



Town of Cumberland Zoning Ordinance

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## **100. TITLE, PURPOSE, DEFINITIONS**

**Sec. 101** **Title.** This ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Cumberland, Maine."

**Sec. 102** **Purpose.** The purpose of this ordinance, made as part of a comprehensive plan for the development of the Town, is to promote public health, safety, and general welfare; to encourage the most appropriate use of land throughout the Town; 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 provide 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 public services.

The purposes of the Shoreland Zoning provisions of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

This ordinance reflects land use regulations imposed by the Town of Cumberland. Additional Federal and/or State permits including State of Maine Department of Environmental Protection, United States Environmental Protection Agency, and the United States Army Corps of Engineers may be required. [Adopted, Effective 12/10/91]

**Sec. 103** **Intent.** Unless otherwise specified, it is the intent of this ordinance that any use not specifically allowed as a permitted use or a special exception use, is prohibited.

**Sec. 104** **Definitions.** The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual; the present tense includes the future tense, the singular number includes the plural, and the plural includes the singular; the word "shall" is mandatory, and the word "may" is permissive; the words "used" or "occupied" include the words "intended", "designed", or "arranged to be used or occupied", the word "building" includes the word "structure", and the word "dwelling" includes the word "residence", the word "lot" includes the words "plot" or "parcel". Terms

not defined shall have the customary dictionary meaning. Other terms shall be defined as follows:

- .1 **Accessory Building or Use:** A subordinate building or use customarily incidental to, and located on the same lot with, the main building or use, including farm markets for the sale of agricultural and similar products where at least 60% of the gross receipts are derived from the sales of products produced or grown, or where some ingredients of products are grown or produced, on the lot. [amended, effective 9/28/98]
- .2 **Acre:** An acre means a unit of area measure consisting of 43,560 square feet. [Effective 5/15/89]
- .3 **Agriculture:** The use of a tract of land for commercial purposes for cultivation and the production of crops, truck gardening, nurseries or greenhouses, or any allied industry, but exclusive of animal husbandry and exclusive of private gardens less than 1/2 acre.
- .4 **Airport, Private, Personal Use:** An airstrip restricted to use by the airstrip owner or lessee, and on an occasional basis, by his invited guests. [Adopted, effective 12/24/86]
5. **Alternative Tower Structure** - shall mean clock towers, bell steeples, light poles and water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers. [adopted, effective 12/13/99]
- .6 **Animal Husbandry:** The keeping of animals for commercial purposes, including dairying, stock raising, poultry raising, and breeding.
- .7 **Antenna** - any structure or device used for the purpose of wireless transmitting or receiving electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas. [adopted, effective 12/13/99]
- .8 **Antenna Array** - shall mean a set of antennas for one carrier or service that are placed on a mount at a given height, and spaced so as to avoid internal interference. [adopted, effective 12/13/99]
- .9 **Aquifer:** A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

- .10 **Aquifer Recharge Area**: Land area composed of soil or rock that is significantly permeable to allow infiltration and percolation of surface water into an aquifer.
- .11 **Auto Repair Service Garage**: A business establishment engaged in general repair, engine rebuilding, parts replacement, rebuilding or reconditioning of motor vehicles, body, frame or fender straightening and repair, painting and undercoating, but where no engine fuels are sold. [Adopted, effective 7/12/93]
- .12 **Backlot**: A lot which does not abut or front on a public right-of-way, and where access to the road is by a narrow, private right-of-way. [Amended, effective 8/10/98]
- .13 **Basement**: That portion of a building which is partly above grade and partly below grade, and having one-half or more of its height above grade.
- .14 **Bed and Breakfast Inn**: A single family dwelling in which the resident or residents of the dwelling provide overnight lodging to paying guests in a maximum of six guest bedrooms located within the dwelling or permitted attached structures. Total sleeping accommodations shall be for twelve (12) or fewer guests. Breakfast shall be the only meal served to guests and shall be limited to overnight guests. Rentals for more than one month in a calendar year to the same guest(s) are prohibited. The inn shall function as a private home with house guests.
- In addition to any other review required under this ordinance, a bed & breakfast inn shall be considered a home occupation and shall be allowed under the conditions and regulations applicable to home occupations subject to Site Plan Review and approval by the Planning Board if providing four or more guest bedrooms.
- A structure shall not be used or occupied as a bed & breakfast inn until the Cumberland Fire Chief certifies the structure to be in compliance with applicable sections of the most recent edition of the NFPA 101 Life Safety Code including but not limited to Chapters 20 & 22, all necessary State approvals have been received, and a certificate of use and occupancy has been issued by the Code Enforcement Officer. [Adopted, Effective 12/13/89]
- .15 **Boarding Care Facility**: A house or other place having more than two residents which, for consideration, is maintained wholly or partly for the purpose of boarding and caring for the residents. For the purposes of the Cumberland Zoning Ordinance, "boarding care facility" shall include only those facilities which have been certified, or which will be certified prior to the issuance of any use permits under this

ordinance, by the State of Maine as meeting all licensing and operation regulations for boarding care facilities as promulgated by the Maine Department of Human Services. [Amended, effective 9/14/88]

16. **Boarding kennel:** any place, building, tract of land or abode in or on more than three privately owned dogs or other pets, or both, are kept at any one time for their owners in return for a fee. [amended, effective 1/25/99]
- .17 **Building:** Any structure used or intended for supporting or sheltering any use or occupancy.
- .18 **Building Area:** Total of areas taken on a horizontal plane at the main finished grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between exterior faces of walls.
- .19 **Building Height:** Vertical distance measured from the average elevation of the proposed finished grade of the building to the highest point of the roof.
- .20 **Cellar:** That portion of a building that is partly or completely below grade and having at least one-half its height below grade.
- .21 **Clinic:** An office building used by members of the medical professions for the diagnosis and out-patient treatment of human ailments.
- .22 **Club, Private:** Building or use catering exclusively to club members and their guests for recreational purposes, and not operated primarily for profit.
- .23 **Cluster System:** A subsurface sewage disposal system that receives the effluent from two or more house units, individual homes, or systems in excess of 400 gallons per day. [Amended, effective 5/26/87]
- .24 **Clustered Residential Development:** A type of development where building lots are smaller with lot frontages that are shorter than those in a traditional subdivision, are grouped on certain portions of the site that are best suited for development, and other areas remain open and free from development. The homes may or may not be connected to the public sewer system. [Amended, effective 4/12/99]
- .25 **Coastal Wetland:** All tidal and subtidal lands; all lands below any identifiable debris line left by tidal action; all lands with vegetation

present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. [Amended, Effective 12/10/91]

- .26 **Co-location** - shall mean the location of more than one telecommunications facility (use) on a tower or alternative tower structure. [Adopted, effective 12/13/99]
- .27 **Commercial Fishing:** Activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing, such as the manufacture or sale of ice, bait and nets, and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats. [Adopted, Effective 12/10/91]
- .28 **Commercial Health and Recreation** : A use which receives a fee in return for the provision of indoor or outdoor health or recreational activity including, racquetball clubs, tennis clubs, health and fitness facilities, gymnasiums, swimming pools, skating rinks, and playgrounds, but not including amusement centers, golf courses, sports stadiums and campgrounds. Any retail activities, child care activities and personal health services which are associated with and located within a health or recreation facility are permitted. [Adopted, effective 10/13/92]
- .29 **Community Living Use:** A state-approved, authorized, certified or licensed group home, or intermediate care facility for mentally retarded group home, for eight or fewer mentally handicapped or developmentally disabled persons. [Amended, effective 9/14/88]
- .30 **Condominium:** A type of real estate ownership in which individual units are owned separately and all of the rest of the property is owned in common by all of the owners of individual units.
- .31 **Congregate Housing:** Residential housing consisting of private living quarters, with or without cooking facilities, within which a supportive services program is provided to functionally impaired residents who have difficulty living independently without assistance, yet who do not require the level of service available at a nursing home or boarding care facility as herein defined. For the purposes of the Cumberland Zoning Ordinance, "congregate housing" shall include only those facilities which have been certified, or which will be certified prior to the issuance of any use permits under this Ordinance, by the State of

Maine as meeting all regulations governing the administration of congregate housing services programs for the elderly. [Amended, effective 9/14/88]

- .32 **Construction Operations** - the use of a tract of land for the storage of construction equipment and materials used in residential and commercial construction. This use does not include the manufacturing or processing of concrete and/or asphalt, or the extraction or processing of earth materials. [Amended, effective 4/6/98]
  
- .33 **Continuing Care Retirement Community:** A residential care facility, with or without guaranteed lifetime care, that provides any combination of nursing home, boarding care, and congregate housing services as defined herein. For the purposes of the Cumberland Zoning Ordinance, "continuing care retirement community" shall include only those facilities which have been certified, or which will be certified prior to the issuance of any use permits under this Ordinance, by the State of Maine as meeting all applicable regulations for nursing homes, boarding care facilities, and congregate housing as promulgated by the Maine Department of Human Services. [Amended, effective 9/14/88]
  
- .34 **Coverage:** That percentage of the lot area covered by the building area.
  
- .35 **Day Care Home:** A house or other place conducted or maintained by anyone who provides, on a regular basis and for consideration, care and protection which is required to be licensed by the State, for three to twelve unrelated persons for any part of a day. Any facility, the chief purpose of which is to provide education, shall not be considered to be day care home.

In addition to any other review required under this ordinance, a day care home shall be considered a home occupation and shall be allowed under the conditions and regulations applicable to home occupations. [Adopted, effective 12/13/89, amended 3/24/97]
  
- .36 **Day Care Center:** A house or other place conducted or maintained by anyone who provides, on a regular basis and for consideration, care and protection for 13 or more children under 16 years of age, except children related to the operator by blood, marriage or adoption, who are unattended by parents or guardians, for any part of a day, except that any facility the chief purpose of which is to provide education, shall not be considered to be a day care center. [Adopted, effective 12/13/89]

- .37 **Dispersed Residential Development or Subdivision:** A type of development where building lots are smaller with lot frontages that are shorter than those in a traditional subdivision, are grouped on certain portions of the site that are best suited for development, and other areas remain open and free from development. [Amended, effective 4/12/99]
- .38 **District:** A section or sections of the Town of Cumberland for which regulations governing the use of buildings and premises, the size of yards, and intensity of use are uniform.
- .39 **Duplex:** A building used or intended for residential use containing two attached dwelling units. [Effective 5/15/89]
- .40 **Dwelling, attached:** A dwelling which shares a common wall with one or more other dwellings, and which has independent outside access.
- .41 **Dwelling, detached:** A dwelling which is physically separate from any other building, including manufactured housing which is composed of two or more sections joined lengthwise, with the exception of accessory buildings. [Amended, eff. 1/9/85]
- .42 **Dwelling Unit:** A group of rooms forming a habitable unit for one family with facilities used or intended to be used for living, sleeping, cooking and eating, the total floor area for which is not less than 600 square feet
- .43 **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.
- .44 **Essential services:** Gas, electrical, communication facilities, steam, fuel or water supply, transmission, or distribution systems.
- .45 **Family:** One or more persons occupying a dwelling unit and living as a single housekeeping unit, whether or not related to each other by birth, adoption or marriage, but no unrelated group shall consist of more than 5 persons, as distinguished from a group occupying a boarding house, lodging house, or hotel.
- .46 **Floor Area:** Sum of the gross horizontal area of the floors of a building, excluding basement floor areas. All dimensions shall be measured between interior faces of walls.

- .47 **Forest Management Activities:** Timber cruising and other forest resources evaluation activities, pesticide or fertilizer application, management planning activities, insect and disease control, timber stand improvement, pruning, regeneration of forest stands, and other similar associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.
- .48 **Forested Wetland:** A freshwater wetland dominated by woody vegetation that is six (6) meters tall or taller. [Adopted, Effective 12/10/91]
- .49 **Freshwater Wetland:** Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:
- (a) Of ten (10) or more contiguous acres, or of less than ten (10) contiguous acres and adjacent to a surface water body, excluding any river or stream, such that, in a natural state, the combined surface area is in excess of ten (10) acres; and
  - (b) Inundated or saturated by surface or groundwater 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 subsection. [Adopted, Effective 12/10/91]

- .50 **Functionally Water-dependent uses:** Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. These uses include, but are not limited to, commercial and recreational fishing and boating facilities (excluding recreational boat storage buildings), finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. [Adopted, Effective 12/10/91, amended, effective 9/28/98]

- .51 **Garden Apartment:** A multi-family dwelling in which units share a common outside access. Garden apartment buildings may have dwelling units on two levels, and each unit has secondary outside access by way of a patio or porch. Entrance drives, parking areas, open space and any recreational facilities are shared in common by all occupants.
- .52 **Gasoline Station:** Building or land that is used for the sale of motor fuel, oil, and motor vehicle accessories, and servicing motor vehicles, and which may include facilities for lubricating or washing, but not including painting, major repairs, storage of vehicles or sales of vehicles.
- .53 **Grade:** A reference plane representing the average of finished ground level adjoining the building at all exterior walls.
- .54 **Great Pond:** Any inland body of water which in a natural state has a surface area in excess of ten (10) 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. [Adopted, Effective 12/10/91]
- .55 **Groundwater:** All water found beneath the surface of the earth.
- .56 **Guest House:** A separate single-family dwelling intended for the private use of the property owner and located on the same parcel as the principal residential structure. A guest house shall not be leased or rented to non-family member.
- .57 **Hazardous Waste:** Any substance or materials which are gaseous, liquid, semi-solid or solid, and which are designated as hazardous by the United States Environmental Protection Agency in regulations which have been proposed or finally promulgated pursuant to the United States Resource and Recovery Conservation Act, Public Law 94-580 and amendment to the Act.
- .58 **Height** - shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said point is an antenna. [adopted, effective 12/13/99]
- .59 **Heliports, Private, Personal Use:** A heliport restricted to use by helipad owner or lessee, and on an occasional basis, by his invited guests. [Adopted, effective 12/24/86]

- .60 **Home Occupations:** Accessory use conducted within a dwelling or accessory structure by the residents thereof, which is clearly secondary to the dwelling used for living purposes and does not change the character thereof.
- .61 **Hospital:** [Removed, effective 9/14/88]
- .62 **Hotel:** A building containing individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities to the general public for compensation, and in which access to all rooms is made through an inside office or lobby.
- .63 **Impervious Surface:** Structures and other man-made improvements to land and materials covering the land which substantially reduce the infiltration of water. Impervious surfaces shall include, but are not limited to, roofs, paved areas, parking lots and driveways, regardless of surface materials. [Adopted 11/22/99]
- .64 **Junk Yard:** A yard, field, or other area used as a place for storage for more than thirty days for three or more unserviceable, discarded, worn-out, or junk motor vehicles. Also a yard, field, or other area used as a place of storage for (a) discarded, worn-out, or junk plumbing, heating supplies, household appliances or furniture and/or (b) discarded, scrapped, or junk lumber and/or (c) old scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste, and/or scrap metal.
- .65 **Landscaping Services:** The business location of a person engaged in the commercial practice of landscaping and who performs or furnishes the labor, and/or materials necessary to maintain or beautify land by contract or consent of the land owner, including, but not limited to; lawn care, planting and care of trees and shrubs, and winter maintenance such as snow removal; but not including retail sales of landscaping materials or tools. [adopted 11/22/99]
- .66 **Leachable Material:** Liquid or solid materials including solid wastes, sludge, and agricultural wastes that are capable of releasing water-borne contaminants into the groundwater.
- .67 **Light Manufacturing:** An establishment which is engaged in the mechanical transformation of materials into new products, including the assembling of component parts, and which has the following characteristics:

- .1 Does not create any offensive smoke, dust, odor, or other unhealthy or offensive air-borne discharge;
  - .2 Does not create any offensive noise or vibration;
  - .3 Does not include any outdoor storage of equipment or material; and
  - .4 Is designed so that the external appearance of any building is compatible with the neighborhood in which it is located.
- .68 **Loading Space:** Off-street space used for the temporary location of one licensed motor vehicle, which is at least twelve feet wide and forty feet long and fourteen feet high, not including access driveway, and having direct access to a street or alley.
- .69 **Lodging House:** A building used for temporary occupancy of individuals who are lodged with or without meals and in which bathroom facilities may be shared. [Effective 5/15/89]
- .70 **Lot:** A tract or parcel of land, in the same ownership, provided that parcels located on opposite sides of a public or private road shall be considered each a separate tract or parcel unless such road was established by the owner of the parcels on both sides thereof.
- .71 **Lot Area:** Total horizontal area within the property lines excluding any part thereof lying within the boundaries of a public street, or proposed public street.
- .72 **Lot Corner:** Lot which has an interior angle of less than 135 degrees at the intersection of two streets. A lot abutting a curved street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle less than 135 degrees.
- .73 **Lot Frontage:** For residential uses, the distance measured along a public or private right-of-way, for all other uses the distance measured along a public right-of-way. [Amended, effective 8/10/98]
- .74 **Lot Line:** Property line bounding a lot.
- .75 **Manufactured Housing:** This term shall be as defined in 30-A M.R.S.A. ~ 4358, as amended from time to time, and shall include both "mobile homes" and "modular homes" as defined therein. [Amended, effective 12/28/89]
- .76 **Marina:** A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore mooring or docking facilities for boats, and which may also provide accessory services

such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities. [Amended, Effective 12/10/91]

- .77 **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. [Adopted, Effective 12/10/91]
- .78 **Minimum Lot Width:** The closest distance between the side lot lines of a lot. [Adopted, Effective 12/10/91]
- .79 **Mobile Home Park** - means a parcel of land under unified ownership approved by the municipality for the placement of 3 or more manufactured homes. [Amended, effective 12/28/89]
- .80 **Mobile Home Park Lot** - means the area of land on which an individual home is situated within a mobile home park and which is reserved for use by the occupants of that home. [Amended, effective 12/28/89]
- .81 **Motel:** Building containing rooms which are rented as a series of sleeping units for transients, each sleeping unit consisting of at least a bedroom and bathroom.
- .82 **Motor Vehicle Sales Showroom:** Enclosed establishment for the display and sale of new and/or used motor vehicles, trailers, mobile homes, and boats.
- .83 **Multiplex:** A building used or intended for residential use containing more than two attached dwelling units. [Effective 5/15/89]
- .84 **Municipal Uses or Buildings:** Any use or building maintained by the Town of Cumberland.
- .85 **Net Residential Acreage :** Net residential acreage shall be determined by subtracting from gross acreage available the following:
  - .1 15% for roads and parking.
  - .2 Land which is cut off from the main parcel by a road, existing land uses, a utility easement or right-of-way or major stream so as to serve as a major barrier to common use, or so that it is isolated and unavailable for building purposes. (Final determination by Planning Board.)
  - .3 Other areas which are difficult to develop-in their natural state because of topography, drainage or subsoil conditions. Specific conditions include but are not limited to:

- (i) Slopes in excess of 20% sustained for 30,000 square feet or more,
  - (ii) wetlands as defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated 1/10/89 and as amended from time to time
  - (iii) Land shown to be in a 100 year flood zone as shown on the Flood Insurance Rate Map (FIRM)
- .4 Land in rights-of-way or easements, but not including land in open space easements under Sec. 406A or Sec. 406B.
  - .5 Resource Protection Districts. [Amended, effective 5/15/89, amended, effective 4/12/99]
- .86 **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. In the case of wetlands adjacent to rivers and great ponds, the normal high-water line is the upland edge of the wetland, and not the edge of the open water. [Adopted, Effective 12/10/91]
- .87 **Nursery School:** A house or other place in which a person or combination of persons maintains or otherwise carries out for consideration, during the day, a regular program which cares for three or more children, provided that:
- A. No session conducted for the children is longer than 3 1/2 hours in length;
  - B. No more than 2 sessions are conducted per day;
  - C. Each child in attendance at the nursery school attends only one session per day; and
  - D. No hot meal is served to the children.

The term does not include any facility operated as a day care center, a summer camp established solely for recreational and educational purposes or a public or private school in the nature of a kindergarten approved by the Commissioner of Educational and Cultural Services, in accordance with State statute as amended from time to time. [Adopted, effective 12/13/89]

- .88 **Nursing Home:** A facility operated in connection with a hospital or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State of Maine, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require extended care and related medical services. For the purposes of the Cumberland Zoning Ordinance,

"nursing home" shall include only those facilities which have been certified, or which will be certified prior to the issuance of any use permits under this Ordinance, by the State of Maine as meeting all licensing and operation regulations for skilled nursing facilities or intermediate care facilities as promulgated by the Department of Human Services. [Amended, effective 9/14/88]

.89 **Outdoor Recreational Facility** - A place designed and equipped primarily for the conduct of non-motorized outdoor sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities, amusement parks, campgrounds, and which has the following characteristics:

- .1 the total area of all buildings and structures, parking lots and other non vegetated surfaces not exceed 10% of the total lot area.
- .2 exterior lighting shall be used for the purposes of ensuring safe movement of people and vehicles, but not to provide illumination for nighttime use of the outdoor activity

The above notwithstanding, nothing in this definition may be read to prohibit the continued use by snowmobiles of existing snowmobile trails. [Adopted: April 28, 1997]

.90 **Parking Lot:** An off-street area for greater than three cars.

.91 **Parking Space:** Off-street space used for the temporary location of one licensed motor vehicle, which is at least nine feet wide and twenty-two feet long, not including access driveway, and have direct access to a street or alley.

.92 **Permitted Use:** A use specifically allowed in a zoning district, excluding non-conforming uses and special exceptions.

.93 **Personal Services:** Businesses providing services of a personal nature, such as barber, hairdresser, beauty parlor, shoe repair, shoe shine, laundry, or photographic studio.

.94 **Piers, Docks, Harries, Breakwaters, Causeways, Marinas, Bridges Over 20 feet in length, and Other Structures and Uses Extending over or Beyond the Normal High-water line or Within a Wetland:**

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

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

- .95 **Piggery**: A building or portion thereof, or an enclosure, used or designed for the keeping of more than five pigs more than six months old.
- .96 **Pond**: Any inland body of water which has a surface area in excess of 10 acres, except where such body of water is man-made and in addition is completely surrounded by land held by a single owner, and except those privately owned ponds which are held primarily as waterfowl and fish breeding areas or for hunting and fishing.
- .97 **Practical Difficulty**: practical difficulty shall mean that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner. An applicant for a practical difficulty variance must show compliance with the following standards:
- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
  - B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
  - C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
  - D. No other feasible alternative to a variance is available to the petitioner;
  - E. The granting of a variance will not unreasonably adversely affect the natural environment; and
  - F. The property is not located in whole or in part within the shoreland areas as described in Title 38, Section 435.

For the purposes of this section, “dimensional standards” means and is limited to ordinance provisions relating to lot coverage, frontage and setback requirements. [adopted 7/10/00]

- .98 **Principal Structure**: The structure in which the primary use of the lot is conducted.

- .99 **Private kennel:** any premises used for the harboring of more than three dogs under one ownership that are more than 6 months old. [amended, effective 1/25/99]
- .100 **Privy:** A pit in the ground into which human excrement is disposed.
- .101 **Professional Office:** A building singularly used for the individual or group practice of doctors, lawyers, dentists, optometrists, architects, engineers, accountants, realtors, insurance agents, or a building used for the branch office of a bank.
- .102 **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. [Adopted, Effective 12/10/91]
- .103 **Recent Flood Plain Soils:** The following soils series as described and identified by the National Cooperative Soil Survey: [Amended, Effective 12/10/91]

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

- .104 **Recreational Facility:** (removed effective 10/13/92)
- .105 **Religious Institution:** Includes church, temple, parish house, convent, or seminary.
- .106 **Replacement System:** A subsurface wastewater disposal 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. [Adopted, Effective 12/10/91]
- .107 **Residential Care Facility:** A facility defined herein as a nursing home, boarding care facility, congregate housing, community living use, or continuing care retirement facility. [Amended, effective 9/15/88]
- .108 **Retail Store:** Any shop or store for the retail sale of goods or personal services, excluding any drive-up service, free-standing retail

stand, gasoline service and motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.

- .109 **Riding Stable**: Any place at which horses or ponies are kept for hire either with or without instructions in riding.
- .110 **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. [Adopted, Effective 12/10/91]
- .111 **River**: A free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth. [Amended, Effective 12/10/91]
- .112 **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.
- .113 **Salt Marsh**: Areas along coastal waters (most often along coastal bays) which support salt tolerant species, and where at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed. [Adopted, Effective 12/10/91]
- .114 **Salt Meadow**: Areas which support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas. [Adopted, Effective 12/10/91]
- .115 **School**: A public or private kindergarten, elementary or secondary school, approved as such by the State of Maine, including accessory uses thereto, and providing instructional services to more than ten students. [Amended, effective 12/13/89]
- .116 **School, Commercial**: Any facility providing instructional services which is not included in the above definition with the exception of day-care or nursery schools . [Amended, effective 12/13/89]
- .117 **Setback**: The shortest horizontal distance between a lot line and any structure on a lot, except that for purposes of regulation of lots, buildings, structures and uses located within the shoreland area,

setback shall mean the nearest horizontal distance from the normal high-water line to the nearest part of a structure, road, parking space or other regulated object or area. [Adopted, Effective 12/10/91]

.118 **Shore Frontage:** The length of a lot bordering on a water body measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation. [Adopted, Effective 12/10/91]

.119 **Shoreland Area:** The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high water line of any great pond, river or salt water body; within two hundred and fifty (250) feet of the upland edge of a coastal or freshwater wetland; or within seventy-five (75) feet of the normal high-water line of a stream, which land area shall consist of the following overlay zoning districts:  
[Adopted, Effective 12/10/91]

Shoreland Resource Protection Overlay District  
Resource Protection/Floodplain Overlay District [Amended -  
effective 10/17/94]  
Limited Residential Overlay District  
Limited Commercial Overlay District  
General Development Overlay District  
Commercial Fisheries/Maritime Activities Overlay District  
Stream Protection Overlay District

.120 **Sewer** (or "Sewer Facilities"): The municipal sewer system. [Effective 5/15/89]

.121 **Signs:** The display of a word or words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, pictures, trade names, trade marks by which anything is made known, and/or combination of these shall be deemed signs.

.122 **Slaughtering Establishment:** A building or other place where animals or poultry, raised elsewhere, are killed or dressed for the market.

.123 **Special Exception:** A use that would not be appropriate generally or without restriction throughout a zoning district by which, if controlled as to number, areas, location or relation to the neighborhood, would promote the public health, safety, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in a zoning district by the Board of Adjustment and Appeals, if specific provision for such special exceptions is made in this zoning ordinance.

- .124 **Story:** That portion of a building including between the upper surface of a floor and the upper surface of the floor or roof next above.
- .125 **Stream:** For the purposes of Section 204.5 - Shoreland Area Overlay Districts, Section 423 - Shoreland Areas and Section 500 - Non-Conforming Uses, Buildings, Structures and Lots, a stream shall be defined as a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a Shoreland area. For purposes of the remainder of this Ordinance, a stream shall be as defined in Title 38 MRSA §480 - B as amended from time to time. [Adopted, Effective 12/10/91]
- .126 **Streets:** Public and private rights-of-way such as alleys, avenues, boulevards, roads, and highways.
- .127 **Structure:** Anything built for the support, shelter, or enclosure of persons, animals, goods, or property of any kind. [Amended, effective 5/26/87]
- .128 **Structural Alteration:** Any change to a structure, other than simple replacement in the supporting members, such as posts, columns, plates, joists, or girders.
- .129 **Substantial Start:** Completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost. [Adopted, Effective 12/10/91]
- .130 **Subsurface Sewage Disposal System:** A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 MRSA § 414, any surface wastewater disposal system licensed under 38 MRSA §413(1-A), or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 MRSA Chapter 13, subchapter 1. [Adopted, Effective 12/10/91]

- .131 **Sustained Slope**: A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area. [Adopted, Effective 12/10/91]
- .132 **Telecommunications Facility** - shall mean any structure, antenna, tower, or other device which provides radio/television transmission, telecommunications services, or any other spectrum-based transmissions/receptions, together with the facility's associated antennas, microwave dishes, horns, cables, wires, conduits, ducts, lightening rods, electronic and other types of equipment for the transmission, receipt, distribution or offering of such services. [adopted, effective 12/13/99]
- .133 **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.
- .134 **Tower** - shall mean any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and similar structures. [adopted, effective 12/13/99]
- .135 **Traditional Residential Development or Subdivision**: A type of development where building lots are at least the minimum lot size for the district in which it is located. A small portion of the lot may remain open and free from development
- .136 **Trailer**: A vehicular portable structure designed as a temporary dwelling for travel or recreational uses, not more than eight feet in body width and thirty-two (32) feet in body length.
- .137 **Tributary Stream**: A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. 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. [Adopted, Effective 12/10/91]

- .138 **Undue Hardship:** for any sign or height variance or for any structure that is located on a lot that is in whole or in part in a shoreland area, undue hardship shall mean:
1. The land in question cannot yield a reasonable return unless a variance is granted;
  2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  3. The granting of a variance will not alter the essential character of the locality;
  4. The hardship is not the result of action taken by the applicant or a prior owner. [Amended - effective 10/17/94, amended – effective 7/10/00]
- .139 **Upland Edge:** The boundary between upland and wetland. [Adopted, Effective 12/10/91]
- .140 **Variance:** A relaxation of the terms of this zoning ordinance where such variance 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. As used in this ordinance, a variance is authorized only for height, area, and size of structure or size of setbacks and lot coverage and/or the size of signs; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.
- For Shoreland Areas a variance shall also be authorized for percent of lot coverage, lot width, lot area, setbacks, substantial expansions and water frontage requirements. [Adopted, Effective 12/10/91]
- .141 **Vegetation:** All live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level. [Adopted, Effective 12/10/91]

- .142 **Volume of a Structure:** The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof. [Adopted, Effective 12/10/91]
- .143 **Warehouse:** Warehouse, wholesale establishment, bulk storage and bulk sales outlet.
- .144 **Water Body:** Any great pond, river, stream or tidal area. [Adopted, Effective 12/10/91]
- .145 **Water Crossing:** Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. [Adopted, Effective 12/10/91]
- .146 **Wetland:** For the purposes of Section 204.5 - Shoreland Area Overlay Districts, Section 423 - Shoreland Areas and Section 500 - Non-Conforming Uses, Buildings, Structures and Lots, a wetland shall be a freshwater or coastal wetland as defined herein. For the purposes of the remainder of this Ordinance, a wetland shall be defined as a freshwater or coastal wetland, regardless of size. As defined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated 1/10/89 and as amended from time to time. [Adopted, Effective 12/10/91]
- .147 **Wetland Associated with Great Ponds and Rivers:** Wetlands contiguous with or adjacent to a great pond or river, and which during normal high water, are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river. [Adopted, Effective 12/10/91]

## SECTION 200 ZONING DISTRICTS

### **Sec. 201    Zoning Map and Districts**

The zoning map officially entitled "Cumberland Zoning Map" dated June 13, 1984, and amended on June 12, 1985, February 9, 1987, May 15, 1989, December 28, 1989, March 11, 1991, and December 10, 1991, January 25, 1999, and July 10, 2000 (setback overlay districts) and on file in the office of the Town Clerk and filed with the Cumberland County Registry of Deeds is hereby adopted as part of this ordinance. Regardless of the existence of other printed copies of the zoning map, the said zoning map on file and as officially adopted by the Cumberland Town Council shall be the final authority as to the location of zoning districts in the Town; provided, however, that notwithstanding said zoning map, the entire surface area of the following islands is contained within the Resource Protection district: Bangs Island, Basket Island, Little Chebeague Island, Stockman Island, Jewel Island, Little Jewel Island, West Brown Cow Island, Crow Island, Broken Cove Island, Goosenest Island, Rogues Island, Upper Green Islands, and Sand Island. The Town of Cumberland Zoning Map divides the Town into the following districts: [Amended, Effective 12/10/91]

Rural Residential	(RR)
Low Density Residential	(LDR)
Medium Density Residential	(MDR)
Island Residential	(IR)
Local Business	(LB)
Highway Commercial	(HC)
Office Commercial	(OC)
Industrial	(I)
Rural Industrial	(RI) [Effective 3/11/91]
Island Business	(IB)
Mobile Home Park Overlay	(MHP) [Effective 12/28/89]
<b>*Shoreland Zoning Overlay Districts:</b>	
Resource Protection Overlay	(RP) [Effective 12/10/91]
Resource Protection/Floodplain Overlay	(RP/FP)[Effective 10/17/94]
Limited Residential Overlay	(LR) [Effective 12/10/91]
Limited Commercial Overlay	(LC) [Effective 12/10/91]
General Development Overlay	(GD) Effective 12/10/91]
Commercial Fisheries/Maritime Activities Overlay	(CFMA)[Effective 12/10/91]
Stream Protection Overlay	(SP) [Effective 12/10/91]
Setback Overlay District 1	(SO1) [Effective 7/10/00]
Setback Overlay District 2	(SO2) [Effective 7/10/00]

### **Sec. 202    District Boundaries**

Where uncertainty exists with respect to the boundaries of the various zones as shown on the official zoning map, the following rules shall apply:

1. Unless otherwise indicated, district boundaries shown within the lines of roads, streams and transportation rights of way shall be deemed to follow center lines; except that the district lines in the setback overlay districts shall follow property lines. The abandonment or non-use of roads shall not affect the location of such district boundaries. Development of property which is in more than one zoning district shall be controlled by the classification of the area to be used. [Amended 7/10/00]
2. The depictions of the shoreland zoning districts on the official zoning map are illustrative of the general location of such zones. The actual boundaries of these zones may be determined by an on-site evaluation done by an appropriate professional using the criteria established in Section 204.5 of this Ordinance, provided the on-site evaluation is reviewed and approved by the Code Enforcement Officer. Where such measurement is not the same as the location of the boundary on the official zoning map, the on-site measurement shall control, unless the official zoning map indicates that the zone boundary shall follow an existing property line. [amended, effective 9/28/98].

