of 1-4-93(3))

111.6. Highway Commercial C-3 zones.

- (a) *Description and purpose.* The C-3 zones, located outside the central business district along highways, are designed to provide appropriate locations for commercial uses which require a large amount of open space for sales or storage, or for maneuvering and parking of automobiles.
- (b) *Uses permitted.*
 - (1) Any use permitted in a C-1 zone, section 111.4(b).
 - (2) Any retail business or service customarily serving motorists including, but not necessarily limited to drive-in theaters, drive-in restaurants, gift shops, outdoor recreation facilities, or gasoline filling stations.
 - (3) Outdoor commercial recreation or amusement services.
 - (4) Any retail use involving the outdoor display or storage of a substantial amount of the merchandise such as building supply sales places, nursery sales places, used and new car, truck, farm machinery, boat trailer, mobile home, or other vehicles sales places, but specifically excluding automobile junkyards.
- (c) *Area, yard, height and lot coverage requirements.*
 - (1) Minimum lot size: One acre where no municipal sewerage is available; ten thousand (10,000) square feet otherwise, except for elderly housing, where minimum lot size shall be one acre if no city sewer is available; and six thousand (6,000) square feet for first unit plus six hundred (600) square feet for each additional unit, where city sewer is available and used.
 - (2) Minimum frontage: One hundred (100) feet, except for elderly housing, one hundred (100) feet principal frontage, seventy-five (75) feet secondary frontage.
 - (3) Minimum yard depths:
 - a. Front yard: Forty (40) feet.
 - b. Side yards: Ten (10) feet, except for elderly housing which shall be twenty (20) feet.
 - c. Rear yard: Twenty (20) feet, except for elderly housing which shall be forty (40) feet.
 - (4) Maximum height of buildings: Thirty-five (35) feet.
 - (5) Maximum lot coverage: Thirty (30) per cent.
 - (6) Cluster developments. A cluster development shall be permitted by special exception in C-3 zones, providing that the following conditions are met:
 - a. If the required frontage is on a private road, road construction standards shall be as listed for local roads in the subdivision ordinance, with the following exceptions:
 - 1. Four-foot shoulders required.
 - 2. Three (3) inches of pavement required.
 - 3. No maximum length dead end street.

4. No cul-de-sac required, providing, that driveways, parking areas, and fire lanes be designed to allow for turning of fire apparatus, as approved by the fire department.
 5. It is not necessary to rough grade the full width of the right-of-way.
 6. An association shall be established, which shall have the responsibility of maintaining the private road. The minimum requirements of the association are that membership must be mandatory, and that the association have the power to assess dues and place liens. The articles incorporating the association shall be approved by the planning board.
 7. There is no minimum right-of-way width.
 8. The planning board, by a two-thirds (2/3) vote, is empowered to waive or modify any of the above road standards, with the exception of the requirement for provisions for long-term maintenance.
- b. Private roads shall not be accepted as city streets without first being upgraded to meet all the requirements of the subdivision ordinance.
 - c. Properties located within the commercial cluster shall have their main points of ingress and egress on the common road serving the commercial cluster.
 - d. Properties located on corner lots in a commercial cluster are not required to have one hundred (100) feet of frontage on both roads.
 - e. The developer of the commercial cluster shall prepare a conceptual plan for the development, which shall be approved by the planning board.
- (d) *Site plan review.* Any use allowed in a C-3 zone involving new construction and conversion of existing in excess of one thousand five hundred (1,500) square feet of floor area shall be subject to site plan review requirements of section 104.24; provided, that this section shall not apply to single-family detached dwellings or their accessory buildings.

(Ord. of 6-25-84; Ord. of 11-7-94, § L)

111.7. Shopping Center C-4 zones.

- (a) *Description and purpose.* The C-4 zones are designed to accommodate commercial growth which is located along major arterials. C-4 zones are served by municipal water and sewer and located on easily developable land. Access to uses in C-4 zones should be coordinated in order to minimize traffic congestion.
- (b) *Uses permitted.* This zone is designed for a building or group of buildings (in single ownership) with coordinated access and parking with an initial minimum of fifty thousand (50,000) square feet (used exclusively for:) for the main building. Minimum square footage for satellite structures shall be 400 square feet. The following uses are permitted:
 - (1) Any retail business where goods are displayed and sold indoors. Outdoor display shall be limited to one (1) per cent of the gross floor area occupied by the respective tenant except for nurseries and garden

centers, which shall be allowed fifty (50) per cent outside display of a seasonal nature, with a maximum of two thousand (2,000) square feet of outside storage.

- (2) Banks.
 - (3) Restaurants.
 - (4) Theaters.
 - (5) Professional offices.
 - (6) Laundromats, restricted to hours of operation of 7:00 a.m. to 10:00 p.m.
 - (7) Barber and beauty shops.
 - (8) Physical fitness facility.
 - (9) YMCA and other, similar uses, with related activities.
- (c) *Special exceptions permitted by the approval of the planning board.*
- (1) Elderly and congregate housing.
 - (2) Any other service business consistent with or complimentary to the permitted uses found in subsection (b).
- (d) *Uses prohibited.* The following uses are specifically prohibited:
- (1) Gasoline filling stations.
 - (2) Convenience stores.
 - (3) Car washes.

