

NOTICE OF PUBLIC HEARING  
MUNICIPAL OFFICERS OF THE TOWN OF  
OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on October 18, 2011 at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 78, Article I, Section 78-1, Article II, Section 78-34, 78-38, 78-68, 78-70, 78-94, 78-95, Article III, Section 78-142, Article VII, Section 78-1268, Article VIII, Section 78-1625, 78-1627, 78-1629, 78-1631, are hereby amended by adding the underscored language and deleting the strikethrough language, as shown below:

**ARTICLE I. IN GENERAL**

**Sec. 78-1. Definitions.**

If there is any difference of meaning or implication between the text of this chapter and any map or illustration, the text shall control. Terms not defined in this section shall have their commonly accepted meanings. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Access strip* means the contiguous and fee simple portion of an estate lot, measuring no less than 50 feet in width and no more than 700 feet in length, that provides an estate lot with legal street and lot frontage on a public street.

*Accessory building.* See *Structure, accessory.*

*Accessory dwelling unit* means a separate dwelling unit which is contained entirely within the confines of a building which otherwise retains the design and appearance of a detached, single-family dwelling.

*Accessory use.* See *Use, accessory.*

*Adult business* means any business in any use category, a substantial or significant portion of which consists of selling, renting, leasing, exhibiting, displaying or otherwise dealing in materials or devices of any kind which appeal to prurient interests and which depict or describe specified sexual activities.

*Adult entertainment* means any business in any category, a substantial or significant portion of which consists of selling, renting, leasing, displaying, or exhibiting live participants or otherwise dealing in materials or devices of any kind which appeal to prurient interests and which depict or describe specified sexual activities.

*Age-restricted housing* means residential housing designed and operated in accordance with the Federal Older Persons Act of 1995, in which at least 80 percent of occupied units contain at least one person aged 55 years or older, a maximum of 20 percent of the units may be occupied by residents between the ages of 18--54, and children under the age of 18 may visit but may not establish permanent residence.

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

*Americans with Disabilities Act of 1990 (ADA)* means the federal law governing the design and construction of buildings and site improvements to accommodate free access and use by citizens with physical disabilities.

*Amusement arcade* means a building or part of a building in which the principal use is devoted to pinball machines, video games, or in which other similar player-operated amusement devices are maintained.

*Amusement park* means a principal use of land upon which one or more commercial amusement rides, games or attractions are erected, installed or placed for the purpose of entertaining or amusing patrons.

*Animal husbandry* means boarding, raising, breeding or keeping of animals, fowl or birds for commercial purposes, including but not limited to poultry, cattle, horses and deer herds.

*Antenna* means any pole, panel, rod, reflecting disc or similar device used for the transmission or reception of radio or electromagnetic frequency signals.

*Antenna height* means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if such highest point is an antenna.

*Aquaculture* means land devoted to the hatching, raising, and breeding of fish or other aquatic plants or animals for sale or personal use.

*Apartment* means a room or suite of rooms affording housekeeping and cooking facilities separate from those of other rooms and occupied as the home or residence of one person or a family.

*Apartment house* means a residential building containing three or more apartments.

*Artist or craftsman studio* means a business or commercial establishment which provides working space for artists or craftspeople, including facilities for classes or demonstrations. Activities may include the sale of supplies or materials necessary for these activities.

*Auditorium* means a municipal, county or a state or quasi-municipal-, quasi-county- or quasi-state-owned or -operated auditorium or civic center.

*Auto service station* means a place where gasoline or any other automobile engine fuel, kerosene, or motor oil or lubricant or grease, for operation of motor vehicles, is retailed directly to the public on the premises, including the sale of minor accessories and the servicing and minor repair of automobiles and not including storage of unlicensed vehicles or body, frame, or fender straightening and repairs.

*Automobile filling station* means a business establishment where the primary use is engaged in the sale of engine fuel stored only in underground tanks, kerosene, motor oil, and lubricants directly to the public.

*Automobile graveyard/junkyard* means a yard or field or other area used as a place of storage for three or more unserviceable, discarded, worn-out, or junked motor vehicles.

*Automobile repair garage* means a place where, with or without the attendant sale of engine fuels, the following services may be conducted: general repair, engine rebuilding or reconditioning of motor vehicles, collision service such as body frame or fender straightening and repair, overall painting and undercoating of automobiles. Towing businesses shall be included in this category.

*Awning* means a roof-like covering that is temporary in nature, generally of canvas or other fabric, usually affixed over windows and doors of a structure to provide protection from the elements.

*Background.* See *Distance zones*.

*Baluster, balustrade* means a shaped, short vertical member, often circular in section, supporting a railing or cap and arrayed in a series to form an architectural feature on porch or building rooftops as a decorative element.

*Basement* means a portion of a building partly underground but having more than half its clear height below the average grade of the adjoining ground.

*Bathhouse* means a facility providing changing rooms, secure lockers or storage facilities, showers, and/or restroom facilities available to the beach-going public.

*Bed and breakfast establishment/inn* means overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation. For the purpose of this chapter, bed and breakfast inns are considered a nonresidential use.

*Billboard* means a sign, structure, or surface exceeding six square feet in area which is available for advertising goods or services available off the premises, excluding directional signs.

*Boarding and riding stable* means an accessory building in which horses are kept for private use and not for remuneration, hire, or sale.

*Boardinghouse* means a building in which more than two but not more than nine guestrooms are offered for lodging with meals for compensation.

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

*Bog* means a periodically or continually wet spongy area exceeding 1,000 square feet in area with soil composed mainly of decayed vegetable matter.

*Bottle club* means a premises which operates on a regular basis for the use of members and guests who provide their own alcoholic beverages.

*Bracket* means a projecting support placed under an architectural overhang such as a cornice; often ornate and popular on Victorian-style architecture.

*Buffer; buffering* means the application of earthwork, vegetation, fences, walls, or combination thereof for the purpose of establishing 75 percent to 100 percent visual blockage of one land use from set vantage points on another property.

*Buildable area* means the contiguous portion of land available to support construction after net lot area; front, side, and rear lot setback yards; and shoreland zoning setbacks have been subtracted from the total surface area of a lot.

*Building* means any enclosed structure affording support, shelter, or enclosure to persons, animals, goods or property of any kind. The term "building" includes the term "structure."

*Building, accessory.* See *Structure, accessory*.

*Building coverage* means the percentage of the lot which is covered by all buildings.

*Building elevation* means a scaled and accurate drawing of the perpendicular view of a side of a building, intended to illustrate the design character of an existing or proposed structure.

*Building height* means the vertical height from the sidewalk or finished grade at the center of the front of the building to the highest point of the roof, if a flat roof; to the deck line, for mansard roofs; and to the mean height of the roof if a gable roof.

*Building, nonconforming,* means a building, structure, use of land or portion thereof, existing at the effective date of adoption or amendment of the ordinance from which this chapter derives, which does not conform to all applicable sections of this chapter for the district in which it is located.

*Bulk* means size of a building measured by both its volume and its external dimensions. In design terms, the perceived size of a structure from a variety of viewpoints

*Bungee jumping* means an amusement ride where patrons are elevated to a designated height and allowed to drop, suspended by elastic-type cords.

*Business and industrial services* means establishments primarily engaged in providing assistance, as opposed to products, to commercial and industrial businesses, including but not limited to the following types of services: commercial laundries, data processing facilities, photocopying production, advertising and marketing, building maintenance, employment services, management and consultant services, protective services, equipment rental and leasing, photo finishing.

*Cafe* means a food service establishment providing foodstuffs and/or nonalcoholic beverages for consumption on or off the premises with a service counter not directly accessible to the public from outside of the building, and indoor seating for not less than eight persons. Cafes may offer sidewalk cafe service provided that the number of outdoor seats does not exceed the number of indoor seats provided.

~~*Cafe, sidewalk,* means an outdoor seating area, ancillary to an indoor food service facility, providing customer seating located adjacent to a public or private sidewalk, and is separated from the sidewalk by elevation change, fence or wall or any combination thereof.~~ means the establishment of tables and chairs on the public or privately owned sidewalk directly in front of, and accessory to a licensed victualer. Outdoor dining on private property, other than a sidewalk is not regulated by Chapter 50 Streets, Sidewalks and Other Public Places, but is regulated by this Chapter.

*Caliper* means the cross sectional width of the trunk of a tree or other woody vegetation as measured at a height of 54 inches from the ground at the base of the tree.

*Campground* means land upon which one or more recreational vehicles or tents are placed for seasonal use on sites specifically arranged for that purpose, and for which a fee is charged.

*Campground expansion* means the creation of one or more new campsites, including the construction of permitted accessory structures on such site, or the permitted creation or construction of one or more new buildings, within an existing campground.

*Camping trailer* means type of recreational vehicle that is a portable structure built on a chassis, designed to be towed by a vehicle and used as a temporary dwelling for

travel, recreational and vacation. The portable structure may be a canvas folding structure or it may be made up of solid walls.