**Sec. 203     District Objectives**

- 203.1     No building shall hereafter be erected or altered to house a greater number of families, or to have a smaller setback, or to occupy a smaller lot, than is specified herein for the district in which such building is located.
- 203.2     No use of land or buildings shall be allowed, nor shall any building be erected or altered for a use, which use is not specifically allowed within the district in which it is located, except as permitted under Section 500.
- 203.3     No parcel of land shall be subdivided into lots smaller than the minimum lot size specified for the district in which the parcel is located, except as allowed under Section 205

**Sec. 204     District Regulations**

**204.1       Rural Residential Districts (RR1 and RR2) [Effective 5/15/89]**

The RR districts primarily allow agriculture, low density residential and other low density uses with the intent of maintaining significant amounts of open space and a generally rural character.

**204.1.1     Rural Residential District 1 (RR1) [Effective 5/15/89]**

The RR1 district requires larger minimum lot sizes than does the RR2 district on the basis of the results of the Community Groundwater Study, Cumberland, Maine, March, 1989.

204.1.1.1   The following uses are permitted in the RR1 district:

- .1   Single family detached dwelling;
- .2   Duplex dwellings; [Effective 5/15/89]
- .3   Multiplex dwellings, subject to the provisions of Sec. 406A; [Effective 5/15/89]
- .4   Agriculture;
- .5   Animal husbandry on a site greater than three (3) acres;
- .6   Timber harvesting;
- .7   Manufactured housing and mobile homes in the Manufactured Housing overlay zones as delineated on the official Town zoning map; [Amended, Effective 1/9/85]
- .8   Private airport, personal use, subject to Site Plan Review and to the provisions of Section 419;
- .9   Private heliport, personal use, subject to Site Plan Review and to the provisions of Section 419;
- .10  Sewer pumping stations, subject to the provisions of Section 420.4.
- .11  Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
- .12  Uses and buildings accessory to those above.

204.1.1.2   The following uses are allowed as special exceptions in the RR1 district, requiring the approval of the Board of Adjustment and Appeals:

- .1   Home occupations;
- .2   Private kennels;
- .3   Animal husbandry on a site of three (3) acres or less;
- .4   Above ground utility lines not located within public ways;

- .5 Excavation of land, subject to the provisions of Sec. 410;
- .6 Temporary sawmills, subject to the provisions of Sec. 427;
- .7 Municipal uses and buildings, subject to Site Plan Review;
- .8 Accessory structures of public utilities subject to Site Plan Review;
- .9 Cemeteries, subject to Site Plan Review;
- .10 Religious institutions, subject to Site Plan Review;
- .11 Private schools, subject to Site Plan Review;
- .12 Boarding kennels, subject to Site Plan Review;
- .13 Riding stables and schools, subject to Site Plan Review;
- .14 Extraction and/or bulk storage of groundwater or spring water subject to the provisions of Sec. 430;
- .15 Residential care facilities [see Sec. 432]; [Effective 9/14/88]
- .16 Day care centers and nursery schools for no more than 20 children, subject to the provisions of Section 408A and Site Plan Review; [Amended, effective 12/13/89, amended, effective 4/12/99]
- .17 Uses and buildings accessory to those above.

204.1.1.3 The following lot standards apply in the RR1 district: [Effective 5/15/89]

- .1 4 acre minimum lot size, except that the minimum lot size shall be 2 acres for a lot served by sewer;
- .2 In the case of duplex or multiplex development, there shall be no less than 2.5 acres of lot area per dwelling unit, except that the minimum lot area per dwelling unit for a lot served by sewer shall be 1 acre;
- .3 There shall be no less than 200 feet of lot frontage [amended, effective 8/10/98].

204.1.1.4 The following minimum setbacks are required in the RR1 district, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines:

- .1 Front: 50 feet;
- .2 Rear: 75 feet;
- .3 Side: 30 feet; combined width at least 75 feet.

204.1.1.5 Notwithstanding the provisions of Section 204.1.1.3, the owners of large parcels located in the RR1 district may create development lots that do not meet the minimum lot size requirement set forth in Section 204.1.1.3, provided that all of the following standards are met: [amended, effective 4/12/99]

- .1 The parcel from which the new development lot will be created shall have no less than twenty-five (25) contiguous acres in the same ownership as of (date). Parcels on the opposite sides of a town road or way shall not be considered contiguous for purposes of this section.

- .2 The creation of the new development lot does not result in the creation of a subdivision as defined in 30-A.M.R.S.A. Section 4401 and does not require an amendment to an existing subdivision plan recorded in Cumberland County Registry of Deeds. (Q: Approved and recorded / post - 1971 only or recorded / grandfathered as well?) (prior to new subdivision law in 1971).
- .3 A development lot shall be at least two (2) acres in size, unless served by public sewer, in which case the development lot shall be at least one (1) acre in size.
- .4 The creator of the development lot must create an easement parcel somewhere on the large contiguous parcel to create the development lot. The easement parcel shall be no smaller than the minimum amount of land necessary to meet the minimum lot size required by Section 2.1.1.3 when added to the land area of the development lot.
- .5 An easement parcel must meet one or more of the following standards:
  - The parcel is active farmland, for purposes of this Section only active farmlands are defined as hayfields, pasture, row crops, orchards.
  - The parcel preserves an area with an active trail that can be used by the general public (as shown on the Greenbelt Plan or is an obvious well used trail).
  - The parcel provides a connection to an existing trail system that can be used by the general public.
  - The parcel preserve a high value wetland, wildlife habitat or stream, all as determined by the Maine Department of Inland Fisheries and Wildlife.
  - The parcel provides access to a water body.
  - The parcel includes land included in the Resource Protection District or the Stream Protection District.
  - The parcel buffers a piece of land owned by the Town.
  - There are no existing structures on the proposed easement parcel, except for non-residential structures that are necessary to an agricultural or forestry use.

.6 The creator of the easement parcel shall restrict the easement parcel so that it cannot be used for development or construction of any type other than non-residential structures that are accessory to agricultural or forestry use. In addition, the easement parcel may not be used for density calculations for or any development purpose other than those provided herein for the development lot. Any paving of the easement parcel shall be restricted either to that necessary for support of agricultural or forestry uses or to trails. The deed creating the easement parcel shall state that it is perpetual and it is created to benefit the development lot, and shall include both the purposes to which the parcel is limited and the development restrictions required by this Ordinance. The deed creating the easement parcel shall explicitly reference the deed for the development lot, and the deed creating the development lot shall explicitly reference the easement parcel. The creator of the easement parcel may hold the easement, or the creator may transfer the easement to the Town, to a qualified land trust, or to some other person or legal entity that will operate the easement parcel for agricultural or forestry purposes. The creator of easement parcel may retain ownership of the fee interest in the easement parcel or may transfer it subject to the provisions of the easement. The owner of the development parcel does not have to own the easement parcel or be the holder of the easement. The creator of the easement parcel will provide copies of the proposed deeds to the easement parcel and the development lot to the Town for approval by the Town Manager and the Town Attorney prior to the sale of the development lot and will also provide evidence that the proposed holder of the easement has agreed to accept the easement. In no event shall any building permit be issued for a development lot until the applicant can demonstrate compliance with these provisions through the provision of copies of deeds recorded in the Cumberland County Registry of Deeds.

.7 Development lots shall not have frontage on the following roads:

- Tuttle Road
- Blanchard Road
- Greely Road
- Greely Road Extension
- Range Road
- Longwoods Road
- Orchard Road

New development lots shall be subject to the backlot provisions Sec. 403 of this Ordinance.

### **204.1.2.1 Rural Residential District 2 (RR2)**

The RR2 district requires a lesser minimum lot size than does the RR1 district on the basis of the results of the Community Groundwater Study, Cumberland, Maine, March, 1989. [Effective 5/15/89]

204.1.2.1 The following uses are permitted in the RR2 district:

- .1 Single family detached dwellings;
- .2 Duplex dwellings; [Effective 5/15/89]
- .3 Multiplex dwellings, subject to the provisions of Sec. 406 A; [Effective 5/15/89]
- .4 Agriculture;
- .5 Animal husbandry on a site greater than three (3) acres;
- .6 Timber harvesting;
- .7 Manufactured Housing and mobile homes in Manufactured Housing overlay zones as delineated on the official Town zoning map. [Amended, Effective 1/9/85]
- .8 Private airport, personal use, subject to site plan review and to the provisions of Section 419;
- .9 Private heliport; personal use, subject to site plan review and to the provisions of Section 419;
- .10 Sewer pumping stations, subject to the provisions of Section 420.4;
- .11 Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
- .12 Uses and buildings accessory to those above.

204.1.2.2 The following uses are allowed as special exceptions in the RR2 district, requiring the approval of the Board of Adjustment and Appeals:

- .1 Home occupations;
- .2 Private kennels;
- .3 Animal husbandry on a site of three (3) acres or less;
- .4 Above ground utility lines not located within public ways;
- .5 Excavation of land, subject to the provisions of Sec. 410;
- .6 Temporary sawmills, subject to the provisions of Sec. 427;
- .7 Municipal uses and buildings, subject to site plan review;
- .8 Accessory structures of public utilities, subject to site plan review;
- .9 Cemeteries, subject to site plan review;
- .10 Religious institutions, subject to Site Plan Review;
- .11 Private schools, subject to Site Plan Review;
- .12 Boarding kennels, subject to Site Plan Review;
- .13 Riding stables and schools, subject to Site Plan Review;
- .14 Extraction and/or bulk storage of ground water or spring water subject to the provisions of Sec. 430;
- .15 Residential care facilities (see Sec. 432); [Effective 9/14/88]

- .16 Day care centers and nursery schools for no more than 20 children, subject to the provisions of Section 408A and Site Plan Review; [Amended, effective 12/13/89, amended, effective 4/12/99]
- .17 Outdoor recreational facility, subject to Site Plan Review; [Adopted: 4/28/97]
- .18 Uses and buildings accessory to those above.

204.1.2.3 The following lot standards apply in the RR2 district: [Effective 5/15/89]

- .1 2 acre minimum lot size, whether or not the lot is served by sewer;
- .2 In the case of duplex or multiplex development, there shall be no less than 1.25 acres of lot area per dwelling unit except that the minimum lot area per dwelling unit for a lot served by sewer shall be one acre;
- .3 There shall be no less than 200 feet lot frontage. [Amended, effective 8/10/98]

204.1.2.4 The following minimum setbacks are required in the RR2 district, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines.

- .1 Front: 50 feet;
- .2 Rear: 75 feet;
- .3 Side: 30 feet; combined width at least 75 feet.

204.1.2.5 Notwithstanding the provisions of Section 204.1.2.3, the owners of large parcels located in the RR2 district may create development lots that do not meet the minimum lot size requirement set forth in Section 204.1.2.3, provided that all of the following standards are met: [amended, effective 4/12/99]

- .1 The parcel from which the new development lot will be created shall have no less than twenty-five (25) contiguous acres in the same ownership as of (date). Parcels on the opposite sides of a town road or way shall not be considered contiguous for purposes of this section.
- .2 The creation of the new development lot does not result in the creation of a subdivision as defined in 30-A.M.R.S.A. Section 4401 and does not require an amendment to an existing subdivision plan recorded in Cumberland County Registry of Deeds. (Q: Approved and recorded / post - 1971 only or recorded / grandfathered as well?) (prior to new subdivision law in 1971).
- .3 A development lot shall be at least two (2) acres in size, unless served by public sewer, in which case the development lot shall be at least one (1) acre in size.

- .4 The creator of the development lot must create an easement parcel somewhere on the large contiguous parcel to create the development lot. The easement parcel shall be no smaller than the minimum amount of land necessary to meet the minimum lot size required by Section 2.1.1.3 when added to the land area of the development lot.
- .5 An easement parcel must meet one or more of the following standards:
  - The parcel is active farmland, for purposes of this Section only active farmlands are defined as hayfields, pasture, row crops, orchards.
  - The parcel preserves an area with an active trail that can be used by the general public (as shown on the Greenbelt Plan or is an obvious well used trail).
  - The parcel provides a connection to an existing trail system that can be used by the general public.
  - The parcel preserve a high value wetland, wildlife habitat or stream, all as determined by the Maine Department of Inland Fisheries and Wildlife.
  - The parcel provides access to a water body.
  - The parcel includes land included in the Resource Protection District or the Stream Protection District.
  - The parcel buffers a piece of land owned by the Town.
  - There are no existing structures on the proposed easement parcel, except for non-residential structures that are necessary to an agricultural or forestry use.
- .6 The creator of the easement parcel shall restrict the easement parcel so that it cannot be used for development or construction of any type other than non-residential structures that are accessory to agricultural or forestry use. In addition, the easement parcel may not be used for density calculations for or any development purpose other than those provided herein for the development lot. Any paving of the easement parcel shall be restricted either to that necessary for support of agricultural or forestry uses or to trails. The deed creating the easement parcel shall state that it is perpetual and it is created to benefit the development lot, and shall include both the purposes to which the parcel is limited and the development restrictions required by this Ordinance. The deed creating the easement parcel shall explicitly reference the

deed for the development lot, and the deed creating the development lot shall explicitly reference the easement parcel. The creator of the easement parcel may hold the easement, or the creator may transfer the easement to the Town, to a qualified land trust, or to some other person or legal entity that will operate the easement parcel for agricultural or forestry purposes. The creator of easement parcel may retain ownership of the fee interest in the easement parcel or may transfer it subject to the provisions of the easement. The owner of the development parcel does not have to own the easement parcel or be the holder of the easement. The creator of the easement parcel will provide copies of the proposed deeds to the easement parcel and the development lot to the Town for approval by the Town Manager and the Town Attorney prior to the sale of the development lot and will also provide evidence that the proposed holder of the easement has agreed to accept the easement. In no event shall any building permit be issued for a development lot until the applicant can demonstrate compliance with these provisions through the provision of copies of deeds recorded in the Cumberland County Registry of Deeds.

.7 Development lots shall not have frontage on the following roads:

Tuttle Road  
Blanchard Road  
Greely Road  
Greely Road Extension  
Range Road  
Longwoods Road  
Orchard Road

New development lots shall be subject to the backlot provisions Sec. 403 of this Ordinance.

## **204.2.1      Low Density Residential District (LDR)**

204.2.1      The following uses are permitted in the LDR district:

- .1      Single family detached dwellings and duplex dwellings, and multiplex dwellings subject to the provisions of Sec. 406A. [Effective 5/15/89]
- .2      Agriculture
- .3      Timber Harvesting
- .4      Sewer pumping stations, subject to the provisions of Sec. 420.4;
- .5      Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
- .6      Uses and buildings accessory to those above.

204.2.2      The following uses are allowed as special exceptions in the LDR district requiring the approval of the Board of Adjustment and Appeals.

- .1      Home occupations;
- .2      Above ground utility lines not located within a public way;
- .3      Excavation of lands, subject to the provisions of Sec. 410;
- .4      Temporary sawmills, subject to the provisions of Sec. 427;
- .5      Municipal uses and buildings, subject to Site Plan Review;
- .6      Accessory structures of public utilities, subject to Site Plan Review;
- .7      Cemeteries, subject to Site Plan Review;
- .8      Religious institutions, subject to Site Plan Review;
- .9      Riding stables and schools, subject to Site Plan Review;
- .10     Private schools, subject to Site Plan Review;
- .11     Extraction and/or bulk storage of ground or spring water, subject to the provisions of Section 430;
- .12     Residential Care Facilities (see Sec. 432); [Effective 9/14/88]
- .13     Day care centers and nursery schools for no more than 20 children, subject to the provisions of Section 408A and Site Plan Review; [Amended, effective 12/13/89, amended, effective 4/12/99]
- .14     Uses and buildings accessory to those above.

204.2.3      The following lot standards apply in the LDR district: [Effective 5/15/89]

- .1      2 acre minimum lot size, except that the minimum lot size for lots served by sewer shall be 1.5 acres;
- .2      In the case of duplex or multiplex developments, there shall be no less than 1.25 acres of lot area per dwelling unit, except that the minimum lot area per dwelling unit for a lot served by sewer shall be .75 acres.
- .3      There shall be no less than 150 feet lot frontage. [Amended, effective 8/10/98]

204.2.4      The following minimum setbacks are required for all structures in the LDR district, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines.

- .1 Front: 50 feet
- .2 Rear: 65 feet
- .3 Side: 30 feet - combined width at least 65 feet.

**204.3      Medium Density Residential District (MDR)**

204.3.1 The following uses are permitted in the MDR district:

- .1 Single family detached dwellings
- .2 Duplex dwellings and multiplex dwellings, so long as each such dwelling is connected to sewer facilities, and provided that multiplex dwellings are subject to the provisions of Sec. 406B. [Effective 5/15/89]
- .3 Timber Harvesting
- .4 Sewer pumping stations, subject to the provisions of Sec. 420.4;
- .5 Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
- .6 Agriculture [adopted, effective 4/24/00]
- .7 Uses and buildings accessory to those above.

204.3.2 The following uses are allowed as special exceptions in the MDR district, requiring the approval of the Board of Adjustment and Appeals:

- .1 Home occupations;
- .2 Above ground utility lines not located within public ways;
- .3 Accessory structures of public utilities, subject to Site Plan Review;
- .4 Municipal uses and buildings, subject to Site Plan Review;
- .5 Religious institutions, subject to Site Plan Review;
- .6 Cemeteries, subject to Site Plan Review;
- .7 Private schools, subject to Site Plan Review;
- .8 Extraction and/or bulk storage of ground water or spring water, subject to the provisions of Sec. 430;
- .9 Residential Care Facilities (see Sec. 432); [Effective 9/14/88]
- .10 Day care centers and nursery schools for no more than 20 children, subject to the provisions of Section 408A and Site Plan Review; [Amended, effective 12/13/89, amended, effective 4/12/99]
- .12 Uses and buildings accessory to those above.

204.3.3 The following lot standards shall apply within the MDR district:

- .1 2 acre minimum lot size, except that the minimum lot size for lots served by sewer shall be 1 acre; [Effective 5/15/89]
- .2 In the case of duplex or multiplex developments, the minimum lot area per dwelling unit for a lot served by sewer shall be .5 acres; [Effective 5/15/89]
- .3 There shall be no less than 150 feet of lot frontage. [Amended, effective 8/10/98]

204.3.4 The following minimum setbacks are required for all structures in the MDR district, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines:

- .1 Front: 35 feet
- .2 Rear: 50 feet
- .3 Side: 20 feet - combined width at least 50 feet.

## **204.4 Island Residential District (IR)**

204.4.1 The following uses are permitted in the IR district:

- .1 Single family detached dwellings and duplex dwellings; [Effective 5/15/89]
- .2 Agriculture
- .3 Uses related to commercial fishing, including storage and repair of traps, seines, boats and other equipment, the keeping and cooking of fish for sale at retail on the premises, and fish processing as a home occupation.
- .4 Timber Harvesting
- .5 Private Heliport Personal Use, subject to Site Plan Review and to the provisions of Section 419;
- .6 Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
- .7 Uses and buildings accessory to those above. [Amended, effective 12/24/86]

204.4.2 The following uses are allowed as special exceptions in the IR district, requiring the approval of the Board of Adjustment and Appeals:

- .1 Home occupations;
- .2 Above ground utility lines not located in a public way;
- .3 Private kennels;
- .4 Temporary sawmill, subject to the provisions of Sec. 427;
- .5 Excavation of lands, subject to the provisions of Sec. 410;
- .6 Animal husbandry;
- .7 Municipal buildings and uses, subject to Site Plan Review;
- .8 Accessory structures of public utilities, subject to Site Plan Review;
- .9 Cemeteries, subject to Site Plan Review;
- .10 Private clubs, subject to Site Plan Review;
- .11 Religious institutions, subject to Site Plan Review;
- .12 Funeral homes, subject to Site Plan Review;
- .13 Any use permitted in Island Business (IB), subject to Site Plan Review;
- .14 Boat building, storage, or marina, subject to Site Plan Review;
- .15 Private schools, subject to Site Plan Review;
- .16 Boarding kennels, subject to Site Plan Review;
- .17 Riding stable, subject to Site Plan Review;
- .18 Professional office building, subject to Site Plan Review;
- .19 Campgrounds;
- .20 Extraction and/or bulk storage of ground water subject to the provisions of Sec. 430;
- .21 Day care centers and nursery schools, subject to the provisions of Section 408A and Site Plan Review; [Amended, effective 12/13/89]
- .22 Uses and buildings accessory to those above.

- 204.4.3 The following lot standards shall apply to all lots within the IR district except that on Great Chebeague Island they shall only apply to lots created on August 1, 1975 or later [Amended, effective 9/25/02]:
- .1 1.5 acre minimum lot size. [Effective 5/15/89]
  - .2 In the case of duplex development, there shall be no less than 0.94 acres of lot area per dwelling unit. [Effective 5/15/89]
  - .3 There shall be no less than 150 feet of lot frontage. [Amended, effective 8/10/98]
- 204.4.4 The following minimum setbacks are required for all structures in the IR district, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines, and except that on Great Chebeague Island they shall only apply to lots that are more than 1.5 acres in size or that were created on or after August 1, 1975 [Amended, effective 9/25/98]:
- .1 Front: 55 feet;
  - .2 Rear: 65 feet;
  - .3 Side: 30 feet - combined width at least 65 feet.
  - .4 Shoreland setbacks shall be as required by Section 423.
- 204.4.5 The following minimum setbacks are required for all lots in the IR district of Great Chebeague Island that are less than 1.5 acres and that were created on or before July 31, 1975, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines [Effective 9/25/2002]:
- .1 Front: 25 feet; [Effective 9/25/2002]
  - .2 Rear: 20 feet; [Effective 9/25/2002]
  - .3 Side: 20 feet [Effective 9/25/2002].
  - .4 Shoreland setbacks shall be as required by Section 423.

**204.5 Shoreland Area Overlay Districts [Adopted, Effective 12/10/91]**

**204.5.1 Resource Protection Overlay District (RP)**

204.5.1.1 The Resource Protection Overlay District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection Overlay District, except that areas which are currently developed and areas which meet the criteria for the Limited Commercial, General Development, or Commercial Fisheries/Maritime Activities Overlay Districts need not be included within the Resource Protection Overlay District.

- .1 Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of June 23, 1988.
- .2 Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- .3 Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during normal spring high water.
- .4 Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

**204.5.2 Resource Protection/Floodplain Overlay District (RP/FP)  
[Amended - effective 10/17/94]**

- .1 Areas of 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps

204.5.1.2 The following uses are permitted in the RP/FP Overlay District:

- .1 Non-intensive recreational uses which do not require structures;
- .2 Motorized vehicular traffic on roads and trails, and snowmobiling;
- .3 Forest management activities, except timber harvesting;
- .4 Fire prevention activities;
- .5 Wildlife management practices;
- .6 Soil and water conservation practices;

- .7 Surveying and resource analysis;
- .8 Emergency operations;
- .9 Harvesting of wild crops;
- .10 Essential services accessory to permitted uses.

204.5.1.3 The following uses are permitted in the RP/FP Overlay District, subject to the approval of the Code Enforcement Officer, in accordance with the standards of Sec. 400:

- .1 Timber harvesting;
- .2 Mineral exploration;
- .3 Structures accessory to permitted uses;
- .4 Temporary piers, docks, wharves, breakwaters, causeways, marinas, bridges over 20 feet in length, and uses projecting into water bodies;
- .5 Clearing for approved construction;
- .6 Filling or other earth-moving activity of less than ten (10) cubic yards;
- .7 Uses similar to permitted uses;
- .8 Uses similar to the above uses which require the approval of the Building Inspector.

204.5.1.4 The following uses are permitted in the RP/FP Overlay District, subject to the approval of the Planning Board, in accordance with the standards of Sec. 400:

- .1 Agriculture;
- .2 Road construction;
- .3 Small, non-residential facilities for educational, scientific, or nature interpretation purposes;
- .4 Public and private parks and recreation areas involving minimal structural development;
- .5 Permanent piers, docks, wharfs, 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 the above uses which require the approval of the Planning Board.

204.5.1.5 The following uses are specifically prohibited in the RP/FP Overlay District:

- .1 Principal structures for residential, commercial, industrial, governmental, or institutional uses;
- .2 Campgrounds;
- .3 Private sewage disposal systems, exclusive of outfall pipes of approved overboard discharge systems.

**204.5.3 Limited Residential Overlay District (LR)**

The Limited Residential Overlay District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial District, the General Development District, or the Commercial Fisheries/Maritime Activities District.

**204.5.4 Limited Commercial Overlay District (LC)**

The Limited Commercial Overlay District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District, which should not be developed as intensively as the General Development District. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

**204.5.5 General Development Overlay District (GD)**

The General Development Overlay District includes the following types of areas:

- .1 Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
  - a. Areas devoted to manufacturing, fabricating or other industrial activities:
  - b. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
  - c. Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
- .2 Areas otherwise discernable as having patterns of intensive commercial, industrial or recreation uses.

Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.

In areas adjacent to great ponds the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this Ordinance. There shall be no newly established General

Development Districts or expansion in area of existing General Development Districts adjacent to great ponds.

**204.5.6 Commercial Fisheries/Maritime Activities Overlay District (CFMA)**

The Commercial Fisheries/Maritime Activities Overlay District includes areas where the existing predominant pattern of development is consistent with the allowed uses for the underlying zoning district and other areas which are suitable for functionally water-dependent uses, taking into consideration such factors as:

- .1 Shelter from prevailing winds and waves.
- .2 Slope of the land within 250 feet, horizontal distance, of the normal high-water line;
- .3 Depth of the water within 150 feet, horizontal distance, of the shoreline;
- .4 Available support facilities including utilities and transportation facilities; and
- .5 Compatibility with adjacent upland uses.

**204.5.7 Stream Protection Overlay District (SP)**

The Stream Protection Overlay District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, river or saltwater body, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area is located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

## **204.6      Local Business District (LB)**

The purpose of the Local Business District is to allow a limited range of local business and professional services for residential and rural areas within the Town. Site Plan Review is required for all uses and special exceptions, with the exception of single-family dwellings, bed & breakfast inns with three or fewer guest bedrooms, and day care homes. [Amended, effective 12/13/89]

204.6.1      The following uses are permitted within the LB District:

- .1      Retail stores provided that no individual store shall exceed 5,000 square feet floor area, and provided that there shall be no more than three stores in any structure or group of attached stores
- .2      Personal Services
- .3      Business and professional offices
- .4      Private clubs
- .5      Lodging houses
- .6      Restaurant
- .7      Private schools
- .8      Municipal Uses and Buildings
- .9      Sewer pumping stations, subject to the provisions of Sec. 420.4;
- .10     Buildings accessory to single family dwellings [Amended, effective 8/10/98]
- .11     Timber harvesting [Amended, effective 10/26/98]
- .12     Landscaping services [adopted, effective 11/22/99]
- .13     Telecommunications Facilities, subject to Site Plan Review and the provisions of Sec. 433. [adotped, effective 12/13/99]
- .14     Uses and buildings accessory to those above.

204.6.2      The following uses are allowed as special exceptions in the LB District requiring the approval of the Board of Adjustment and Appeals:

- .1      Home Occupations
- .2      Single-family dwelling
- .3      Accessory structures of public utilities
- .4      Above ground utility transmission lines not located within public ways
- .5      The sale of gasoline and diesel fuel as an incident to the business of a retail store
- .6      Residential Care Facilities (see Sec. 432) [Effective 9/14/88]
- .7      Day care centers and nursery schools, subject to the provisions of Sec. 408A and Site Plan Review;      [Amended, effective 12/13/89]
- .8      Boarding kennels [Amended, effective 1/25/99]
- .9      Uses and buildings accessory to those above.

204.6.3      The following lot standards apply within the LB District:

- .1 40,000 square feet minimum lot size
- .2 In the case of multi-family structures, there shall be no less than 40,000 square feet of lot area per family;
- .3 In the case of multi-use business structures, there shall be no less than 15,000 square feet of lot area for each store located therein;
- .4 There shall be no less than 150 feet of lot frontage on a public right-of-way, and in the case of multi-use business structures there shall be no less than 75 feet of lot frontage on a public right-of-way for each store therein.