REQUIREMENTS FOR THE MAIN STRUCTURE AND PARKING LOTS SERVING THE MAIN STRUCTURE

- (e) *Area, yard, height, and lot coverage requirements.* The following requirements apply:
- (1) *Building setbacks:*
 - a. Height: One story, not to exceed twenty-eight (28) feet in height.
 - b. Front yard: Two hundred fifty (250) feet (No parking shall be nearer than twenty-five (25) feet to any property line nor ten (10) feet to any building line.)
 - c. Side yard: Seventy-five (75) feet (No parking area shall be nearer than fifty (50) feet to any property line nor ten (1) feet to any building.)
 - d. Rear yard: Seventy-five (75) feet (No parking area shall be nearer than fifty (50) feet to any property line nor ten (10) feet to any building.)
 - (2) *Parking lot setbacks:*
 - a. Front, side, and rear: Twenty-five (25) feet.
 - b. Parking setback from building: Ten (10) feet.
 - (3) *Landscaping requirements:* Along (each) the front property line the buffer area shall be attractively planted with trees, shrubs, plants, and grass lawns. (Along rear and side lines such buffer areas shall be at least

fifty (50) feet wide and along the street line such buffer areas shall be twenty-five (25) feet wide. All buffer areas shall be designed so as not to interfere with adequate vision for pedestrian and motor vehicles entering and leaving shopping area. Special plantings shall be provided throughout all buffer areas so that parking areas are not visible from abutting residential property.) This area shall be twenty-five (25) feet deep. The planning board may also require similar landscaped buffer areas along side and rear property lines, depending upon permitted land uses in these areas. The intent of the buffer requirement is to protect existing residential neighborhoods by blending the landscaping of the parking area to the residential neighborhoods.

Throughout the (shopping center) area the planning board may also require areas of planting and grass lawns adjacent to sidewalks and pedestrian ways which are required below.

(4) *Traffic circulation and parking:*

- a. The shopping center site shall not be divided by (any street) a public road.
- b. Direct ingress or egress shall be prohibited within two hundred (200) feet of any intersection, unless it is directly at an intersection.
- c. Pedestrian walks of not less than six (6) feet between the parking areas and the stores shall be provided.
- d. Traffic movements through the parking area shall be organized and guided, by directional signs, lane markings, and dividers, so as to assure maximum safety.
- e. Adequate provision shall be made to assure safe pedestrian movement to and through the parking area. Sidewalks shall be provided wherever necessary.
- f. (Parking areas shall be two (2) square feet for each square foot of floor space.) There shall be three (3) parking spaces for every one thousand (1,000) square feet of gross leasable space in the main structure.

REQUIREMENTS FOR SATELLITE STRUCTURES

(f) *Area, yard, height and lot coverage requirements.* Recognizing that the intent of the larger setbacks governing the main structure in the C-4 zones is to protect existing residential neighborhoods from major developments, setback requirements for satellite buildings are not as crucial. Therefore, the area, yard, height, and lot coverage requirements for satellite structures in the C-4 zone shall comply to the following:

- (1) *Minimum lot size:* Twenty thousand (20,000) square feet, except for elderly and congregate housing, where minimum lot size shall be one acre if no city sewer is available; and six thousand (6,000) square feet for first unit plus six hundred (600) square feet for each additional unit, where city sewer is available and used.
- (2) *Minimum frontage:* One hundred (100) feet. As the intent of the shopping center zone (C-4 zone) is to allow coordinated development and avoid a multitude of driveway openings, frontage on private roads for satellite structures is not only allowed but actively encouraged. Private roads constructed under this section shall meet the standards for local roads found in section 18-114(o) of the Subdivision Regulations, as amended, except that parking lot circulation may be designed to avoid the construction of a cul-de-sac and to waive the one thousand (1,000) foot

limit on cul-de-sac length. The applicant shall demonstrate to the planning board provisions for long-term maintenance of any private roads constructed under this section.

(3) *Minimum yard depths:*

- a. Front yards: Forty (40) feet.
- b. Side yards: Twenty (20) feet.
- c. Rear yards: Twenty (20) feet, except for elderly and congregate housing, which shall be forty (40) feet.

The above setbacks shall also apply to expansions of existing non-conforming commercial structures in the C-4 zone.

(4) *Maximum height of buildings:* Twenty-eight (28) feet.

(5) *Maximum lot coverage:* Thirty (30) per cent.

(6) *Location:* There shall be no satellite building within the required front, rear, or side yard of the main building, although a portion of the required building lot for the satellite building may be within the required setbacks.

(7) *Parking lots:*

- a. Setbacks from property lines, including private roads: Ten (10) feet. These areas shall be landscaped with a mixture of trees, shrubs, grass area, and natural vegetation (where present). In addition, the interior of the lot shall be landscaped.
- b. Traffic circulation and parking:
 - i. Access to parking areas serving satellite structures shall be via a private road leading through the parking lot serving the main structure.
 - ii. There shall be three (3) parking spaces for every one thousand (1,000) square feet of gross leasable space.

(g) *Nuisances.* No store or shop in the zone shall use any noisemaking devices such as phonographs, loudspeakers, amplifiers, radios, television sets, or similar devices so situated as to be heard outside any building in the zone. A public address system is permitted if operated by the management of the shopping center, provided that the sound is not audible in any residential zone. No fumes or objectionable odors shall be emitted from any building. (The display of merchandise placed on the exterior premises of any building is prohibited. Any trash, garbage, and debris of every kind shall be stored indoors until such time as they are collected for disposal.) No flashing, blinking, or rotating signs shall be allowed.

(h) *Lighting.*

- (1) All driveways, aisles, maneuvering spaces, and vehicular service areas shall be adequately illuminated.
- (2) All outside lighting, including sign lighting, shall be directed in such a way as not to create a nuisance in any residential zone.
- (3) No sign shall be illuminated beyond the hours of operation of the use to which it pertains.

(i) *Reserved.*

- (j) *(Off-street parking and) loading spaces:* (All areas for the loading and unloading of delivery trucks and other vehicles, and for the serving of establishments or shops shall be located in the rear yards.) Such spaces serving the main structure shall be located in rear yards.
- (k) *Drainage.* The entire shopping area shall be adequately drained of surface waters. Paved parking areas, planted areas and vacant areas, if any, shall be maintained so there is no accumulation of drainage waters. The design of such drainage installation shall be shown on proposed plans of the shopping center.)
- (l) *Permits.*
 - (1) *Building permit:* Before the issuance of a building permit, the planning board shall approve a site development plan and construction plans of the proposed planned shopping center.)
 - (2) *Occupancy permit:* Prior to the actual occupancy of the building or buildings, the development must obtain an occupancy permit from the city manager. The city manager, prior to his issuance of the permit, will check to see that all requirements under this ordinance have been met.
- (m) *Site plan review.* Any use allowed in a C-4 zone involving new construction shall be subject to site plan review requirements of section 104.24.
- (n) *Bonding.* The board may require that a certified check, certificate of deposit, or bond, in an amount to be set by the board, be posted to cover the maintenance and/or replacement of landscaping. Bonds shall be released by the board three (3) years after the installation of the landscaping, following an inspection by the city engineer.