*Camp model (park model) trailers* means a type of recreational vehicle containing no more than 400 square feet of floor area and not transported on public roads on a regular basis.

*Campsite (site)* means an identified area of ground within a campground set aside for the placement and occupancy of a tent or recreational vehicle.

*Campsite upgrade* means the addition of any new utility hookup, construction of any freestanding or attached deck, outdoor patio, or a structure on an existing campsite in a commercial campground.

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

*Cemetery* means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including mausoleums and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

*Channel* means a natural or artificial watercourse with definite bed and banks to confine and conduct continuously or periodically flowing water.

*Channel flow* means water flowing within the limits of the defined channel.

*Chem-free club/nonalcoholic establishment* means a public establishment offering public dancing or live entertainment and serving exclusively nonalcoholic beverages as the primary sales item with the service or sale of food as accessory to the sale of beverages.

*Child care facilities* mean as follows:

~~(1) *Day care facility* means a house or place in which 13 or more children may for consideration be cared for, on either a regular or nonrecurring basis, and which is licensed by the state department of human services as a day care facility, also which conforms to section 78-1268.~~

(1) *Child Care Facility* means a house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for three (3) or more children under thirteen (13) years of age. Any program for children under 5 years of age that is located in a private school and programs that contract with one or more Child-Development Services System sites are required to be licensed as a Child Care Facility by the state department of human services as a day care facility, also must conform to section 78-1268

There are two types of *Child Care Facilities*:

(a) *Child Care Center* means house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for thirteen (13) or more children under thirteen (13) years of age or any location or locations operated as a single childcare program or by a single person or persons when there are more than twelve (12) children being cared for.

(b) *Small Childcare Facility* means a house or other place, not the residence of the operator, in which a person, or combination of persons, maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 3 - 12 children under the age of thirteen (13).

“Child Care Facility” does not include a facility operated by a family child care provider, a summer camp established solely for recreational and educational purposes, programs offering instruction to children for the purpose of teaching a skill such as karate, dance or basketball or a private school recognized by the Department of Education as a provider of equivalent instruction for the purpose of compulsory school attendance, or a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with Title 20-A.

~~(2) *Family day care home* means a house or other place in which one to six children may for consideration be cared for and which fully complies with the rules and regulations of the state department of human services, also which conforms to section 78-1268.~~

(2) *Family child care provider* means a person who provides day care in that person's home on a regular basis, for consideration, for 3 to 12 children under 13 years of age who are not the children of the provider or who are not residing in the provider's home. If a provider is caring for children living in that provider's home and is caring for no more than 2 other children, the provider is not required to be certified as a family child care provider by the State Department of Health and Human Services and also which conforms to section 78-1268.

(3) *Group day care home* means a house or other place in which seven to 12 children may for consideration be cared for and which is licensed by the state department of human services as a day care facility, also which conforms to section 78-1268.

~~(4) *Nursery school* means 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 provides care for three to 12 children, provided that:~~

- ~~a. No session conducted for the children is longer than 3 1/2 hours in length;~~
- ~~b. No more than two 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.~~
- ~~e. Also, which conforms to section 78-1268.~~

means 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 that provides care for 3 or more children 33 months of age or older and under 8 years of age, 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.
- (e) Also, which conforms to section 78-1268.

*Church* means an institution that people regularly attend to participate in or hold religious services, meetings, and other activities. The term "church" includes buildings in which the religious services of any denomination are held.

*Clapboards* means narrow wood boards applied horizontally to an exterior wall, each overlapping the board below it to create a continuous siding.

*Club* means any reputable group of individuals incorporated and operating in a manner solely for a recreation, social, patriotic, or fraternal nature and not for monetary gain.

*Cluster development* means a subdivision of land into lots used or available for use as building sites where such lots are grouped together into one or more areas separated from adjacent property and other groups of lots by intervening common land.

*Coastal wetlands.* See *Wetland, coastal.*

*Code enforcement officer* means a person appointed by the municipal officers to administer and enforce this chapter. Reference to the code enforcement officer may be construed to include building inspector, plumbing inspector, electrical inspector and the like where applicable.

*Collocation* means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

*Columbarium* means a vault or other structure with recesses in the walls to receive the ashes of the dead.

*Commercial amusement* means any building, structure, use of land, or portion thereof designed, constructed and/or operated, primarily for profit, as a place of amusement or recreation.

*Commercial parking lot.* See *Parking lot, commercial.*

*Commercial use.* See *Use, commercial.*

*Community living arrangement* means a housing facility for eight or fewer persons with disabilities, otherwise defined as "handicaps" under the Federal Fair Housing Act (42 USC 3602), that is licensed and/or approved by the state as a group home, foster home, or intermediate care facility. Community living arrangements shall be considered as single-family uses under this chapter pursuant to 30-A M.R.S.A. § 4357-A.

*Conditional use.* See *Use, conditional.*

*Conditional use permit* means a permit authorized by the planning board for a conditional use. A conditional use permit may be issued only after the applicant has followed the procedure of this chapter.

*Conforming use.* See *Use, conforming.*

*Congregate care facility* means a facility containing two or more dwelling units and/or rooming units where the occupancy of the units is restricted to persons 62 years of age or older, their spouses or surviving spouses, except for rooms/units occupied by resident staff personnel; which provides a program of support services to residents; which may include a common dining facility; and which may include common recreational, social and service facilities for the exclusive use of residents and available to all residents. The term "congregate care facility" includes specialized facilities for persons with Alzheimer's disease or other afflictions of the elderly for which specialized care outside a nursing home may be appropriate. The word "spouses" as used in this definition

may include persons who are not married but are living together in a domestic relationship.

*Contractor storage yard 1* means the principal place of business for a building or landscape contractor operating a fleet of three or more construction/commercial vehicles and customarily consisting of offices, display areas, storage yards for building supplies, earth material, construction vehicle storage, and fueling storage facilities not exceeding 10,000 gallons in capacity and used exclusively for the fueling of the vehicles stored on site.

*Contractor storage yard 2* means a yard, building, or combination thereof in which no more than two commercial vehicles, equipment, building supplies, and/or earth material are stored for use by a building or landscape contract tradesman solely for the conduct of the contract business and not for on-site display or resale to the general public.

*Constructed* includes the term "built," "erected," "altered," "reconstructed," "moved upon." Any physical operations on the premises which are required for construction, excavation, fill, drainage, and the like shall be considered a part of construction.

*Contiguous* means located next to; touching or adjacent.

*Convenience store* means any retail establishment offering for sale prepackaged food products, household items, newspapers and magazines, and sandwiches and other freshly prepared foods, such as salads, for off-site consumption, and having less than 2,000 square feet of net leasable area (NLA).

*Convention center* means an enclosed indoor facility used primarily for meetings, conventions, trade shows, and similar events, and which customarily includes such accessory uses and facilities as restaurants and concession stands. Lodging facilities may be associated with a convention center facility.

*Corner lot.* See *Lot, corner.*

*Cornice.* a continuous molded architectural projection that visually crowns or finishes the part of the building to which it is attached. Most commonly used over doorways, at the junction of first and second floors on commercial storefronts, and at the junction of the roof and wall.

*Cul-de-sac* means a local street, one end of which is closed and consists of a circular turnaround.

*Cupola* means a small structure, usually dome or conical shaped, mounted on a building roof, for ornamental or observation purposes.

*Curblin tangent* means the projection of an orthographic line between two points at the edge or the curb of a street that is parallel to the centerline of such street.

*Dependent recreational vehicle* means a recreational vehicle which is dependent upon a service building for toilet and lavatory facilities.

*Dimensional requirements* means numerical standards relating to spatial relationships, including but not limited to setback, lot area, shore frontage, road frontage, building coverage, lot coverage and height.

*Distance zones* means areas of the viewer's field of vision defined by distance from the observer as follows:

(1) *Background* means the portion of the visual field where landscape elements are discernable as silhouettes or skylines and serve as a foil against which midground features are more clearly visible (often three miles to infinity).

(2) *Foreground* means the distance from the viewer at which feature details in the landscape such as leaves, bark, patterns, and human features are visually discernable (often zero to one-fourth mile).

(3) *Midground* means the distance from the viewer in which individual elements of the landscape form units, such as trees form forests or sand forms a sweeping beach; colors are distinct although somewhat bluer (often one-fourth mile to three miles).

*District (zoning district)* means a specified portion of the town delineated on the official zoning map, within which certain regulations and requirements or various combinations thereof apply under the terms of this chapter.

*Dormer* means a roofed structure with a vertical window projecting from a pitched roof.

*Downlight* means a building- or pole-mounted lighting fixture designed to direct the beam of light perpendicular (90 degrees) to the earth's surface. The term "shielded downlights" means downlights in which the lightbulb and reflector are shielded from view.