204.6.4 The following minimum setbacks are required for all structures in the LB District, except that residential driveways may be permitted to a minimum setback of fifteen (15) feet from side and rear lot lines:

- .1 Front: 50 feet;
- .2 Rear: 65 feet;
- .3 Side: 30 feet - combined width at least 65 feet

## **204.7 Highway Commercial District (HC)**

The purpose of the HC District is to allow a wide range of business and professional uses that provide town-wide service, as well as roadside service for through traffic on major arterials. The HC district along Route 100 is also intended to allow boarding kennels. Site plan review and approval by the Planning Board is required, with the exception of single-family dwellings, bed & breakfast inns with three or fewer guest bedrooms, and day care homes. [Amended, effective 12/13/89, amended, effective 1/25/99]

204.7.1 The following uses are permitted in the HC District:

- .1 Uses listed as permitted uses in the LB district under 204.6.1; [Effective 5/15/89]
- .2 Retail business and service establishments including garden centers, landscaping services, outdoor vehicle sales, gasoline stations, and drive-in sales and service; [Amended, effective 10/28/87]
- .3 Hotels, motels;
- .4 Municipal uses and buildings;
- .5 Agriculture;
- .6 Animal Husbandry;
- .7 Private heliport, personal use, subject to Site Plan Review and to the provisions of Section 419;
- .8 Sewer pumping stations, subject to the provisions of Sec. 420.4; [Amended, effective 12/13/89]
- .9 Additions to and accessory structures to single-family dwellings existing as of the effective date of this amendment. [Amended, effective 8/10/98]
- .10 Timber harvesting [Amended, effective 10/26/98]
- .11 Telecommunications Facilities, subject to Site Plan Review and the provisions of Sec. 433, [Adopted, effective 12/13/99]
- .12 Uses and buildings accessory to those above.

204.7.2 The following uses are allowed as special exceptions in the HC district, requiring the approval of the Board of Adjustment and Appeals:

- .1 Accessory structures of public utilities;
- .2 Warehousing and wholesale distribution related thereto, but exclusive of junk yards and salvaging operations;
- .3 Transportation termini;
- .4 Above ground utility transmission lines not located within public ways;
- .5 Light manufacturing, as defined;
- .6 Home occupations; [Amended, effective 12/13/89]
- .7 Day care centers and nursery schools, subject to the provisions of Sec. 408A and Site Plan Review; [Amended, effective 12/13/89]
- .8 Boarding kennels [Amended, effective 1/25/99]

.9 Uses and buildings accessory to those above.

204.7.3 The following lot standards apply in the HC District:

- .1 40,000 square feet minimum lot size;
- .2 There shall be no less than 150 feet of lot frontage on a public right-of-way. [Amended, effective 8/10/98]

204.7.4 The following setbacks are required for all structures in the HC District:

- .1 Front: 50 feet;
- .2 Rear: 65 feet;
- .3 Side: 30 feet - combined width at least 65 feet.

## 204.8

### Office Commercial (OC)

The purpose of the OC District is to allow a limited range of employment-intensive commercial uses with low intensity land use impacts, measured in terms of traffic generation, environmental effects, and building scale and site layout. The northern OC District is also intended to allow higher density residential development (see Cumberland Comprehensive Plan-1989), and commercial health and recreation facilities [adopted,10/13/92]. Site Plan review and approval by the Planning Board is required with the exception of day care homes and bed & breakfast inns with three or fewer guest bedrooms. [Amended, effective 12/13/89]

204.8.1 The following uses are permitted within the OC District:

- .1 Business and professional offices;
- .2 Research facilities;
- .3 Uses and buildings accessory to those above;
- .4 Sewer pumping stations, subject to the provisions of Sec. 420.4.
- .5 Duplex and multiplex dwellings in the more northerly of the two Office Commercial Districts shown on the Town's Zoning Map enacted May 15, 1989, and amended January 25, 1999, subject to the provisions of Sec. 406B, except that for purposes of this use in this District, those provisions shall be modified as follows [amended, effective 11/22/99]:
  - .1 The minimum lot size shall be 20,000 square feet per dwelling unit, except that for units constructed specifically for persons 55 years of age or older the minimum lot size shall be 10,000 square feet per dwelling unit. [amended, effective 11/22/99].
  - .2 No more than 40% of a tract or parcel developed hereunder shall be required to be reserved as open space. [Effective 5/15/89]
  - .3 All dwelling units shall be connected to the public water and sewer system. [adopted 11/22/99]
- .6 Commercial health and recreation facility. [Effective 10/13/92]
- .7 Timber harvesting; [Amended, effective 10/26/98]
- .8 Residential care facilities, subject to the provisions of Sec. 432, except that for the purposes of this District, those provisions shall be modified as follows: [Amended, effective 6/14/99]
  - .1 The minimum lot size shall be 4 acres;
  - .2 All facilities shall be connected to the public water and sewer system;
  - .3 The total gross area of all building footprints on the site shall not exceed thirty thousand square feet for each four acres of lot area. Additional building footprints of 30,000 square feet shall be permitted for each additional land area increment of four acres.
  - .4 Buildings and parking lots shall cover not more than 25% of the lot.

- .5 The parking requirement included in Section 432 may be reduced upon a positive finding by the Board that the proposed use does not, in practice, require the amount stated in the standard.
- .9 Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
- .10 Uses and buildings accessory to those above. [Effective 5/15/89]

204.8.2 The following uses are allowed as special exceptions in the OC District, requiring the approval of the Board of Adjustment and Appeals:

- .1 Light manufacturing, as defined;
- .2 Hotels and motels;
- .3 Municipal uses and buildings;
- .4 Accessory structures of public utilities;
- .5 Above ground utility transmission lines not located within public ways;
- .6 Uses listed as permitted uses in the LB District under 204.6.1; [Effective 5/15/89]
- .7 Home occupations; [Amended, effective 12/13/89]
- .8 Day care centers and nursery schools, subject to the provisions of Sec. 408A and Site Plan Review; [Amended, effective 12/13/89]
- .9 Uses and building accessory to those above.

204.8.3 The following lot standards apply in the OC District:

- .1 One (1) acre minimum lot size, except that the minimum lot size per dwelling unit in a duplex or multiplex development under Sec. 204.8.1.5 above shall be 20,000 square feet, except that for units constructed specifically for persons 55 years of age or older the minimum lot size shall be 10,000 square feet per dwelling unit; [Effective 5/15/89, amended 11/22/99]
- .2 There shall be no less than 150 feet of lot frontage. [Effective 5/15/89]

204.8.4 The following setbacks are required for all structures in the OC District: [Amended, effective 6/12/95]

- .1 Front: 25 feet;
- .2 Rear: 65 feet;
- .3 Side: 20 feet

**204.9 Industrial (I)**

The purpose of the I District is to allow a wide range of employment-intensive and production facilities. Site Plan Review and approval by the Planning Board is required, with the exception of day care homes and bed & breakfast inns with three or fewer guest bedrooms. [Amended, effective 12/13/89]

204.9.1 The following uses are permitted in the I District:

- .1 Light manufacturing;
- .2 Warehousing and wholesale distribution;
- .3 Road and rail facilities;
- .4 Research facilities;
- .5 Municipal uses and buildings;
- .6 Private Heliport, Personal Use, subject to Site Plan Review and to the provisions of Section 419;
- .7 Sewer pumping stations, subject to the provisions of Sec. 420.4; [Amended, effective 12/13/89]
- .8 Timber harvesting [Amended, effective 10/26/98]
- .9 Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
- .10 Uses and buildings accessory to those above.

204.9.2 The following uses are allowed as special exceptions in the I District, requiring the approval of the Board of Adjustment and Appeals:

- .1 Primary buildings of a public utility;
- .2 Temporary sawmills, subject to Sec. 427;
- .3 Junk yards, subject to Sec. 415;
- .4 Gasoline stations;
- .5 Above ground utility transmission lines not located within public ways;
- .6 Other manufacturing;
- .7 Agriculture and animal husbandry;
- .8 Home occupations; [Amended, effective 12/13/89]
- .9 Day care centers and nursery schools, subject to the provisions of Sec. 408A and Site Plan Review; [Amended, effective 12/13/89]
- .10 Uses and buildings accessory to those above.

204.9.3 The following lot standards shall apply in the I district:

- .1 80,000 square feet minimum lot size;
- .2 200 feet minimum lot frontage on a public right-of-way.

204.9.4 The following setbacks are required for all structures in the I District:

- .1 Front: 100 feet;

- .2 Rear: 65 feet;
- .3 Side: 20 feet, with a combined width of 50 feet, but neither side shall be less than 100 feet if it adjoins a residential district.

## **204.10 Rural Industrial (RI)**

The purpose of the Rural Industrial Zone is to establish a mixed zone of rural residential and industrial and commercial uses, including home occupations. Site Plan Review and approval is required for all uses with the exception of "residential uses", which term for purposes of Sec. 204.10, is defined to consist of the following uses: single-family detached dwellings, duplex dwellings, day care homes, bed & breakfast inns with three or fewer guest rooms and home occupations. For purposes of Sec. 204.10, the term "nonresidential uses" is defined to consist of all permitted and special exception uses in the RI District other than residential uses. [Effective; 3/11/91]

204.10.1 The following uses are permitted in the RI District:

- .1 Single family detached dwellings.
- .2 Duplex dwellings.
- .3 Agriculture and animal husbandry.
- .4 Light manufacturing.
- .5 Warehousing and wholesale distribution.
- .6 Research facilities
- .7 Municipal uses and buildings.
- .8 Sewer pumping stations subject to the provisions of Sec. 420.4.
- .9 Road and rail facilities.
- .10 Residential care facilities. [Amended 6/24/91]
- .11 Business and professional offices. [Amended 6/24/91]
- .12 Construction operations [Amended, effective 4/6/98]
- .12 Timber harvesting [Amended, effective 10/26/98]
- .13 Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
- .14 Uses and buildings accessory to those above.

204.10.2 The following uses are allowed as special exceptions in the RI district requiring the approval of the Board of Adjustment and Appeals:

- .1 Primary buildings of a public utility.
- .2 Temporary sawmills subject to Sec 427.
- .3 Facilities for repair and servicing of motor vehicles, but not including the storage or sale of gasoline or motor fuel.
- .4 Other manufacturing.
- .5 Above ground utility transmission lines not located within public ways.
- .6 Home occupations.
- .7 Day care centers and nursery schools subject to the provisions of Sec. 408A and Site Plan Review.
- .8 Uses and buildings accessory to those above.

- 204.10.3 The following lot standards shall apply in the RI District:
- .1 2 acre minimum lot size whether or not the lot is served by sewer.
  - .2 In the case of duplex development there shall be no less than 1.25 acres of lot area per dwelling unit except that the minimum lot area per dwelling unit for a lot served by sewer shall be one acre.
  - .3 There shall be no less than 200 feet lot frontage on a public right of way.
- 204.10.4 The following setbacks are required for all structures in the RI District:
- .1 Structures for residential uses and home occupations:
    - a. Front: 50 feet.
    - b. Rear: 65 feet
    - c. Side: 30 feet; combined width of at least 75 feet.
  - .2 Structures for nonresidential uses:
    - a. Front: 100 feet.
    - b. Rear: 65 feet.
    - c. Side: 30 feet; combined width of at least 75 feet; provided that if a new nonresidential use is commenced on a lot adjoining a lot containing an existing residential use, the side setback shall be at least 50 feet with a combined width of 100 feet.
- 204.10.5 The following buffering and screening shall be provided along each boundary of any lot in the RI District which lot is unimproved as of the effective date of the amendment or which lot is created after the effective date of this amendment 1) where residential use will be made of said lot and the boundary adjoins a lot that contains nonresidential use or uses at the time that subdivision or building permit (if subdivision review is not required) application is made to the Town, or 2) where nonresidential use will be made of said lot and the boundary adjoins a lot that contains a residential use or uses at the time that site plan or building permit (if site plan review is not required ) application is made to the Town:
- .1 There shall be provided and maintained a 25 -foot wide buffer along said lot boundary in order to buffer and screen the residential uses from the nonresidential uses on the adjoining parcel(s). This buffer shall contain screening that is at least 6 feet in height. This screening shall consist of one or some combination of the following: fencing, evergreens, shrubs, berms, rocks, boulder, mounds, bushes and deciduous trees. Said screening may consist in whole or in part of natural vegetation and the 6-foot high screening need not extend across the entire 25-foot width of the buffer so long as the screening is sufficient to minimize the effects of vehicle headlights, noise, light from structures and the movement of people and vehicles on adjacent properties. Unless the residential lot has received subdivision review from the Planning Board and the Planning Board has required screening under this Ordinance as a condition of subdivision approval, the Code Enforcement Officer shall

review the proposed buffer and screening at the time that a building permit is requested to determine whether the proposed buffer and screening complies with the standards of this Ordinance. This buffer and screening must be completed before a use permit or temporary use permit can be issued by the Code Enforcement Officer.

## **204.11 Island Business District (IB)**

Site plan review and approval by the Planning Board is required for all permitted uses and special exceptions, with the exception of single-family dwellings, day care homes, bed & breakfast inns with three or fewer guest bedrooms, home occupations, agriculture, and animal husbandry and uses related to commercial fishing as allowed in 204.11.1.3, below . [Amended, effective 12/13/89]

204.11.1 The following uses are permitted within the IB District:

- .1 Single family detached dwellings and duplex dwellings; [Effective 5/15/89]
- .2 Retail stores;
- .3 Uses related to commercial fishing, including, but not limited to, storage and repair of boats and equipment, the keeping and cooking of fish for retail sale on the premises, and fish processing as a home occupation;
- .4 Marinas, and other facilities for building and storage of boats;
- .5 Personal services;
- .6 Private clubs;
- .7 Restaurants;
- .8 Private schools;
- .9 Municipal buildings and uses;
- .10 Religious institutions;
- .11 Private Heliport, Personal Use, subject to Site Plan Review and to the provisions of Section 419;
- .12 Home occupations (special exception not required notwithstanding Sec. 414); [Amended, effective 12/13/89]
- .13 Auto repair service garage; [Amended, effective 7/12/93]
- .14 Residential Care Facility; [Amended, effective 10/28/96]
- .15 Agriculture; [Amended, effective 2/13/97]
- .16 Timber harvesting; [Amended, effective 10/26/98]
- .17 Public Facility; [Amended, effective 11/13/00]
- .18 Business/professional offices; [Amended, effective 04/22/02]
- .19 Uses and buildings accessory to those above.

204.11.2 The following uses are allowed in the IB District as special exceptions, requiring the approval of the Board of Adjustment and Appeals:

- .1 Accessory structures of public utilities;
- .2 Above ground utility lines not located in a public way;
- .3 Gasoline stations, and other facilities for the retail sale and storage of petroleum products;
- .4 Funeral homes;
- .5 Day care centers and nursery schools, subject to the provisions of Sec. 408A and Site Plan Review; (Amended, effective 12/13/89)

- .6 Residential care facilities, (see Sec. 432, amended, effective 10/28/96)
- .7 Animal husbandry, [Adopted, effective April 28, 1997]
- .8 Telecommunications Facilities, subject to Site Plan Review and the provisions of Sec. 433, [Adopted, effective 12/13/99]
- .9 Uses and buildings accessory to those above.

204.11.3 The following lot standards shall apply to all lots within the IB District except that on Great Chebeague Island they shall only apply to lots created on August 1, 1975 or later [Amended, effective 09/25/02]:

- .1 1.5 acre minimum lot size for single family detached dwellings; [Effective 5/15/89]
- .2 In the case of duplex development, there shall be no less than 0.94 acres of lot area per dwelling unit; [Effective 5/15/89]
- .3 There shall be no less than 150 feet of lot frontage on a public right-of-way.

204.11.4 The following setbacks are required for all structures in the IB District, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines, and except that on Great Chebeague Island they shall only apply to lots that are more than 1.5 acres in size or that were created on or after August 1, 1975 [Amended, effective 09/25/02]:

- .1 Front: 55 feet;
- .2 Rear: 65 feet;
- .3 Side: 30 feet - combined width at least 65 feet.
- .4 Shoreland setbacks shall be as required by Section 423.

204.11.5 The following minimum setbacks are required for all lots in the IB district of Great Chebeague Island that are less than 1.5 acres and that were created on or before July 31, 1975, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines [Effective 9/25/2002]:

- .1 Front: 25 feet; [Effective 9/25/2002]
- .2 Rear: 20 feet; [Effective 9/25/2002]
- .3 Side: 20 feet [Effective 9/25/2002].
- .4 Shoreland setbacks shall be as required by Section 423.

**204.12      Mobile Home Park Overlay District**

Mobile Home parks are permitted in the Mobile Home Park Overlay District as delineated on the official Town zoning map, subject to the provisions of Section 416-A and subdivision review. [Amended, effective 12/28/89]

**204.13      Setback Overlay Districts [adopted 7/10/00]**

**204.13.1      Setback Overlay District 1**

The following minimum setbacks are required for all structures in the Setback Overlay District 1:

The setbacks shall be the lesser of the distance from the existing building to the nearest property line or the stated limit below:

1.      Front: the setback for the underlying district;
2.      Side: 10'
3.      Rear: 25' principal structure (including decks and porches); 10' all other buildings

**204.13.2      Setback Overlay District 2.**

The following minimum setbacks are required for all structures in the Setback Overlay District 2:

The setbacks shall be the lesser of the distance from the existing building to the nearest property line or the stated limit below:

- A.      For the LDR District;
  1.      Front: 50' provided that no front setback need be greater than the average depth of the existing front setbacks on the adjoining lots on either side lots. A vacant lot shall be considered as having an existing front setback requirement of 50'.
  2.      Side: 15' and a combined setback of 35' for the principal structure (including decks and porches); 8' all other buildings.
  3.      Rear: 40' for the principal structure (including decks and porches); except that for lots with an average depth of 100' or less, the setback requirement for the principal structure shall be

no less than 25% of the average depth of the lot; 10' all other buildings.

- A. For the MDR and RR2 Districts;
  - 1. Front: 35' provided that no existing front setback need be greater than the average depth of the front setbacks on the adjoining lots on either side lots. A vacant lot shall be considered as having an existing front setback requirement of 35'.
  - 2. Side: 15' and a combined setback of 35' for the principal structure (including decks and porches); 8' all other buildings.
  - 3. Rear: 40' for the principal structure (including decks and porches); except that lots with an average depth of 100' or less, the setback requirement for the principal structure shall be no less than 25% of the average depth of the lot; 10' all other buildings.

## **204.14 Fairgrounds Overlay District**

The purpose of the Fairgrounds Overlay District is to allow as permitted uses a diverse range of exhibitions, shows, fairs, entertainment programs, and similar events, both related to and not related to agriculture, of the type commonly and historically associated with the Cumberland Fairgrounds.

- 204.14.1 The Cumberland Fairgrounds, delineated as R07, Lots 8 and 8-1 on the official Town of Cumberland Tax Assessor's map dated April 1 2001, is hereby designated as an overlay district within the Rural Residential District 2 zone for the purposes designated herein.
- 204.14.2 All the uses commonly and historically associated with the annual Cumberland County Fair shall be allowed at the Cumberland Fairgrounds as permitted uses. These uses shall conform to the Cumberland Mass Gathering Ordinance and other ordinances of the Town of Cumberland as may be appropriate.
- 204.14.3 All uses commonly and historically associated with the Cumberland Fairgrounds other than the annual Cumberland County Fair shall be allowed to continue at the Cumberland Fairgrounds as permitted uses. These uses shall conform to the Cumberland Mass Gathering Ordinance (if necessary) and other ordinances of the Town of Cumberland as may be appropriate. Permitted uses shall include, but not be limited to the following:
- .1 Animal Exhibitions and Competitions
  - .2 Antique Fairs and Shows
  - .3 Art Fairs and Shows
  - .4 Auctions
  - .5 Barbecues
  - .6 Boat Shows
  - .7 Car Shows
  - .8 Car Club Meets
  - .9 Circuses
  - .10 Craft Fairs and Shows
  - .11 Cultural Events
  - .12 Dog Shows
  - .13 Farm and Garden Shows
  - .14 Home Shows
  - .15 Horse Shows
  - .16 Jamborees, Scouting Events, 4-H Club Events, etc.
  - .17 Picnics
  - .18 Public Events and Suppers
  - .19 Sporting Events

Because no list of uses can be complete, uses similar in size, scope, type, and impact to those listed above will be permitted within the discretion of the Code Enforcement Officer, subject to the appeal provisions of Section 603.4 of this Ordinance. [Adopted, Effective 2/25/02]

**Sec. 205     Lot Regulations**

- 205.1     Lots which abut on more than one street shall provide the required front setbacks along each and every street on which that lot abuts.
- 205.2     No structures, whether attached to the principal structure or not, and, whether open or enclosed, including porches, carports, balconies, or platforms above normal grade level, shall project beyond the setbacks provided in this Ordinance.
- 205.3     In any district, notwithstanding limitations imposed by other provisions of this Ordinance, a single lot of record at the effective date of adoption of this Ordinance may be built upon subject to the following conditions:
- .1     Such a lot must be in a separate and distinct ownership from adjacent lots on said date. This provision shall apply even though such lots fail to meet the minimum requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions of the lot shall conform to the requirements for the district in which the lot is located. Variance of setback requirements shall be obtained only through action of the Board of Adjustment and Appeals.
- .2     If two or more lots or combinations of lots and portions of lots with continuous frontage are in single ownership at the time of the 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 individual parcel for the purpose 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.
- 205.4     In any district, notwithstanding limitations imposed by other provisions of this Ordinance, a lot containing at least 20,000 square feet, or 15,000 square feet if connected to the public sewer system, as shown on a plan of a subdivision duly approved and recorded in the Cumberland County Registry of Deeds prior to the date of the adoption of this Ordinance, and irrespective of whether said lot was in separate and distinct ownership from adjacent lots on said date, may be built upon subject to the condition that said lot and proposed construction meet with the width, frontage and yard requirements contained in the Zoning Ordinance of the Town of Cumberland which was in effect immediately prior to the adoption of this Ordinance. [Amended, effective 10/26/98]
- 205.5     No lot shall be reduced in size by conveyance of a portion thereof unless *both of the following standards are met*: (a) the remaining land is in conformance with

the minimum lot size provided for the zoning district in which that land is located, and (b) unless the land conveyed is in conformance with said minimum lot size, or is conveyed to the owner of the abutting property. [Amended, effective 12/13/89]

**Sec. 206**     **SITE PLAN REVIEW**  
[Amended 2/25/02, effective 3/19/02]

**206.1**       **PURPOSE**

The site plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that non-residential 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.

**206.2**       **APPLICABILITY OF SITE PLAN REVIEW**

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:

- .1    The construction or placement of any new building or structure for a use identified in Sec. 204, or the construction, placement, or alteration of any telecommunications facility.
- .2    The expansion of an existing nonresidential building or structure including accessory buildings that increases the total floor area.
- .3    The conversion of an existing building, in whole or in part, from a residential use to any non-residential use included in Section 204 of this Ordinance.
- .4    The establishment of a new use even if no buildings or structures are proposed, including uses such as gravel pits, cemeteries, golf courses, and other non structural nonresidential uses.
- .5    The conversion of an existing nonresidential use, in whole or in part, to another nonresidential use if the new use changes the basic nature of the existing use such that it increases the intensity of on - or off-site impacts of the use subject to the standards and criteria of site plan review described in Section 206.8.
- .6    The construction or expansion of paved areas or other impervious surfaces, including access drives, and parking lots.

### **206.3 REVIEW AND APPROVAL AUTHORITY**

The Planning Board is authorized to review and act on site plans for both minor developments and major developments as defined below. In considering site plans under this section, the Planning Board may act to approve, disapprove, or approve the project with conditions as are authorized by these provisions.

### **206.4 CLASSIFICATION OF PROJECTS**

- .1 The Town Planner shall classify each project as a major or minor development. Minor developments are smaller scale, less complex projects for which a less complex review process is adequate to protect the Town's interest. Major developments are larger, more complex projects for which a more detailed review process and additional information are necessary.
- .2 Minor developments shall include those projects involving the construction or addition of fewer than five thousand (5,000) square feet of gross nonresidential floor area or projects involving only the installation of impervious surfaces, or projects involving the conversion of existing buildings or structures from one use to another without enlargement of the gross floor area.
- .3 Major developments shall include projects involving the construction or addition of five thousand (5,000) or more square feet of gross nonresidential floor area, or other projects requiring review which are not classified as minor developments.

### **206.5 FEES**

#### *.1 Application Fee*

Any application for minor or major site plan review must be accompanied by an application fee set by order of the Town Council. This fee is intended to cover the cost of the municipality's administrative processing of the application, including notification, advertising, mailings, staff review, and similar costs. The fee shall not be refundable.

#### *.2 Site Inventory and Analysis Fees*

All site plan applications for major developments are subject to Site Inventory and Analysis review. Prior to submitting a site inventory and analysis for a major development, the applicant must pay a processing fee in an amount as set by order of the Town Council. The fee is

intended to cover the cost of the municipality's administrative processing of the application, including notification, advertising, mailings, staff review, and similar costs. [Amended 2/25/02, effective 3/19/02]

*.3 Technical Review Fee*

In addition to the application fee, the applicant for site plan review must also pay a technical review fee to defray the municipality's legal and technical costs of the application review. This fee must be paid to the municipality and shall be deposited in an escrow account, which shall be separate and distinct from all other municipal accounts. The application will be considered incomplete until evidence of payment of this fee is submitted to the Planning Board. The Board may reduce the amount of the technical review fee or eliminate the fee if it determines that the scale or nature of the project will require little or no outside review.

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, in the account after the payment by Town of all costs and services related to the review, provided, however, that where the cost of technical reviews exceeds the amount of monies in the escrow account the applicant shall pay to the Town prior to the issuance of any building permit the amount by which the technical reviews exceed the amount of monies in the escrow account.

**206.6 REVIEW PROCEDURES**

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

*.1 Pre application*

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

.1 Purpose

- .1 Allow the 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.

.2 Site Inspection

The Board may schedule a site inspection if deemed necessary, and offer guidance on any requests for waivers and variations from the submission requirements.

A written notice for such site inspections shall be published at least once in a newspaper of general circulation in the community, and the date of the publication shall be at least seven (7) days prior to the site inspection. Notice shall also be sent by first class mail to all property owners of record within two hundred (200) feet of the parcel on which the proposed development is located. [Amended 2/25/02, effective 3/19/02]

.3 Information Required

There are no formal submission requirements for a pre application 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 project, and
- .4 Any requests for waivers from the submission requirements.

*.2 Application Submission and Review Procedures*

*.1 Minor Development Submission Procedure*

Projects classified as minor developments shall go through a simplified review process. Applicants shall not be required to submit a site inventory and analysis and may proceed directly to preparing and submitting a formal site plan review application including the development plan and supporting documentation meeting the submission requirements. This material must be submitted to the Town Planner. The Planning Board shall have the authority to waive any review standards if it finds they are inapplicable to a minor site plan application.

*.2 Major Development Submission Procedure*

- .1 Applicants with projects classified as major developments must submit a site inventory and analysis for Planning Board review. This review must be completed prior to the preparation and submission of a site plan review application and supporting documentation. The Board shall review the site inventory and analysis with the applicant and shall authorize the submission of the formal application when the site analysis is complete. The site inventory and analysis must be submitted to the Planner.*
- .2 Upon receipt of a site inventory and analysis, the Planner shall give a dated receipt to the applicant. Within thirty (30) days of the receipt of a site inventory and analysis submission for a major development, the Planner shall review the material and determine whether or not the submission is complete. If the submission is determined to be incomplete, the applicant shall be notified in writing of this finding, which shall specify the additional material required to make the submission complete, and shall advise the applicant that the application will not be reviewed until the additional information is submitted. When the submission is determined to be complete, the applicant shall be notified in writing of this finding and the item placed on the agenda for informal review by the Board.*
- .3 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 either before or*

after the first meeting at which the application is considered. A written notice for such site inspections shall be published at least once in a newspaper of general circulation in the community, and the date of the publication shall be at least seven (7) days prior to the site inspection. Notice shall also be sent by first class mail to all property owners of record within two hundred (200) feet of the parcel on which the proposed development is located. [Amended 2/25/02, effective 3/19/02]

- .4 Within forty-five (45) days of the finding that the site inventory and analysis submission is complete, the Board shall complete its review of the submission and notify the applicant in writing of its findings.

*.3 Site Inventory and Analysis Review Procedure  
(Major developments only)*

The review of the site inventory and analysis shall be informational and shall not result in any formal approval or disapproval of the project by the Planning Board. The parties identified in section 206.6.4.1 below shall be notified of the time, date, and place of the Board meeting at which the site inventory and analysis will be reviewed. The Board shall review the submission to determine if the information provides a clear understanding of the site and identifies opportunities and constraints that help determine how it should be used and developed. The outcome of the review process shall be a determination by the Board of the issues and constraints that must be addressed in the formal site plan review application. The Board shall also act on any requests for waivers. [Amended 2/25/02, effective 3/19/02]

*.4 Site Plan Application Review Procedure  
(Minor and Major Developments)*

- .1 Upon receipt of a formal site plan review application, the Planner shall give a dated receipt to the applicant and shall notify by first-class mail all property owners of record within two hundred (200) feet of the parcel on which the proposed development is located. The determination of the names and owners shall be based upon the records of the local Assessor's records. The notice shall specify the location of the proposed development and provide a general description of the project. Written notice of the pending application shall be mailed to a newspaper or newspapers in general circulation.

- .2 Within thirty (30) days of the receipt of a formal development review application, the Planning Board shall review the material and determine whether or not the submission is complete. If the application is determined to be incomplete, the applicant shall be notified in writing of this finding, which shall specify the additional materials required to make the application complete, and shall advise the applicant that the application will not be reviewed until the additional information is submitted. Failure to submit the additional information within six months shall be deemed an abandonment of the application.
- .3 As soon as the application is determined to be complete, the applicant shall be notified in writing of this finding. The notification requirements of subsection (4) below shall be met and the item placed on the agenda for substantive review within thirty (30) days of this finding.
- .4 The Planning Board shall give written notice of the date, time, and place of the public hearing at which the application will be considered, to the applicant, and to those who received notice in section 206.6.4.1 above. A notice of the hearing shall be published in a newspaper of general circulation in the community at least once, the date of publication shall be at least seven (7) days prior to the hearing. [Amended 2/25/02, effective 3/19/02]
- .5 Failure of any property owner to receive notice under this section for any reason shall not necessitate a new hearing and shall not invalidate any action by the Planning Board.

*.5 Procedure for Public Hearing of an Application  
(Minor and Major Developments)*

- .1 The purpose of the public hearing is to allow the applicant and affected property owners to provide information as part of the record that the Board will use in considering its action on the application. Testimony presented at the hearing should be related to factual information about the application and related submissions and the project's compliance with the review standards and other regulations and requirements of this ordinance or other municipal ordinances.

.2 The Chair shall provide the applicant or his/her representative with an opportunity to make any statement or presentations at the beginning of the hearing. The Chair shall then allow the members of the Board to ask questions of the applicant and for the applicant to answer those questions. Following Board questions, the Chair shall open the public hearing to the public for statements, information submissions, or questions about the project. At the close of the public comment period, the Chair shall afford the applicant an opportunity to answer any questions raised by the public, rebut any statements or information submitted, and cross-examine anyone offering testimony on the application. The Chair may allow the applicant this opportunity after each member of the public testifies if that is deemed to be desirable. At the conclusion of the applicant's response, the hearing shall be closed.

*.6 Procedure for Final Action on an Application  
(Minor and Major Developments)*

.1 The Planning Board shall take final action on said application within thirty (30) days of the public hearing. The Board shall act to deny, to approve, or to approve the application with conditions. The Board may impose such conditions as are deemed advisable to assure compliance with the standards of approval and performance standards of this ordinance.

.2 In issuing its decision, the Board shall make written findings of fact that establish whether the proposed development does or does not meet the standards of approval, performance standards, and other requirements of this Ordinance.