DEFINITIONS

Garden center - A retail business which specializes in the sale of plants, flowers, shrubs, and trees, together with the sale of garden tools and fertilizer.

Nursery - A business which grows plants, flowers, shrubs, and trees for sale.

Satellite structure - A building in the C-4 (Shopping Center) zone which has coordinated access and parking with the main (greater than fifty thousand (50,000) square feet) building in the zone. A satellite structure cannot exist independently from a main structure of less than fifty thousand (50,000) square feet.

Intersection - The junction of two (2) or more public streets. For the purposes of this ordinance, a private driveway serving twenty or more dwelling units shall be considered a street, as shall a curve with a tangent angle between forty-five (45) and one hundred thirty-five (135) degrees.

(Ord. of 6-25-84; Ord. of 5-1-89; Ord. of 12-2-91)

111.8. Reserved.

111.9. Industrial I-1 zones.

- (a) *Description and purpose.* The purpose of the I-1 zones is to provide land which is conveniently located with respect to transportation and municipal services and where other conditions are favorable to the development of industry and which at the same time is so located as to prevent undesirable conflict with residential and business uses.
- (b) *Uses permitted.*

(1) Processing, manufacture, or other industrial use which is not injurious or noxious by reason of noise, smoke, vibration, gas, fumes, odor, dust, fire or explosion hazard, and which meets the following standards:

a. Wastes discharged to a municipal sewer shall not contain significant amounts of the following substances:

1. Floating solids, such as wood, cloth, plastics, fibers, feathers and similar material which could clog screens or pipes in the system.
2. Oils, tars, greases and similar materials which are not readily degradable.
3. Toxic compounds, such as insecticides, pesticides, rodenticides, poisons and herbicides.
4. Total Suspended Solids greater than twenty-five thousand (25,000) ppm.
5. Phenols or phenolic compounds in concentrations greater than 0.5 ppm.
6. Radioactive materials.
7. Substances containing heavy metal ions.
8. Substances with a pH greater than 9.0 or less than 5.5.
9. Flammable materials.
10. Foaming agents or foam-producing wastes.
11. Liquids at temperatures higher than one hundred sixty (160) degrees Fahrenheit.

Before discharge of any industrial or process waste to the municipal system, the details as to the nature and quantity of such discharge shall be submitted for review by the municipal regulating authority, who shall have the right to permit or deny connection to the municipal system, or to require such pretreatment or other modifications as may be deemed appropriate.

b. There shall not be discharged into the air, dirt, dust or fly ash in excess of 0.3 grains per standard cubic foot of flue gas which is not more than fifty (50) per cent excess air.

c. There shall be submitted to the building inspector detailed plans and specifications for any process which will not clearly meet these standards before such process is put into operation.

(2) Bulk oil and fuel tanks.

(3) Warehouses, truck terminals and storage.

(4) Wholesale business facilities.

(5) Industrial or business research laboratory.

(6) Municipal use.

(7) Public utilities, communication and transportation facilities.

- (8) Residential uses only when clearly incidental or accessory to a lawful industrial use.
 - (9) Retail and other businesses customarily serving or consistent with industrial uses.
 - (10) Accessory uses including signs consistent with section 104.23.
 - (11) Automotive or other maintenance shop which shall be compatible with primary industrial use, provided that junk autos or machinery are not stored on the premises.
- (c) *Area, yard, height and lot coverage requirements.*
- (1) Minimum lot size: None.
 - (2) Minimum frontage: None.
 - (3) Minimum yard depths:
 - a. Front yard: Twenty-five (25) feet.
 - b. Side yards: Fifteen (15) feet.
 - c. Rear yard: Twenty-five (25) feet.
 - (4) Maximum height of buildings:
 - a. Within four thousand (4,000) feet from any portion of an airport runway: Forty-five (45) feet.
 - b. More than four thousand (4,000) feet from [any] portion of an airport runway: One hundred fifty-five (155) feet.
 - (5) Maximum lot coverage: Fifty (50) per cent.
- (d) *Site plan review.* Any use allowed in an I-1 zone involving new construction and conversion of existing in excess of one thousand five hundred (1,500) square feet of floor area shall be subject to site plan review requirements of section 104.24; provided, that this section shall not apply to single-family detached dwellings or their accessory buildings.

(Ord. of 6-25-84)

111.10. Industry and Service District I-2 zone.

- (a) ***Description and purpose.*** The purpose of the I-2 zone is to provide land which is conveniently located to transportation facilities for business activities which require extensive land area, but do not require close proximity to residential areas of the community and to promote such land use in the community while at the same time locating such activity as to prevent undesirable conflict with residential areas.
- (b) ***Uses permitted.***
- (1) Processing, manufacture, or other industrial use consistent with standards of Section 111.9(b)(1)
 - (2) Bulk oil and fuel tanks.
 - (3) Warehouses, truck terminals, storage and distribution centers..
 - (4) Wholesale business facilities.

- (5) Industrial, governmental or business research or testing facilities.
- (6) Municipal use.
- (7) Public utilities, communication and transportation facilities.
- (8) Residential uses only when clearly incidental or accessory to a lawful uses in this zone.
- (9) Retail and other businesses customarily serving or consistent with permitted uses.
- (10) Accessory uses including signs consistent with section 104.23.
- (11) Airport
- (12) Airport related facilities and aviation related business.
- (13) Construction companies or associated business.

(c) *Special exceptions permitted by approval of the planning board.*

- (1) Primary and secondary processing of raw materials, upon findings that said activity creates no unusual noise or adds air or water pollutants to the area.
- (2) Gasoline service stations, provided that such use will not create a traffic hazard in the area and provided that ingress and egress points are at least one hundred (100) feet apart and no less than one hundred (100) feet from other public or private streets or ways providing access to the abutting street.
- (3) Automotive storage and repair provided that junked autos or machinery are not stored in the open and that where such uses abut other zones, provision is made for screening them from view by planting or fencing.