*Drinking establishment* means any establishment which is licensed by the state to serve alcoholic beverages for on-premises consumption, unless the establishment (i) is equipped with a separate and complete kitchen and with dining room equipment; (ii) has the capacity to prepare and serve full course meals; and (iii) is primarily and regularly used for the purpose of providing full course meals. The term "full course meals" means meals consisting of a diversified selection of food which ordinarily cannot be consumed without tableware and cannot be conveniently consumed while standing or walking. The term "drinking establishment" does not include an establishment licensed under 28-A M.R.S.A § 1061 et seq. as a hotel, bed and breakfast, golf course or club.

*Drive-through (drive-thru) facility* means any use in which goods, food, services, or money is dispensed directly to occupants of a motor vehicle.

*Driveway* means a vehicular accessway less than 500 feet in length serving two lots or less.

*Drug paraphernalia* means all equipment, products and materials of any kind that are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a scheduled drug in violation of this chapter or 22 M.R.S.A. § 2383, except that this section does not apply to a person who is authorized to possess marijuana for medical use pursuant to 22 M.R.S.A. § 2383-B, subsection 5, to the extent the drug paraphernalia is required for that person's medical use of marijuana. It includes, but is not limited to:

(1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a scheduled drug or from which a scheduled drug can be derived;

(2) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing scheduled drugs;

- (3) Isomerization devices used or intended for use in increasing the potency of any species of plant that is a scheduled drug;
- (4) Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of scheduled drugs;
- (5) Scales and balances used or intended for use in weighing or measuring scheduled drugs;
- (6) Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting scheduled drugs;
- (7) Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding scheduled drugs;
- (9) Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of scheduled drugs;
- (10) Containers and other objects used or intended for use in storing or concealing scheduled drugs; and
- (11) Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
  - a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
  - b. Water pipes;
  - c. Carburetion tubes and devices;
  - d. Smoking and carburetion masks;
  - e. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
  - f. Miniature cocaine spoons and cocaine vials;
  - g. Chamber pipes;
  - h. Carburetor pipes;
  - i. Electric pipes;
  - j. Air-driven pipes;
  - k. Chillums;
  - l. Bongs; or
  - m. Ice pipes or chillers.

*Dumping station* means a facility used for removing and disposing of wastes from recreational vehicle holding tanks.

*Dwelling* means a building a portion thereof used exclusively for residential occupancy, including one-family, two-family, and multifamily dwellings, but not including hotels, motels, lodging houses or boardinghouses. The term "dwelling" includes the term "residence."

*Dwelling, accessory*, means a separate dwelling unit which is contained entirely within the confines of a building which otherwise retains the design and appearance of a detached, single-family dwelling.

*Dwelling, multifamily*, means a residence designed for or occupied by three or more families with separate housekeeping and cooking facilities for each.

*Dwelling, single-family*, means a detached residence designed for or occupied by one family only. Only one such single-family dwelling shall be permitted per lot.

*Dwelling, two-family*, means a detached residence designed for and occupied by two families only, with separate housekeeping and cooking facilities for each.

*Dwelling unit* means a room or suite of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for sleeping, living, cooking and eating. The term includes a mobile home, but does not include trailers or recreational vehicles.

*Dwelling, yearround*, means any structure used or capable of being used as a residence for one or more persons, which possesses the minimum amount of utilities and services, including but not limited to heating, water supply, sewage treatment and electrical and cooking facilities, to permit the structure to be used continuously as a residence during the entire calendar year and the occupancy of which would not require a seasonal structure conversion permit under article III of chapter 34 pertaining to conversion of the seasonal structures.

*Earth* means topsoil, sand, gravel, clay, rock, or other minerals which may be extracted from the land.

*Eave* means the lower part of a building roof that projects beyond the building wall.

*Elderly housing* means a building or group of buildings containing dwellings where the occupancy of the dwellings is restricted to persons 62 years of age or older or couples where either the husband or the wife is 62 years of age or older. This does not include a development that contains convalescent or nursing facilities. As used in this definition, the terms "couples," "husband" and "wife" may include persons who are unmarried but are living together in a domestic relationship.

*Essential services* means the construction, alteration, or maintenance of gas, electrical, and communication facilities; steam, fuel, or water transmission or distribution systems; collection, supply or disposal systems. Such systems may include all physical facilities essential to such services but shall not include buildings necessary for furnishing such services.

*Estate lot* means a building lot with legal access to a public street or approved private way via a minimum 50-foot-wide access strip which is in fee part of the lot.

*Excavation* means any removal of earth or earth materials from its original position.

*Expansion of a structure* means an increase in the floor area or volume of a structure, including all extensions such as but not limited to attached decks, garages, porches and greenhouses.

*Expansion of a wireless telecommunications facility* means the addition of antennas, towers, or other devices to an existing structure.

*FAA* means the Federal Aviation Administration or its lawful successor.

*Facade* means the exterior face of a building, most often the front exhibiting the most ornate or articulated elevation.

*Family* means one or more persons occupying a premises and living as a single housekeeping unit, as distinguished from persons occupying a boardinghouse, lodging house, or hotel. Such unit shall not exceed six persons not related by blood or marriage.

*Family unit* means a unit which is occupied by one or more persons, whether or not related to each other by birth, adoption or marriage, but not to consist of more than six unrelated persons.

*Farm products* means useful or valuable growth of the field or garden, nursery stock and greenhouses, but excluding animal husbandry.

*Farm stand* means a roadside stand not exceeding 400 square feet in floor area selling only farm, garden, greenhouse or nursery products.

*Farming* means the cultivation of the soil for food products or other useful or valuable growth of field or garden, nursery stock and noncommercial greenhouses, but excluding animal husbandry.

*FCC* means the Federal Communications Commission or its lawful successor.

*Fenestration* means the design and arrangement of windows in a building.

*Fifth wheel* means an articulated bearing or coupling or horizontal bearing that allows a vehicle's front axle to swivel left or right relative to its body, or that allows a trailer attached to a truck tractor to pivot.

*Filling* means a depositing or dumping of any matter on or into the ground or water.

*Fire wall.* See *Wall, fire.*

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

*Floodplain* means the areas designated as being in the special flood hazard area on the flood insurance rate map of the town, published by the Federal Emergency Management Agency, July 5, 1984, or as amended from time to time.

*Floor area* means the sum of the horizontal areas of the floor of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

*Floor area, gross,* means the sum in square feet of floor areas of all roofed portions of a building as measured from the interior faces of the exterior walls.

*Floor area, net,* means the total floor area designed for tenant occupancy and exclusive use, excluding basements mezzanines, stairwells, closets and bathrooms if any, expressed in square feet and measured from the centerline of joint partitions and from outside wall faces.

*Food stand* means any business not qualifying as a restaurant or a convenience store as defined in this section, and offering for sale foodstuffs to be consumed by the public off premises.

*Footprint* means the portion of a lot covered by all portions of any structure, including decks, porches, cantilevered sections and roof overhangs.

*Foreground.* See *Distance zones.*

*Forest management activities* means timber cruising and other forest resources evaluation activities; pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other associated activities; but not timber harvesting and construction, creation or maintenance of roads.

*Foundation* means the supporting substructure of a building or other structure, including but not limited to basements, slabs, sills, posts or frost walls.

*Frontage, lot.* See *Lot frontage.*

*Frontage, shore,* means the horizontal distance measured in a straight line, between the intersection of the side lot lines with the shoreline at normal high water elevation.

*Frontage, street*, means that portion of a property lot line, measured in horizontal distance, that directly abuts a public street or a street that has been improved to construction standards approved by the planning board as prescribed by chapter 74 pertaining to subdivisions and/or this chapter. Any property line that can be defined as "street frontage" is also defined as the "front lot line" of a parcel.

*Fuel storage and distribution facility* means a commercial facility where fuel products such as but not limited to petroleum, natural gas, propane, ethane, and butane are stored and loaded for wholesale and/or retail distribution to residential and commercial customers. Automobile filling stations and ancillary fuel storage for the exclusive use of the property owner shall not be considered a fuel storage and distribution facility.

*Functionally water-dependent uses* means those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these waters. The uses include but are not limited to commercial and recreational fishing and boating facilities; finfish and shellfish processing; fish storage and retail and wholesale fish marketing facilities; waterfront dock and retail and wholesale fish marketing facilities; waterfront dock and port facilities; shipyards and boatbuilding facilities; marinas; navigation sides, basins and channels; industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site; and uses which primarily provide general public access to marine or tidal waters.

*Gable* means the vertical triangular shape of a building wall above cornice height formed by two sloping roof planes.

*Games of skill* means an activity of amusement or diversion, either mechanical or manual, by which success is achieved by the ability to perform such activity.

*Grade* means, in relation to buildings, the average of the finished ground level at the center of each wall of a building.

*Greenhouse* means a structure enclosed by transparent/translucent materials in which plants requiring an even temperature are grown.

*Gross floor area*. See *Floor area, gross*.

*Gross vehicle weight* means the rated working weight of a motor vehicle by the U.S. Department of Transportation consisting of the net weight of the vehicle plus the weight of the load the vehicle was designed by the manufacturer to haul.