.3 The Board shall notify the applicant, of the action of the Board, including the findings of fact and any conditions of approval.

*.7 Time Limitations*

.1 All time limits provided for in this section may be extended by mutual agreement of the applicant and Board.

## Sec. 206.7 SITE PLAN APPLICATION SUBMISSION REQUIREMENTS

### .1 *Submission Requirements for Site Inventory and Analysis (Major developments only)*

The site inventory and analysis is intended to provide both the applicant and the Planning Board with a better understanding of the site and the opportunities and constraints imposed on its use by both the natural and built environment. It is anticipated that this analysis will result in a development plan that reflects the conditions of the site; those areas most suitable for the proposed use will be utilized, while those that are not suitable or present significant constraints will be avoided to the maximum extent possible. Therefore, the submission requirements provide that the applicant submit basic information about the site and an analysis of that information. All submission requirements shall be submitted to the Town Planner at least twenty-one (21) days prior to the meeting at which it is to be considered. If the application is found to be deficient all additional information must be submitted no later fourteen (14) days prior to the meeting at which it is to be considered. The site inventory and analysis submission must contain, at a minimum, the following information:

- .1 The names, addresses, and phone numbers of the record owner and the applicant.
- .2 The names and addresses of all consultants working on the project.
- .3 Evidence of right, title, or interest in the property.
- .4 Evidence of payment of the site inventory and analysis fee.
- .5 Twelve (12) copies of an accurate scale inventory plan of the parcel at a scale of not more than one hundred (100) feet to the inch showing as a minimum: [Amended 2/25/02, effective 3/19/02]
  - a. the name of the development, north arrow, date and scale;
  - b. the boundaries of the parcel;
  - c. the relationship of the site to the surrounding area;
  - d. the topography of the site at an appropriate contour interval depending on the nature of the use and character of the site
  - e. the major natural features of the site and within two hundred (200) feet of the site, including wetlands, streams, ponds,

floodplains, groundwater aquifers, significant wildlife habitats or other important natural features;

- f. existing buildings, structures, or other improvements on the site;
  - g. existing restrictions or easements on the site;
  - h. the location and size of existing utilities or improvements servicing the site;
  - i. a class D medium intensity soil survey; and
  - j. if a private sewage disposal system will be used, a suitable location for a system.
- .6 Twelve (12) copies of a narrative describing the existing conditions of the site, the proposed use and the constraints or opportunities created by the site. This submission should include any traffic studies, utility studies, market studies or other preliminary work that will assist the Planning Board in understanding the site and the proposed use. [Amended 2/25/02, effective 3/19/02]
- .7 Twelve (12) copies of any requests for waivers from the submission requirements for the site plan review application. [Amended 2/25/02, effective 3/19/02]

*.2 Submission Requirements for Site Plan Review Applications (Minor and Major developments)*

Applications for site plan review must be submitted on application forms provided by the Town. The complete application form, evidence of payment of the required fees, and the required plans and related information must be submitted to the Planner. Applications for major developments will not be received until the review of the site inventory and analysis is completed. All submission requirements shall be submitted to the Town Planner at least twenty-one (21) days prior to the meeting at which it is to be considered. If the application is found to be deficient all additional information must be submitted no later fourteen (14) days prior to the meeting at which it is to be considered. The submission must contain at least the exhibits and information specified in this section, unless specifically waived in writing.

- .1 All applications for site plan review must contain the following information:

- .1 a fully executed and signed copy of the application for development review;
  - .2 evidence of payment of the application and technical review fees; and
  - .3 twelve (12) copies of written materials plus twelve (12) sets of maps or drawings containing the information listed in Sections 206.7.2 (2), (3), (4), (5) and (6) below. The maps or drawings must be at a scale sufficient to allow review of the items listed under approval criteria: forty (40) feet to the inch is preferred, but in no case shall the scale exceed one hundred (100) feet to the inch for that portion of the tract of land being proposed for development. [Amended 2/25/02, effective 3/19/02]
- .2 General Information (Minor and Major developments)
- .1 record owner's name, address, and phone number and applicant's name, address and phone number, if different.
  - .2 the location of all required building setbacks, yards, and buffers.
  - .3 names and addresses of all property owners within two hundred (200) feet of any and all property boundaries.
  - .4 sketch map showing general location of the site within the municipality based upon a reduction of the tax maps.
  - .5 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.
  - .6 the tax map and lot number of the parcel or parcels on which the project is to be located.
  - .7 a copy of the deed to the property, an option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
  - .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.

.3 Existing Conditions Plan (Minor and Major developments)

- .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 to be developed and the source of this information. The 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 and 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, 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, and any off-site drainage facilities that will be used.
  - .10 the location, front view, dimensions, and lighting of existing signs.
  - .11 location and dimensions of any existing easements and copies of existing covenants or deed restrictions.
  - .12 the location of the nearest fire hydrant or other water supply for fire protection.
- .4 Proposed Development Activity (Minor and Major developments)
- .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.
  - .6 the location, dimensions, and ground floor elevation of all proposed buildings or building expansion proposed on the site.
  - .7 location, of proposed signs together with the method for securing the sign.
  - .8 location and type of exterior lighting.
  - .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; and,
- .12 stormwater calculations, erosion and sedimentation control measures, and water quality and/or phosphorous export management provisions.

.5 Additional Submission Requirements for Major Developments

In addition to the information required for all applicants, an application for a major development must contain twelve (12) copies of the following information: [Amended 2/25/02, effective 3/19/02]

- .1 a narrative and/ or plan describing how the proposed development plan relates to the site inventory and analysis.
- .2 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, and
- .3 a stormwater drainage and erosion control program showing:
  - a) the existing and proposed method of handling stormwater runoff.
  - b) the direction of flow of the runoff, through the use of arrows.
  - c) the location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins, and storm sewers.
  - d) engineering calculations used to determine drainage requirements based upon the 25-year 24-hour storm frequency; this is required only if the project will significantly alter the existing drainage pattern due to such factors as the amount of new impervious surfaces being proposed, and
  - e) methods of controlling erosion and sedimentation during and after construction.
- .4 A groundwater impact analysis prepared by groundwater hydrologist for projects involving on-site water supply or sewage disposal facilities with a capacity of two thousand (2,000) gallons or more per day.

- .5 The name, registration number, and seal of the architect, engineer, landscape architect and/ or similar professional who prepared the plan.
- .6 A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone, cable TV, and any other utility services to be installed on the site.
- .7 A planting schedule keyed to the site plan indicating the general varieties and sizes of trees, shrubs, and other vegetation to be planted on the site, as well as information pertaining to provisions that will be made to retain and protect existing trees, shrubs, and other vegetation.
- .8 A traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets, if the project or expansion will provide parking for fifty (50) or more vehicles or generate more than one hundred (100) trips during the a.m. or p.m. peak hour based upon the latest edition of the trip generator manual of the Institution of Traffic Engineers.
- .9 A written statement from any utility district providing service to the project as to the adequacy of the water supply in terms of quantity and pressure for both domestic and fire flows, and the capacity of the sewer system to accommodate additional wastewater if public water or sewerage will be utilized.
- .10 Cost of the proposed development and evidence of the applicant's financial capacity to complete it. This evidence should be in the form of a letter from a bank or other source of financing indicating the name of the project, amount of financing proposed or available, and individual's or institution's interest in financing the project or in the form of a letter from a certified accountant or annual report indicating that the applicant has adequate cash flow to cover anticipated costs.

.6 Waiver of the Submission Requirements

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 pre application conference or at the initial review of the application if no pre application conference is held. A waiver of any submission requirement may be granted only if the Board finds that the information is not required to determine compliance with the standards and criteria. The

application must contain twelve (12) copies of all waiver requests as part of the application. [Amended 2/25/02 effective 3/19/02]

## **Sec. 206.8 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, including buildings, lots, and support facilities, must reflect the natural capabilities of the site to support 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. 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.

- .1 Any driveway or proposed street must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards, to the maximum extent possible.
- .2 Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.
- .3 The grade of any proposed drive or street must be not more than +3% for a minimum of two (2) car lengths, or forty (40) feet, from the intersection.
- .4 The intersection of any access/egress drive or proposed street must function: (a) at a Level of Service D, or better, 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.

- .5 Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot must 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 short cutting through the site.
- .6 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, and traffic controls within public streets.
- .7 Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
- .8 The following criteria must be used to limit the number of driveways serving a proposed project:
  - a. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway must be no greater than thirty (30) feet wide. For health care, residential care, extended care and similar facilities, which generate less than one hundred (100) vehicle trips per day, where the applicant can conclusively demonstrate that life safety is or could be at risk due to the lack of adequate access for emergency vehicles, and only after all other site design alternatives have been exhausted, the Planning Board may at its discretion, with appropriate input from the Town's Public Safety Chiefs and the Town's Public Works director, approve a second separate driveway. [Amended, effective 4/22/02]
  - b. 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.

### .3 Accessway Location and Spacing

Accessways must meet the following standards:

- .1 Private entrance / exits 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 Private accessways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

#### .4 Internal Vehicular Circulation

The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site.

- .1 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.
- .2 Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).
- .3 The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.
- .4 All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

#### .5 Parking Layout and Design

Off street parking must conform to the following standards:

- .1 Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the street.
- .2 All parking spaces, access drives, and impervious surfaces must be located at least fifteen (15) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within fifteen (15) feet of the front property line. Parking lots on adjoining

lots may be connected by accessways not exceeding twenty-four (24) feet in width.

- .3 Parking stalls and aisle layout must conform to the following standards.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9'-0"		18'-0"	24'-0" 2-way
60°	8'-6"	10'-6"	18'-0"	16'-0" 1-way
45°	8'-6"	12'-9"	17'-6"	12'-0" 1-way
30°	8'-6"	17'-0"	17'-0"	12'-0" 1 way

- .4 In lots utilizing diagonal parking, the direction of proper traffic flow must be indicated by signs, pavement markings or other permanent indications and maintained as necessary.
- .5 Parking areas must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.
- .6 Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

.6 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 the amenities such as parks or open space on or adjacent to the site.

.7 Stormwater Management

Adequate provisions must be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

- .1 To the extent possible, the plan must retain stormwater on the site using the natural features of the site.
- .2 Unless the discharge is directly to the ocean or major river segment, stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.
- .3 The applicant must demonstrate that on - and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to, flooding and erosion of shoreland areas, or that he / she will be responsible for whatever improvements are needed to provide the required increase in capacity and / or mitigation.
- .4 All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review.
- .5 The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
- .6 The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or through the site to be developed and provide for this movement.
- .7 The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source, or a great pond.
- .8 Erosion Control
  - .1 All building, site, and roadway designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity must be kept to a minimum. Parking lots on sloped sites must be terraced to avoid undue cut and fill, and / or the need for retaining walls. Natural vegetation must be preserved and protected wherever possible.

- .2 Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active program meeting the requirements of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991, and as amended from time to time.

#### .9 Water Supply Provisions

The development must be provided with a system of water supply that provides each use with an adequate supply of water. 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 of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

#### .10 Sewage Disposal Provisions

The development must be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code. If provisions are proposed for on-site waste disposal, all such systems must conform to the Subsurface Wastewater Disposal Rules.

#### .11 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.

#### .12 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 the 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.

#### .13 Water Quality Protection

All aspects of the project must be designed so that:

- .1 No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxious, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.
- .2 All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshall's Office.

#### .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 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.

#### .16 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 Town's Floodplain management provisions.

#### .17 Exterior Lighting

The proposed development must have adequate exterior lighting to provide for its safe use during nighttime hours, if such use is contemplated. All exterior lighting must be designed and shielded to avoid undue glare, adverse impact on neighboring properties and rights - of way, and the unnecessary lighting of the night sky.

#### .18 Buffering of Adjacent Uses

The development must provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of mechanical equipment and service and storage areas. The buffer may be provided by distance, landscaping, fencing, changes in grade, and / or a combination of these or other techniques.

#### .19 Noise

The development must control noise levels such that it will not create a nuisance for neighboring properties.

#### .20 Storage of Materials

- .1 Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.
- .2 All dumpsters or similar large collection receptacles for trash or other wastes must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.
- .3 Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises must be provided and maintained in good condition.

#### .21 Landscaping

Landscaping must be provided as part of site design. The landscape plan for the entire site must use landscape materials to integrate the various elements on site, preserve and enhance the particular identity of the site, and create a pleasing site character. The landscaping should define street edges, break up parking areas, soften the appearance of the development, and protect abutting properties.

#### .22 Building and Parking Placement

- .1 The site design should avoid creating a building surrounded by a parking lot. Parking should be to the side and preferably in the back. In rural, uncongested areas buildings should be set well back from the road so as to conform with the rural character of the

area. If the parking is in front, a generous, landscaped buffer between road and parking lot is to be provided. Unused areas should be kept natural, as field, forest, wetland, etc.

- .2 Where two or more buildings are proposed, the buildings should be grouped and linked with sidewalks; tree planting should be used to provide shade and break up the scale of the site. Parking areas should be separated from the building by a minimum of five (5) to ten (10) feet. Plantings should be provided along the building edge, particularly where building facades consist of long or unbroken walls.

## **Sec. 206.9      LIMITATION OF APPROVAL**

Construction of the improvements covered by any site plan approval must be substantially commenced within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially commenced 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 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.

## **Sec. 206.10    PERFORMANCE GUARANTEES**

- .1 Performance Guarantee - The Planning Board may require the posting of a performance guarantee in such amount and form as specified in subsection .1 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.
  - .1 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 Town Attorney.
    - .1 Security Bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.
    - .2 Letter of Credit. The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution.

- .3 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 Town approval for withdrawal and must stipulate that the Town can withdraw the money upon forty-eight (48) hour advance notice to the applicant to complete the guaranteed improvements.
- .4 Surety Bonds. The applicant may provide a surety bond given by the contractor to the developer, provided the town is included in the bond as an additional named insured and that the bond states that the amount provided for in the bond cannot be reduced without prior written approval of the town.
- .2 Upon substantial completion of all required improvements, the developer must notify the Planning Board 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.

**Sec. 206.11 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 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.

**Sec. 206.12 MINOR CHANGES TO APPROVED PLANS**

Minor changes in approved plans necessary to address field conditions may be approved by the Planner provided that any such change does not affect compliance with the standards or alter the essential nature of the proposal.

**Sec. 206.13 APPEAL OF PLANNING BOARD ACTIONS**

Appeal of any actions taken by the Planning Board with respect to this section shall be to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure. [Adopted, Effective 8/23/99]

## **SECTION 300 - AQUIFER PROTECTION**

### **Sec. 301 Purpose**

The purposes of this section are to protect the health, safety, and general welfare of the residents of Cumberland by protecting the quality of the Town's groundwater through the regulation of activities and land use practices.

### **Sec. 302 Applicability**

The requirements of Section 300 shall apply to all areas designated as Aquifer Protection (AP) on the official aquifer protection map which shall be adopted as part of this Zoning Ordinance. Aquifer Protection areas shall be determined on the basis of the most recent data available from the United States Geological Survey and Maine Geological Survey and other public sources.

### **Sec. 303 Regulations**

303.1 Disposal of hazardous waste materials is prohibited.

303.2 The following uses shall only be allowed upon a positive finding by the Planning Board that the proposed use, with any conditions imposed by the Board, will not adversely affect the quality of groundwater:

- .1 Disposal of solid waste, other than brush or stumps;
- .2 Storage of road salt or other de-icing agents;
- .3 Animal feedlots which hold more than three (3) animals per acre, or in the case of poultry, which holds more than 150 animals per acre;
- .4 Manure piles or storage pits in excess of 50 cubic yards, or in the case of poultry manure in excess of 20 cubic yards; manure shall otherwise be disposed in accordance with the provisions of Sec. 401.1;
- .5 Storage of petroleum or other refined petroleum products, with the exception of petroleum products used for household purposes;
- .6 Disposal of other leachable materials, with the exception of single-family and two-family residential septic systems;
- .7 Extraction of earth materials;
- .8 Any residential, commercial, industrial, institutional, or governmental development, including subdivision, which occupies a land or water area in excess of 20 acres.

## **SECTION 400 GENERAL REGULATIONS**

### **Sec. 401 Agriculture**

- .1 All spreading or disposal of manure shall be accomplished in conformance with the Maine Guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission in July, 1972.
- .2 Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. Within five (5) years of the effective date of this ordinance 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. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five (5) year period.
- .3 Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the shoreland zone shall require a Soil and Water 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 the Ordinance.
- .4 There shall be no new tilling of soil greater than forty thousand (40,000) square feet in surface area located in whole or in part within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seven-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five feet, horizontal distance, of tributary streams, and wetland. Operations in existence on the effective date of this ordinance and not in conformance with provision may be maintained, provided that such operations are conducted in accordance with a Soil and Water Conservation Plan to be filed with the Planning Board.
- .5 After the effective date of the Ordinance, newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance of other water bodies, 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

Soil and Water Conservation Plan to be filed with the Planning Board.  
[Amended, Effective 3/23/92]

**Sec. 402     Animals**

- 402.1       Household pets are allowed in all districts.
- 402.2       Horses may be kept provided that there shall be at least one (1) acre of containment area for the first horse to be kept on the premises, and 10,000 square feet of containment area for each horse thereafter.
- 402.3       Animals other than horses or household pets may be kept for personal use and enjoyment provided that the minimum lot size shall be three (3) acres in the MDR and LDR districts;
- 402.4       The free range of poultry is prohibited;
- 402.5       No chicken house and no piggery shall be permitted nearer than 100 feet to any property line.

**Sec. 403     Backlots**

Single-family dwellings and duplex dwellings shall be permitted on backlots provided they are served by a private way meeting the standards of Sec. 421 of this Ordinance subject to the following provisions:

- 403.1       The creation of a lot which does not have the required frontage on a public right-of-way shall require twice the minimum lot size for the district in which it is located, and shall require a right-of-way no less than fifty (50) feet wide, except that in no case shall such private right-of-way be required to be wider than the public right-of-way which it intersects. Lots in the Rural Residential Districts 1 and 2 shall be exempt from the doubling of the minimum lot size provision of this section. Where a lot is in existence and is provided access by a private right-of-way recorded at the Cumberland County Registry of Deeds prior to the adoption of this ordinance, these provisions shall not apply. [Amended, effective 5/26/87 and Amended, effective 5/15/89, Amended, effective 8/10/98]
- 403.2       The Board of Adjustment and Appeals may allow a reduction of these standards upon a finding that backlots will be provided with safe access and that the proposed reduction in requirements is otherwise in conformance with Sec. 603.2.6.
- 403.3       No dwelling unit shall be erected on a back lot closer than two hundred feet to an existing public right of way.

**Sec. 404**     **Beach Construction**

Beach construction on any great pond or coastal wetland shall require a permit from the Department of Environmental Protection. Beach construction on any river, stream, or brook capable of floating watercraft shall require approval from the Commissioner of the DEP, as required by law. [Amended, Effective 3/23/92]

**Sec. 405**     **Campgrounds**

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following: [Amended, Effective 12/10/91]

- .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 from the normal high-water line of a great pond, and seventy-five (75) feet from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

**Sec. 406**     **Clustered, Dispersed, and Traditional Residential Development**

[Amended, effective 4/12/99]

- 406.1       GENERAL: In reviewing applications for major subdivision approval involving a residential development consisting of four five or more single family residences and/or duplex dwellings in the Rural Residential 1, Rural Residential 2, Rural Industrial, Medium Density Residential, Low Density Residential, Island Residential and Island Business zoning districts, the Planning Board shall be authorized to require that the residential development be designed and constructed as a clustered residential development, a traditional residential development, or a dispersed residential development based on the standards and criteria set forth in this Section., except that developments with four or fewer lots may be designed as a clustered or dispersed development upon a positive finding by the Planning Board that the intent of the Ordinance listed below can be met. Such developments are subject to Section 4.4 or the Subdivision Ordinance. All such residential developments shall conform to the requirements of this Ordinance as well as the Subdivision Ordinance of the Town of Cumberland and all other applicable Ordinances of the Town of Cumberland and the Town of Cumberland Comprehensive Plan. The intention of this section of the Ordinance is to assure that residential

developments are designed in such a way as to assure protection of wells and groundwater from contamination; prevent adverse impacts on existing wells on adjoining properties and on wells to be created within the new residential development; avoid septic contamination or interference within the new residential development and with respect to surrounding properties; minimize the cost of constructing and maintaining public utilities and improvements including streets, water lines, sewer lines, electric lines, gas lines, telephone lines, and other utilities; protect and preserve existing farms and farmland; protect areas in resource protection districts; protect, preserve and improve existing recreational areas and trails; protect and preserve sensitive wildlife habitats and other natural areas; and protect and preserve public access to water bodies.

406.2 CLUSTERED RESIDENTIAL DEVELOPMENT: Clustered residential developments are residential developments in which groups or clusters of dwelling units may be located on adjoining individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as open space so long as the following requirements are satisfied:

- .1 Minimum lot size: If the lots are connected to the public water and sewer systems, the minimum lot size for each single family dwelling shall be 30,000 square feet and for each duplex dwelling shall be 40,000 square feet. If the lots are connected to the public water system but not the public sewer system, the minimum lot size for each single family dwelling shall be 45,000 sq. ft. and 60,000 sq. ft. for each duplex. If the lots are not connected to the public water and sewer system, the minimum lot size for each single family dwelling shall be 60,000 square feet and for each duplex dwelling shall be 80,000 square feet.
- .2 Setback: Setback requirements for a clustered residential development shall be the same as those required in the zoning district in which the residential development is located.
- .3 Frontage: In the Rural Residential 1 and 2 districts, each lot shall have no less than 100 feet of lot frontage on a street. In all other districts each lot shall have no less that 75 feet of lot frontage on a street.
- .4 Buffering: A buffer area at least 75 feet in depth shall be established between the clustered residential development and abutting tracts or parcels of land and between the clustered residential development and existing streets and roads adjoining or abutting the clustered residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees landscaping, fencing, grading, or

a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in buffer areas.

- .5 Open space. At least 25% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:
  - a. Active farmland or land adjoining active farmland.
  - b. An active trail system or which provides a link to an existing trail system.
  - c. Land which provides a buffer around a sensitive wildlife habitat or other natural area.
  - d. Land which provides physical or visual access to a water body including the ocean, lake, pond, river, stream or brook.
  - e. Land which is in Resource Protection.
  - f. Land which is suitable for active recreation.
  - g. Land which abuts or adjoins an existing public open space.
- .6 Land set aside as open space may, be held as common open space by the individual lot owners of the proposed residential development and in such cases the developer shall be required to establish a homeowner's association consisting of individual lot owners which shall include the following:
  - a. Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and obligations in the association and in the common open space including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.
  - b. The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.

- c. The developer shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners after which time the association shall be responsible for such maintenance and this requirement shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.
  - d. All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the town attorney and the planning board and, if approved, shall be recorded in the Cumberland County Registry of Deeds and included or referred to in the deed of each lot.
- .7 Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the town attorney.
  - .8 Some or all of the open space may be conveyed to a non-profit tax exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes. Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the town attorney.

406.3 TRADITIONAL RESIDENTIAL DEVELOPMENT: Traditional residential developments are residential developments in which the dwelling units are located on individual building lots which conform with the minimum lot size for the zoning district in which they are located. A traditional residential development may but is not required to include land set aside as open space, as provided in Section 7.5 of the Subdivision Ordinance.

406.4 DISPERSED RESIDENTIAL DEVELOPMENT: Dispersed residential developments are residential developments in which the dwelling units may be located on individual building lots which may be smaller than the required minimum lot size for the zoning district in which they are located but within which land is set aside as open space so long as the following requirements are satisfied:

- .1 Minimum lot size: The minimum lot size for each single family dwelling shall be 60,000 square feet and for each duplex dwelling shall be 80,000 square feet.
- .2 Setback: Setback requirements for a dispersed residential development shall be the same as those required in the zoning district in which the residential development is located.

- .3 Frontage: In the Rural Residential 1 and 2 districts, each lot shall have no less than 100 feet of lot frontage on a street. In all other districts each lot shall have no less that 75 feet of lot frontage on a street.
- .4 Buffering: A buffer area shall be established between the residential development and abutting tracts or parcels of land and between the residential development and existing streets and roads adjoining or abutting the residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in buffer areas.
- .5 Open space. At least 25% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:
  - a. Active farmland or land adjoining active farmland.
  - b. An active trail system or which provides a link to an existing trail system.
  - c. Land which preserves and provides a buffer around a sensitive wildlife habitat or other natural area.
  - d. Land which provides physical or visual access to a water body including the ocean, lake, pond, river, stream or brook.
  - e. Land which is in Resource Protection.
  - f. Land which is suitable for active recreation.
  - g. Land which abuts or adjoins and existing public open space.
- .6 Land set aside as open space may, be held as common open space by the individual lot owners of the proposed residential development and in such cases the developer shall be required to establish a homeowner's association consisting of individual lot owners which shall include the following:
  - a. Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and bligations in the association and in the common

open space including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.

- b. The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.
  - c. The developer shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners after which time the association shall be responsible for such maintenance and this requirement shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.
  - d. All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the town attorney and the planning board and, if approved, shall be recorded in the Cumberland County Registry of Deeds and included or referred to in the deed of each lot.
- .7 Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the town attorney
- .8 Some or all of the open space be conveyed to a non-profit tax exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes. Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the town attorney.

406.5 NET RESIDENTIAL DENSITY: The maximum number of dwelling units permitted on the tract or parcel of land proposed for any type of residential development shall be determined by dividing the net residential acreage of the tract or parcel by the zoning district minimum lot size for the zone in which the project is located. In no event shall the number of residential units exceed the density requirement of the zoning district in which it is located.

406.6 CRITERIA TO BE CONSIDERED: In determining whether a proposed residential development shall be constructed as a clustered residential development, a traditional residential development, or a dispersed

residential development, the Planning Board shall consider the following criteria as required by Title 30-A M.R.S.A. Section 4404 and the Cumberland Subdivision Ordinance:

406.7 STANDARDS FOR REQUIRING CLUSTERED RESIDENTIAL DEVELOPMENT: The Planning Board shall require that a residential development be designed as a clustered residential development if the following standards are met:

- .1 The tract or parcel of land to be developed has a public water system or will be connected to the public water system or the Planning Board determines that adequate wells can be established for each residential unit without risk of contamination or interference with existing wells or groundwater on abutting properties and wells to be located within the proposed residential development.
- .2 The tract or parcel of land to be developed is connected to the public sewer system or will be connected to the public sewer system or the Planning Board determines that adequate on site septic systems can be established for each residential unit without risk of contamination or interference with existing wells, ground water and septic systems on abutting properties and within the proposed residential development.
- .3 The tract or parcel of land to be developed contains one or more of the following types of open space:
  - a. Land which is active farmland or which adjoins or abuts active farmland.
  - b. Land which contains an existing trail system used by the public or which can provide a link to existing trails.
  - c. Land which contains or adjoins a significant wildlife habitat or other rare and irreplaceable natural area as determined by the Department of Inland Fisheries and Wildlife or the Town of Cumberland.
  - d. Land which may provide physical or visual access to waterbodies including the ocean, lakes, ponds, rivers, streams, and brooks.
  - e. Land which contains or adjoins a Resource Protection district as shown on the official zoning map of the Town of Cumberland.
  - f. Land which adjoins or abuts an existing parcel of land which constitutes public open space.

- g. Land which is suitable for active recreational activities.

406.8

**STANDARDS FOR REQUIRING DISPERSED RESIDENTIAL DEVELOPMENT:** The Planning Board shall require that a residential development be designed as a dispersed residential development if the following standards are met:

- .1 The Planning Board determines that adequate wells cannot be established for each residential unit in the proposed residential development without risk of contamination or interference with existing wells or wells to be established within the proposed residential development unless the wells are widely separated.
- .2 The Planning Board determines that due to the nature of soils and the configuration of the tract or parcel of land to be developed, on site septic systems must be widely separated in order to eliminate risk of contamination and interference with wells and septic systems on adjoining properties or within the proposed residential development.
- .3 The tract or parcel to be developed contains one or more of the following types of open space:
  - a. Land which is active farmland or which adjoins or abuts active farmland.
  - b. Land which contains an existing trail system used by the public or which can provide a link to existing trails.
  - c. Land which contains or adjoins a significant wildlife habitat or other rare and irreplaceable natural area as determined by the Department of Inland Fisheries and Wildlife or the Town of Cumberland.
  - d. Land which may provide physical or visual access to waterbodies including the ocean, lakes, ponds, rivers, streams, and brooks.
  - e. Land which contains or adjoins a Resource Protection district as shown on the official zoning map of the Town of Cumberland.
  - f. Land which adjoins or abuts an existing parcel of land which constitutes public open space.
  - g. Land which is suitable for active recreational activities.

406.9 AFFORDABLE HOUSING DEVELOPMENTS: Notwithstanding the foregoing requirements of this section and the requirements applicable to the underlying zoning district, the Town Council may by contract zoning pursuant to Section 606 of this ordinance allow a clustered residential development of single family residential lots that is developed as an affordable housing development in any zoning district in which residential uses are permitted and which has access to public water and sewer subject to the following requirements:

- .1 "Affordable housing" shall mean residential dwelling units such that the persons eligible to purchase such residential dwellings shall have annual incomes which fall within income guidelines established by the Cumberland Town Council.
- .2 Minimum lot size: 10,000 square feet per single family dwelling unit.
- .3 Setback:           Front: 25 feet  
                          Rear: 30 feet  
                          Side: 10 feet
- .4 Frontage: Each lot shall have no less than 100 feet of lot frontage on a street.
- .5 Buffering: A buffer area at least 75 feet in depth shall be established between the affordable residential development and abutting tracts or parcels of land and between the affordable residential development and existing streets and roads adjoining or abutting the affordable residential development. Such buffer shall be designed to eliminate potential adverse impacts (including glare, noise, and unsightly views of service areas). Buffering shall consist of trees landscaping, fencing, grading, or a combination of some or all of these techniques. Where possible, existing trees and vegetation shall be preserved in buffer areas.
- .6 Open space. At least 25% but no more than 50% of the total area of the tract or parcel of land being developed must be maintained as open space and not included in the individual building lots. Such open space shall consist of land which has one or more of the following characteristics:
  - a. Active farmland or land adjoining active farmland.
  - b. An active trail system or which provides a link to an existing trail system.

- c. Land which provides a buffer around a sensitive wildlife habitat or other natural area
  - d. Land which provides physical or visual access to a water body including the ocean, lake, pond, river, stream or brook.
  - e. Land which is in Resource Protection.
  - f. Land which is suitable for active recreation.
  - g. Land which abuts or adjoins and existing public open space.
- .7 Land set aside as open space may be held as common open space by the individual lot owners of the proposed residential development and in such cases the developer shall be required to establish a homeowner's association consisting of individual lot owners which shall include the following:
- a. Covenants shall be included in each deed from the developer to an individual lot owner which shall require mandatory membership in the association and shall set forth the owner's rights, interests, privileges, and obligations in the association and in the common open space including the association's responsibility and obligation to maintain the common open space and any recreational facilities located therein.
  - b. The association shall develop a system to levy and collect annual charges against any and all lot owners to defray expenses connected with the maintenance of common open space and recreational facilities located therein and this system shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.
  - c. The developer shall be responsible for its maintenance until at least 75% of the lots have been sold to individual lot owners after which time the association shall be responsible for such maintenance and this requirement shall be set forth in the deed covenants or other legal instrument binding upon the lot owner and running with the land.
  - d. All proposed deed covenants and legal documents relating to such common open space shall be reviewed by the town attorney and the planning board and, if approved, shall be recorded in the Cumberland County Registry of Deeds and included or referred to in the deed of each lot.