(d) *Area, yard, height and lot coverage requirements.*

- (1) Minimum lot size: One acre.
- (2) Minimum frontage: One hundred (100) feet.
- (3) Minimum yard depths:
 - a. Front yard: Thirty (30) feet.
 - b. Side yards: Twenty (20) feet.
 - c. Rear yard: Twenty (20) feet.
- (4) Maximum height of buildings: Thirty-five (35) feet and consistent with the height requirements of the Airport Master Plan or FFA Regulations.
- (5) Maximum lot coverage: Forty (40) per cent.

(e) *Site plan review.* Any use allowed in an I-2 zone involving new construction and conversion of existing in excess of one thousand five hundred (1,500) square feet of floor area shall be subject to site plan review requirements of section 104.24.

(Ord. of 6-24-85; Ord of 3-7-05)

Sec. 111.11 Landfill Zone (L-1)

(a) **Description and Purpose** - The purpose of the Landfill Zone is to provide an area for the state-owned solid waste landfill and activities accessory to and compatible with a solid waste landfill to occur in such a way that neither the solid waste landfill nor the accessory uses unreasonably impact the surrounding neighborhood; to balance the operational needs of the solid waste landfill with neighborhood concerns; and to reduce the conflicts that often occur between a solid waste landfill and neighboring residential areas. This Ordinance is intended to be consistent with the Resolve to Authorize the State to Purchase a Landfill in the City of Old Town, Chapter 93 of Private and Special Laws of Maine, 121st Legislative Session (the "Resolve").

(b) **Applicability** - the state owned landfill operating as of the date of enactment of this section 111.11 is exempt from this section, pursuant to the Resolve, unless and until the landfill is expanded.

(c) **Uses Permitted**

- (1) Expansion, as defined in the Resolve, of State owned solid waste landfills licensed by the City under Chapter 24 (Solid Waste Facilities) of the Code of Ordinances of the City of Old Town and in possession of all licenses required by the State of Maine or the United States.
- (2) Accessory uses and accessory structures to a permitted solid waste landfill, which may include office structures, maintenance facilities, storage buildings for materials used for construction and/or operation of the landfill or other structures used for the direct operation of the State owned land fill. An on-site residence for watchmen is an accessory use. Uses permitted by special exception are not considered accessory uses.

(d) **Special Exceptions.**

The following Special Exception Uses may be permitted by approval of the Planning Board in accordance with the standards set forth in §108.2 of this Ordinance, the City of Old Town Code of Ordinances, Appendix A (Zoning), and upon a finding by the Planning Board that the proposed Special Exception Use is so located on the site that it will not create an unreasonable risk of air pollution or of contaminating groundwater or surface water beyond the site boundaries, as evidenced by receipt of appropriate State licenses, and will not generate noise, odor, traffic, or litter that will unreasonably interfere with the existing uses of surrounding properties:

- (1) Recycling or recovery facility.
- (2) Landfill gas to energy facility.
- (3) Sand, gravel, or earth removal meeting the requirements of supplemental regulations, section 104.1.
- (4) Construction or demolition debris storage facility.

(e) **Prohibited Uses.** Any use not identified as a permitted use, an accessory use to a permitted use, or a Special Exception Use is prohibited.

(f) **Area, yard and other requirements.**

- (1) A solid waste landfill shall meet dimensional and buffer requirements established in Department of Environmental Protection Regulations, Solid

Waste Management Rules, Chapter 400 General Provisions of the Code of Maine Regulations, as evidenced by a permit issued by the Maine Department of Environmental Protection.

- (2) A solid waste landfill shall meet the setback, construction and environmental standards established in Department of Environmental Protection Regulations, Solid Waste Management Rules, Chapter 401 Solid Waste Siting, Design and Operation of the Code of Maine Regulations, as evidenced by a permit issued by the Maine Department of Environmental Protection. Any other structure shall be setback a minimum of 300 feet from any property line, except structures for monitoring or access control, and fences.
- (3) Any accessory use requiring a permit from the Department of Environmental Protection and every special exception use shall obtain all state and federal permits required and shall file copies with the Code Enforcement Officer prior to obtaining a building permit or commencing construction.

- (g) **Site Plan Review.** Any use allowed in the L-1 zone involving new construction or the conversion of an existing structure larger than fifteen hundred (1500) square feet of floor area to a new use shall be subject to the site plan review requirements of section 104.24 of this Ordinance, the City of Old Town Code of Ordinances, Appendix A (Zoning) .

Construction of the landfill, expansion of the landfill, accessory structures to the landfill such as berms, detention ponds, fences or parking lots are not subject to Site Plan Review.

- (h) **Definitions.** Terms used in this section and defined herein shall have the meaning set forth below:

(1) Construction or demolition debris: Construction or demolition debris means solid waste resulting from construction, remodeling, repair, and demolition of structures. It includes but is not limited to: building materials, discarded furniture, asphalt, wall board, pipes, and metal conduits. It excludes: containers of glue, tars, solvents, resins, paints, or caulking compound; friable asbestos; and other special wastes or hazardous wastes as those terms are defined in Chapter 400 General Provisions of the Maine Solid Waste Management Rules, revised January 23, 2001.

(2) Landfill gas to energy facility: A facility that processes gases generated by and captured from a solid waste landfill to produce energy or fuel, including but not limited to biomethane and electricity. Landfill gas means gases, including but not limited to carbon dioxide and methane, produced by decomposition of solid waste.

(3) Recycling or Recovery: Recycling or Recovery means the collection, separation, recovery and sale or reuse of materials, other than composting, that would otherwise be disposed of or processed as waste or the mechanized separation of waste, other than through combustion, and the creation and recovery of reusable materials other than as a fuel for the generation of electricity.

(4) Recycling Facility: A recycling facility is a building or other structure in which recycling or recovery occurs or an outside area screened by berms, fences or vegetation which is used for recycling or recovery.