*Hardship, undue*. Undue hardship exists when:

- (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 of the neighborhood;
- (3) The granting of the variance will not alter the essential character of the locality; and
- (4) The hardship is not the result of action taken by the applicant or a prior owner.

*Head shop* means a building or place where drug paraphernalia is sold or offered for sale or where merchandise is displayed for the purpose of sale and/or for the purpose of promoting sales and where either the nature of the merchandise or the nature of some of the merchandise and the context in which it is displayed would indicate to a reasonably knowledgeable person that some of the merchandise is equipment, products or materials designed or marketed for use as drug paraphernalia. An establishment which meets this

definition is considered a head shop, notwithstanding that it may also sell or display other types of merchandise.

*Health care facility* means a facility where medical or other treatment or care is provided for persons suffering from physical or mental illness, disease or infirmity.

*Health club* means a public or private facility providing exercise and/or weight lifting equipment, aerobics, yoga, gymnastic, swimming, sauna or similar type facilities for the promotion of exercise and health maintenance.

*Health services* means health care facilities as well as establishments providing support to the medical profession and patients, such as medical and dental laboratories, blood banks, oxygen, and miscellaneous types of medical supplies and services.

*Height of a wireless telecommunications facility* means the vertical measurement from a point on the ground at the mean finished grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure to the highest point of the building or structure. Measurement of the highest point shall exclude flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings, but shall include the entirety of the wireless telecommunications towers.

*High water elevation, normal*, means, along lakes, ponds, and tidal waters, the elevation at which vegetation changes from predominantly aquatic to predominantly term.

*Historic district* means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures or objects which are united aesthetically, by past events, plan or physical development, and identified by the town, which is listed or is eligible to be listed on the National Register of Historic Places or is of such local significance as to be deemed significant by the comprehensive plan or town ordinances. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

*Historic landmark* means any improvement, building or structure of particular historic or architectural significance to the town relating to its heritage or cultural, social, economic or political history or which exemplifies historic personages or important events in local, state or national history.

*Historic or archaeological resources* means resources that are:

- (1) Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district; or
- (3) Areas identified by the state historic preservation commission or the town as having significant value as historic or archaeological resources on a statewide, regional, or local basis.

*Home occupation* means an occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, carried on by household members occupying the dwelling unit, clearly incidental and secondary to the use of the dwelling unit for residential purposes, which can be conducted within a residential dwelling without changing the appearance or condition of

the residence or accessory structures, and which conforms to the requirements of section 78-1267.

*Hotel* means a building used for transient or permanent lodging of individuals, with or without meals, having ten or more guestrooms. For the purpose of this chapter, a hotel is considered a nonresidential use.

*Hydric soils* means soils that are classified as poorly drained and very poorly drained by the county soil and water conservation district.

*Hydrophytic* means vegetation that is specifically adapted to submerged or saturated soil conditions and is classified by the U.S. Fish and Wildlife Service, U.S. Department of Agriculture, in the National List of Plant Species that Occur in Wetlands (NERC-88/18.19 or updated version).

*Impervious surface* means any material constructed on or over the ground that prevents 80 percent or greater of surface precipitation from infiltrating into the underlying soil, including but not limited to buildings, pavement and curbing, sidewalks, steps, and patios.

*Interior lot.* See *Lot, interior.*

*Junk* means waste or discarded material which may be treated or prepared to be used again in another form.

*Junkyard* means a yard, field, or other area used as a place of storage, keeping, sorting, processing, baling, or abandonment of junk, including but not limited to scrap metal or other materials such as paper, rags, bottles, automobiles, or other vehicles, machinery or parts thereof.

*Lagoon* means an artificial enlargement or creation of a water bed, primarily by means of dredging and excavation.

*Landscaping, landscaping* means the installation of plant material.

*Level of service (LOS)* means the amount of delay that is encountered at a traffic intersection as defined by the state department of transportation (MDOT).

*Light manufacturing.* See *Manufacturing, light.*

*Limited expansion of lot coverage* means the expansion of maximum lot coverage by no more than five percent.

*Limited reduction of yard size* means the reduction of a required front yard by no more than 25 percent or the reduction of a required side or rear yard by no more than 50 percent of either the required side or rear yard setback in the district.

*Lodge or fraternal organization* means a private building used by a fraternal, philanthropic or other civic organization and which may be made available from time to time for community functions.

*Lodging establishment* means a hotel, motel, bed and breakfast establishment or inn.

*Lot* means a parcel of land described on a deed, plan, or similar legal document, which is of sufficient area to meet minimum zoning requirements for use, coverage and area and to provide such yards and other open areas as are required in this chapter. The term "lot" includes the term "plot" or "parcel."

*Lot area, net,* means the area of contiguous land suitable to support a building unit enclosed within the boundary lines of a lot, minus land below the normal high water mark of a waterbody or upland edge of a wetland, or land with slope gradients of 50 percent or more.

*Lot, corner,* means a lot with at least two contiguous sides abutting upon a street.

*Lot coverage* means the percentage of the lot covered by all buildings or structures.

*Lot frontage* means the contiguous street frontage of a parcel of land required to meet the space and bulk requirements of a zoning district.

*Lot in residential use* means a lot on which a dwelling exists on February 3, 1998 or a vacant nonconforming lot of record on which a residential dwelling is proposed.

*Lot, interior,* means any lot other than a corner lot.

*Lot lines* means the lines bounding a lot as defined as follows:

(1) *Front lot line,* on any interior lot, means the line separating the lot from the street. On a corner lot or through lot, the line separating the lot from either street.

(2) *Rear lot line* means the lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten feet in length, lying farthest from the front line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.

*Lot of record* means a parcel of land, a legal description of which dimensions of which are recorded on a document or map on file with the county registry of deeds on the effective date of the ordinance from which this chapter derives or for any amendment to this chapter which affects the status of such parcel.

*Lot, shoreland,* means any lot abutting a waterbody or wetland.

*Lot, through,* means any interior lot abutting two more or less parallel streets, as distinguished from a corner lot. All lot lines of through lots abutting streets shall be considered front lot lines, which must meet the required minimum lot frontage, and front yards shall be provided as required.

*Lot width* means the horizontal distance between the side lot lines measured at the setback line.

*Manufactured housing subdistrict* means an area within a zoning district in which manufactured housing units can be located on undeveloped lots subject to the same requirements as single-family detached dwellings except as provided in division 11 of article VIII of this chapter.

*Manufactured housing unit* means a structure, transportable in one or more sections, which was constructed in a manufacturing facility and is transported to a building site and designed to be used as a dwelling when connected to the required utilities, including plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of this chapter, a manufactured structure constructed in compliance with the ~~BOCA/CABO~~ [International Residential building codes as referenced by the State's Manufactured Housing Act and regulations](#) and being at least 20 feet in width shall not be considered a manufactured housing unit. The term manufactured housing unit does not include a "park model" recreational vehicle.

*Manufacturing, light,* means a use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.

*Manufacturing, processing and treatment facilities* means the making of goods and articles by hand or machinery, including assembly, fabrication, finishing, packaging and processing.

*Marsh* means a periodically or continually flooded land exceeding 1,000 square feet in area with the surface not deeply submerged, covered predominantly with sedges, cattails, rushes, or other hydrophytic plants.

*May* is permissive.

*Mean height* means the vertical height from the finished grade at the center of the front of the building to a point halfway between the line of the eaves and the ridgepole of a gable roof.

*Medical clinic* means a building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

*Membrane-covered frame structures.* A nonpressurized building wherein the structure is composed of a rigid framework to support a tensioned membrane which provides the weather barrier.

*Memorial garden* means a garden to receive the ashes of the dead with commemorative signage limited to a single centralized sign, marker, plaque, or stone.

*Midground.* See *Distance zones.*

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

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

*Minimum open space* means open space in a campground overlay district or PMUD district that is dedicated to remain undeveloped in order to meet space and bulk requirements of the district and provide light, air circulation, wildlife conservation, natural resource protection and/or either passive or active recreational facilities for the benefit of the owners and users. For the purpose of this chapter, minimum open space shall not include streets, roads/driveways, sidewalks, parking areas, and maintenance yards, but can include swimming pools, hiking trails, ponds, lawns, athletic fields, and outdoor recreational facilities.

*Mobile home* means a structure designed as a dwelling unit which may be placed on a permanent foundation, and containing sleeping accommodations, toilet, tub or showerbath, and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems, and designed to be transported after fabrication upon its own wheels. A mobile home shall contain not less than 600 square feet of gross floor area. The term mobile home does not include a "park model" recreational vehicle.

*Mobile home park* means a parcel of land under unified ownership designed and/or used to accommodate three or more manufactured housing units.

*Mobile home park lot* means an area of land on which an individual manufactured housing unit is situated within a mobile home park and which is reserved for use by the occupants of that unit.

*Modular home* means a prefabricated dwelling of more than one section designed to be placed permanently on a masonry foundation after transportation to its permanent site. The term modular home does not include a "park model" recreational vehicle.