- .8 Some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council. Any such dedication shall be accomplished by deeds or other appropriate legal instruments acceptable to the town attorney.
- .9 Some or all of the open space be conveyed to a non-profit tax exempt land trust or similar organization for conservation, passive recreation, or active recreational purposes. Any such conveyance shall be accomplished by deeds or other appropriate legal instruments acceptable to the town attorney.

**Sec. 406A Multiplex Dwellings [Effective 5/15/89]**

406A.1 General: The construction of any new multiplex dwelling or the conversion of an existing single-family dwelling or duplex dwelling into a multiplex dwelling shall comply with the following standards and the planning board shall review a proposed multiplex dwelling development for compliance with these standards:

- .1 The number of multiplex dwelling units allowed on a tract or parcel shall be calculated by dividing the net residential acreage of the tract or parcel by the minimum lot area per dwelling unit required by the appropriate zoning district for multiplex development.
- .2 On any tract or parcel, the maximum number of attached dwelling units per structure shall be six (6) and the average number of attached dwelling units per structure shall be four (4). The distance between the foundations of any two principal structures, shall be no less than the height of the taller of the two buildings, but in no event shall a building separation of less than 25 feet be permitted.
- .3 A tract or parcel developed under this Section shall be held either in single or common ownership, shall be at least 10 acres in area and shall have the same amount of lot frontage on a public right-of-way as is required by the underlying District.
- .4 Setbacks. The following minimum setbacks are required for front, rear or side yards that adjoin a boundary line of the tract or parcel or a street:
  - .1 Front: The same as in the underlying District except that this shall be twice that required when the tract or parcel has any frontage along a collector street as defined in the Subdivision Ordinance.
  - .2 Side: The same as in the underlying District.
  - .3 Rear: The same as in the underlying District.

- .5 A buffer shall be established between the multiplex housing and any dwelling on abutting tracts or parcels, which buffer shall be sufficient to minimize any potential nuisance, including but not limited to headlights, noise, storage areas and solid waste storage. This buffering shall consist of landscaping, fencing or grading or a combination of some or all of these techniques.
- .6 No dwelling unit shall have less than 600 square feet of finished living area, exclusive of common hallways, basements and unimproved attic areas.
- .7 The scale and surface area of parking areas, driveways and paved areas shall be compatible with adjacent structures, must be properly screened and must provide for parking in accordance with the requirements of Sec. 417 of this Ordinance.
- .8 Open Space. The amount of open space that shall be required shall be required shall be at least 70% of the tract or parcel in the Rural Residential Districts 1 and 2 and at least 50% in other zones in which multiplex developments are permitted.
  - .1 This open space shall be usable for recreational, agricultural or other outdoor living purposes and for preserving natural features including, but not limited to, large trees, tree groves, woods, ponds, streams, glens, rock outcrops, natural plant life and wildlife cover, deer yards, and to the greatest extent possible, shall be contiguous open space. The use of any such open space may be further limited or regulated by the imposition of reasonable conditions at the time of final subdivision approval by the Planning Board where necessary to protect adjacent properties or uses, or the open space itself.
  - .2 If any or all of the open space is to be reserved by the individual unit owners as common open space, each unit owner shall own a fractional interest in the common open space and the developer shall be required prior to final subdivision plan approval to incorporate a homeowners' association consisting of the individual unit owners, which incorporation must comply with the following:
    - .1 Proposed covenants shall be placed in each deed from the developer to the individual unit owner, which deed covenants shall require mandatory membership in the homeowners' association, and shall set forth the unit owners' rights, interests, privileges and obligations in the association and in the common open space, including the homeowners association's responsibility and obligation to maintain the

common open space and any recreational facilities located therein.

- .2 The homeowners' association shall develop a system to levy and collect annual charges against any and all individual lot owners to defray any expense connected with the maintenance of common open space and any recreational facilities located therein, and this system shall be described in said deed covenant or by some other legal instrument made binding upon the individual unit owner and running with the land.
- .3 The developer shall maintain control of the common open space and be responsible for its maintenance until 75% of the multiplex dwelling units in the subdivision have been sold, at which time, the homeowners' association shall be responsible for such maintenance, and this obligation shall be described in said deed covenant or by some other legal instrument made binding upon the individual dwelling unit owner and running with the land.
- .4 All such proposed deed covenants and other legal documents pertaining to common open space shall be reviewed by the town attorney, and, if approved by the planning board, shall be recorded in the Cumberland county Registry of Deeds, and included or referred to in the deed to each unit.
- .3 At the option of the Town, some or all of the open space may be dedicated to the Town of Cumberland, subject to acceptance by the Town Council.
- .4 Some or all of the open space may be dedicated to a non-profit land trust for conservation, passive recreation purposes or active recreation purposes.
- .5 Any dedication under subsection .1.8.3 or .1.8.4 above must be made through appropriate legal instruments, reviewed by the Town Attorney.
- .6 The open space(s) shall be shown on the subdivision plan with appropriate notation on the face thereof to indicate that it shall not be used for future buildings or structures.
- .7 All legal documents required under this subsection must be submitted with the final subdivision plan application.

**Sec. 407     Conversions**

407.1       Accessory Apartments

Any single-family dwelling or an existing accessory structure, which is either attached or detached, to the dwelling may be altered or expanded to include one apartment unit subject to the approval of the Board of Adjustment and Appeals as a special exception, and in accordance with the following standards:

- .1    The unit to be added shall include no more than one bedroom and shall not exceed 40% of the total living area of the building; [Effective 5/15/89]
- .2    The board may waive the lot size requirements, provided that the Plumbing Inspector indicates adequate capacity and conformity with the State Plumbing Code; but in no case shall such conversion be allowed on a lot smaller than 20,000 square feet.
- .3    This provision shall not prohibit the conversion of a single-family dwelling to a duplex or multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling, so long as said conversion complies with all district and other zoning standards, including, but not limited to the minimum lot size per dwelling unit. [Effective 5/15/89]
- .4    An accessory apartment may be constructed in a detached accessory structure provided that the lot standards, and the setback requirements from the single-family dwelling to the accessory structure, for the district in which it is located cannot be met for each structure. The parcel on which the single-family dwelling and the detached accessory structure are located cannot be split so that each structure is on a separate parcel. [Amended, effective 8/10/98]

407.2       Manor Houses

Any single family dwelling with no less than 6,000 square feet of living area may be converted to a multi-family structure with the approval of the Board of Adjustment and Appeals as a special exception, subject to the following conditions and any additional conditions imposed by the Board of Adjustment and Appeals to assure that said conversion will have no adverse impact on the neighborhood:

- .1    The conversion of a manor house, as defined, into a multi-family structure shall be deemed a subdivision and subject to final approval of the Planning Board in accordance with the Subdivision Ordinance, after special exception approval has been granted by the Board of Adjustment and Appeals;
- .2    The number of units allowed shall be based on the minimum lot size requirement for the district in which it is located, except that the Board of

Adjustment and Appeals may reduce the lot size requirement to no less than 20,000 square feet per dwelling unit as a special exception, upon a finding that the conversion will not have an adverse effect upon the neighborhood as a result of traffic circulation, vehicular access, pedestrian circulation, storm drainage, or appearance;

- .3 No manor house shall be converted to a multi-family structure on a lot less than three acres in size;
- .4 The minimum floor area for each dwelling unit shall be 1,000 square feet;
- .5 No dwelling unit shall be created on a third floor or higher, except that a dwelling unit on the second floor may continue on to a third floor;
- .6 Associated structures of manor houses, such as garages and carriage houses, may be converted to dwelling units, but may not be included in the determination of living area in the manor house.

#### 407.3 Condominium

Any structure or property which is converted to condominium ownership in accordance with the provisions of the Maine Condominium Act, regardless of whether there is any physical change in the structure or property, shall be considered a subdivision and subject to the provisions of the Subdivision Ordinance, unless such structure or property has already been approved under the Subdivision Ordinance.

#### **Sec. 408 Corner Clearance**

No building, structure, or foliage shall be erected or maintained greater than three and one-half (3 1/2) feet above the curb height within an area defined by a line connecting the points 20 feet distant of the intersection of street lines at intersecting streets and roads.

#### **Sec. 408A Day Care Centers and Nursery Schools**

##### 408A.1 Purpose:

It is the intent of these provisions to allow the location of day care centers and nursery schools in healthy and safe environments in a manner that will not be disruptive to neighborhoods. Such uses should be considered integral components of neighborhood life. [Amended, effective 12/13/89]

##### 408A.2 Standards for Day Care Centers and Nursery Schools:

In addition to state requirements and the requirements of any other ordinance, including the special exception and site plan review ordinances, the following standards shall apply to the review of day care centers and nursery schools:

- .1 No Day Care Center or Nursery School shall be located on a lot less than 24,000 square feet in area.
- .2 Day Care Centers and Nursery Schools shall have at least 1,000 square feet of lot area per child received into the home, including the operator's own children under 16 years of age.
- .3 Day Care Centers and Nursery Schools shall be subject to the provisions of Sec. 7.15 -- Sewage Disposal -- of the Cumberland Subdivision Ordinance. At a minimum, the applicant must present the approval of the Town's local plumbing inspector that the proposed Day Care Center or Nursery School's sewage disposal system can accommodate the proposed use.
- .4 There shall be a fifteen-foot setback for outdoor play areas in side and rear yards, which set-back shall be enforced by fencing and/or plantings. Outdoor play areas shall not be permitted in front yards or yards adjacent to a street.
- .5 There shall be one (1) off-street parking space for each employee and volunteer worker not living at the site, and the parking area shall be designed to provide a safe location for vehicular ingress and egress and for the loading and unloading of children.
- .6 The Planning Board and/or the Board of Adjustment and Appeals may attach additional conditions directly related to screening and buffering, hours of operation, vehicular access restrictions, off-street parking, traffic volume, wastewater disposal, and barriers and other safety devices. [Sec. 408A enacted effective 12/13/89]

**Sec. 409     Erosion and Sedimentation Control**

Filling, grading, lagooning, dredging, earth-moving activities, and other land use activities shall be conducted in such manner to prevent to the maximum extent possible, erosion and sedimentation of surface waters. To this end, all construction shall be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission.

**Sec. 410     Extraction of Earth Materials**

- 410.1 Top soil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this Ordinance only after the granting of a one year, annually renewable special permit for

such operations as may be issued by the Board of Adjustment and Appeals and under such terms and conditions as may be approved and provided for by the Board and as provided for in this Ordinance.

410.2 Procedure:

- .1 The applicant shall present a site plan with detailed information of the proposed extraction operation as required under Section 206, Site Plan Review, and a written report describing the method of extraction, duration of the operation, traffic generation, measures to be taken to control erosion and stormwater runoff, and other information requested by the Board of Adjustment and Appeals.
- .2 The site plan, written report, and fee as required in Sec. 602.4 shall be submitted to the Code Enforcement Officer at least 30 days prior to the next available meeting date of the Board of Adjustment and Appeals, and shall be forwarded to the Planning Board for their review and advisory opinion.
- .3 After receipt of the advisory recommendations of the Planning Board and all other required materials, the Board of Adjustment and Appeals shall decide whether, and under what conditions, the proposed extraction operation may be permitted consistent with the provisions of Section 410.3, below:

410.3 Standards:

- .1 The operation shall be shielded from surrounding property by an adequate buffer area of not less than 200 feet from the top of the final grade to the property line, except that the Board of Adjustment and Appeals may reduce the buffer area from the minimum requirement of two hundred (200) feet to a minimum requirement of not less than one hundred (100) feet provided that any excavated property remaining will be left in a condition more useful for some future purpose conforming to the district requirements in which the excavation site is located.
- .2 An applicant may specifically apply as a part of his application for the excavation and removal of lands to the Board of Adjustment and Appeals for waiver of the requirement of the 200 foot buffer strip when the protective barrier serves only to separate two existing gravel pits. The Board of Adjustment and Appeals may only grant a waiver from this requirement of the Ordinance if (1) the protective buffer zones exist only between two existing gravel pits, (2) the owner of the respective properties mutually and voluntarily consent to the removal of the buffer zone, and (3) the Board of Adjustment and Appeals find that it shall not have a detrimental effect upon adjoining properties.

- .3 Specific plans shall be established to avoid hazards from excessive slopes and/or standing water. In no case may soils be removed or excavated to closer than within five (5) feet of the seasonal high water table as may be determined by a competent authority. Where an embankment must be left upon the completion of operations, it shall be at a slope of not steeper than one (1) foot vertical to three (3) feet horizontal, except that where the required buffer area has been reduced to 100 feet the slope of the edge of the excavation area shall not exceed one (1) foot vertical to four (4) feet horizontal.
- .4 No standing water shall be allowed to remain longer than two consecutive calendar weeks unless specifically provided for by the Board of Adjustment and Appeals.
- .5 In the case of any excavation to a depth of more than 20 feet below the surface there shall be constructed a substantial fence with suitable gates completely enclosing the property or area in which the excavation is located. No portion of such fence shall be located closer than forty feet to the edge of such excavation. However, this condition shall not apply in the case of an excavation or removal of lands adding a slope of one foot vertical to greater than 3 feet horizontal.
- .6 No excavation shall be extended below the grade of adjacent streets unless a 200-foot buffer strip shall be provided from the edge of the right-of-way except in cases where a specific condition has been made with the consent of the Board of Adjustment and Appeals and other involved parties such as the Cumberland Highway Department, Maine State Department of Transportation and other property owners for the reconstruction of the right-of-way and street at a different level.
- .7 Provision shall be made for the control of stormwater runoff to prevent on-site erosion, and to ensure that stormwater runoff leaves the site at the same location and is not significantly increased.
- .8 Sufficient topsoil shall be retained on the site or otherwise provided sufficient to cover all disturbed areas with an average depth of not less than two (2) inches. All disturbed areas resulting from the excavation and removal of lands or soils shall be graded and sloped to conform to the provisions of this Ordinance, reloaded and seeded with grasses indigenous to the area and such trees as the Board of Adjustment and Appeals may require and otherwise restored to a natural condition. In the case of topsoil removal, the upper six inches of topsoil shall be stockpiled and restored to a depth of six (6) inches throughout the site.

- .9 Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load.
- .10 All access roads leading from the extraction site to public ways shall be treated with stone, calcium or other suitable materials to reduce mud and dust.
- 410.4 A surety bond shall be posted with the Town Treasurer by the applicant in an amount and form approved by the Board of Adjustment and Appeals with the advice of the Town Manager sufficient to guarantee performance and conformity with the provisions of this Ordinance and approval of the special permit for the excavation and removal of lands.
- 410.5 The foregoing provisions shall not apply to any lawful use of land for the removal of sand or gravel and the quarrying of stone, existing at the time of adoption of this Ordinance provided, however (a) that no such existing operation shall expand closer to or within two hundred feet to any adjoining property line or to the line of any existing public way, (b) that no such existing operation which may be within two hundred feet to any such adjoining property line or the line of any existing public right-of-way shall be permitted to expand closer to such line or lines, and (c) existing restrictions as may have been previously provided for previous approvals shall continue in full force and effect, and (d) further provided the Board of Adjustment and Appeals shall have the authority to approve applications for the expansion of such existing pits or quarries into such areas, under the same terms and conditions as it may approve applications for new gravel pits and quarries for the excavation and removal of lands pursuant to the provisions of this ordinance.
- 410.6 This subsection shall not apply to (a) extraction necessarily incidental to construction, alteration, excavation, or grading for which a building permit has been issued, (b) to extraction from one portion of a lot for use on another portion of the same lot, or contiguous lot of the same owner, or (c) removal of topsoil from a site that is less than one acre in area during a one-year period.
- 410.7 Violations of this section of the Ordinance shall be punishable by a fine as established by order of the Town Council. Each day such violations are permitted to continue to exist shall constitute a separate violation.  
[Amended, effective 9/1/98]

#### **Sec. 411 Garden Apartments**

Garden apartments, as defined herein, shall be allowed at locations where permitted under this ordinance, subject to approval by the Planning Board under the Subdivision Ordinance, and subject to the following provisions:

- 411.1 No garden apartment building shall be allowed on a site less than three acres in size.
- 411.2 There shall be no more than eight dwelling units per structure and where there is more than one building, the average number of dwelling units per structure shall be no greater than six.
- 411.3 No garden apartment building shall have living quarters on more than two (2) floors;
- 411.4 All buildings and parking areas shall be set back at least 75 feet from any property line, and driveways shall be set back at least 25 feet from side and rear lot lines;
- 411.5 All major access ways shall be at least fifty foot rights-of-way, with a paved surface not less than 24 feet wide constructed according to town standards. All other driveway, parking areas, and walkways shall be constructed according to the standards in the Subdivision Ordinance.

**Sec. 412 Guest Houses**

A guest house may be constructed provided the lot standards and setback requirements for the district in which it is located are met for each guest house.

**Sec. 413 Height Regulations**

Height limitations for all districts shall be 35 feet, except that the Board of Adjustment and Appeals may allow a greater height as a special exception, upon a finding that the proposed height will not adversely affect other property in the same district and neighborhood, that the granting of such approval by the Board will not substantially depart from the intent and purposes of this ordinance where it is consistent with the objectives of the Comprehensive Plan, and is in a scale with its environs. These regulations shall not apply to silos for the storage of feed crops, nor to steeples.

**Sec. 414 Home Occupations**

- 414.1 Any home occupation such as arts and crafts work, dressmaking, tutoring, music teaching, and the use of a portion of a residential building as a bed & breakfast inn, day care home, or as the office of a physician, dentist, lawyer, engineer, architect, hairdresser, barber, real estate broker, insurance agent, accountant or similar uses may be approved as a special exception by the Board of Adjustment and Appeals if: [Amended, effective 12/13/89]

- .1 The occupation of an office will be managed by a member of the family residing within the dwelling unit. Up to two employees who are not members of the family may be employed in a home occupation, and;
- .2 The occupation or office will be located wholly within the principal or accessory structures, and;
- .3 Exterior displays, exterior storage of materials, and exterior indication of the home occupation will not be permitted except for signs as may be specifically provided for by the Board of Adjustment and Appeals and as may otherwise conform to the conditions of this Ordinance; and
- .4 Noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare will not be detectable beyond property limits, and;
- .5 Off-street parking spaces will be provided in an amount to be determined by the Board as necessary to avoid street congestion.

414.2 The granting of a special exception approval for a home occupation shall apply to the applicant only while the applicant resides at the property.

**Sec. 415 Junk Yards**

Before granting special exception approval for a junk yard, the Board of Adjustment and Appeals shall find that the following conditions have been met:

- 415.1 The proposed junk yard is shown to have no detrimental effect on adjacent land uses;
- 415.2 The proposed junk yard site is not visible from a public road or street;
- 415.3 The proposed junk yard shall be entirely enclosed by a solid wall or fence with access only through solid gates, and such fence or wall shall be kept in good repair and neatly painted;
- 415.4 The contents of the proposed junk yard shall not be placed higher than the fence or wall herein required;
- 415.5 The proposed junk yard is in conformance with the Ordinance and any other ordinances of the Town of Cumberland pertaining to the protection of the quality of surface and ground water.

**Sec. 416     Manufactured Housing**

Manufactured housing as defined and allowed under this Ordinance to be placed or erected on individual house lots on undeveloped lots where single family dwellings are allowed shall be required to meet the following design standards: [Amended, effective 12/28/89]

- .1 There shall be a pitched roof having a pitch of 4 in 12 or greater covered with roofing shingles;
- .2 The exterior walls shall be covered with materials similar to traditional site-built houses. These materials may include clapboards, simulated clapboards such as conventional vinyl or metal siding, wood shingles or shakes or similar materials, but shall not include smooth, ribbed or corrugated metal or plastic panels;
- .3 The minimum horizontal dimension shall be 14 feet and the minimum floor area shall be 750 square feet;
- .4 The house will be anchored on a permanent frost wall foundation;
- .5 Any fuel storage tanks shall be enclosed or buried;
- .6 All plumbing and utility connections shall comply with local, State and National codes.
- .7 The unit shall be sited on the lot so that it is within 30 degrees of being parallel to the front property line of the lot (or the chord connecting the two points where the side lot lines meet the front line if the front property line is curved). This requirement shall not apply if the width of the front building face is more than 24 feet. The width of the front building face shall include the width of the manufactured housing unit plus the width of any permanent addition, all such additions shall meet the following criteria:
  - (a) The addition is of a similar architectural design and constructed of similar materials as the manufactured housing unit;
  - (b) The addition is permanently attached to the unit to create one integral structure; and
  - (c) The addition is placed on a permanent frost wall foundation.
- .8 All disturbed areas of the site, not otherwise revegetated, shall be loamed, fertilized and seeded.
- .9 All exterior doors shall be provided with steps of a suitable design and construction to provide all-season access. [Amended, eff. 1/9/85.]

**Sec. 416A     Mobile Home Parks** [Enacted; effective 12/28/89]

- .1 Except as otherwise provided below, mobile home parks shall comply with all applicable State laws and municipal ordinances and regulations and shall meet the requirements of the subdivision law. In addition to any other reviews that may be required, any proposed mobile home park development, expansion or amendment shall be reviewed by the Planning Board for compliance with the requirements of this section. No

mobile home park development shall be permitted unless the Planning Board finds it will be in compliance with this section.

- .2 Lot size, width and density. Notwithstanding the dimensional requirements in Sec. 204 of this ordinance, lots in a mobile home park shall meet the following lot size, width and density requirements.
  - .1 Lots served by public sewer:
    - .1 Minimum lot size 6,500 square feet
    - .2 Minimum lot width 50 feet
  - .2 Lots served by individual subsurface waste disposal systems:
    - .1 Minimum lot size 20,000 square feet
    - .2 Minimum lot width 100 feet
  - .3 Lots served by a central subsurface waste water disposal system approved by the Maine Dept. of Human Services:
    - .1 Minimum lot size 12,000 square feet
    - .2 Minimum lot width 75 feet
  - .4 The overall density of any mobile home park served by a central subsurface waste water disposal system shall not exceed one dwelling unit per 20,000 square feet of total mobile home park area.
  - .5 Mobile home park lots located within a shoreland zoning district shall meet the dimensional requirements for that district.
  - .6 The overall area of a mobile home park shall be no greater than the combined area of its mobile home park lots plus:
    - .1 The area required for road rights-of-way;
    - .2 The area required for buffer strips, if any;
    - .3 For mobile home parks served by a public sewer, an additional area for open space, storage or recreation, which additional area shall be ten percent (10%) of the combined area of the individual lots within a mobile home park; and
    - .4 The area within any setbacks required in the shoreland zoning districts.
- .3 Lot setbacks. Notwithstanding the setback requirements in Sec. 204 of this ordinance, lots in a mobile home park shall meet the following lot setback requirements:

- .1 For lots 12,000 square feet in area or larger, structures shall meet the following setbacks:
  - .1 Front setback: 20 feet;
  - .2 Side setback: 20 feet;
  - .3 Rear setback: 10 feet.
- .2 For lots less than 12,000 square feet in area, structures shall meet the following setbacks:
  - .1 Front setback: 10 feet;
  - .2 Side setback: 10 feet;
  - .3 Rear setback: 10 feet.
- .3 Notwithstanding .1 and .2 above, structures on a mobile home park lot that is adjacent to a public road shall be set back from the public road the same distance applicable to other residential developments.
- .4 Notwithstanding 3.1, 3.2 and 3.3 above, mobile home park lots located within a shoreland zoning district shall meet the setbacks for that district.
- .5 A minimum twenty (20) foot separation shall be maintained between all manufactured homes in all directions.

.4 Lot coverage:

- .1 All structures on the lot, including manufactured housing and accessory structures, but excluding open decks and parking spaces, shall not cover more than 50% of the lot area.

.5 Buffering:

- .1 A fifty (50) foot wide buffer strip shall be provided along any mobile home park boundary that abuts land used for residential use if the per-acre density of homes within the mobile home park is at least two times greater than:
  - .1 The density of residential development on immediately adjacent parcels of land, or
  - .2 If the immediately adjacent parcels of land are undeveloped, the maximum net residential density permitted by applicable municipal ordinances or State law.

- .2 No structures, streets or utilities may be placed in the buffer strip, except that utilities may cross the buffer strip to provide services to the mobile home park.

.6 Open space:

- .1 For mobile home parks served by a public sewer, an additional area for green space, storage and recreation, amounting to 10% of the total area of those lots within a lot size of less than 12,000 square feet shall be reserved by the developer as open space. Such open space shall be accessible and usable by all residents of the park.
  - .1 The reserved open space area shall have slopes less than 5% and shall be accessible directly from roads within the park. At least 50% of the required open space shall consist of land that is suitable for active recreation or storage.
  - .2 This open space shall be usable for recreational, agricultural or other outdoor living purposes and for preserving natural features including, but not limited to, large trees, tree groves, woods, ponds, streams, glens, rock outcrops, nature plant life and wildlife cover, deer yards, and to the greatest extent possible, shall be contiguous open space. The use of any such open space may be further limited or regulated by the imposition of reasonable conditions at the time of final subdivision approval by the Planning Board where necessary to protect adjacent properties or uses, or the open space itself.
  - .3 At the option of the Town, some or all of the open space may be dedicated to the Town subject to acceptance by the Town Council.
  - .4 Some or all of the open space may be dedicated to a non-profit land trust for conservation, passive recreation purposes or active recreation purposes.
  - .5 Any dedication under .6.3 or .6.4 above must be made through appropriate legal instruments, reviewed and approved by the Town attorney.
  - .6 As part of the mobile home park review process, the developer shall submit prior to final subdivision plan approval a copy of proposed mobile home park rules and a plan specifying how and under what conditions the open space area is to be used and maintained. The plan shall specify the areas to be dedicated to open space, recreation and storage. Open space areas shall be maintained and used for their stated purpose, and a note shall be

placed on the subdivision plat stating that the open space areas shown on the plat shall not be developed as mobile home park lots.

.7

Roads:

- .1 Streets within a mobile home park that are to be dedicated to the Town for acceptance as town ways shall be designed and constructed in accordance with the standards contained in Sec. 8 of the Town's Subdivision Ordinance;
- .2 Streets within a mobile home park that are to be privately owned roads shall be built according to acceptable engineering standards, shall be designed by a professional engineer registered in the State of Maine, and shall meet the following design standards:
  - .1 Right of way width, 23 feet
  - .2 Width of paved traveled way, 20 feet
  - .3 Privately owned roads within a mobile home park that intersect with public ways adjacent to the mobile home park shall meet the following standards:
    - .1 The desired angle of intersection shall be 90 degrees, and the minimum angle of intersection shall be 75 degrees.
    - .2 The maximum permissible grade within 75 feet of the intersection shall be 2 %.
    - .3 The minimum sight distance shall be 10 feet for every mile per hour of posted speed limit on the existing public way. Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of 3 1/2 feet above the pavement and the height of object 4 1/4 feet. Where the Planning Board finds it necessary, the mobile home park land bordering the intersection shall be cleared of all growth and sight obstructions to achieve the required visibility.
    - .4 The centerline of any privately owned road within a park intersecting an existing public way shall be at least 125 feet from the centerline of any other street intersecting that public street.
- .3 On-street parking shall be prohibited on privately owned roads in a mobile home park.

- .4 No mobile home park lot shall have direct vehicular access onto an existing public way.
- .5 Any mobile home park expected to generate average daily traffic of 200 trips per day or more shall have at least two street connections with existing public ways.
- .6 The Planning Board shall require a traffic impact analysis if the mobile home park will generate more than 500 trips per day.

.8 Utilities:

The Planning Board shall not require electrical utilities and telephone lines to be located underground within a mobile home park. A developer may install utilities anywhere within the mobile home park.

.9 Lighting:

Outdoor lighting shall be provided to adequately illuminate internal streets and pedestrian walkways. Lights shall be sized and directed to adverse impact on adjacent properties.

.10 Storage:

At least 300 cubic feet of enclosed tenant storage shall be conveniently provided on or near each mobile home lot for the storage of materials and equipment.

.11 Administration:

- .1 Mobile home park lots must be designated on the subdivision plan for the proposed mobile home park.
- .2 A person proposing development or expansion of a mobile home park has the burden of proving that development will not pollute a public water supply or aquifer or violate any State law relating to land development, subdivision or use.

- .1 Ground water impact assessment. Accompanying the application for Planning Board approval of any mobile home park which is not served by public sewer shall be an analysis of the impacts of the proposed mobile home park on ground water quality. The hydrogeologic assessment shall be prepared by a Certified Geologist or Registered Professional Engineer, experienced in hydrogeology, and shall contain at least the following information:

- .1 A map showing the basic soils types.
  - .2 The depth to the water table at representative points throughout the mobile home park.
  - .3 Drainage conditions throughout the mobile home park.
  - .4 Data on the existing ground water quality, either from test wells in the mobile home park or from existing wells on neighboring properties.
  - .5 An analysis and evaluation of the effect of the mobile home park on ground water resources. The evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the mobile home park, at the mobile home park boundaries and at a distance of 1000 feet from potential contamination sources, which ever is a shorter distance. For mobile home parks within the watershed of a lake, projections of the developments impact on groundwater phosphate concentrations shall also be provided.
  - .6 A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the mobile home park and within 200 feet of the mobile home park boundaries.
- .2 Standards for Acceptable Ground Water Impacts.
- 1. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
  - .2 No mobile home park shall result in existing groundwater quality exceeding 50% of the physical, biological, chemical and radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations pursuant to 22 M.R.S.A. ~ 2601 et seq. If existing groundwater quality is inferior to Maine State Drinking Water Regulations, the applicant shall not degrade the water quality any further. This criteria shall apply to the property boundaries existing and proposed water supply wells and springs. If groundwater assessment under Section 2.1 above shows that the effect of the development or use of land will be to exceed whichever of these groundwater quality standards applies, that will be the basis for denial of the application.
- .3 No mobile home park approved under this section may be converted to another use without Planning Board approval and without meeting the appropriate district dimensional and setback requirements. The subdivision plan for the mobile home park

development, expansion or amendment shall include the following note:

"This subdivision plan is approved solely as a 'mobile home park' as defined in 30-A M.R.S.A. ~ 4358; the area of each lot of this subdivision is lawfully less than the minimum lot size otherwise required under the Town's Zoning Ordinance solely because of its status as a lot within a mobile home park. If any or all of the lots depicted upon this subdivision plan cease to be used as a mobile home park as so defined, this subdivision plan must first be revised to comply with the Town's then-current land use ordinances."

**Sec. 417 Parking and Loading**

417.1 Parking: Off-street parking spaces shall be provided in accordance with the specifications in this section in any district whenever any use is established.