(5) Solid Waste Landfill: A solid waste landfill is a discrete area of land or an excavation used for the disposal of solid waste pursuant to a license issued by the Maine Department of Environmental Protection.

111.12. Resource Protection P zones.

- (a) *Description and purpose.* The purpose of the resource protection zone is to control the use of the most vulnerable shoreland areas and other areas in which uses would adversely affect water quality, productive habitat, biological systems or scenic and natural values. This zone includes areas such as wetlands, floodplains and excessively steep slopes and some areas adjacent thereto, all of which are generally unsuitable for intensive development.
- (b) *Uses permitted.*
 - (1) Nonintensive recreational uses not requiring structures, such as hunting, fishing and hiking.
 - (2) Motorized vehicular traffic on roads and trails, and snowmobiling.
 - (3) Forest management activities, except for timber harvesting.
 - (4) Fire prevention activities.
 - (5) Wildlife management practices.
 - (6) Soil and water conservation practices.
 - (7) Mineral exploration, subject to the provisions of section 104.21.
 - (8) Surveying and resource analysts.
 - (9) Emergency operations as defined.
 - (10) Harvesting of wild crops.
 - (11) Essential services accessory to permitted uses.
 - (12) Signs consistent with sections 104.23 and 104.21(k).
- (c) *Uses permitted with restrictions.* The following uses may be allowed by permit from the building inspector when said inspector finds that such uses are in conformance with the provisions of this ordinance:
 - (1) Timber harvesting, subject to the provisions of section 104.21.
 - (2) Structures accessory to permitted uses.
 - (3) Temporary piers, docks, wharves, breakwaters, causeways, marinas, bridges over twenty (20) feet in length, and uses projecting into water bodies.
 - (4) Clearing for approved construction.
 - (5) Filling or other earth-moving activity of less than ten (10) cubic yards.
 - (6) Uses similar to permitted uses and uses similar to those requiring a building inspector's permit.
- (d) *Special exceptions permitted:*
 - (1) Agriculture, subject to the provisions of section 104.21.
 - (2) Road construction, subject to the provisions of section 104.21.
 - (3) Small nonresidential facilities for educational, scientific or nature interpretation purposes.

- (4) Public and private parks and recreational areas involving minimal structural development.
 - (5) Permanent piers, docks, wharves, breakwaters, causeways, marinas, bridges over twenty (20) feet in length and uses projecting into water bodies.
 - (6) Public utilities, including sewage collection and treatment facilities.
 - (7) Filling or other earth-moving activity of more than ten (10) cubic yards.
 - (8) Uses similar to uses allowed as special exceptions.
- (e) *Area, yard, height and lot coverage requirements.* No requirements.

SECTION 112. GENERATOR-OWNED SECURE LANDFILLS

112.00. Authority.

The City of Old Town promulgates this ordinance pursuant to M.R.S.A. 38, Section 1310-U and the Charter of the City of Old Town. This section shall not be interpreted to be stricter than applicable State Laws and regulations or Maine Department of Environmental Protection interpretations of those laws and regulations.

112.01. Purpose.

These review regulations are established to promote the public health, general, economic and environmental welfare by requiring development plans to be submitted to, and reviewed by the planning board for generator-owned secure landfills which have a potential for significant impact on the environment but which when properly designed can become acceptable uses. The primary purposes of such review shall be to insure orderly and beneficial development and the maintenance of public health and welfare.

112.02. Definitions.

Generator-owned secure landfill. A solid waste disposal facility used exclusively for the disposal of waste generated by the owner of the facility except that the facility may accept, on a nonprofit basis, up to fifteen (15) per cent by weight of all nonhazardous solid waste accepted on an annual average by sources other than the owner. Such a landfill must use a liner system, a leachate collection and treatment system, and a final cover system to minimize discharges of waste or leachate, and control the release of gas to the environment.

Owner/generator. This term is used throughout the ordinance and is meant to include the individual or entity that owns the site for the proposed landfill. Included in and covered by this term are all agents of the owner/generator that may be involved in the application process, the construction, the operation, and the closing of the landfill, including the transportation of waste material and leachate. It will be the responsibility of the owner/generator to ensure that all of its agents comply with the requirements under this ordinance.

All other definitions for the purpose of this ordinance shall be those defined in Title 38, Section 1303-C M.R.S.A. and the Department of Environmental Protection Solid Waste Management Regulations, Chapter 400, as amended from time to time.

112.03. Filing procedures.

- (a) Persons seeking approval must submit the following to the planning board clerk:
 - (1) The proposed site location including:
 - a. Location map: The most recent U.S. Geological Survey topographic map (7 1/2 minute series) of the area showing property boundaries and waste facility boundary.

- b. A narrative describing size, access and brief generalized description of pre-development vegetative growth.
- (2) Ownership and title; copies of deeds showing sufficient ownership and title.
- (3) Discuss the source and delivery of waste; provide:
 - a. The source of waste and amount of waste from each source including an estimate of material to be disposed of on an annual basis.
 - b. The types of vehicles used to deliver waste to the facility and to transport leachate to the treatment plant.
 - c. The estimated number of trips per day for each type of vehicle to enter or leave the facility and the routes of travel of those vehicles.
 - d. A narrative on safety precautions being taken to prevent spillage of waste material and/or leachate. Include procedures which will be followed if a spill occurred.
 - e. List of all hazardous waste generated at the facilities from which waste is being accepted and method of disposal of such waste.
- (4) Types of waste: Discuss types of waste from all sources. Include an estimate of chemical analysis of each material, variability, and the potential hazard of each material. Also, include a discussion on the composition of the leachate to be generated at the landfill.
- (5) Discuss the potential for source reduction and recycling of materials to be placed in the landfill.
- (6) Submit the estimated cost of project including separate costs for construction, closure and post-closure.
- (7) Submit evidence of the applicant's financial capability to complete the development.
- (8) Soils map: Include a soils map and narrative by a Maine certified Geologist or a Maine Professional Engineer showing evidence that the soils and geology on the site are suitable for the proposed secure landfill, consistent with Maine Department of Environmental Protection regulations.
- (9) Maps: Maps no larger than thirty-two (32) inches by forty-eight (48) inches shall be submitted at an appropriate scale to show needed detail. Maps shall cover the landfill site and a minimum of one thousand (1,000) feet beyond the site on all sides. Detail maps of the development shall not be greater than one (1) inch equals one hundred (100) feet. The maps shall show the following as appropriate:
 - a. Name and address of owner.
 - b. Scale, north arrow, and date.
 - c. Property boundaries.
 - d. Topography, existing and after closure. In the area of the development the contour interval shall be two (2) feet or less and the contour interval over the remaining property shall be ten (10) feet or less.
 - e. Roads, walkways, parking areas, and loading/unloading facilities.