*Motel* means a structure designed for overnight accommodation of motorists and other transients in units containing sleeping, bathing, and toilet facilities, and providing at least one off-street parking area for each unit. Motel units may also include cooking facilities. A motel may provide, as accessory uses, a dining room with necessary kitchen facilities and retail sales provided the sales area is entered through the motel's lobby. For the purpose of this chapter, a motel is considered a nonresidential use.

*Motor freight business* means a business which transports goods and materials for others from one location to another utilizing motor vehicles with a gross vehicle weight in excess of 18,000 pounds and most commonly with truck tractors and trailer equipment, also referred to as "semitrailers." A business which utilizes motor freight vehicles to transport, deliver, or distribute products which it produces or sells and which does not routinely carry freight for others is not a motor freight business.

*Motor home* means type of recreational vehicle that is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.

*Multifamily dwelling.* See *Dwelling, multifamily.*

*Municipal use* means any building, structure, facility, storage area, parking facility, utility, or other use owned, operated, or maintained by or on the behalf of the town.

*Natural condition* means the environmental condition of a parcel of land or water that is undisturbed by human activities or actions. For the purposes of restoring disturbed land, the term "natural condition" refers to the replacement of disturbed soils, replanting of the groundcover, shrub cover, and tree canopy vegetation with species natural to the area. Dimensions of tree replacements should, at a minimum, conform to the standards of section 78-1772.

*Net amusement area* means the total floor area of all primary and complementary uses in the amusement overlay district (AO), exclusive of exterior pedestrian circulation paths and walkways, refuse and fuel storage areas, administrative offices, driveways, employee parking areas, building basements and stairwells.

*Net development density (NDD)* means the area of a parcel suitable for building development, calculated by subtracting the area of site constraints as identified as follows from the total parcel area:

- (1) All wetlands, watercourses and very poorly drained soils;
- (2) All access roads or 15 percent of lot; and
- (3) Steep slopes in excess of 50 percent.

*Net floor area.* See *Floor area, net.*

*No hookup campsite* means a campsite that contains on-site parking, and provides no on-site utility hookups except for a water spigot, and is designed to be occupied by tents, pop-up trailers and small towed trailers.

*Nonconforming building.* See *Building, nonconforming.*

*Nonconforming use.* See *Use, nonconforming.*

*Normal high water elevation.* See *Elevation, high water.*

*Normal high water mark of coastal waters* means that line on the shore of tidal waters reached by the shoreward limit of the rise of the highest tide of a normal year.

*Normal high water mark of inland waters* means 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. For wetlands adjacent to Goosefare Brook, the normal high water mark is the upland edge of the wetland and not the edge of the open water.

*Nuisance* means an annoying, unpleasant, or obnoxious thing or practice which interferes with the legal rights of an individual, neighborhood or community.

*Nursery* means any land used in which the primary use of the land is to raise trees, shrubs, flowers, and other plants for sale or for transplanting.

*Nursing home* means any dwelling in which three or more aged, chronically ill, or incurable persons are housed and furnished with meals and nursing care for compensation.

*Open space use.* See *Use, open space.*

*Overnight cabin* means a small detached dwelling unit providing overnight accommodations to overnight guests for a fee. For the purpose of this chapter, overnight cabins are considered a nonresidential use.

*Parking lot* means a parcel of land designed for the off-street parking of motor vehicles, excluding trailer parks.

*Parking lot, commercial,* means a parking lot providing off-street parking to the public for direct or indirect compensation **for more than ten days out of a calendar year.**

*Parking lot, valet,* means an off-street parking lot associated with a specific use in which vehicles are parked exclusively by an on-site attendant often for a fee.

*Park model* means a towable recreational vehicle that contains no more than 400 square feet of floor area and that lacks holding tanks and/or dual-voltage appliances so that it must be connected to utility hookups in order to operate installed fixtures and appliances. In order to be considered a recreational vehicle under this ordinance, a park model cannot be occupied between November 1<sup>st</sup> and March 31<sup>st</sup>.

*Performing arts facility* means a facility which includes a fixed permanent structure and which regularly presents events, such as but not limited to sporting events, conventions, trade shows, concerts, and performing arts.

*Permanent foundation* means a substructure fabricated to provide support and to transmit the live and dead load of a building or structure onto suitable bearing soils as required by the building code as adopted by the town.

*Personal services* means establishments primarily engaged in providing services involving the care of a person or his personal goods or apparel.

*Pick-up coach* means type of recreational vehicle that is a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation and vacation, also known as a camper truck. This includes recreational vehicles commonly referred to as truck campers.

*Piers, docks, wharves, breakwaters, causeways, marinas, bridges, and uses projecting into water bodies* means as follows:

(1) *Permanent* means structures which remain in the water for six months or more in any period of 12 months.

(2) *Temporary* means structures which remain in the water for less than six months in any period of 12 months.

*Pitched, shingled roof* means a roof with a pitch of two or more vertical units for every 12 horizontal units of measurement and which is covered with asphalt or fiberglass

composition shingles or other materials, but specifically excludes corrugated metal roofing material.

*Plant material* means vascular vegetation, including but not limited to trees, shrubs, herbaceous vegetation, flowers, grasses, and herbaceous ground covers.

*Primitive campsite* means a campsite that contains on-site parking, and provides no on-site utility hookups except for a water spigot, and is designed to be occupied by tents, pop-up trailers and small towed trailers.

*Principal structure.* See *Structure, principal.*

*Principal use.* See *Use, principal.*

*Private utility facility.* See *Public/private utility facility.*

*Professional office* means a building or portion of a building wherein services are performed involving predominantly administrative, professional, or clerical operations.

*Public building* means a building owned, operated or funded in whole or in part by the town which members of the general public have occasion to visit, either regularly or occasionally, such as but not limited to the town hall, the public library, the police and fire stations.

*Public facility* means any facility, including but not limited to buildings, property, recreation areas and roads, which is owned, leased, or otherwise operated or funded by a governmental body or public entity.

*Public/private utility facilities* means facilities for the transmission or distribution of water, gas, sewer, electricity or wire communications, excluding wireless telecommunications facilities.

*Recreational facility* means a facility, such as but not limited to amateur athletic fields, playgrounds/tot lots, tennis courts and picnic shelters/areas, swimming pools, minigolf and hot tubs.

*Recreational vehicle* means a portable unit designed as temporary living quarters for recreational, camping, travel or seasonal use that is mounted on a chassis and either self-propelled or towed by another vehicle. A recreational vehicle may be a "dependent recreational vehicle," a "self-contained recreational vehicle" or a "park model." The term "recreational vehicle" includes but is not limited to a "motor home", "camping trailer", "park model" or "pick-up coach". In order to be considered as a recreational vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with a state division of motor vehicles or similar agency, unless it is a park model located within a campground or a pick-up coach.

*Recreational vehicle accessory enclosure* means a factory manufactured rigid metal or vinyl enclosure with the dimensions not exceeding ten feet in width and the length of the recreational vehicle and/or camp model trailer to which it is accessory and designed for use with recreational vehicles or camp model trailers. The term "recreational vehicle accessory enclosure" shall not include decks, patios, awnings, awning tents, screen panels or unenclosed roof projections.

*Recreational vehicle parks.* See "campground."

*Research laboratory* means a building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

*Restaurant* means a premises primarily used for the purpose of providing full-course meals for the public on the premises, which is equipped with a separate and complete kitchen and which maintains adequate dining room equipment and capacity for preparing and serving full-course meals consisting of a diversified selection of food which ordinarily cannot be consumed without the use of tableware and which cannot be conveniently consumed while standing or walking. Liquor may be available for consumption on the premises as accessory to the principal use.

*Retail* means sale to the ultimate consumer for direct consumption and not for resale.

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

*Road* means 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.

*RV campsite* means a campsite that contains a prepared gravel pad no larger than 15 feet by 25 feet in dimension, and provides water and/or electric (but not sewer) hookups, and on-site parking.

*School* means any building or group of buildings, the use of which meets state requirements for elementary, secondary, or higher education and which use secures the major part of its funding from any governmental agency.

*School, private,* means any building or group of buildings, the use of which meets state requirements for elementary, secondary, or higher education and which use does not secure the major part of its funding from any governmental agency.

*Screen, screening* means the application of earthwork, vegetation, fences, walls, or combination thereof for the purpose of:

- (1) Establishing 25 percent to 74 percent visual blockage of one land use from another; or
- (2) Articulating a physical and visual separation of adjacent land uses (see *Buffering* ).

*Seasonal campsite* means a campsite that contains a prepared gravel pad no larger than 20 feet by 40 feet in dimension, provides full utility hookup services including water, sewer and electrical and may include internet and cable TV services. These campsites are designed to accommodate camp model trailers, recreational vehicles and recreational vehicle accessory enclosures throughout the calendar year.

*Seasonal structure.* See *Structure, seasonal.*

*Seasonal use* means occupancy of a recreational vehicle only between April 1<sup>st</sup> and October 31<sup>st</sup> .