<u>USE</u>	<u>PARKING SPACES REQUIRED (MINIMUM)</u>
Commercial Accommodations	1.2 for each lodging unit
Residential	2.5 per dwelling unit
Church and School room	1 per 3 seats in principal assembly
Private Club or Lodge	1 per 4 members
Theater	1 per 4 seats
Residential Care Facilities	See Sec. 432.3.6
Professional Offices & Business services, medical clinics and retail business in Commercial Districts	1 for every 250 square feet of gross leasable area
Retail Businesses & Personal Service estab.	1 for each 180 square feet of gross leasable sales area
Eating & drinking estab.	1 for every 3 seats
Industrial	1 for each 1.2 employees, based on the highest expected average employee occupancy
Funeral Homes	1 for each 75 square feet of floor in slumber rooms, parlors, and individual service rooms.
Bed and Breakfast Inn	Residential parking space requirement and 1 per guest bedroom

Day Care Center and Nursery School See Sec. 408A.2.5 (Amended, effective 12/13/89)

- 417.2 The use of any land in a residential district for a parking lot, with or without charge, for the purpose of serving a public beach or other area open to the public may be permitted as a special exception by the Board of Adjustment and Appeals. The Board shall impose such restrictions concerning hours of operation, lighting, landscaping, buffering and traffic circulation so as not to cause undue adverse effect on the use of the other property in the area.
- 417.3 Off-Street Loading: Logically and conveniently located space for bulk pick-ups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled, shall be provided for all commercial and industrial uses. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space. Off-street loading shall not face residential uses on abutting property without provision for a 100 ft. visual buffer measured from the edge of the access area of dense vegetation sufficient to substantially screen the loading area or a buffer of not less than 50 ft. when a solid fence is to be used.

**Sec. 418 Piers and Other Uses Projecting into the Water**

Piers, docks, wharves, breakwaters, causeways, marinas, bridges over twenty (20) feet in length, and other uses projecting into the water shall conform to the following requirements in addition to any Federal or State permits which may be required:

- .1 Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- .2 The location shall not interfere with developed beach areas.
- .3 The facility shall be located so as to minimize adverse effects on fisheries.
- .4 The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.

**Sec. 419 Private Airports and Private Heliports**

- 419.1 Recognizing the growing development of and need for private aircraft service in the Town of Cumberland, it has been deemed appropriate to adopt provisions which provide for the safe and orderly development of Private Airports and Private Heliports within designated zones of the Town.

- 419.2 Private Airports and Private Heliports, as defined herein, shall be allowed at locations where permitted under this ordinance, subject to approval by the Planning Board under Site Plan Review and subject to the following provisions:
- .1 The private airport or private heliport shall be limited to the basing of only one (1) aircraft which shall be owned by and registered to or leased by the airport or heliport owner;
  - .2 No commercial operations or activities shall be permitted on or from the airport or heliport;
  - .3 No more than three (3) aircraft shall be permitted at the airport or heliport at any one time;
  - .4 Flight activities shall be prohibited from one-half hour prior to sunset to one-half hour after sunrise;
  - .5 Guest usage shall not be considered occasional if the guest aircraft utilizes the airport or heliport for more than seven days in any one month or twelve days in any calendar year;
  - .6 The minimum runway length of the airstrip shall be 1,500 feet;
  - .7 Operations at airports and heliports shall be restricted to aircraft of gross weights not exceeding 3,000 pounds and rotorcraft of gross weights not exceeding 3,500 pounds;
  - .8 The minimum setbacks required for parcels containing an airport shall be 400 feet minimum setbacks to either side of the center line of the runway, and 750 foot minimum setback from either end of the runway;
  - .9 Heliports shall require designated landing areas of 50 feet by 50 feet, with setbacks from all sides of the designated landing area of not less than 150 feet from the property perimeter;
  - .10 Temporary landing areas for rotorcraft in use for three (3) days or less in any calendar year are exempt from the provisions of this Ordinance;
  - .11 The Planning Board may request an evaluation of the air safety aspects of the site plan from the Division of Aeronautics of the Maine Department of Transportation;
  - .12 No airport or heliport, other than a private airport for personal use or a private heliport for personal use, shall be permitted. [Adopted, effective 12/24/86]

**Sec. 420     Public Utilities**

- 420.1       Nothing in this Ordinance shall be deemed to prevent erection, construction, alteration or maintenance in any district of distribution lines of any utility, such as water or gas mains, sewer lines or pipes, within the limits of a public way and all necessary statutory permits and licenses have been obtained, and further provided that such transmission or distribution lines, if located in a subdivision requiring the approval of the Planning Board shall be subject to the Subdivision Ordinance as now enacted or as hereafter amended. For the purposes of this section, a telecommunications facility is not considered a public utility. [Amended, effective 12/13/99]
- 420.2       No underground transmission lines, not located in a public way, but excluding water and sewer lines, shall be permitted in any district unless allowed by the Board of Adjustment and Appeals as a special exception. In addition to the other criteria contained in this ordinance to be followed by said Board in granting or denying requests for special exceptions, the Board shall take into consideration the effect of the location of the underground lines upon other development in the area, the materials used in the construction of such lines, the size thereof, and the proposed treatment of the surface of the land within the work limits and/or the right of way for such lines.
- 420.3       No above ground transmission lines, not located in a public way, shall be permitted in any district unless allowed by the Board of Adjustment and Appeals as a special exception. In addition to the other criteria contained in this Ordinance to be followed by said Board in granting or denying requests for special exceptions, the Board shall take into consideration the effect the location of the above ground lines upon other development in the area, the materials used in the construction of such lines, the size thereof, and the proposed treatment of the surface of the land within the work limits and/or the right of way for such lines, and also any proposed screening of such above-ground facilities by plantings or otherwise to minimize the distracting visual effects upon users of any public ways in the area and on the users of residential properties in the area.
- 420.4       Accessory structures, including power substations and standpipes, but excluding sewer pumping stations, may be permitted in any district as special exceptions by the Board of Adjustment and Appeals, with review requirements as listed in the district requirements. These structures shall further be subject to site plan review by the Planning Board. Sewer pumping stations shall be a permitted use in specified districts except that site plan review by the Planning Board shall be required. District dimensional requirements as regard lot sizes, setback and lot coverage

shall not apply to said accessory structures and/or sewer pumping stations except that as a part of the special exception review, the Board of Adjustment and Appeals shall assure that said facilities are located on a site of sufficient size to provide any screening or other necessary buffering from any residential neighborhood. [amended 2/14/94]

- 420.5 Primary, non-accessory buildings of a public utility, including those designed for the production or generation or relay of the service offered by the utility may be permitted in any district where the same is listed as a special exception by the Board of Adjustment. Business offices of a public utility shall not be subject to the provisions of this subsection, but shall be subject to the general requirements of this Ordinance applying to Professional Offices. [amended 2/14/94]

**Sec. 421 Road Construction** [Amended, effective 8/10/98]

Private ways meeting the following standards, as determined by the Code Enforcement Officer, may be used to satisfy the lot frontage requirement for residential uses.

1. Except in the IR and IB zones, the private way application shall be accompanied by a plan showing the private way(s), which plan shall be prepared by a registered land surveyor. The plan shall be drawn in permanent ink on permanent transparency material and shall be sealed by the surveyor preparing the plan. The plan shall be labeled "Plan for a Private Way" and shall provide an approval block for the signature of the Code Enforcement Officer, the date of the approval, and the words "Private Way, Approved by the Town of Cumberland Code Enforcement Officer. The plan shall show information sufficient to establish on the ground the exact location, direction, width, and length of the private way. Where a proposed private way contains severe slopes, stream crossings, or a significant amount of cut and fill, the applicant shall also provide a profile of the way. In addition, a street plan and cross section shall be submitted for each private way serving two (2) or more dwelling units. The plan shall also contain a note which shall read, "The Town of Cumberland shall not be responsible for the maintenance, repair, plowing, or similar services for the private way shown on this plan." The original plan(s) shall be recorded in the Cumberland County Registry of Deeds within 90 days of approval of the plan of private way and proof of such recording shall be submitted to the Code Enforcement Officer prior to the issuance of any building permit. If the plan is not recorded within this period, the approval shall be void.
2. If the private way provides access to two (2) or more dwelling units, the applicant shall prepare a maintenance agreement in a form acceptable to the Town Attorney and shall submit this as part of the application. This maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way. The applicant

shall record this maintenance agreement in the Cumberland County Registry of Deeds within 90 days of approval of the plan of private way by the Code Enforcement Officer and shall submit proof of such recording to the Code Enforcement Officer prior to the issuance of any building permit. Deeds to new lots located on private ways servicing two (2) or more dwelling units shall include references to the required maintenance agreement.

3. Except in the IR and IB zones, private ways shall have a minimum right of way width of 50 feet and a paved apron at least 5 feet in length commencing at the existing edge of pavement where it intersects with the public or private way.

The paved apron shall be constructed to the following standards:

- a. fifteen inches (15") of base gravel meeting M.D.O.T. Spec. 703.06 Type D:
  - b. three inches (3") of surface crushed gravel meeting M.D.O.T. Spec. 703.06 Type A:
  - c. the thickness of paving of the apron shall be a total thickness of 3 inches of hot bituminous pavement, with a surface course (Grading "C") of 1 inch and a base course (Grading "B") of 2 inches.
  - d. a negative 2.0% grade from the existing edge of pavement to an appropriate drainage way but in no case less than 5 feet from the travel surface of the public way it intersects.
  - e. approach radius shall be specified by the Public Works Director.
  - f. all entrances shall be located so that the sight distance in both directions is ten feet of sight for every one mile of posted speed limit. This standard may be reasonably reduced by the Director of Public Works in circumstances where no reasonable alternative exists.
4. Except in the IR and IB zones, the construction of private ways shall meet the following minimum standards.

	Number of Dwelling Units Served			
	1-2	3-5	6-10	11+
Minimum Roadway Width	12'*	16'*	20'*	Same as Residential Access Streets as Required by Table 8.2 of the Subdivision Ordinance
Minimum Base	12"	15"	15"	
Wearing Surface	3"	3"	3"	

Maximum Length	None	None	None
Maximum Grade	10%	10%	10%
Minimum Grade	0.5%	0.5%	0.5%
Minimum Centerline Radius	100'	100'	100'
Minimum Tangent Between Curves of Reverse Alignment	50'	50'	50'
Minimum Angle At Street Intersections (degrees)	75°	75°	75°
Turn Around at Dead End			T

Storm Water Damage Approval of Director of Public Works

- \* Vehicle turnout(s) providing spaces for two (2) vehicles to pass shall be specified by the Town Engineer or Public Works Director if necessary due to the length of the private way.
- 5. Private ways shall be inspected by the Public Works Director, unless the Public Works Director determines physical conditions such as steam crossings or wetland areas require inspection by a registered professional engineer or other qualified land use professional. Prior to the issuance of building permits for lots served by a private way, the Public Works Director shall certify to the Code Enforcement Officer that the private way(s) has been constructed in accordance with this section. The applicant shall be responsible for the cost of each inspection by a registered professional engineer.
- 6. To help recover costs incurred by the Town in the review, administration, site inspection, and public notice associated with the private way application, at the time of filing the private way application, the applicant shall pay to the Town of Cumberland the following fees and deposits in such amount(s) and for such purpose(s) as the Town Council may from time to time establish by Council order:
  - a. Review fee; and
  - b. Independent consulting and peer review escrow account to be established with the Town in accordance with Section 206.2.1.1 of this Ordinance.

All fees shall be non-refundable except unexpended escrow deposits, which shall be refunded in accordance with Section 206.2.1.1.

7. The Code Enforcement Officer, the Town Planner and the Director of Public Works shall review and approve applications for private ways serving dwelling units when such private ways meet the standards set forth in this Ordinance. The Code Enforcement Officer shall issue decisions under this Section in writing. Such decisions may be appealed by filing a written notice of appeal stating the reasons therefor to the Cumberland Board of Adjustment and Appeal within thirty (30) days of the date of decision.
8. This amendment applies to all private ways proposed to be created after the effective date of this amendment and to existing private ways upon which one or more new dwelling units are proposed to be constructed after the effective date of this amendment, unless such dwelling is to be constructed on a lot that was in existence on August 10, 1998.
9. In the IR and IB zones, an applicant shall submit to the CEO an application for a private way required to provide access to a structure located within that zone. The application shall specify the location of the proposed way, the proposed width, the materials to be utilized in the construction of the road, grades, provisions for drainage, and sight distances at any turning radius. The CEO shall approve any plan that makes adequate provision for these items, provided that the Fire Chief approves the application for sufficiency of access for emergency vehicles.
10. The provisions of this section shall not apply to privately owned roads within a mobile home park.

**Sec. 422     Sanitary Standards**

- .1 All subsurface sewage disposal systems shall be constructed in conformance with the State of Maine Subsurface Waste Disposal Rules, except where the requirements of this section differ from the Rules, the requirements of this section govern. [Amended, effective 5/26/87]
- .2 The minimum setback for underground sewage disposal facilities from the normal high water mark of a waterbody shall be no less than 100 horizontal feet. Where daily sewage flow exceeds 2000 gallons, the minimum setback shall be 300 feet from any shoreline. All other setback requirements of the Subsurface Waste Disposal Rules shall be met in full. Setbacks from shorelines for all subsurface sewage disposal facilities shall not be reduced by variance.
- .3 The following soils are unsuitable for construction of subsurface sewage disposal systems due to their very severe limitations of drainage, flooding and organic nature: Chocorua, Whately, Sebago, Saco-Limerick, Borochemists, Borosapristis, Sulfihemists.

- .4 Except for a lot of record in the Cumberland County Registry of Deeds created before May 26, 1987, the minimum separation between any subsurface sewage disposal system and a dug well or spring shall be 200'. An applicant may obtain a waiver of the 200' separation from the Town Plumbing Inspector, if the applicant demonstrates by appropriate engineering data that the proposed action will not adversely affect water quality, but in no event shall separation be less than 100'. For purposes of this section, "not adversely affecting water quality" shall mean that no development or use of land shall result in existing groundwater quality exceeding 50 percent of the physical, biological, chemical and radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 MRSA 601. If existing groundwater quality is inferior to the State Drinking Water Regulations, the developer or land owner will not degrade the water quality any further. This criterion shall apply to any existing or proposed water supply source. As a minimum, the direction and rate of groundwater movement shall be determined and a projection made by analytical methods of groundwater quality at any well location. Where necessary in order to demonstrate compliance with the above waiver standard, the investigation shall include: soil borings, installing groundwater observation wells, measurement of groundwater elevation at wells, estimation of the rate and direction of groundwater movement, measurement of existing groundwater quality, and identification of existing water supply wells or springs on abutting properties. If the hydrogeologic evaluation and projection of groundwater and/or surface water quality show that the effect of the development or use of land will be to exceed the above groundwater quality standards, that will be the basis for denial of the waiver. [Amended, effective 6/24/91; amended effective 3/11/96]

**Sec. 423**     **Shoreland Areas** [Adopted, Effective 12/10/91]

.1     General

All land use activities within the shoreland area shall conform with the following provisions, as applicable. When there is any conflict between the performance standards in this section and the standards of this Ordinance or of the Town of Cumberland Subdivision Ordinance, the more restrictive standard shall prevail.

.2 Minimum Lot Standards

<u>Lot Area and Frontage:</u>	<u>Minimum Lot Area (sq. ft)</u>	<u>Minimum Shore Frontage (ft)</u>
<b><u>Residential per dwelling unit</u></b>		
a. Within the Shoreland Zone Adjacent to Tidal Areas	That of the underlying district or 30,000, whichever is greater	150
b. Within the Shoreland Zone Adjacent to Non-Tidal Areas	That of the underlying district or 40,000, whichever is greater	200

<u>Lot Area and Frontage:</u>	<u>Minimum Lot Area (sq. ft)</u>	<u>Minimum Shore Frontage (ft)</u>
<b><u>Non-residential per principal structure</u></b>		
a. Within the Shoreland Zone Adjacent to tidal areas exclusive of those areas Zoned for Commercial Fisheries and or Maritime Activities	That of the underlying district or 40,000 whichever is greater	200
b. Within the Shoreland Zone Adjacent to Tidal Areas Zoned for Commercial Fisheries and Maritime Activities	NONE	NONE
c. Within the Shoreland Zone Adjacent to Non-Tidal Areas	That of the underlying district or 60,000, whichever is greater	300

**Public and Private Recreation Facilities**

a. Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	That of the underlying district or 40,000, whichever is greater	200
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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 or more than one principal commercial or industrial structure is constructed on a single parcel, all dimensional requirements shall be met for each additional dwelling unit or principal structure.

.3 Principal and Accessory Buildings and Structures

- .1 All new principal and accessory buildings and structures shall be set back at least one hundred (100) feet from the normal high-water line of great ponds, and seventy-five (75) feet from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development District the setback from the normal high-water line shall be at least twenty-five (25) feet, and in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback.

In addition:

- .1 The water body or wetland setback provision shall not apply to buildings and structures which are functionally water-dependent uses.[amended, effective 9/28/98]
- .2 The first floor elevation or openings of all buildings and structures including basements shall be elevated at least two feet above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.
- .3 The total area of all buildings and 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 General Development District adjacent to tidal waters and rivers which do not flow to great ponds, and in the Commercial Fisheries/Maritime Activities District, where lot coverage shall not exceed seventy (70) percent.
- .4 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, Title 38, Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

.4 Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland

- .1 Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- .2 The location shall not unreasonably interfere with existing developed or natural beach areas.
- .3 The facility shall be located so as to minimize adverse effects on fisheries.
- .4 The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.
- .5 No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- .6 No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwellings units in any district.
- .7 Except in the General Development District and Commercial Fisheries/Maritime Activities District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

.5 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 from the normal high-water line of a great pond, and seventy-five (75) feet from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

.6 Commercial and Industrial Uses

The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds:

- a. Auto or other vehicle service and/or repair operation, including body shops
- b. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms
- c. Commercial painting, wood preserving, and furniture stripping
- d. Electronic circuit assembly
- e. Laundromats, unless connected to a sanitary sewer
- f. Metal plating, finishing, or polishing
- g. Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- h. Photographic processing
- j. Printing

.7 Parking Areas

- .1 Parking areas shall meet the shoreline setback requirements for structures for the district in which such areas are located, except that in the Commercial Fisheries/Maritime Activities District parking areas shall be set back at least twenty-five (25) feet from the normal high-water line or the upland edge of a wetland. The setback requirement for parking areas serving public boat launching facilities, in Districts other than the General Development and Commercial Fisheries/Maritime Activities Districts may be reduced to no less than fifty (50) feet from the normal high-water line or upland edge of a wetland if the Planning Board finds that no other reasonable alternative exists.

- .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, 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.

.8 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 from the normal high-water line of a great pond, and seventy-five (75) feet from the normal high-water line of these water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

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

This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline due to an operational necessity.

- .2 Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body.
- .3 New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable

from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

- .4 Road banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in subsection Q.
- .5 Road grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet.
- .6 Where underground stormwater drainage is not required, in order to prevent road surface drainage from directly entering water bodies, roads shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (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, Road surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- .7 Where underground stormwater drainage is not required, ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch. To accomplish this, the follow shall apply:
  - a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

Road Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
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 road grade is ten (10) percent or less.

- c. On road sections having slopes greater than ten (10, percent, ditch relief culverts shall be placed across the road at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road.
- 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 Signs

The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, Limited Residential, and Limited Commercial Districts;

- .1 Signs and billboards relating to goods and services sold on the premises shall be permitted, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Billboards and signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- .2 Name signs shall be permitted, provided such signs shall not exceed two (2) signs per premises.
- .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 permitted 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 permitted 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.

.9 Stormwater Runoff

- .1 All new construction and development shall be designed to minimize stormwater runoff from site in excess of the natural pre-development conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces, and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.

- .2 Stormwater runoff control systems shall be maintained as necessary to ensure proper functioning.

.10 Septic Waste Disposal

- .1 All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (Rules)

.11 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 is not permitted in a Resource Protection or Steam Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such strictures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

.12 Mineral Exploration and Extraction of Earth Materials

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 excavation, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

Extraction of earth materials, (regulated by Section 410) within Shoreland Areas shall also comply with the following additional standards:

- .1 Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A., Section 480-C no part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet of the normal high-water line of a great pond, and within seventy-five (75) feet 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 seventy-five (75) feet of any property line, without written permission of the owner of such adjacent property.

- .2 When gravel pits must be located within shoreland areas, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.

.13 Agriculture

- .1 All spreading or disposal of manure shall be accomplished in conformance with the Maine Guidelines for Manure and Manure Sludge Disposal on Land published by the University of Maine Soil and Water Conservation Commission in July, 1972.
- .2 Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. Within five (5) years of the effective date of this ordinance 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. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five (5) year period.
- .3 Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the shoreland zone shall require a Soil and Water 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 the Ordinance.
- .4 There shall be no new tilling of soil greater than forty thousand (40,000) square feet in surface area located in whole or in part within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seven-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five feet, horizontal distance, of tributary streams, and wetland. Operations in existence on the effective date of this ordinance and not in conformance with provision may be maintained, provided that such operations are conducted in accordance with a Soil and Water Conservation Plan to be filed with the Planning Board.
- .5 After the effective date of the Ordinance, newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance of other water bodies, 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 Soil and Water Conservation Plan to be filed with the Planning Board.

.14 Timber Harvesting

- .1 Within the strip of land extending 75 feet inland from the normal high-water line in a shoreland area zoned for resource protection abutting a great pond there shall be no timber harvesting, except to remove safety hazards.
2. Except in areas as described in Paragraph 1 above, timber harvesting shall conform with the following provisions:
  - a. Selective cutting of no more than forty percent (40%) 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. Timber harvesting operations exceeding this forty percent (40%) limitation may be allowed by the Planning Board upon a clear showing, including the submission by the applicant of a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and is carried out in accordance with the purposes of shoreland zoning. The Planning Board shall notify the commissioner of Environmental Protection of each exception allowed. In addition:
    - i. Within one-hundred (100) feet, horizontal distance of the normal high-water line of a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of 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, 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 apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.

- b. No accumulation of slash shall be left within fifty (50) feet 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 shall be removed.
- c. 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.
- d. 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.
- e. 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.
- f. 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 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. 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 from the normal high-water line of a water body or upland edge of a wetland.

.15 Clearing of Vegetation for Development

- .1 Within a shoreland area zoned for Resource Protection abutting a great pond, there shall be no cutting of vegetation within the strip of land

extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

.2 Except in areas as described in Paragraph 1, above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- a. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten (10) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created. Adjacent to a great pond the width of the foot path shall be limited to six (6) feet.
- b. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section a "well-distributed stand of trees and other vegetation" adjacent to a great pond shall be defined as maintaining a rating score of 12 or more in any 25-foot by 25-foot square (625 square feet) area as determined by the following rating system.

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

Adjacent to other water bodies, tributary streams, and wetland, a "well-distributed stand of trees and other vegetation" is defined as maintaining a minimum rating score of 8 per 25-foot square area.

Note: As an example, adjacent to a great pond, if a 25-foot x 25-foot plot contains three (3) trees between 2 and 4 inches in diameter, three trees between 4 and 12 inches in

diameter, and three trees over 12 inches in diameter, the rating score is:

$$(3 \times 1) + (3 \times 2) + (3 \times 4) = 21 \text{ points}$$

Thus, the 25-foot by 25-foot plot contains trees worth 21 points. Trees totaling 9 point ( $21 - 12 = 9$ ) may be removed from the plot provided that no cleared openings are created.

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, adjacent to great ponds existing vegetation under three (3) feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described in paragraphs 2 and 2a above.
- d. Pruning of tree branches, on the bottom 1/3 of the tree is permitted.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

The provisions contained in paragraph 2 above shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas, however, shall be limited to the minimum area necessary.

- .3 At distances greater than one hundred (100) feet, horizontal distance, from a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, except to allow for the development of permitted uses, there shall be permitted 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 development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, exceed in the aggregate, 25% of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously developed. This provision shall not apply to the General Development or Commercial Fisheries/Maritime Activities District.

- .4 Cleared openings legally in existence on the effective date of this Ordinance may be maintained, but shall no be enlarged, except as permitted by this Ordinance.
- .5 Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

.16 Erosion and Sedimentation Control

- .1 All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - a. Mulching and revegetation of disturbed soil.
  - b. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - c. Permanent stabilization structures such as retaining walls or riprap.
- .2 In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- .3 Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all states 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, pet 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 of lined with riprap.

.17 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.

.18 Water Quality

No activity shall deposit on or into the ground or discharge to the water 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.

.19 Archaeological Sites

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

**Sec. 424 Signs [Amended - Effective date May 20, 1991, Amended October 28, 1997]**

Purpose

It is the intent of these regulations to provide for attractive, coordinated, informative and efficient signs with the express purpose of protecting property values, and enhancing the physical appearance of the town.

424.1 Permits and Fees:

- .1 No sign or outdoor display structure shall be erected, attached, suspended or altered, until a permit has been issued by the Code Enforcement Officer to the person or owner in control of the sign. This Ordinance does not apply to temporary or permanent State or municipal signs, historical designation signs, contractor's signs, signs related to activities at the Fairgrounds posted for 7 days or less, and temporary signs for the sale of a single-family residence nor to signs relating to or controlling the use of private property. Except as otherwise provided in this Ordinance, a "temporary" sign is one that is erected for six (6) months or less and a "historic designation" sign is a sign that gives notice that a property is of an historic nature as determined by a State, federal or local government agency.
- .2 A person who wishes to erect or have erected a sign within the Town shall make application on a prescribed application and submit same to the Town Office for each location where a sign is desired. A fee as established by order of the Town Council per sign shall be submitted with each application, except as indicated in Section 424.3.8. [Amended, effective 9/1/98]
- .3 The Code Enforcement Officer shall approve the application within two weeks if it meets the requirements of this Ordinance, otherwise the application shall be denied with a statement of the reason given.
- .4 Any person aggrieved by the decision regarding an application may appeal to the Board of Adjustment and Appeals who shall consider said appeal within 30 days or at their next regularly scheduled meeting,

whichever event occurs later, and the Board of Adjustment and Appeals decision shall be final.

424.2 General regulations:

- .1 No sign shall be painted upon or otherwise directly affixed to any rock, ledge, or other natural feature except for signs reading "No Trespassing", "No Hunting", or other signs of similar import relating to controlling the use of private property.
- .2 No sign shall be erected at any location where, by reasons of position, shape, wording or color, it interferes with or obstructs the view of pedestrian or vehicular traffic, or which may be confused with any other traffic signs, signal, or device.
- .3 Permanent signs, other than municipal, state directional signs in accordance with Section 424.4.3 and 424.4.4, shall not be erected within the right-of-way of any street or approved sight easements, nor shall any sign, including temporary signs, be located so as to constitute a traffic hazard.
- .4 All signs and their supporting structures shall be properly maintained to prevent rust, rot, peeling, or similar deterioration.
- .5 Whenever a sign shall become structurally unsafe or endanger the safety of a building or the public, the Building Inspector shall order such sign to be made safe or removed. Such order shall be complied with within ten (10) days of the receipt thereof by the person owning or using the sign, or by the owners of the building or premises on which such sign is affixed or erected.
- .6 Any sign which advertises, identifies or pertains to an activity no longer in existence shall be removed by the owner of the sign or the property or person otherwise responsible within 30 days from the time the activity ceases existence. This provision does not apply to seasonal activities during the regular periods in which they are closed.

Where due written notification has been given by the Building Inspector and compliance has not been made within the required thirty (30) day period, the town may cause removal of such sign and charge the cost of such removal to the owner.

- .7 No sign shall have visible moving parts or have blinding, moving or glaring illumination or consist of banners, pennants, ribbons, streamers or similar devices.

- .8 No animated, flashing, apparently moving, or portable signs shall be permitted.
- .9 Signs attached to a principal structure shall not extend above the roof line or the parapet.
- .10 No sign, except business directional signs (see Sec. 424.4), shall be closer than fifteen (15) feet to any lot line, or five (5) feet from the edge of any public way as may be determined by a lawful authority or otherwise encroach over in the airspace of any public right-of-way.
- .11 No advertising or identification sign, whether permanent or temporary, shall be erected on any premises other than the premises where the activity to which the sign pertains is located, other than those permitted under Section 424.3.2, or Section 424.15. (amended 10/28/97)
- .12 A sign may be illuminated provided it identifies the premises on which it is displayed. An illuminated sign may be displayed in a LB, OC, HC or I Zone provided it does not emit a glare beyond the premises upon which it is located. All other illuminated signs may only be lighted during the daylight hours or those hours during which the premises may be opened to the public. Internally illuminated signs will only be allowed in the Highway Commercial, Industrial, and Local Business districts.
- .13 In all residential districts the source of light of an illuminated sign shall be shielded or concealed. In all other districts the use of an illuminated sign with unshielded light shall be subject to a finding by the Board of Adjustment and Appeals that such a sign will not adversely affect adjacent properties.
- .14 Signs which are not visible from a public way are not subject to this Ordinance.
- .15 Signs advertising the sale of fresh fruit and vegetable crops are allowed as permitted by 23 M.R.S.A. § 1913-2-F as amended from time to time. (amended 10/28/97)

424.3 Standards:

- .1 The number of permanent or temporary identification signs which may be displayed on any lot in any zone must not exceed three (3).
- .2 The number of permanent or temporary advertising signs which may be displayed on any lot only in a commercial, business, or industrial zone must not exceed four (4). Advertising signs in all other zones are prohibited except for signs advertising the sale of real estate and except

as may be specifically provided for by the Board of Adjustment and Appeals in its granting of a use and of a corresponding temporary advertising sign by special exception. Signs associated with home occupations or one day sales such as yard/garage/tag sales are permitted in all zones. Such specific provisions shall not violate the intent and purpose of this Ordinance.

- .3 No individual sign shall contain more than twenty-five (25) square feet, except in the Highway Commercial (HC) district where no individual sign shall exceed forty (40) square feet.
- .4 No individual sign shall have a height greater than twenty-five (25) feet above the ground level of land upon which it is located and as may be measured from the highest point on the sign.
- .5 The top of free-standing signs shall not exceed the height limit of principal structures in the zone where located or twenty-five (25) feet, whichever is less.
- .6 The area surrounding free-standing signs shall be kept neat, clean and landscaped.
- .7 A temporary sign used to provide directional instructions to a single-family residence that is for sale shall not exceed four (4) square feet in size, shall be limited to four (4) in number at any one time relative to a single house, and shall be so located as not to interfere with traffic or otherwise cause a public nuisance. Temporary signs for the sale of real estate other than a single-family residence shall not exceed twenty-five (25) square feet in area and a renewal permit shall be required after the expiration of the first six (6) months that such a sign is posted; such renewal permit shall be valid for up to six (6) months.
- .8 Temporary political campaign signs which do not individually exceed sixteen square feet may be erected in any zone provided they conform with the conditions of this Ordinance and only after obtaining a permit for the display of such signs from the Code Enforcement Officer and payment of a refundable application fee as established by order of the Town Council. Applications for such political campaign signs shall be made on forms provided for by the Code Enforcement Officer. If following the election the Code Enforcement Officer finds that all such political advertising signs pertaining to an individual applicant have been removed, he may refund the application fee. No temporary political campaign signs may be erected more than thirty (30) days prior to the election for which such signs pertain. All such temporary political campaign signs shall be removed within 7 days following the election or

the deposit fee shall be forfeited to the Town. [Amended, effective 9/1/98]

**424.4 Business Directional Signs:**

424.4.1 Purpose:

This section regulates and restricts business direction signs within the Town in order to promote safety and well being of the users of the public ways, reduce distractions, and preserve the natural beauty and other aesthetic features of the Town.

424.4.2 Scope:

This section controls off-premises signs in the Town directing the public to the specific location of a business. The provisions of this Section shall take effect on April 27, 1986, and any sign covered hereunder not in compliance within 120 days of the effective date shall be subject to removal 30 days after written notice.