- f. Culverts.
 - g. Structures.
 - h. Streams, intermittent streams, water bodies, wetlands.
 - i. Cross section lines.
 - j. Buffer zones.
 - k. Wells, springs, or any other source for private or public water supplies.
 - l. Utilities, existing and proposed.
 - m. Proposed landfill boundary.
 - n. Zoning.
 - o. Signs, fences and permanent outdoor fixtures.
 - p. Exterior lighting.
 - q. Easements and right of ways.
 - r. Erosion and sedimentation control.
- (9) Cross sections: Cross sections shall be submitted in at least two (2) directions through the landfill site showing:
- a. Original topography.
 - b. Final topography.
 - c. Surficial and bedrock geology.
 - d. Water table.
 - e. Significant aquifers.
- (10) Road construction: Typical cross section and profile of the main access roads to the facility. Also, discuss plans for maintenance and general upkeep of the roads in the development.
- (11) Construction and operation: A narrative describing the construction, development phases, and the operation of the landfill, including safety and security measures and the control of any offensive odor, dust and vermin.
- (12) Submit boundary survey, made and certified by a Maine licensed land surveyor.
- (13) Submit recent aerial photographs of the area taken within the last year. Aerial photos shall give complete stereo coverage within, at a minimum, one thousand (1,000) feet of the property boundary of the proposed landfill disposal facility. The scale of the photographs shall be one (1) inch equal to or less than five hundred (500) feet. The proposed solid waste boundary and the property boundary shall be clearly outlined on one (1) photo.
- (14) Ground Water Monitoring Program: A narrative discussing the ground water monitoring program during the operation of and after the closure of the landfill.

- (15) Surface water management with a narrative and maps discuss pre- and post-development storm water runoff and steps being taken to assure no increased peak runoff. Submit TR-55 for pre- and post-development conditions. Use the twenty-five-year storm event.
 - (16) Application fee. A nonrefundable application fee of two thousand dollars (\$2,000.00) shall be submitted with the application.
 - (17) Consultant fee: The owner/generator shall file, at the time of submitting an application, a five thousand dollar (\$5,000.00) fee to cover the cost of necessary consultant assistance for the City to evaluate the application. When the fee has been depleted to one thousand dollars (\$1,000.00), the owner/generator must replenish the fund so that there is five thousand dollars (\$5,000.00) in the fund up to a maximum of fifteen thousand dollars (\$15,000.00) contributed by the owner/generator. Expenditure of funds from this fund may be used to support the city's review of the application and must be approved by the City Council's Finance Committee. Upon approval or denial of the project and the completion of any appeals or time periods for appeals, monies remaining, if any, in this fund shall be reimbursed to the owner/generator.
 - (18) Department of environmental protection application: Three (3) copies of the complete application which has been submitted to the department of environmental protection and copies of any additional information requested by the Maine Department of Environmental Protection.
- (b) Filing of the above listed documents with the planning board clerk shall constitute filing of an application for review for secure landfills.

Within ten (10) days of the filing of an application for review, the planning board clerk shall notify the owner/generator in writing either that the application is a complete application or, if the application is incomplete, the specific additional materials needed to make the application complete. A completeness determination does not preclude the planning board from asking for more information.

Within sixty (60) days of the notification of a completed application the planning board shall hold a public hearing on the application. The planning board shall notify interested parties by placing a notice of hearing in one (1) newspaper with local circulation at least seven (7) days prior to the hearing stating the nature of the hearing and the time and place of the public hearing thereon. The owners of abutting property shall be notified by direct mail.

Within thirty-five (35) days of the public hearing the planning board shall approve subject to conditions of section 112.06, or disapprove the application. The planning board shall limit its review to the criteria set forth in section 112.04. The planning board may consult with the owner/generator or any other party in making its decisions. All decisions of the planning board shall contain a statement setting forth the exact reason for the finding. A copy shall be forwarded to the owner/generator and the code enforcement officer.

112.04. Standards for review for generator-owned secure landfills.

The planning board shall evaluate the application according to the following criteria and shall approve the application if all of the following have been met:

- (1) That the proposed development will be built on soil types which are suitable for the development of a secure landfill.
- (2) That the proposed development will not present an unreasonable risk that a discharge to a significant ground water aquifer will occur.
- (3) The developer has made adequate provisions for the safe movement of traffic of all types, into, out of and within the developed area. The

main access road is to be constructed in accordance with provisions of a private gravel road in section 104.6 and other internal roads are to be constructed in accordance with good engineering practice.

- (4) That the owner/generator has the financial capacity and technical ability to meet state air and water pollution control standards.
- (5) The owner/generator has made adequate provisions for the control of offensive odor, dust and vermin.
- (6) The owner/generator has taken steps to minimize storm water runoff and surface water contamination.
- (7) The owner/generator has provided for adequate litter control, spill control and has developed an adequate safety plan.
- (8) The owner/generator has provided landscaping and screening, leaving a buffer of at least three hundred (300) feet between the waste facility boundary and property boundary to minimize visual impact of the development. There shall be no cutting of trees inconsistent with the intent of maintaining this buffer, except for the purpose of erecting a fence or constructing a road or monitoring wells, or drainage structures within this three hundred (300) foot buffer.
- (9) That the owner/generator has taken adequate steps to minimize fire safety hazards.
- (10) The owner/generator shall meet the following minimum setback requirements at the time of application:
 - a. Distance from property line--300 feet.
 - b. Distance from nearest residence--1,000 feet.
 - c. Distance from nearest well or spring used for public or private water supply--1,000 feet.
 - d. Distance from a classified body of water--300 feet.
 - e. Distance from an airport runway--5,000 feet.
- (11) That the minimum size of real property owned by the generator on which the landfill is located is adequate to meet the operational needs and siting requirements of this ordinance.
- (12) The owner/generator has taken all practical steps which are economically feasible to reduce the amount of material to be placed in the landfill through recycling and source reduction.