*Self-contained recreational vehicle* means a recreational vehicle which can operate independently of connections to sewer, water, and electrical systems. It may contain a water-flush toilet, lavatory, shower and kitchen sink, all of which are connected to water storage, gray water and storage tanks located within the recreational vehicle.

*Self-service storage facility* means a building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual, compartmentalized, and controlled access stalls or lockers for the storage of customers' goods or wares.

*Service building* means a structure within a campground housing toilet, lavatory and other typical bathroom facilities.

*Setback* means the minimum horizontal distance from a lot line to the nearest point of a structure.

*Setback from water* means the minimum horizontal distance from the normal high water mark or upland edge of a wetland to the nearest part of a structure, road, parking space or other regulated object or area.

*Shall* is mandatory.

*Shoreland lot.* See *Lot, shoreland.*

*Shoreland zone* means the land area located within:

- (1) Two hundred fifty feet, horizontal distance, of the normal high water mark of a saltwater body or the nontidal portion of Goosefare Brook downstream of the Boston and Maine Railroad bridge;
  - (2) Two hundred fifty feet of the upland edge of a coastal or jurisdictional wetland;
  - (3) One hundred fifty feet, horizontal distance, of the normal high water mark of the nontidal portion of Goosefare Brook upstream of the Boston and Maine Railroad bridge;
- or
- (4) One hundred feet of the normal high water mark of a stream; and
  - (5) All land east of the Boston and Maine Railroad between the Scarborough town line and Union Avenue and east of Seaside Avenue between Union Avenue and Goosefare Brook is included in the shoreland zone.

*Sidewalk cafe.* See *Cafe, sidewalk.*

*Sight distance* means the horizontal distance of unobstructed vision between a motor vehicle preparing to enter traffic and oncoming vehicles on the roadway.

*Sign* means a structure or device designed or intended to convey information to the public in written or pictorial form. Logos, labels, and other graphic symbols that are an integral part of a product for sale or the price tag, international flags or banners containing any graphic except the name, logo, or graphic depiction of a product or service for sale shall not be considered as sign under this definition.

*Sign area* means the physical area of a sign, measured by the dimensions of the sign if a detachable unit or by an imaginary rectangle drawn around the perimeter of a sign applied or painted directly to a building, awning, or other structure.

*Single-family dwelling.* See *Dwelling, single-family.*

*Slash* means the branches and waste wood products left from a timber harvesting operation which are not removed from the site for utilization.

*Special exception.* See *Conditional use.*

*Specified sexual activities* means:

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse or sodomy.
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

*Sports facility* means a facility constructed or arranged to support organized sporting events.

*Story* means that portion of a building included between the surface of any floor area and the surface of the floor or roof next above it. A basement shall be considered a

story for height measurement where more than half of its height is above the average level of the adjoining ground.

*Stream* means a free-flowing body of water with a minimum water depth of two inches flowing within a distinct channel of three or more feet at the discharge confluence with another waterbody, wetland. Multiple channel streams shall have an aggregate channel width of three or more feet. Wetlands associated with a stream shall be considered as part of the stream area excepting wetlands that measure greater than 100 linear feet in width for a contiguous length of 100 feet.

*Street* means a public street or a street shown on a recorded subdivision plan approved by the planning board after September 25, 1984, or a private way approved by the planning board pursuant to division 3 of article VIII of this chapter.

*Street frontage.* See *Frontage, street.*

*Street line* means the right-of-way line of a street.

*Street, public,* means a right-of-way held in easement or fee by the town or the state and constructed and maintained to facilitate the repeated passage of motor vehicles and pedestrians, which provides a transportation route for use by the general public.

*Street tree* means a tree of a minimum of two inches caliper planted within or adjacent to a public or private travelway for the purpose of providing shade, seasonal color, and providing visual unity.

*Structural alteration* means changes in supporting members of a building such as supporting walls, beams, columns and girders.

*Structure* means anything constructed or erected of three or more members, the use of which requires a fixed location on the ground or attachment to something fixed to the ground. This shall not include awnings, boundary walls, fences.

*Structure, accessory,* means a structure of a nature customarily incidental and subordinate to that of the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure. ~~For the purpose of this chapter, swimming pools shall not be considered accessory structures.~~

*Structure, principal,* means the structure in which the principal use of the lot is conducted.

*Structure, seasonal,* means any structure, including but not limited to hotel or motel units, private cottages and guest or tourist cottages, which, because of inadequate heating, water supply, sewage treatment, electricity or cooking facilities or because of any other factor relating to the structure or the land on which it is situated, could not be lawfully or safely used as a residence continuously during the calendar year and which would require a seasonal structure conversion permit under article III of chapter 34 pertaining to seasonal structure conversion prior to being converted to a yearround dwelling.

*Subdivision* means as defined in M.R.S.A. title 30-A.

*Subsurface sewage disposal system* means a collection of treatment tank, disposal area, holding tank and pond, surface spray system, cesspool, well, surface ditch, designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface licensed under 38 M.R.S.A. § 414; any surface wastewater disposal system licensed under 39 M.R.S.A. § 413(1-A); or any public sewer. The term shall not include a

sewage disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S.A. ch. 13, subch. 1.

*Swamp* means a periodically or continually wet area exceeding 1,000 square feet in area which supports tree growth.

*Swimming pool* means a water-filled enclosure, permanently constructed or portable, having a depth of more than 18 inches below the level of the surrounding land, or an above-surface pool, having a depth of more than 30 inches, designed, used, and maintained for swimming and bathing.

*Targeted market coverage area* means the area which is targeted to be served by a proposed telecommunications facility.

*Temporary anemometer tower.* A structure, including all accessory facilities, temporarily erected for a period of one year or less, on which an anemometer is mounted for the purposes of documenting whether a site has wind resources sufficient for the operation of wind power generation of electricity.

*Through lot.* See *Lot, through.*

*Timber harvesting* means 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.

*Town design standards* means a compendium of construction detail drawings, plan layouts, and/or specifications governing design and construction within the town. Such standards are approved and amended from time to time by the town council.

*Town planner* means the person or professional appointed by the town council to perform those duties and exercise those functions assigned to the town planner under this chapter.

*Tractor-trailer unit* means a vehicle combination consisting of a truck tractor hauling a nonmotorized trailer.

*Trailer, house trailer, camper.* See *Recreational vehicle.*

*Trailer park, campground,* means land upon which one or more recreational vehicles or camping trailers are parked for recreational use on sites arranged specifically for that purpose.

*Transportation facility* means a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions.

*Tree, street,* means a species of tree meeting the standards of division 7 of article VIII of this chapter that is planted in the right-of-way of a public street or private way for the purpose of mitigating negative microclimate conditions and/or creating visual unity or visual screening/buffering.

*Tributary stream* means 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 waterbody or wetland as defined. This definition does not include the term "stream" as defined in this section, and only applies to that portion of the

tributary stream located within the shoreland zone of the receiving waterbody or wetland.

*Trompe de l'oeil* means a mural painting on the unadorned wall of a building intended to create the illusion of an active street scene or a detailed building facade.

*Truck terminal* means land and buildings used as a relay station for the transfer of a load from one vehicle to another or one party to another, or used for garaging of the trailer portion of a tractor-trailer unit and/or storage facility by a motor freight business consisting of one or more truck tractors. The terminal cannot be used for permanent or longterm accessory storage for principal land uses at other locations. The terminal facility may include storage areas for trucks and buildings or areas for the repair of trucks associated with the terminal.

*Truck tractor* means a motorized vehicle with a gross vehicle weight in excess of 26,000 pounds or with three axles, regardless of gross vehicle weight, which is designed with a fifth wheel or similar device for hauling a trailer behind.

*Turret* means an appurtenant, usually rounded, vertical structure attached to the corner of the principal structure often extending to the roofline elevation of the principal building. Turrets are a characteristic element of Queen Anne style architecture and often provided distinctive living space.

*Two-family dwelling.* See *Dwelling, two-family.*

*Undue hardship.* See *Hardship, undue.*

*Unreasonable adverse impact* means the proposed project would produce an end result which is:

- (1) Excessively out of character with the existing visual quality affected, including existing buildings structures and features within the designated scenic resource; and
- (2) Would significantly diminish the scenic value of ambient visual quality.

*Upland edge* means the boundary between upland and wetland.

*Use* means the purpose for which land or buildings or structure part thereof is arranged, designed, intended, occupied, or maintained.

*Use, accessory,* means a use of a nature customarily incidental and subordinate to that of the principal use. Accessory uses, when aggregated, must remain subordinate to the principal use of the lot.

*Use, commercial,* means an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

*Use, conditional,* means a use permitted only after review and approval by the planning board. A conditional use is a use that would not be appropriate without restriction but which, if controlled under this chapter, would promote the purposes of this chapter. Such uses may be permitted if specific provision of such conditional use is made in this chapter.

*Use, conforming,* means a use of buildings, structures, or land which complies with all applicable sections of this chapter.