424.4.3 Standards:

Directional signs erected or in place after the effective date of this section shall meet the following specifications:

- .1 Size: 48 inches long by 12 inches wide.
- .2 Lettering: 3 1/2 inches.
- .3 Signboard: 1/2 inch plywood overlay.
- .4 Post: 4 inch by 6 inch - green painted.
- .5 Color: Background color shall be blue (highway blue color tolerance charts Pr-Color #3). The background sign legend and border of all signs shall be reflectorized with reflective sheeting to show the same shape and color for both day and night. Edges and backs of signboards shall be sealed and painted. Reflectorized legend and border shall meet the requirements of Federal specifications LS-300R.
- .6 Style: All lettering used in the name of the business, including the directional legend and mileage, shall be helvetica-medium lower-case lettering with initial upper-case.

- .7 Legend: Directional legend shall be located on the left or right edge of the sign depending upon direction of turn required. The distance in miles from the intersection shall be shown below the directional arrow.
- .8 Signs shall meet all applicable DOT guidelines.

424.4.4 Location:

- .1 Business directional signs shall be located within the highway right-of-way, subject to Maine Department of Transportation (D.O.T.) placement approval, only on approaches to the Town intersections of:
  - U.S. Route 1 at Tuttle Road;
  - Tuttle Road at Middle Road;
  - Route 9 at Winn Road;
  - Route 9 at Tuttle and Blanchard Roads;
  - Route 9 at Greely Road;
  - Skillins/Blackstrap Roads at Routes 26 and 100;
  - Blanchard Road at Skillins Road; and
  - Route 100 at Range Road.
- .2 Directional signs shall be located within 1000 feet of the intersection where a change in direction is required, and there shall be no more than 3 signs per post assembly, with only one post assembly per intersection approach. Businesses must be located within 5 miles of the intersection sign and businesses may be eligible for no greater than 4 signs within the Town.

424.4.5 Maintenance:

- .1 All signs shall be furnished by the business owner or applicant and shall be installed by the D.O.T. at approved locations on approved sign posts furnished by the D.O.T. who shall thereafter maintain the sign support.
- .2 Sign boards which are lost, stolen, defaced or damaged shall be replaced by the owner for reinstallation by the D.O.T.
- .3 Businesses with signs which are no longer applicable due to business name or location changes, or other reasons, shall notify the D.O.T. within 30 days of such change to have the sign removed. An owner failing to properly maintain a sign may subject the sign to removal by the D.O.T.

424.5 Violations:

Any violation of this Ordinance shall constitute a nuisance and the owner, person or firm having control or use of any premises or sign violating any

provisions hereof shall be fined as established by order of the Town Council for each day such violation is permitted to exist after notification in writing from the Town. [Amended, effective 9/1/98]

424.6 Minimum Requirements:

The provisions of this Ordinance are minimum requirements. Whenever the requirements of this Ordinance are at a variance with the requirements of any other lawfully adopted statute, rule, regulation, ordinance, deed restriction or covenant, the most restrictive or that imposing the highest standard shall govern.

**Sec. 425 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, 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 soil report, prepared by a State certified soil scientist or site evaluator based on an on-site investigation. Suitability considerations shall be based primarily on criteria employed in the National Cooperative Soil Survey as modified by on-site factors such as depth to water table and depth to refusal.

**Sec. 426 Outdoor Swimming Pools**

426.1 An outdoor swimming pool shall be any artificially confined body of water greater than twenty-four (24) inches in depth in any portion which may or may not require recirculation and filtering equipment for the maintenance of water quality.

426.2 Any swimming pool which is not located entirely within a building shall comply with the following requirements:

- .1 The pool shall not encroach upon the setback or yard requirements of the District in which it is located. For the purposes of this regulation, this shall not include aprons or approaches to the swimming pool but shall include all filtering facilities and buildings accessory to the swimming pool as well as the swimming pool itself.
- .2 The pool shall be completely enclosed by a fence or a wall not less than four feet in height, with appropriate doors and/or gates, and so constructed as to reasonably prohibit the unsupervised entrance of young children. The wall of a building or the pool itself may be used as

a part of such an enclosure. This regulation shall apply to below ground and above ground pools.

.3 These requirements shall not apply to so-called farm ponds or fire ponds.

426.3 No outdoor swimming pool shall be constructed until a building permit has been issued by the Code Enforcement Officer.

**Sec. 427 Temporary Sawmill Operations**

The Board of Adjustment and Appeals before granting special exceptions in Districts where a temporary sawmill operation is permitted as a special exception shall first determine that the proposed operation will meet the following requirements:

427.1 It shall not be located within 500 feet of any dwelling, school or religious institution.

427.2 The operators thereof shall file with the Town of Cumberland a bond in an amount to be determined by the Board of Adjustment and Appeals sufficient to ensure that upon conclusion of the operation the appearance of the area will not have an adverse effect upon neighboring properties by reason of abandoned piles of sawdust and/or other debris and ruination of vegetation to cause excessive soil erosion.

427.3 The operation of a temporary sawmill shall be completed within a twelve-month period.

427.4 The Board may impose such other restrictions as it deems necessary to protect the health, safety, and welfare of the public and adjoining properties.

**Sec. 428 Temporary Structures**

Temporary structures including mobile units used in conjunction with construction work shall be permitted only during the period that construction work is in progress. Permits for temporary structures may be issued by the Building Inspector for up to a six month period. Fees for the permit shall be set by order of the Town Council. The basement of a structure shall not be used for residential purposes before the completion of the total structure. Sanitary facilities shall be provided in construction facilities and shall be completely self-contained with holding tanks. [Amended, effective 9/1/98]

**Sec. 429 Timber Harvesting**

No timber shall be harvested for commercial purposes from an area greater than three (3) acres until a permit has been issued by the Code Enforcement Officer and a fee of \$25.00 has been paid. Such permit shall be valid for a period of one year and may be renewed.

All timber harvesting operations shall be managed in accordance with the following standards:

- .1 All timber harvesting operations shall be conducted in accordance with the provisions of Sec. 409 regarding control of erosion and sedimentation;
- .2 No substantial accumulation of slash shall be left within fifty (50) feet of the normal high water mark of any pond, river, or salt water body as defined. At distances greater than fifty (50) feet from the normal high water mark of such waters, and extending to the limits of the area covered by this Ordinance, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground.
- .3 Skid trails, log yards, and other sites where the operation of logging machinery results in the exposure of substantial areas of mineral soil shall be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high water mark of any pond, river, or salt water body as defined. The width of this strip shall vary according to the average slope of the land as follows:

<u>Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark (percent)</u>	<u>Width of Strip Between Exposed Mineral Soil and Normal High Water Mark (Feet along Surface of Ground</u>
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

- .4 Harvesting activities within 250 feet of the shoreline shall not create single openings greater than seven thousand five hundred (7,500) square feet in the forest canopy, and shall remove not more than forty

(40) percent of the volume of trees in any ten (10) year period. For the purpose of these standards, a stand means a contiguous group of trees, sufficiently uniform in species, arrangement of age classes, and conditions, to be identifiable as a homogeneous and distinguishable unit.

**Sec. 430     Water Extraction and Storage**

Ground water or spring water may be pumped, extracted and/or bulk stored for wholesale commercial purposes at locations where permitted under this ordinance, subject to the approval of the Board of Adjustment and Appeals. Notwithstanding the provisions of Sec. 206.1, the Board of Adjustment and Appeals shall receive the recommendations of the Planning Board under Site Plan Review, and shall grant final approval if it finds that the proposal with any reasonable conditions, will conform with the additional requirements of Sec. 430.1, below.

430.1     Conditions of approval:

- .1     The quantity of water to be taken from ground water sources will not substantially lower the ground water table to the detriment of public and private wells on adjacent properties, cause salt water intrusion, cause undesirable changes in ground water flow patterns, or cause unacceptable ground subsidence, based on the conditions of a drought with a probability of occurrence of once in ten years.
- .2     The proposed facility will not cause water pollution or other diminution of the quality of the aquifer from which the water is to be extracted.
- .3     Safe and healthful conditions will be maintained at all times within and about the proposed use.
- .4     The proposed use will not cause sedimentation or erosion.
- .5     The proposed facility is not within the defined aquifer recharge area of a public water supply, unless notice is given to the operator thereof and the Board has considered any information supplied by the operator and finds that no adverse affect on a public water supply will result.
- .6     The operator shall make monthly operating records of the quantity of water extracted, stored and removed from the site available to the Town Council or its designee.

430.2     The application together with site plan shall include the following additional information:

- .1 Statement of the quantity of ground water to be extracted, expressed as the annual total, the maximum monthly rate by month, and the maximum daily rate;
- .2 A letter from the Maine Department of Human Services approving the facility as proposed;
- .3 Where appropriate, letters from the Maine Department of Transportation when access approval is required, and from the Department of Environmental Protection when the site location law is applicable or a discharge permit is required;
- .4 Applicants shall present a written report of a hydrogeologic investigation conducted by a certified professional geologist or registered professional engineer, except for spring water extraction facilities which meet the following conditions; this spring enhancement will not increase the combined spring's catchment capacity by removing more than four (4) cubic yards of earth and not increase this spring's depth by more than four (4) feet, where the discharge drain is no lower than the existing spring water level, where gravity alone (without the aid of a siphon) is used to withdraw the spring water to other facilities on site, and where other improvements do not threaten ground water levels. This report shall include the following information:
  - .1 A map of the aquifer tributary to the spring(s) or well(s) from which water is to be extracted in sufficient detail to support a calculation of sustained yield during a drought with a probability of one in ten years, as well as an estimate of any potential interaction between this aquifer and adjacent aquifers.
  - .2 The results of the investigation shall establish the aquifer characteristics, the rates of draw down and rebound, the sustainable yearly, monthly (by month), and daily extraction rates, the cone of depression which may develop about the proposed facility, and other impacts on the water table in the tributary aquifer and such other private or public wells within 1000 feet of the proposed extraction facilities shall be assessed.

430.3 Nothing in this procedure, and no decision by the Board of Adjustment and Appeals shall be deemed to create ground water rights other than those rights which the applicant may have under Maine Law.

**Sec. 431 Water Quality Protection**

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials

of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.

**Sec. 432 Residential Care Facilities** [Effective 9/14/88; Amend. 8/26/91, Amend 10/28/96]

Residential care facilities as defined herein shall be allowed where permitted under this ordinance, subject to the following conditions:

- 432.1 Review Procedures: All residential care facilities shall be subject to approval by the Planning Board under the Site Plan Review Ordinance. In addition, all residential care facilities, except for Community Living Uses and for Boarding Care Facilities with eight (8) or fewer residents, must meet the submissions requirements and review standards contained in the Town of Cumberland Subdivision Ordinance under Sections 1, 3, 5, 6, 7 (except for Sec. 7.8, 7.9, and 7.12), 8, 9, 10, and Appendix D; provided, however, such subdivision submissions and review standards may be waived by the Planning Board if otherwise addressed under the Site Plan Review Ordinance. For the purposes of this ordinance, the words "residential care facility" should be substituted for "subdivision" when referring to the Subdivision Ordinance provisions listed above.
- .1 Review Fees: Residential care facilities subject to review under the Subdivision Ordinance provisions above shall be assessed review fees as specified by order of the Town Council. [Amended, effective 9/1/98]
- 432.2 Density and Living Area: The minimum lot size of the zoning district in which the residential care facility is proposed shall apply to the facility as a whole and not to dwelling units, beds, or residents. The maximum size of a facility for a given site shall instead be limited by the requirements contained in Sec. 432.3 below and by applicable Special Exception, Subdivision and/or Site Plan Review standards. Residential care facilities shall in all events provide at least sufficient living area per resident to comply with applicable State licensing or certification requirements.
- 432.3 Site and Building Requirements:
- .1 Minimum Lot Size: The minimum lot size shall be that required for the zoning district in which the facility is proposed.
- .2 Site Coverage: The facility, as measured by the area of the building footprint of all structures, shall not cover more than 10% of any site's

gross acreage. This limitation on site coverage applies only to structures and does not apply to drives, parking areas, walkways, and gardens.

- .3 Open Space: At least 50% of the gross site acreage shall be devoted to vegetated open space. The open space may include lawn areas, forest areas, areas with a vegetative cover, and gardens. Open space shall not include areas covered by structures, parking areas, drives, walkways, swimming pools, tennis courts, or similar improvements.
- .4 Setbacks: The setbacks below shall apply to new structures upon which construction commences after the effective date of this amendment, additions thereto, additions to structures upon which construction commenced prior to the effective date of this amendment, parking areas, swimming pools, tennis courts and similar improvements.

SETBACK SCHEDULE

(Total Square Footage of All Structures, Existing and Proposed New Structures and any Additions, added Together)

	Greater than 10,000 Square Feet	5,000 to 10,000 Square Feet	Less than 5,000 Square Feet
Front:	100 feet	75 feet	Same as otherwise required under Sec. 204 "District Regulations"
Rear:	75 feet	75 feet	
Each Side:	100 feet	75 feet	

In cases involving expansions of or additions to existing structures which result in an increase in the square footage of a residential care facility sufficient to cause the facility as a whole to become subject to an increased setback requirement pursuant to the foregoing schedule, the existing structure, if in compliance with the applicable setback requirement at the time of its construction, shall be deemed to conform to the setback schedule. The addition or expansion shall be subject to the increased setback requirement except that the Planning Board in a site plan review may grant approval to permit the setback requirement applicable to the original structure to apply to the addition on finding that compliance with the increased setback requirement would cause undue hardship and that the proposed addition or expansion will not result in any noise, glare, dust, fumes, storm water runoff, air or water pollution or similar condition having a detrimental effect on adjoining properties. The Board may, as a condition of such approval, require buffering or screening sufficient to protect the privacy of residents of the facility and adjoining properties. [Amend. 8/26/91]

- .5 Height: The maximum building height shall not exceed that which is permitted for residential construction in accordance with the provisions of this ordinance.
- .6 Parking: Off-street parking spaces shall be provided in the amount of a minimum of one parking space for each residential unit, except that for nursing homes one parking space for every four beds and for hospitals one for every three beds shall be provided. In addition, employee parking spaces that equal the highest number of employees on duty during any one shift shall be provided.
- .7 Buffering: Adequate landscaping and screening shall be provided in accordance with the standards for landscaping and buffering contained in the Site Plan Review section of this ordinance and, if required under Section 432.1 above, in the applicable sections of the Subdivision Ordinance.

- 432.4 Wastewater Disposal: All proposed residential care facilities shall be subject to the submission requirements and standards contained in Sec. 7.15--Sewage Disposal of the Cumberland Subdivision Ordinance.
- 432.5 Occupancy Guarantee and Conversions: All residential care facilities shall be licensed or certified by the State of Maine and shall be restricted to occupancy by elderly, handicapped, or ill persons as specified by the license or certification. The conversion of a residential care facility to another use shall require site plan review and approval in addition to any other applicable provisions of this ordinance.
- 432.6 Reserved Units: A proposed residential care facility shall be required to reserve at least 10% of its units for lower income people. "Lower income" is defined as the full range of incomes at or below 80% of the median household income as determined by the Department of Economic and Community Development. Any applicant seeking a variance from the requirement of this subsection must, in addition to the other variance standards under this ordinance, demonstrate that the Town has achieved a level of 10% or more of new residential development, including units in residential care facilities, based on the most recent five-year historical average of residential development in the Town, which meets the definition of housing for lower income persons as defined herein.

## **SECTION 433 - TELECOMMUNICATIONS FACILITIES [adopted, effective 12/13/99]**

### **433.1 PURPOSE**

The purpose of this Section is to provide a uniform and comprehensive set of performance standards and requirements to be used by the Planning Board during the site plan review process when it reviews an application for the placement and construction of wireless telecommunication facilities. These standards and requirements are intended to regulate the location and installation of such facilities in order to:

1. Protect and promote public health safety and welfare from potential problems examples of which are falling ice, telecommunication wave interference and attractive nuisance of towers to children.
2. Protect and preserve the aesthetic quality of Cumberland as set forth in the goals, policies and objectives of the adopted Comprehensive Plan, examples of which are the protection of scenic vistas, rural character and important historical areas, and the regulations of the Cumberland Zoning Ordinance, including but not limited to buffering requirements, by carefully regulating siting and design of wireless telecommunication facilities.
3. Protect adjacent properties from potential damage from tower failure and falling ice through careful siting regulations and engineering requirements:
4. Facilitate and encourage the managed development of telecommunications infrastructure while at the same time not unduly restricting the development of needed telecommunications facilities, including important amateur radio installations and
5. Encourage co-location on existing and future wireless telecommunication towers and maximize the use of existing and approved towers and other existing structures such as utility poles, water towers and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of new towers needed to serve the community's needs.

### **433.2 EXEMPTIONS**

The following uses are exempt from these regulations:

- 1.A ground, building or tower mounted antenna, operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, which is no higher than thirty-five (35) feet in height, and is not licensed or used for any commercial purpose. The Codes Enforcement Officer may permit additional height up to a maximum of seventy-five (75) feet only if, a) engineering documentation substantiating the need for the excess height is

submitted to and is acceptable to the Codes Enforcement Officer, and b) the CEO determines that a height in excess of thirty-five (35) feet is technically necessary to successfully engage in this activity.

2. Radio or television satellite dish antenna for the sole use of the resident occupying a residential parcel on which the satellite dish is located.
3. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the occupant of a residential parcel on which the radio or television antenna is located, with an antenna height not exceeding thirty-five (35) feet.
4. A ground or building mounted citizens band radio or two-way FM antenna including any mast, if the height (post, and antenna and support structure is not on the ground) does not exceed thirty-five (35) feet.
5. A municipal, public safety or public works wireless telecommunication facility up to a minimum height of 100 feet, the 100 feet height limitation shall not include the height of any building that the TCF may sit upon.

#### 433.3 SUBMISSION REQUIREMENT

In addition to all of the relevant site plan review submission requirements listed in Sec. 206, the following submissions shall be required unless waived by the Planning Board.

- a. A report from a Registered Professional Engineer in the State of Maine that describes the tower, the technical reasons for the tower design and the capacity of the tower, including the number(s), type(s), and volume(s) of antenna(s) that it can accommodate and the basis for the calculation of capacity.
- b. Written approval by all applicable state and federal agencies, including but not limited to the Federal Aviation Administration (FAA) and Federal Communications Commission (FCC), including a description of any conditions or criteria for the approval, or a statement from the agency that no approval is required.
- c. A letter of intent that commits the tower owner and his or her successors in interest to:
  - (1) respond in a timely, comprehensive manner to a request for information from a potential co-location applicant.
  - (2) negotiate in good faith for shared use by third parties that have received an FCC license or permits:

- (3) allow shared use if an applicant agrees in writing to pay reasonable charges.
- d. Proof of financial capacity to build, maintain, and remove the proposed tower.
- e. An inventory of all of the provider's existing and approved towers, antennas or sites within the Town of Cumberland and locations in surrounding communities where wireless telecommunications are proposed to be utilized in conjunction with the facility proposed in the application.
- f. Photos showing site vegetation, existing and adjacent structures, views of and from the proposed site, topography, and land uses on the proposed parcel and on abutting properties.
- g. Landscaping plan reflecting location of proposed screening and fencing, planting areas, proposed plantings, existing plant materials to be retained and trees or shrubs to be removed.
- h. Elevation drawings, cross-sectional area or silhouette of the facility, drawn to scale, and showing all measurements, both linear and volumetric, showing front, sides and rear of the proposed facility including all fencing, supporting system for transmission cables running between the tower and accessory structures, control panels, antennas, and existing structures and trees. The submission shall reference any design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- i. Detail of the tower base or method of attachment to a structure. If the facility will be attached to an existing building or structure, provide measurements and elevations of the structure.
- j. A visual analysis, which may include photo montage, field mock up, or other techniques, which identifies the potential visual impacts, at design capacity, of the proposed facility. Consideration shall be given to views from public areas as well as from private residences and from archaeological and historic resources including but not limited to the National Register of Historic Places or those that are eligible for such listing. The analysis of the impact on historical and archaeological resources shall meet the requirements of the Maine State Historic Preservation Officer in his/her review capacity for the FCC. The overall analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable communication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed communication service.
- k. Identify any other telecommunication facilities existing or proposed on the site.

- I. Details of all accessory structures including buildings, parking areas, utilities, gates, access roads, etc.
  
- m. Structural requirements:
  - (1) Telecommunication towers shall be designed and installed in accordance with the most current standards of the Electronic Industries Association (EIA) *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*.
  - (2) The applicant's engineer shall provide documentation showing that the proposed transmission tower meets or exceeds the most current standards of the American National Standards Institute ANSI/EIA/TIA-222 for Cumberland County relative to wind and 1/2" ice loads when the tower is fully loaded with antennas, transmitters, and other equipment as described in the submitted plan.
  - (3) For towers or antennas placed on buildings or alternative tower structures (ATS), the applicant shall also provide written certification that the building or ATS itself is structurally capable of safely supporting the tower or antennas and their accompanying equipment.

#### 433.4 SPACE AND BULK STANDARDS

- a. Tower Height

Towers shall not exceed a height of one hundred (100) feet, except that where evidence of acceptable design and co-location is provided, the Planning Board may approve an additional twenty-five (25) feet of tower height per each additional wireless communication service co-locator, not to exceed the following maximum tower heights:

"HC" Highway Commercial; "LB" Local Business, and "IB" Island Business:  
175 feet

- b. Antennas

- (1) Height  
Installing antennas on alternative tower structures is permitted, provided the resulting alternative tower structure height does not exceed the following maximum heights:

"RR1 & RR2" Rural Residential; "LDR" Low Density Residential;  
"MDR" Medium Density Residential, "IR" Island Residential, "I"  
Industrial, "OC" Office Commercial; "RI" Rural Industrial;:  
150 feet

(2) Mounting and dimensions

The mass and dimensions of antennas on a tower or alternative tower structure shall be governed by the following criteria:

- (a) Whip antennas shall not exceed 20' in length for an individual antenna and shall be limited to two (2) per mount, with no more than three (3) mounts at a given level.
- (b) Microwave dish antennas. The aggregate diameters of microwave dish antennas mounted within a 20' vertical section of a tower may not exceed 24", with no single dish being more than 8" in diameter and 5' in depth, unless otherwise required per the path reliability and/or tower structural studies.
- (c) Panel antennas. The horizontal centerline of all panel antennas of a single carrier must be aligned in the same horizontal plane, with each antenna not to exceed 8' in length nor 2' in width.

c. Lot Area

A new wireless telecommunications tower shall not be constructed on a lot that does not conform to the minimum lot area required in the zoning district even if such lot is a lawful non-conforming lot of record.

d. Setbacks

- (1) All wireless communications towers shall be setback from any lot lines a distance equal to at least 125% of the tower height.
- (2) Equipment facilities shall meet the required District setbacks.
- (3) If more than one tower is proposed on a single lot or parcel, they shall be clustered as closely together as technically possible.
- (4) Notwithstanding the height and setback limitations within a zoning district, in order to accommodate the co-location of an additional antenna, a tower, existing as of (date of adoption) may be modified or rebuilt to a taller height, not to exceed a total maximum of thirty (30) feet more than the tower's height as of (date of adoption), but only if that additional height will not require any lighting or obstruction

painting. The additional tower height shall not require increased lot setbacks.

- (5) There shall be setback requirements for antennas mounted on alternative tower structures. The standard District setbacks shall continue to apply for alternative tower structures and equipment facilities, where applicable.

#### 4. CO-LOCATION REQUIREMENTS

##### a. On existing towers

- (1) Applicants for site plan review for a new wireless communication tower must send written notice by pre-paid first class United States mail to all other such tower and alternative tower structure owners and licensed wireless communication providers in the Town utilizing existing towers and alternative tower structures and to owners of such towers and alternative structures within a one (1) mile search radius of the proposed tower, stating their needs and/ or co-location capabilities. Evidence that this notice requirement has been fulfilled shall be submitted to the Planning Board and shall include a name and address list, copy of the notice which was sent, and a statement, under oath, that the notices were sent as required. An application for a new tower must include evidence that existing or previously approved towers and alternative tower structures within the Town and search area cannot accommodate the communications equipment (antennas, cables, etc.) planned for the proposed tower. Such evidence shall be documentation from a qualified and licensed professional engineer that:

- (a) Planned necessary equipment would exceed the structural capacity of existing and approved towers and alternative tower structures, considering the existing and planned use of those towers and alternative tower structures, and the existing and approved towers cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost;

- (b) Planned equipment will cause electromagnetic frequency interference with other existing or planned equipment for that tower or alternative tower structure, and the interference cannot be prevented at a reasonable cost:

- (c) Existing or approved towers and alternative tower structures do not have space on which planned equipment can be placed so it can function effectively and at least in parity with other similar equipment place or approved; or

- (d) Other documented reasons that make it technically or financially unfeasible to place the equipment planned by the applicant on existing and approved towers and alternative tower structures.
  - (2) Shared use shall be conditioned on the applicant's agreement to pay a reasonable fee and costs of adapting existing facilities to the proposed use.
  - (3) Once the Planning Board has determined that telecommunications equipment proposed by the applicant cannot be accommodated on an existing or approved tower or alternative tower structure, each tower or alternative tower structure so determined is presumed unable to accommodate similar equipment that may be proposed in the future unless the Board determines after additional information is provided, that new technology or other considerations enables the existing or approved tower or alternative tower structure to accommodate the equipment.
  - (4) The Planning Department will maintain a list of existing and approved towers and alternative tower structures, including the name and address of owner(s), within the Town of Cumberland.
- b. Construction of new towers  
 A proposal to construct a new co-located communication tower taller than the maximum height permitted for a single wireless communication service must include evidence that the tower can structurally support a minimum of three (3) antenna arrays for each anticipated co-locating entity. (See Section 433.4 on Tower Height).

Prior to the issuance of any building permits for a co-located tower in excess of the height of a single user tower, the applicant will submit to the Code Enforcement Officer executed agreements documenting commitments to co-locate from the number of co-locators approved by the Planning Board.

## 5. INTEREST OF TELECOMMUNICATION ENTITY

A proposal to construct or modify a wireless communication tower must include evidence of a commitment from a duly licensed entity to utilize the tower to provide wireless communication services. All wireless communication entities which are contracted to locate on the tower must join as applicants.

## 6. DESIGN STANDARDS

- a. Wireless communication facilities:

- (1) Except where dictated by federal or state requirements, the Planning Board may require that a proposed tower be camouflaged or designed to blend with its surroundings. This may include, but not be limited to, having a galvanized finish, being painted "flat" blue gray or in a skytone above the top of surrounding trees and earthtone below treetop level.
  - (2) Equipment facilities shall be adjacent to the tower base unless an alternate location will be less visually obtrusive or topographic considerations require an alternative location.
  - (3) Equipment facilities shall be no taller than one story in height and shall be treated to look like a building or facility typically found in the area.
  - (4) No obstruction painting or any lighting shall be permitted on any towers, except where dictated by federal or state requirements. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties and views.
  - (5) Manually operated or motion detecting security lighting is permitted.
  - (6) The Planning Board may require special design of the facilities where findings of particular sensitivity are made (e.g.), proximity to historic or aesthetically significant structures, views and / or community features).
  - (7) Sufficient anti-climbing measures and other security measures preventing access to the site shall be incorporated into the facility as needed, to reduce the potential for trespass and injury.
- b. Antenna arrays  
Antenna arrays located on an existing structure or alternative tower structure shall be placed in such a manner so as to not be visible from a ground level view adjacent to the structure. If, however, circumstances do not permit such placement, the antenna array shall be placed and colored to blend into the architectural detail and coloring of the host structure.

## 7. LOCATION

- a. Wireless telecommunication facilities shall not be sited in areas of high visibility unless the Planning Board finds that no other location is technically feasible. For purposes of this section high visibility shall mean areas with no visual clutter such as trees and buildings. If the facility is to be sited above the ridgeline it must be designed to minimize its profile by blending with the surrounding existing natural and man-made environment.

- b. No facility shall be located so as to create a significant threat to the health or survival of rare, threatened or endangered plant or animal species.

## 8. ADDITIONAL STANDARDS AND CRITERIA

- a. Mitigation measures have been utilized to screen antennas and towers from view from public rights-of-way or scenic vistas, either via landscaping, fencing or other architectural screening.
- b. Creative design measures have been employed to camouflage facilities by integrating them with existing buildings and among other uses.
- c. Other technically feasible sites have been investigated and, if available, the proposed facility has been relocated in order to minimize the effect of the location on visually sensitive areas such as residential communities, historical areas and open space areas.

## 9. WAIVER PROVISION

The Planning Board, in its sole discretion, may modify or waive any of the submission requirements, application procedures, or standards of this Section 433.3 of this ordinance when it determines that, because of the type or size of the project or circumstances of the site, such requirements would not be applicable or would be unnecessary to determine compliance with the approval standards. The Planning Board must additionally determine that such modification or waiver would not adversely affect properties in the vicinity or the general safety and welfare of the Town. The burden of proof regarding any such modification or waiver rests solely with the applicant and must be shown to be consistent with federal and state law.

Notwithstanding the authority of the Planning Board to grant a waiver, in no instance may the height of a new tower exceed 250' or may the height of an alternative tower structure be increased to more than 250'.

## 10. AMENDMENTS

Any change to existing, previously approved and proposed towers requires site plan approval as noted in the definitions of major and minor development. Changes include, but are not limited to, modifications to approved height and to approved attachments such as antennas and dishes as well as requests for additional attachments.

## 11. REMOVAL OF ABANDONED WIRELESS COMMUNICATION FACILITY

- a. The owner of a telecommunication facility (TCF) shall notify the Town Planner of the date of cessation of use of the facility or any component(s)

thereof within one month from the date of such cessation. If the owner fails to give the notice required by this paragraph, the Code Enforcement Officer shall make a determination of such date, which determination shall be conclusive.

- b. Any TCF or component thereof that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The owner of abandoned TCF or component thereof shall remove it within ninety (90) days of receipt of notice from the Code Enforcement Officer of determination of abandonment.

All above ground structures, equipment, foundations, guy anchors, utilities and access roads or driveways specifically constructed to service the town, structures equipment or utilities shall be removed, and the land returned to a condition as near to the original pre-construction condition as possible.

- c. At the time of approval, the applicant for a new tower shall post a performance guarantee in the form of a continuous corporate surety bond, an irrevocable letter of credit, or an escrow account in favor of the Town equal to 125% of the estimated demolition and removal cost of the tower and associated facilities if abandoned at any time by the applicant. Such performance guarantee shall be satisfactory to the Town Manager as to the issuer, form, sufficiency, surety and manner of execution. All performance guarantees shall be on a continuous basis, with any provision for cancellation to include that a minimum 30 day notice of cancellation or non-renewal be sent by certified mail to the Town of Cumberland.
- d. If there are two or more users of a single tower or TCF, then this provision shall not apply until all users cease using the tower or TCF.
- e. If all antennas above a manufactured connection on a tower are removed, the resulting unused portions of the tower shall subsequently be removed within six (6) months.
- f. The replacement of all or portions of a TCF previously removed requires a new site plan approval.