112.05. Planning board decision.

The planning board may either grant approval subject to the conditions of section 112.06 or deny the application with appropriate findings.

112.06. Conditions of approval.

- (1) No transfer of the ownership of the development without the written permission of the planning board.
- (2) The owner/generator must receive all state and federal permits prior to the beginning of construction of the project and file a copy of said permits with the code enforcement officer.

- (3) Construction shall commence within two (2) years from the date of receiving the final local, state and federal permits.
- (4) The owner/generator shall notify the code enforcement officer and make an application to the planning board for any proposed modifications to the type of solid wastes disposed at the landfill which have been approved by the department of environmental protection. The planning board may hold a public hearing on the issue. Any public hearing held for this purpose shall occur within thirty-five (35) days after the owner/generator's request for planning board approval to dispose of the new waste stream. The planning board shall consider whether the disposal of the new waste stream will be physically and chemically compatible with the wastes already approved. That the method and route of transportation is adequate. That the owner/generator has considered alternate methods of disposal. That the owner/generator has considered the potential for recycling and source reduction for the necessary steps to ensure that the new material will not unreasonably increase the threat to the environment. The planning board shall approve or deny the request within thirty (30) days after the close of the public hearing.
- (5) At the time of closure, the owner/generator must submit to the planning board the closure plan it has developed in accordance with the department of environmental protection regulations.
- (6) If the owner/generator receives a notice of violation for the facility from the department of environmental protection or any other state or federal agency, it shall notify the code enforcement officer within three (3) business days of receipt of said notice. Within thirty (30) days, the owner will submit copies of the response of the notice violation to the code enforcement officer.
- (7) If the owner/generator detects any contamination of the ground water or any abnormal condition which may have an adverse effect on the health, safety, or welfare of the community, they must notify the Code Enforcement Officer as soon as possible, however, the notification must be within five (5) days.
- (8) Annual fee: The owner/generator must pay an annual operating fee to the City of Old Town of one thousand dollars (\$1,000.00) with the first payment due upon receipt of the initial permit and subsequent payments due by June 30 of every year the facility is operated.
- (9) Annual report: At the time of approval of the application, the owner/generator shall file a five thousand dollar (\$5,000.00) fee to cover the cost of sampling, analysis and review of the sampling results by a consultant. The fund shall run for the duration of the operation of the landfill and during the post closure monitoring period defined by the department of environmental protection. The city may use the fund to evaluate waste material, leachate, ground water or soil. Once the fund has been depleted to one thousand dollars (\$1,000.00) the owner/generator must replenish the fund so that there is five thousand dollars (\$5,000.00) in the fund. The city cannot spend more than five thousand dollars (\$5,000.00) of the fund in any given calendar year.

Expenditures from the fund must be done after consulting with the owner/generator. When possible, sampling and analysis will be done in conjunction with requirements of other federal and state agencies. All expenditures from this fund must be approved by the finance committee of the city council.

Any amounts remaining in the fund after the department of environmental protection post closure monitoring period shall be refunded to the owner/generator.

- (10) Reports: The owner/generator shall submit to the code enforcement officer the following:
- a. All quarterly and annual reports required by the department of environmental protection.
 - b. All other reports, notices or other submittals which are required by any state or federal agency.
 - c. Annual report: An annual report stating the amount, source and type of waste disposed of and the number and types of vehicles used. Also, include a discussion on the material recycled and efforts made to reduce amount of material placed in the landfill.
- (11) All conditions imposed on the applicant by any state or federal agency, whether the condition is imposed prior to approval by the city or subsequent to approval by the city, shall automatically become a condition of the permit issued by the city and the owner/generator is requested to notify the city of all such conditions.
- (12) The planning board may impose other conditions so long as those conditions do not violate the intent of this ordinance or state and federal law.
- (13) By accepting the permit the owner/generator, its assign, heirs, etc., accept all moral and financial responsibility for any damage to personal property or the environment resulting from its operation.
- (14) Representatives of the City of Old Town will have the right to enter and inspect the operation, facilities, and any vehicles used in the operation as well as the right to sample and test any material being placed in the landfill or leachate being produced at any reasonable hour.
- (15) Liability insurance:
- a. The owner/generator shall maintain liability insurance for sudden and accidental occurrences. The owner/generator shall provide proof of said insurance on an annual basis. Coverage shall be provided for bodily injury and property damage and must be provided during active life and during post closure of the facility. The purpose of the coverage in the event of contamination is to provide funds for the creation of an alternative water source or for the payment of damages to injured parties. The level of coverage must be at least one million dollars (\$1,000,000.00) per occurrence. The planning board may assess a higher minimum coverage if the planning board determines it is necessary for a particular facility. Coverage shall run for the active period of the landfill and for thirty (30) years following closure.
 - b. All liability insurance coverage amounts must be exclusive of legal defense costs.
 - c. If liability insurance is not available, a two million dollars (\$2,000,000.00) or greater, letter of credit drawn on a reputable bank, the terms of which the planning board must approve, may be used in lieu of liability insurance for sudden and accidental occurrences.
- (4) The wording of liability insurance endorsements shall be subject to approval by the planning board. This endorsement shall contain conditions equal to the following:

- a. The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer;
 - b. Whenever requested by the planning board, the insurer agrees to furnish a signed duplicate original of the policy and all endorsements;
 - c. Cancellation of this endorsement, whether by the insurer or the insured, shall only be effective upon written notice and only after the expiration of sixty (60) days after a copy of the written notice is received by the planning board; and
 - d. Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a written copy of the notice has been received by the planning board.
- (5) If a liability insurance policy is written as a "claims made" policy, an endorsement must provide for a discovery period of at least twelve (12) months beyond the date of expiration or cancellation of the policy. The endorsement must also provide that the underwriter will notify the public according to the requirements below:

At least sixty (60) days prior to the date upon which the policy will expire or be canceled, written notification shall be given to all owners of property abutting the facility and to the chief elected official in the municipality in which the facility is located and in each of the municipalities immediately abutting the municipality in which the facility is located, that insurance for the facility will expire or be canceled, giving date of expiration or cancellation, and that claims against the insured must be filed within twelve (12) months from the date of expiration or cancellation, specifying where and how claims can be filed.