*Use, nonconforming,* means a building, structure, use of land or portion thereof, existing at the effective date of adoption or amendment of the ordinance from which this chapter derives which does not conform to all applicable sections of this chapter for the district in which it is located. [Existing complementary uses in the DD-1 and DD-2 Zoning Districts which do not comply with Sections 78-719. Distribution of uses; 78-](#)

720. Spacing of drinking establishments and 78-749. Distribution of uses shall be considered nonconforming uses.

*Use, open space,* means a use not involving a structure; earth moving activities; or the removal or destruction of vegetative cover, spawning grounds of fish, aquatic life, birds, and other wildlife habitat.

*Use, principal,* means the primary use to which the premises are devoted and the primary purpose for which the premises exist.

*Used or occupied* includes the term "intended," "designed," or "arranged" to be used or occupied.

*Valet parking lot.* See *Parking lot, valet.*

*Variance* means a relaxation of the terms of this zoning ordinance where such variance will not be contrary to the public interest, and where, owing to circumstances or conditions pertaining to the individual property, but not generally to other land and buildings in the district, and not the result of actions of the applicant, a literal enforcement of the Ordinance would result in undue hardship in the use of the property. As used in this chapter, a variance is authorized only from dimensional requirements. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance; nor shall a variance be granted because of a claimed financial hardship or because of the presence of nonconformities in the zoning district or uses in an adjoining district.

*Vegetation* means all live trees, shrubs, ground cover, and other plants.

*Vertical expansion of structure* means the expansion of a structure, in a vertical fashion, wholly within the existing footprint of the structure, including the placement of a foundation below an existing structure.

*Veterinary hospital* means a place where animals are given medical care and the boarding of animals is limited to shortterm care incidental to the hospital use.

*Viewpoint* means a specific geographical location from which a person views a land use activity.

*Viewshed* means that area on the face of the earth from which a specific object such as a tower, exhaust plume, or building can be visually seen. Factors such as atmospheric effects, vegetation, landform, viewer position in the landscape, distance zones, and viewer sensitivity or movement through the landscape all can have a moderating effect of visibility of a target object.

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

*Wall, fire,* means a masonry wall located in a building to prevent the spread of fire between separate buildings or structures or units within a building.

*Warehouse storage* means a use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions.

*Water crossing* means any project extending from one bank to the opposite bank of Goosefare Brook or a stream, whether under, through, or over the waterbody. 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 crossing.

*Waterbody* means an impounded area of water, including but not limited to ponds, lakes, the Atlantic Ocean, tidal waters, but excluding drainage ditches and other manmade structures constructed principally for stormwater control purposes.

*Watercourse* means a periodic or perennial free-flowing body of water within a channel, including but not limited to streams, brooks, and drainage swales.

*Wetland* means a freshwater or coastal wetland.

*Wetland, coastal,* means all tidal and subtidal lands including all areas below any definable debris line left by tidal action; all areas with vegetation present that is tolerant of saltwater and that occurs primarily in a saltwater 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.

*Wetland, contiguous,* means a freshwater, coastal, or jurisdictional wetland measuring a minimum of 100 horizontal feet in width for a lateral distance of 100 horizontal feet. Wetlands separated by roads, dikes, or topography for a horizontal distance of less than 100 feet shall be regarded as contiguous.

*Wetland, freshwater,* means areas of land periodically inundated by surface water or groundwater creating a condition whereby a predominance of hydrophytic (wetland) vegetation, hydric soils, and wetland hydrologic conditions exist, as defined and classified by the Federal Manual for Identification and Delineation of Jurisdictional Wetlands as published by the U.S. Fish and Wildlife Service (1989). Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

*Wetland, jurisdictional,* means jurisdictional wetlands are defined as follows:

- (1) Freshwater wetlands of ten or more contiguous acres rated as being of moderate or high value by the state department of inland fisheries and wildlife; or wetlands of less than ten contiguous acres and adjacent to a surface waterbody, excluding any stream or brook such that, in a natural state, the combined surface area is in excess of ten acres; or
- (2) Any coastal or marine wetland of any size.

*Wetlands associated with the Goosefare Brook* means wetlands contiguous with Goosefare Brook and which during normal high water are connected by surface water to the brook. Also included are wetlands which are separated from the brook 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 mark of the brook. Wetlands associated with Goosefare Brook are considered to be part of that waterbody.

*Wireless telecommunications facility* means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

*Wheelbase* means the horizontal distance between the centerpoint of the front axle and the centerpoint of the rearmost axle of a motor vehicle or trailer.

*WTF.* See *Wireless telecommunications facility.*

*Yearround dwelling.* See *Dwelling, yearround.*

(Ord. of 9-18-2001, § 3.0; Ord. of 5-7-2002, § 3.2; Ord. of 11-5-2003(1), § 3.0; Ord. of 4-21-2009(1); Ord. of 4-21-2009(4); Ord. of 12-15-2009(2); Ord. of 12-15-2009(3))

**Cross references:** Definitions generally, § 1-2.

**Sec. 78-2. Purpose.**

(a) This chapter and its regulations are designed for all the purposes of zoning embraced in the state statutes as an integral part of a comprehensive plan.

(b) This chapter is, among other things, designed to:

- (1) Encourage the most appropriate use of land throughout the town;
- (2) Provide safety from fire and other elements;
- (3) Promote public safety;
- (4) Provide adequate light and air;
- (5) Prevent overcrowding of real estate;
- (6) Promote a wholesome home environment;
- (7) Prevent housing developments in unsanitary areas;
- (8) Provide an adequate street system;
- (9) Promote the coordination of unbuilt areas;
- (10) Encourage the formulation of community units;
- (11) Provide an allotment of land area in new developments sufficient for all the requirements of community life;
- (12) Provide for adequate public facilities and services;
- (13) Conserve natural resources;
- (14) Prevent and control water pollution;
- (15) Protect spawning grounds, fish, aquatic life, birds, and other wildlife habitats;
- (16) Control building sites, placement of structures, and land uses;
- (17) Conserve shore cover, visual as well as actual points of access to inland and coastal waters; and
- (18) Conserve natural beauty.

(Ord. of 9-18-2001, § 1.3)

**Sec. 78-3. Applicability.**

The sections of this chapter shall regulate the following:

- (1) The use of all land and water areas within the town;
- (2) The use, construction, repair, alteration, height, number of stories, and bulk of all buildings and structures;
- (3) The size and open spaces of real estate;
- (4) Population density;
- (5) The setback of structures along public rights-of-way; and
- (6) The shoreland zone. Provisions and terms which specifically address the shoreland zone or shoreland zoning matters are intended to apply only within the shoreland zone and are not to be construed as affecting or changing the meanings of any other provisions or terms existing in this chapter prior to the adoption of shoreland zoning amendments on December 7, 1993.

(Ord. of 9-18-2001, § 1.4)

**Sec. 78-4. Effective date of shoreland zoning amendments.**

Upon enactment of any amendment that affects the shoreland zone, the town clerk shall forward a copy of the amendment to the shoreland zoning coordinator within the state department of environmental protection, and the amendments shall not be effective unless approved by the department of environmental protection. If the department of environmental protection fails to act on any amendment within 45 days of the department's receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the town within the 45-day period shall be governed by the terms of the amendment, if such amendment is approved by the department.

(Ord. of 9-18-2001, § 1.6)

Secs. 78-5--78-30. Reserved.

## **ARTICLE II. ADMINISTRATION AND ENFORCEMENT\***

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\***Cross references:** Administration, ch. 2.

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### **DIVISION 1. GENERALLY**

#### **Sec. 78-31. Amendments to chapter.**

(a) This chapter may be amended from time to time as the needs of the town require after public hearing on a proposed amendment held by the planning board and following posting and publishing of notice of the hearing.

(b) Such notice shall be posted in the town office at least 14 days before the public hearing and shall be published at least two times in a newspaper of general circulation in the town. The date of the first publication must be at least 14 days before the hearing, and the date of the second publication must be at least seven days before the hearing.

(c) Amendments to this chapter shall be adopted only after favorable vote of a majority of the members of the town council.

(Ord. of 9-18-2001, § 1.7)

#### **Sec. 78-32. Code enforcement officer.**

(a) *Notice to violators of chapter.* If the code enforcement officer shall find that any section of this chapter is being violated, he shall notify in writing, by certified mail or by hand delivery, the person responsible for the violation, indicating its nature and ordering the action necessary to correct it and the times for commencing and completing the corrective action.

(b) *Orders of discontinuance.* The code enforcement officer shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of illegal additions, alterations or structural changes; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to ensure compliance with or to prevent violation of it.

(Ord. of 9-18-2001, § 15.1)

**Cross references:** Officers and employees, § 2-126 et seq.

**Sec. 78-33. Violations.**

(a) When any violation of any section of this chapter is found to exist, the designee of the town council is hereby authorized and directed to institute any and all actions either legal or equitable that may be appropriate or necessary for the enforcement of this chapter, the action to be brought in the name of the town.