## 12 INSPECTIONS

- a. Inspection of towers by a Registered Professional Engineer in the State of Maine shall be performed to insure structural integrity, such inspections shall be performed as follows:

- (1) Monopole towers - at least once every seven years following completion of construction. The inspection shall take place between the sixth and seventh year of the repeat sequence.
  - (2) Self-supporting towers - at least once every five years following completion of construction. The inspection shall take place between the fourth and fifth year of the repeat sequence.
  - (3) Guyed towers - at least once every three years following completion of construction. The inspection shall take place between the second and third year of the repeat sequence.
- b. The inspection report shall be submitted to the Town Engineer within thirty (30) days of its receipt by the tower owner. Based upon the results of the inspection, the CEO, upon recommendation by the Town Engineer, may require repair or demolition of the tower.
  - c. The cost of such inspections, reports, repairs or demolition required under this Section of the Ordinance shall be borne entirely by the tower owner. Required repairs shall be completed within ninety (90) days or less as required by the CEO and agreement by the Town Engineer for safety reasons.
  - d. Failure to provide required inspection reports in the required time schedule shall be deemed *prima facie* evidence of abandonment.

## **SECTION 500 -NON-CONFORMING USES, BUILDINGS, STRUCTURES AND LOTS**

**Sec. 501** The use of any building, structure or land which is made non-conforming by reason of the enactment of this Ordinance, or which shall be made non-conforming by reason of a subsequent amendment, may be continued subject to the following provisions:

### 501.1 Non-conforming Buildings

- .1 Repairs and Alterations: A nonconforming building or structure may be repaired, altered, improved, or reconstructed. The number of square feet of floor area devoted to the nonconforming use may not be increased, unless the Board of Adjustment and Appeals finds that the proposed expansion of the nonconforming use will not adversely affect other property in the same district and neighborhood and that the granting of such approval by the Board will not substantially depart from the intended purposes of this ordinance.
- .2 Rebuilding: A nonconforming building or structure, damaged or destroyed by fire, explosion, or act of God may be rebuilt, provided the rebuilding is begun within twelve (12) months of the disaster. The number of square feet of floor area devoted to nonconforming use shall not be increased, unless in the opinion of the Board of Adjustment and Appeals, such increase will not be detrimental to adjacent properties.
- .3 Shoreland Areas: Notwithstanding Sections 501.1.1 and 501.1.2, expansions, relocations and reconstruction or replacement of non-conforming buildings or structures in shoreland areas are governed by the following: [Adopted, Effective 12/10/91]
  - .1 Expansions: A non-conforming building or 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, provided further that:
    - .1 If any portion of a building or structure is less than the required setback from the normal high-water line of a water body or upland edge of a wetland, after January 1, 1989, that portion of the building or structure shall not be expanded in floor area or volume; by thirty percent (30%) or more, during the lifetime of the building or structure without a variance from the Board of Adjustment and Appeals for a substantial expansion. A "substantial expansion" is an expansion which increases by thirty percent (30%) or more the portion thereof

that is less than the required setback from the normal highwater line or upland edge of a wetland.

- .2 Construction or enlargement of a foundation beneath the existing building or structure shall not be considered an expansion of the building or structure provided; that the building or structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified Section 501.1.3.2, Relocation, below; that the completed foundation does not extend beyond the exterior dimensions of the building or structure; and that the foundation does not cause the building or structure to be elevated by more than three (3) additional feet.
  - .3 No building or structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.
- .2 Relocation: A non-conforming building or structure may be relocated within the boundaries of the parcel on which the buildings or structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a building or structure be relocated in manner that causes the structure to be more non-conforming.

In determining whether the building or structure relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings and 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.

- .3 Reconstruction or Replacement: Any non-conforming building or structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or damaged or destroyed by more than fifty percent (50%) of the market value of the building

or structure before such damage, destruction or removal, any be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a building or structure be reconstructed or replaced so as to increase its non-conformity.

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

In determining whether the building or structure reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in Section 501.1.3.2 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 building or 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 or wetland, or on the subject or adjacent properties and resources that the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant regarding each of the criteria listed herein and shall determine whether the proposed use has a greater adverse impact upon the public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing maritime activities, and other functionally water-dependent uses than the existing use.

#### .4 Non-conforming Use

- .1 Extension of Use: A nonconforming use of a building or structure shall not be extended, nor shall a nonconforming use of a part of a building or structure be extended to other parts of the building or structure unless those parts were manifestly arranged or designed for such use prior to the enactment of this Ordinance or of any amendment making such use

nonconforming, provided, however, that non-conforming residential uses may be expanded within existing residential buildings or structures or with expansions of such structures that have been permitted under Section 501.1.3.1. A non-conforming use of land may not be extended. [Adopted, Effective 12/10/91]

- .2 Change of Use: A nonconforming use of a building or structure or piece of land may be changed to another nonconforming use only when the Board of Adjustment and Appeals finds that the new use is not objectionable or detrimental to adjacent properties; provided, however, that a non-conforming use of a building or structure or piece of land located within the shoreland areas may be changed to another non-conforming use only upon a determination by the Board of Adjustment and Appeals that the proposed use has no greater adverse impact upon the subject and adjacent properties and resources than does the existing use, with such determination of "no greater adverse impact" to be made upon the criteria listed in Section 501.1.3.4. [Adopted, Effective 12/10/91]
- .3 Abandonment: The nonconforming use of any building, structure, or piece of land, which has been abandoned shall not thereafter be resumed. A nonconforming use shall be considered abandoned:
  - .1 When it has been replaced by a conforming use;
  - .2 When it has been discontinued for a period of one year; or, upon the death of the owner when it has been discontinued for eighteen (18) months; or
  - .3 When it has been changed to another nonconforming use pursuant to the approval of the Board of Adjustment and Appeals.

## **SECTION 600 - ADMINISTRATIVE PROVISIONS**

### **Sec. 601 Code Enforcement Officer**

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. The Town Council, Town Manager, and Police Department shall assist the Code Enforcement Officer by reporting to him any new construction or use of land, and apparent violations of this Ordinance.

The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including application submitted, shoreland zoning permits granted or denied, variances granted or denied, revocation actions, revocation of shoreland zoning permits, appeals, court action, violation investigated, violations found, and fees collected. On an biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land Quality control within the Department of Environmental Protection. [Amended, Effective 3/23/92]

### **Sec. 602 Permits and Fees**

- 602.1 Building Permit: No building or part thereof shall be erected, structurally altered, enlarged, or moved unless a building permit for such action has been issued by the Code Enforcement Officer.
- .1 Application for a building permit shall be accompanied by a fee as established by order of the Town Council. [Amended, effective 9/1/98]
  - .2 Each application to the Code Enforcement Officer for a permit to erect a new building or structure or to enlarge or to move an existing one shall be accompanied by a site plan showing the measurements of the lot and of all buildings, yards, and parking spaces, existing and proposed. The intended use or uses of land and building shall be indicated clearly.
- 602.2 Use Permit: The fee for a use permit shall be established by order of the Town Council unless a fee for a building permit has previously been paid. [Amended, effective 9/1/98]
- .1 No building or part thereof that has been erected, altered, enlarged or relocated, shall be occupied or used unless a use permit has been issued by the Code Enforcement Officer;
  - .2 A temporary use permit may be issued by the Code Enforcement Officer for a period of six months during the completion of work, provided that such temporary permits may require such conditions and safeguard as

will protect the health, safety, and welfare of the occupants and the public;

- .3 The establishment of an office or home occupation within a dwelling shall require a use permit.

602.3 Demolition Permits: The fee for a permit for the demolition of a building or structure shall be established by order of the Town Council. No permit shall be issued until notice of the application has been posted in the Town Office for at least ten (10) days. [Amended, effective 9/1/98]

Before a building can be demolished or removed, the owner or agent shall notify all utilities having service connections within the building such as water, electric, gas, sewer, and other connections.

Any other application for a building permit, and any application for a use permit, shall be accompanied by a description of the intended use or uses of the land and buildings and such further details as the Code Enforcement Officer may reasonably require for a clear understanding of the case.

602.4 Excavation of Land and Removal of Earth Products:

An application to the Board of Adjustment and Appeals for a permit to excavate land or remove earth products shall be accompanied by a fee as established by order of the Town Council. Outside consulting fees shall be charged in accordance with Section 608. Upon annual renewal of the application for the excavation of land and the removal of earth products, such application shall be accompanied by an application fee as established by order of the Town Council. [Amended, effective 3/25/87, amended, effective 9/1/98]

602.5 Shoreland Zoning Permits [Adopted, 12/10/91, Amended, 10/17/94]

602.5.1 Shoreland Zoning Permits Required

- .1 After the effective date of this Article no person shall engage in any activity or use of land or construct a building in a shoreland area district without first obtaining a shoreland zoning permit as required.
- .2 Shoreland Zoning Permit Applications
  - .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 Code Enforcement Officer or Town Planner as appropriate.

- .2 All applications shall be signed by the owner or owners of the property or other person authorizing the work, certifying that the information in the application is complete and correct. If the person signing the application is not the owner or lessee of the property then that person shall submit a letter of authorization from the owner or lessee.
- .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 local plumbing inspector, shall be submitted whenever the nature of the proposed structure would require the installation of a subsurface sewage disposal system.
- .5 If the property appears to be in the Resource Protection/Floodplain (RP/FP) Overlay District, applications for uses which are specifically prohibited in the RP/FP overlay district but permitted in the adjacent shoreland area must include an approved Letter of Map Amendment as issued by the National Flood Insurance Program. The application then will be considered as one for the requested use and the CEO shall deem the property to be located in the adjacent shoreland district.
- .6 A filing fee of as established by order of the Town Council must accompany all applications for Shoreland Zoning permits requiring Planning Board approval. Outside consulting fees shall be charged in accordance with Section 608. At the time of application, the applicant also may, at the discretion of the Town Planner, establish an escrow account. This escrow account shall be used to pay the cost of review of the application by outside consultants. Monies remaining in the escrow account at the time of the Planning Board's final decision on the application shall be returned to the applicant within thirty (30) days after the Planning Board's final decision; provided, however, that where the cost of outside consultants exceeds the amount of monies in the escrow account the applicant shall pay to the Town prior to the Planning Board's final decision the amount by which the actual cost of the outside consultants review exceeds the amount of monies in the escrow account.

.3 Procedure for Administering Shoreland Zoning Permit Applications

- .1 Permits issued by the Code Enforcement Officer in accordance with Sec. 204.5. Within thirty-five (35) days of the date of receiving a written application, the code enforcement officer 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 code enforcement officer, shall approve, approve with conditions, or deny all shoreland zoning permit application in writing within thirty-five (35) days of receiving a completed application unless the applicant and the code enforcement officer have agreed in writing to an enlargement of this time.
- .2 Permits issued by the Planning Board in accordance with Sec. 204.5 - Within thirty-five (35) days of the date of filing a written application to the Town Planner, the Planning Board 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, shall approve, approve with conditions, or deny all shoreland zoning permit applications in writing within thirty-five (35) days of receiving a completed application unless the applicant and the Planning Board have agreed in writing to an enlargement of this time.

A completed application must be filed no less than 14 days prior to the meeting at which it is to be considered. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty-five (35) days after the first available date on the planning board's agenda following receipt of the completed application, or within thirty-five (35) days of the public hearing, unless the applicant and the planning board have agreed in writing to an enlargement of this time.

The Planning Board may require other information in addition to that required in the application form and may request an evaluation of specific aspects of the application from the Town staff or other outside consultants.

Prior to taking final action on a Shoreland Zoning permit application, the Planning Board, shall hold a public hearing to afford the public the opportunity to comment on the application. Written notice of the nature of the application and of the date, time and place of the public hearing shall be given to property owners within 200 feet of the property on which the proposed project involved, and to the general public in a newspaper of general

circulation in the Town. The Planning Board may, at its discretion, hold any additional public hearings as it deems appropriate. Failure of any property owner or any member of the public to receive a notice of the public hearing shall not necessitate another public hearing and shall not invalidate the action of the Planning Board. [Amended, effective]

Shoreland zoning permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

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

- .3 After the submission of a complete application to the code enforcement officer or the planning board, the code enforcement officer or the planning 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 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 waters.
  - .8 Will protect archaeological and historic resources as designated in the comprehensive plan;
  - .9 Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities Overlay District;

- .10 Will avoid problems associated with flood plain development and use; and
- .11 Is in conformance with the provisions of this Article.
- .12 Is not in a floodplain adjacent to tidal waters (RP/FP Overlay District), and that an approved Letter of Map Amendment has been issued by the National Flood Insurance Program.

If a shoreland zoning 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 building or structure if the building or structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State law which the municipality is responsible for enforcing.

.4 Expiration of Shoreland Zoning Permit

Following the issuance of a shoreland zoning permit, if no substantial start is made in construction or in the use of the property within one year of the date of the shoreland zoning permit, the shoreland zoning permit shall lapse and become void.

.5 Installation of Public Utility Service

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

602.6 Belated Permits:

In addition to the cost of a permit, all belated permits will be subject to a fine as established by order of the Town Council. [Amended, effective 9/1/98]

## **Sec. 603 Board of Adjustment and Appeals**

- 603.1 There is hereby created a Board of Adjustment and Appeals to assist in the administration of this Ordinance. Such Board shall serve as a Board of Appeals pursuant to Title 30-A of the MAINE REVISED STATUTES ANNOTATED, Section 2691, and may perform such other functions as may be delegated to it by other ordinances. [Amended, effective 6/14/99]
- .1 The Board shall consist of seven members appointed by the Town Council. They shall be residents of the Town and serve without compensation. Appointments to the Board shall be for terms of three years, provided, however, that initial appointments to the Board shall be as follows: two members shall be appointed for terms of three years each, two members for two year terms and one member for a one year term. The initial appointment of the sixth and seventh members of the Board shall be for two year terms, so that their initial terms shall expire in the same year that the single appointment from the five-member Board would normally occur. The Board shall elect annually a chairman and secretary from its membership. When there is a vacancy on the Board, the Town Council shall appoint a person to serve for the balance of the unexpired term. [Amended, effective 6/14/99]
  - .2 Neither a Town Councilor, a member of the Planning Board, nor his or her spouse may be a member of the Board.
  - .3 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.
  - .4 Vacancies may occur by reason of resignation, death, removal from the Town, and, when certified to the Council by a majority of the members of the Board, by failure to attend at least 75% of the Board meetings, regular or special, during any 12 month period. A member may also be removed for cause, after notice and hearing, by the Town Council. Vacancies shall be filled by the Council for the unexpired term. [Amended, effective 12/24/86]
  - .5 Four members of the Board shall constitute a quorum for the hearing of appeals. If less than a quorum be present, the hearing may be adjourned for a period not exceeding two weeks at any one time, and the clerk to the Board shall in writing notify all members of the next date of the hearing to be rescheduled. Any hearing at which a quorum is present may also be adjourned in like manner by a majority of those present for such time or upon such call as is determined by vote with the

same written notification by the clerk. The clerk shall also give notice of adjourned hearing to all other interested parties as shall be directed in the vote of adjournment. [Amended, effective 6/14/99]

- .6 The Board shall be guided in its procedures by the provisions of Title 30-A of the MAINE REVISED STATUTES ANNOTATED, Section 2691, and Title I of said Statutes, Section 401 et seq. [Amended, effective 6/14/99]

603.2 The Board shall have the following powers and duties:

- .1 Interpretation. Upon appeal from a decision of the Code Enforcement Officer, the Board shall determine whether the decisions of the Code Enforcement Officer are in conformity with the provisions of this Ordinance, and interpret the meaning of the Ordinance in cases of uncertainty.
- .2 Variances. Upon appeal from a decision of the Code Enforcement Officer, the Board shall have the power to vary the dimensional requirements of this Ordinance that relate to size and height of structures, setback distances, and size of signs. A variance shall only be granted where such variance will not be contrary to public health, safety or general welfare. The Board may only grant those variances related to lot coverage, lot frontage or setback requirements for lots that are not located in a shoreland or resource protection overlay district if the Board finds that strict application of the ordinance to the petitioner would cause practical difficulty. For any sign or height variance or any dimensional variance sought for a lot located in a shoreland or resource protection overlay district, the Board must find that a literal enforcement of this Ordinance would result in unnecessary and undue hardship, and that such hardship arises out of conditions peculiar to the property and is not the result of any action of the applicant or a prior owner. A variance shall not be granted for the establishment or expansion of a use otherwise prohibited. The presence of other non-conformities in the neighborhood or zoning district shall not constitute grounds for a variance. [amended 7/10/00]
- .3 Special Exception. The Board shall have the power and duty to approve, deny or approve with conditions special exceptions only where such approval is specifically required. Where an advisory report from the Planning Board is required, the Building Inspector shall refer the application to the Planning Board for its review and recommendations at least 30 days prior to the meeting of the Board of Adjustment and Appeals; however, where site plan or subdivision review is required, the applicant shall apply to the Board of Adjustment and Appeals for special exception approval prior to the submission of a detailed site plan for

Planning Board approval, but any conditions imposed by the Board of Adjustment and Appeals shall be binding upon the applicant and upon the Planning Board. The applicant shall have the burden of proving that his application is in compliance with the requirements of this Ordinance. After the submission of a complete application, the Board shall approve a special exception application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use, with any conditions attached, meets the following standards:

- .1 The proposed use will not create hazards to vehicular or pedestrian traffic on the roads and sidewalks serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, intensity of use by both pedestrians and vehicles and the visibility afforded to pedestrians and the operators of motor vehicles;
- .2 The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous, aesthetically unpleasant, or unhealthy condition may result;
- .3 The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants;
- .4 The proposed use will be compatible with the uses that are adjacent to and neighboring the proposed location, as measured in terms of its physical size, intensity of use, visual impact, and proximity to other structures and the scale and bulk of any new structures for the proposed use shall be compatible with structures existing or permitted to be constructed on neighboring properties;
- .5 The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or restrict access of light and air to neighboring properties;
- .6 The proposed location for the use has no peculiar physical characteristics due to its size, shape, topography, or soils which will create or aggravate adverse environmental impacts on surrounding properties;
- .7 The proposed use has no unusual characteristics atypical of the generic use which proposed use will depreciate the economic value of surrounding properties;

.8 If located in a shoreland zone, the proposed use (1) will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat; (ii) will conserve shoreland vegetation; (iii) will conserve visual points of access to waters as viewed from public facilities; (iv) will conserve actual points of access to waters; (v) will conserve natural beauty and (vi) will avoid problems associated with flood plain development and use. [Amended, effective 12/2/86]

.4 Shoreland Zoning Permits or Variances [Adopted, Effective 12/10/91]

.1 An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board under the Shoreland Zoning provision of this Ordinance. Such appeal shall be taken within (30) days of the date of the decision appealed from, and not otherwise, and such appeal shall be governed by Section 603.2.1 and .2 except as additionally modified herein.

Notwithstanding Section 603.2.2, a variance under this Article also may be granted for percent of lot coverage, lot width, lot area, water setbacks, substantial expansions, and water frontage requirements.

.2 Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:

.1 A concise written statement indicating what relief is requested and why it should be granted.

.2 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.

.3 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.

.4 The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

.5 A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

- .5 Other Permits. The Board shall also have the power and duty to pass upon the issuing of certain permits or approvals where expressly authorized by this Ordinance.
- .6 Conditions for Approval. In granting appeals or special exception approvals under this Section, the Board of Adjustment and Appeals may impose such conditions as it deems necessary in furtherance of the intent and purpose of this Ordinance, to assure that there will be no adverse effects on adjacent properties, and to assure that the proposed use or modification will be compatible with other uses in the neighborhood or district. Such conditions for approval may be imposed based upon the following factors:
  - .1 The location of buildings, drives, parking areas, lighting, signs, and other outdoor storage areas;
  - .2 Access to the site for vehicular and pedestrian traffic, and emergency access;
  - .3 Sight distance at access points;
  - .4 Fences, screening and buffering;
  - .5 Landscaping and storm drainage;
  - .6 Garbage storage and snow storage areas;
  - .7 Any other factors relating to the impact of the proposed use on neighboring properties or on the public health, safety and welfare.

The concurring votes of at least three members of the Board shall be required for the approval of any appeal or application.

- .7 Additional Special Exception Performance Standards in Certain Zones.

In addition to the standards contained in Section 603.2.3, all special exceptions must conform with the performance standards set forth herein. No use already established on the date of adoption of this ordinance shall be so altered or modified as to conflict with or, if already in conflict with, to further conflict with these performance standards.

- .1 The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according the standards prescribed by the American Standards Association), inherently and recurrently generated shall not exceed a maximum of 60 decibels at lot boundaries, excepting air raid sirens and similar warning devices;
- .2 Vibration inherently and recurrently generated shall not exceed a peak particle velocity of .01 inches per second at lot boundaries;
- .3 No materials or wastes shall be deposited on any lot in such form or manner that they may be transferred beyond the lot boundaries

by regularly recurring natural causes or forces, and all materials which cause fumes or dust, constitute a fire hazard, or are edible or otherwise attractive to rodents or insects if stored out-of-doors shall be in closed containers;

- .4 The emission of noxious, odorous matter across lot boundaries in such quantities as to be offensive to persons of ordinary sensibilities is prohibited; and
- .5 No discharge into any private sewage disposal system, or stream or into the ground of any materials in such nature or at such temperature as to contaminate any water supply or otherwise cause the emission of dangerous or unhealthful elements is permitted, and no accumulation of solid waste conducive to the breeding of rodents or insects shall be allowed. [Amended, effective 12/2/86]

### 603.3 Hearings:

- .1 For all appeals from decisions of the Code Enforcement Officer, and for the consideration of all applications for variances, special exceptions, or other permits requiring approval of the Board, the Board shall hold a public hearing as prescribed herein. At least seven days before the hearing, the clerk of the Board of Adjustment and Appeals shall notify by mail the owners of properties located within 300 feet of the lot line of the property for which the appeal or application shall be made. In addition to the notice by mail, the clerk to the Board of Adjustment and Appeals shall also cause to be published, at least seven days before the hearing, in a newspaper of general circulation in the Town, a notice summarizing the nature of the appeal and the time and place of the hearing.
- .2 Failure of a property owner to receive notice by mail shall not invalidate actions taken by the Board. Property owners as listed on the assessor's records shall be deemed to be the persons to whom such notice should be mailed.
- .3 The Code Enforcement Officer, unless prevented by illness or absence from the State, shall attend all hearings and shall present to the Board all plans, photographs, or other factual materials which are appropriate to an understanding of matters before the Board.
- .4 Written notice of the decision of the Board shall be sent to the appellant and to the Code Enforcement Officer within 15 days of the date of the hearing.

### 603.4 Appeal Procedure:

- .1 Any person with standing or equity aggrieved by a decision of the Code Enforcement Officer, may appeal such decision to the Board of Adjustment and Appeals within thirty (30) days inclusive of the date of such decision.
- .2 Within 30 days of the date of the decision of the Code Enforcement Officer, the appeal shall be entered at the Office of the Town Clerk upon forms to be approved by the Board of Adjustment and Appeals. The appellant shall set forth on said form the ground of his appeal and shall refer to the specific provisions of the Zoning Ordinance, Building Code, State Regulation, Private or Special Law, Case law Statute and Amendments thereto whichever may be involved. The appellant in such case shall pay a fee as established by order of the Town Council. Outside consulting fees may be assessed as provided in Section 608 only where necessary to protect the public health, safety or welfare. [Amended, effective 3/25/87, amended, effective 9/1/98]
- .3 Following the receipt of any appeal, the Town Clerk shall notify the Code Enforcement Officer and the Chairman of the Board of Adjustment and Appeals of the appeal. The Chairman shall then fix the date for a hearing within thirty (30) days of the appeal. The notice to the Board shall be in order for hearing at a meeting of the Board following by at least seven (7) days any publication of notice and the mailing of notices as prescribed above.
- .4 An aggrieved party may appeal from the decision of the board to the Superior Court, as provided for by Statute.

603.5 Successive Appeals:

After a decision has been made by the Board of Adjustment and Appeals, a new appeal of similar import concerning the same property shall not be entertained by the Board until one year shall have elapsed from the date of said decision, except that the Board may entertain a new appeal if the Chairman believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done, or if he believes that a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.

603.6 Expiration of Rights:

Rights granted by the Board of Adjustment and Appeals shall expire if the work or change authorized is not begun within six months or substantially completed within one year of the date of vote by the Board.

**Sec. 604     Savings Clause**

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect; and to this end the provisions of the Ordinance are hereby declared to be severable.

**Sec. 605     Changes and Amendments**

- 605.1       Amendments may be initiated by the Planning Board, the Town Council, by any landowner or his authorized agent or by a person having a written agreement to purchase the property.
  
- 605.2       Before public hearing by the Town Council, any proposed amendment or change, unless initiated by the Planning Board, shall be submitted to the Planning Board for public hearing and recommendations to the Town Council; public notice of such hearing shall be given by publication in a newspaper of general circulation within the Town at least ten days prior to the date thereof.
  
- 605.3       Amendments to the text or the zoning map shall be consistent with the adopted Comprehensive Plan, and shall be consistent with the purpose of this Ordinance as stated in Sec. 102.
  
- 605.4       Proposals for change of zone shall include a site plan for the proposed use drawn in compliance with Sec. 206.2.2, Site Plan Review, and shall also include a location map showing the existing and proposed zone classification and zone boundaries. If a petitioner fails to begin construction in a substantial manner in accordance with an approved plan within one year from the effective date of the rezoning, the Planning Board shall initiate rezoning to the original zone classification by the Town Council. No request for change of zone shall be considered within one year from the date of Town Council denial of the same request.
  
- 605.5       The DEP shall be notified by certified mail of any amendments to Sec. 204.5, Resource Protection District, prior to the effective date of such amendments. A file of return receipts from such mailings shall be maintained as a permanent record. [Amended, Effective 3/23/92]
  
- 605.6       Attested copies of amendments to any of the Shoreland Zoning provisions of this Ordinance shall be submitted to the DEP by certified mail, return receipt requested. Any such amendment shall not become effective unless approved or deemed approved by the Board of Environmental Protection. Notwithstanding any ordinance or charter provision to the contrary, upon approval by the Board of Environmental Protection, any

such amendment shall become effective retroactively upon the date it is received by the Board of Environmental Protection. The Town shall maintain as a permanent record a file of return receipts from mailings of any such amendments.

[Adopted, Effective 12/10/91; Amended, 3/23/92]

- 605.7 If amendments are made in the Shoreland Zoning district boundaries or other Shoreland Zoning matter portrayed on the zoning map, such changes shall be made on the zoning map within thirty (30) days after the amendment has been approved by the DEP. [Adopted, Effective 12/10/91; Amended, 3/23/92]

**Sec. 606 Contract Zoning**

- 606.1 In consideration of a request for change in zoning classification for a particular property or group of properties under the provisions of Sec. 605, the Town Council may impose certain restrictions on the use of the property where it finds that such conditions are necessary to protect the public health, safety, and general welfare.

606.2 Standards:

- .1 Any zone change adopted pursuant to this section shall be subject to a contractual agreement executed by authorized representatives of both the property owner and the Town, providing for the implementation and enforcement of the conditions of the agreement;
- .2 The agreement shall only include conditions which relate to the physical development or operation of the property;
- .3 Any zone change permitted under this section shall be consistent with the Comprehensive Plan of the Town, with the existing uses in the zone, and with the other permitted uses in the zone.

- 606.3 Conditions. In considering the conditions for approving a zone change under these provisions, the Town Council may consider the following factors:

- .1 Limitations on the number and type of permitted uses of the property;
- .2 The height and lot coverage of any structure;
- .3 The setback of any structure;
- .4 The installation, operation and maintenance of physical improvements such as parking lots, traffic control devices, fencing, shrubbery and screening;
- .5 The creation of open space areas or buffer zones;

- .6 The dedication of property for public purposes, such as streets, parks, utility systems, and conservation easements.

**Sec. 607     Violations**

- 607.1     Warning. It shall be the duty of the Code Enforcement Officer to warn any person, firm, or corporation of violations of this Ordinance by them. The Code Enforcement Officer shall notify in writing the party responsible for such violation, indicating the nature of the violation, ordering the action necessary to correct it, and informing the party of their right to seek a variance or other relief from the Board of Adjustment and Appeals.
  
- 607.2     Enforcement Actions. When the above action does not result in the correction or abatement of the violation, the Town Council, upon notice from the Code Enforcement Officer, shall institute or cause to be instituted in the name of the Town, any and all actions legal and equitable, that shall be appropriate or necessary for the enforcement of the provisions of this Ordinance.
  
- 607.3     Penalties. Any person, firm or corporation, having been issued a building permit for, or being the owner or occupant of, or having control or the use of, or being engaged in the construction, alteration or repair of, any building or land or part thereof, found to violate any of the provisions of this ordinance, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as established by order of the Town Council. Each day such violation is permitted to exist after notification thereof by the Code Enforcement Officer shall constitute a separate offense. [Amended, effective 9/1/98]

**Sec. 608     Outside Consulting Fees**

Notwithstanding any other ordinance provision to the contrary and in addition to such fees as are otherwise specified by law, the Town shall assess a fee to cover 100 percent of its costs for outside engineering, planning, legal and similar professional consulting services. Such fees shall be subject to the following limitations:

- .1 They must be expressly provided by ordinance;
  
- .2 The ordinance must require review which is beyond the expertise of Town staff members;
  
- .3 They must be reasonable in amount based upon the time involved and the complexity of the review;

- .4 The results shall be available for public review, but shall be deemed to have been made solely for the benefit of the Town and shall remain its property;
- .5 They shall be assessed for the privilege of review and so be payable without regard to their results or the outcome of the application; and
- .6 Any dispute, regarding the application of this section or the amount required to be paid either in advance or upon completion, may be appealed in writing within 10 days to the Town Manager who may, after due notice and investigation and for good cause shown, affirm, modify or reverse the disputed decision or reduce the amount assessed. Until the Town Manger has resolved the dispute, no portion of the project review for which the consulting fee is in dispute may go forward unless the applicant has paid or otherwise made satisfactory provision therefor, and no portion of the project review may go forward.
- .7 Where the amount of such fee may exceed \$1,000, reasonable provision must be made in advance to guarantee payment. If the balance in the special account shall be drawn down by 75%, the Town shall notify the applicant, require that an additional amount be deposited to cover the remaining work, and no portion of the project review, for which the additional consulting fee is required, may go forward unless the applicant has paid or otherwise made satisfactory provision therefor. The Town shall continue to notify the applicant and require an additional amount be deposited as necessary whenever the balance of the account is drawn down by 75% of the original deposit. Any excess amount deposited in advance shall be promptly refunded after final action on the application.

This section shall be administered initially by the Town employee or board responsible for enforcing the ordinance under which review is sought. No building permit or certificate of occupancy may be issued, nor subdivision plat released for recording until all fees hereunder have been paid in full.  
 [Adopted, Effective 3/25/87]

**Sec. 609 Effective Date**

This Ordinance shall take effect thirty days after its adoption by the Town Council, unless adopted as an emergency ordinance in which case it shall take effect on its adoption.

Effective Date. This amendment shall be submitted to the Commissioner of Environmental Protection following adoption by the Town Council and shall not become effective unless approved by the Commissioner; provided, however, that if the Commissioner fails to act upon the amendment within

forty-five (45) days after receipt of this ordinance, it shall be deemed approved and further that notwithstanding the Town's Charter, 1 M.R.S.A. §302, this amendment upon approval or deemed approval by the Commissioner, shall have an effective date retroactive to the date of the Commissioner's receipt of this amendment.

[Updated 9/25/02]