- (6) The owner/generator of a private, noncommercial, solid waste disposal facility may use a financial test in lieu of liability insurance coverage under certain conditions. These conditions include:
- a. That the owner/generator of the solid waste facility derives more than fifty (50) per cent of its income from activities not associated with the handling, transportation, or disposal of solid waste of hazardous waste, and
 - b. That the owner/generator must meet the financial test for liability coverage in 40 CFR 264.147(f) of July 1, 1986.

112.07. Waiver of provisions.

Any facility owner/generator may seek a waiver to the provisions governing the establishment, alteration, operation or closing of the waste facilities subject to this section by using the procedures described below. It is the responsibility of the owner/generator to demonstrate that its proposal will comply with the intent of these rules.

Note: The planning board intends, through this section of "Waivers" to allow for flexibility and creativity in meeting the requirements of these rules. Differences in waste characteristics, facility size, geologic conditions and management capacities may be taken into consideration.

- (a) *Waivers affecting location, facility design, and construction.* The planning board has determined that the requirements of these rules affecting location criteria for new waste facilities are best able to ensure that a facility will not pollute any waters of the state, contaminate the ambient air, constitute a

hazard to health or welfare, or create a nuisance. Whenever a facility owner/generator seeks to vary from the requirements of these rules relating to location criteria, facility design and construction, the owner/generator must present clear and convincing evidence that the facility site's location, design or construction is distinctive in some way that allows for compliance with the intent of the ordinances of the City of Old Town.

Application or plans that vary from the requirements of these rules shall identify the provisions from which literal compliance is sought, the proposed alternative, and such clear and convincing evidence as is necessary to demonstrate affirmatively that the intent of the ordinances will be met. The planning board shall consider the waiver as part of its comprehensive review of a complete application.

- (b) *Variances affecting the contents of the application and the facility closure plan.* Specific requirements of this ordinance relating to the contents of an application for review under this section or the contents of a waste facility closure plan may be varied with the approval of the planning board. Particular waste characteristics, handling, site conditions and engineering designs may necessitate a greater or lesser need for data acquisition as determined by the planning board.
- (c) *Waivers affecting operation.* Whenever any facility owner/generator seeks to vary any aspect of a facility's operation from the operating requirements of this ordinance, application may be made to the planning board for a special condition to the approval.
 - (1) *Criteria.* The planning board may grant a waiver only when it finds that a facility will not contaminate any waters of the state, contaminate the ambient air, constitute a hazard to health and welfare, or create a nuisance, and, specifically, that compliance with the intent of the ordinance is affirmatively demonstrated.
 - (2) *Contents of application.* Requests for a waiver properly submitted to the planning board shall include, but not be limited to:
 - a. Identification of the specific provisions of these ordinances from which waiver is sought;
 - b. The alternative operational procedure proposed and the reasons why it meets the intent of the ordinance;
 - c. The reasons for which a waiver is requested, including the environmental, economic and technological justifications; and
 - d. Any other relevant information the planning board may request or the applicant may wish to provide.
 - (3) *Term and renewal of conditions.* The term of the waiver shall be concurrent with the term of the approval or for such lesser term as the planning board may specify.
- (d) *Three-hundred-foot waiver.* If the planning board shall determine from an examination of soil conditions, ground water characteristics, climatic conditions, topography, the nature and amount of the solid waste and other appropriate factor, that the deposit of solid waste within an area less than three hundred (300) feet from any classified body of surface water, will not result in an unlicensed direct or indirect discharge of pollutants to such body of surface water, it may, after notice and hearing, permit the deposit of solid waste within such area, upon such terms and conditions as it deems necessary. Permits issued pursuant to this section shall be for a term of not more than two (2) years but maybe renewed for successive two (2) year terms after re-examination pursuant to this section.

- (e) *Prohibitions.* The planning board shall not grant a waiver for a new or expended solid waste disposal facility when that facility:
- (1) Overlies a significant sand and gravel aquifer as that term is defined in 38 M.R.S.A. Section 1310-N (2-A) (A); or
 - (2) When the proposed facility poses an unreasonable threat to the quality of a significant sand and gravel aquifer which it does not overlie; or
 - (3) When the proposed facility poses an unreasonable threat to the quality of an underlying fractured bedrock aquifer as that term is defined in 38 M.R.S.A. Section 1310-N (2-A) (B).

112.08. Appeal procedure.

Any appeal of a planning board decision under this section must be made in writing to Superior Court, pursuant to Rule 80B of the Maine Rules of Civil Procedures within thirty (30) days of the applicant's receipt of the planning board decision.

112.09. Violations and fines.

Violation of the planning board approval including conditions imposed by section 112.06 shall be declared unlawful. The violation of any such provision shall be punishable pursuant to Title 30-A, Section 4452(3) M.R.S.A., as amended from time to time. Each day the violation continues constitutes a separate violation. Furthermore, the Judge shall order that the violator or owner will pay the entire cost of abating the violation including legal costs incurred by the city of Old Town to obtain enforcement.

112.10. Severability.

The provisions of this ordinance shall be severable and if any phrase, clause, sentence or provision, or the application thereof shall be held invalid, the remainder of this ordinance and the application thereof shall not be affected thereby.