(b) Violations of this chapter, including failure to comply with any conditions imposed by the code enforcement officer, town planner, planning board or board of appeals, and failure to use, construct or arrange property in compliance with plans, permits or approvals under this chapter are punishable under 30-A M.R.S.A. § 4452. The civil penalties provided in that statute shall be assessed on a per-day basis.

(Ord. of 9-18-2001, § 15.2)

**Sec. 78-34. Building permits.**

(a) *Required.* No building or other structure shall be erected, moved, renovated or structurally altered without a permit issued by the code enforcement officer.

(b) *Approval or denial.* The code enforcement officer shall issue or deny a building permit for the construction of a new principal building no ~~earlier than seven days and not~~ later than 21 days of receipt of the proper application. All other permits shall be issued or denied within seven days.

(c) *Expiration.* Expiration of building permits is as follows:

(1) If the work described in any building permit has not begun within 180 days from the date of issuance thereof, the permit shall expire ~~and be canceled by the code enforcement officer with written notice of the cancellation given to the persons affected.~~ Permits may be extended for an additional 6 month upon receipt of a written request from the owner/agent received prior to the expiration of the original permit.

(2) If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, the permit shall expire.

(Ord. of 9-18-2001, § 15.3)

**Sec. 78-35. Certificate of occupancy.**

(a) It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises or both or part thereof created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure after the effective date of the ordinance from which this chapter derives until a certificate of occupancy shall have been issued therefor by the code enforcement officer stating that the proposed use of the building or land or both conforms to the requirements of this chapter.

(b) A temporary certificate of occupancy may be issued by the code enforcement officer for a period not exceeding six months during construction, alteration, or partial occupancy of a building pending its completion, provided that such temporary certificate of occupancy may include such conditions and safeguards as will protect the occupants and the public. A temporary certificate of occupancy may be renewed for a period of six months during which time the exterior of the building shall be completed.

(Ord. of 9-18-2001, § 15.4)

**Sec. 78-36. Applications for building permits and certificates of occupancy.**

(a) All applications for building permits and certificates of occupancy shall be made in writing on forms furnished by the code enforcement officer.

(b) All applications for building permits for new construction or additions shall be accompanied by plans drawn to scale showing the actual dimensions and shape of the lot to be built upon; the exact size and location on the lot of buildings already existing, if any; and the location and dimensions of the proposed buildings or alterations, including parking facilities. The application shall include such other information as lawfully may be required by the code enforcement officer to determine conformance with and to provide for the enforcement of this chapter.

(Ord. of 9-18-2001, § 15.5)

**Sec. 78-37. Maintenance of records.**

The code enforcement officer shall maintain a record of all building permits and certificates of occupancy and letters and notices issued by him, and a copy shall be issued upon request to any person.

(Ord. of 9-18-2001, § 15.6)

**Sec. 78-38. Fees for after-the-fact permit.**

Whenever a permit or approval required by this chapter is not obtained until after construction has begun or the use has been commenced, the fee for that permit or approval ~~shall~~ may be double the fee established by the town council or \$100.00, whichever is greater. The fee imposed by this section is in addition to any penalty imposed by this chapter or state law for failure to obtain the required permit or approval.

(Ord. of 9-18-2001, § 15.7)

Secs. 78-39--78-65. Reserved.

**DIVISION 2. BOARD OF APPEALS\***

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\***Charter references:** Zoning board of appeals, § 902.

**Cross references:** Boards, committees, commissions, § 2-206 et seq.

**State law references:** Board of appeals 30-A M.R.S.A. § 2691.

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**Subdivision I. In General**

**Sec. 78-66. Organization.**

The board of appeals shall annually elect a chairman and vice-chairman from its membership and shall adopt rules to govern its proceedings in accordance with this chapter.

(Ord. of 9-18-2001, § 14.1)

**Sec. 78-67. Minutes.**

The board of appeals shall keep minutes of all its proceedings and actions taken and the minutes shall, at a minimum show the following:

- (1) The vote of each member upon each question.
  - (2) The absence of any member during a vote on any question.
  - (3) Abstention of a member from voting on any question because of a conflict of interest.
- (Ord. of 9-18-2001, § 14.1)

**Sec. 78-68. Notification of public hearing.**

- (a) *Posting notice.* Before making a decision on any appeal or other matter before it, a notice from the chairman of the board of appeals shall be published and posted in the town office at least ten days in advance of the public hearing.
  - (b) *Abutters.* The notice of the public hearing shall be sent to the owners of all properties which touch any lot line of the property which is the subject of the hearing (referred to as "the subject property") or which is located across a street from the subject property and which touches any line which could be drawn from any part of the subject property at right angles to the street sideline opposite the subject property. The applicant shall mail the notice of public hearing by certified mail, return receipt requested, at least ten days in advance of the hearing. At the time of the hearing the applicant shall submit to the board of appeals proof of mailing in the form of certified mail receipts. Failure of the applicant to produce such proof of mailing shall cause the board to reschedule the hearing until the proper notice has been provided. For purposes of this subsection, the term "owners" means those persons identified as the owners of the property in the records of the town tax assessor. The cost of abutter notification for administrative appeals shall be the responsibility of the Town. All other appeal notifications shall be the responsibility of the applicant.
- (Ord. of 9-18-2001, § 14.2.1)

**Sec. 78-69. Applications.**

- (a) A fee which shall have been determined by the town council shall be paid by the appellant prior to the public hearing as provided in this division.
  - (b) An application for a limited reduction of yard size or limited expansion of lot coverage and for the construction of nonconforming means of egress shall be accompanied by a standard boundary survey showing all lot lines of the property, the location of each existing building or structure and the location of each proposed expansion, means of egress, enlargement or new principal building or structure. The code enforcement officer may waive the requirement of the survey if he determines, in his sole discretion, that the locations of the lot lines relevant to the request for a limited reduction in yard size or expansion of lot coverage can be determined accurately without a survey.
- (Ord. of 9-18-2001, § 14.2.2)

**Sec. 78-70. Meetings.**

- (a) *Times.* Meetings of the board of appeals shall be held at the call of the chairman and at such other times as the board may determine, and they shall be open to the public.
- (b) *Quorum.* A quorum shall consist of any three regular or alternate members, all of whom shall be present when any action is taken.

(c) *Code enforcement officer's attendance.* The code enforcement officer or a designee shall attend all public hearings and may present to the board all plans, photographs, or other material he deems appropriate to a proper understanding of the appeal.

(d) *Applicant's case first.* The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked only through the chair. All persons at the hearing shall abide by the orders of the chairman.

(e) *Representation by agent or counsel.* At any hearing, a party may appear in person or be represented by agent or attorney.

(f) *Rebuttal.* At the discretion of the chairman, rebuttal may be permitted by any person present of any testimony presented on the opposing side.

(g) *Expression of sentiment forbidden.* The board shall not request and the chairman shall not permit, by show of hands, voice vote, or any other means, an expression of sentiment among those present of approval or disapproval of the appeal.

(h) *Continuance of hearings.* Hearings shall not be continued to other times except to obtain additional evidence which cannot be produced at the scheduled hearing and only after unanimous vote of the those members present to continue the hearing.

(Ord. of 9-18-2001, § 14.2.3)

### **Sec. 78-71. Recording of certificate granting variance or miscellaneous appeal approval.**

Whenever the board of appeals grants a variance or miscellaneous appeal approval, the board shall prepare a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title, indicating the variance or miscellaneous appeal has been granted and setting forth the date of the granting. The applicant shall record the certificate in the county registry of deeds within 90 days of approval, or the approval shall be invalid.

(Ord. of 9-18-2001, § 14.2.4)

Secs. 78-72--78-90. Reserved.

## **Subdivision II. Powers and Duties**

### **Sec. 78-91. Scope.**

The board of appeals shall have the powers and duties stated in this subdivision.

(Ord. of 9-18-2001, § 14.3)

### **Sec. 78-92. Administrative appeals.**

(a) The board of appeals shall have the power and duty to hear and decide appeals where it is alleged there is an error in any order, decision or determination made by the code enforcement officer in writing. The board may affirm or reverse in whole or in part or may modify the code enforcement officer's order, decision or determination. The affirmative votes of three members of the board are required to grant an administrative appeal.

(b) An administrative appeal may only be granted by a majority vote of the entire board.

(Ord. of 9-18-2001, § 14.3.1)

### **Sec. 78-93. Variance appeals.**

(a) *Generally.* The board of appeals shall have the power and duty to grant variances when strict application of this chapter to the applicant's property would cause undue hardship, as defined in section 78-1. The board of appeals may attach conditions and safeguards and may limit the variance to the minimum relief necessary to relieve the hardship.

(b) *Conditions not applicable for issuance of variance.* No nonconforming use of neighboring lands, structures or buildings in the same district or nonconforming uses of lands, buildings or structures in other districts shall be considered to be grounds for the issuance of a variance.

(c) *Variance granted only by majority.* The affirmative votes of at least three members of the board are required to grant a variance.

(Ord. of 9-18-2001, § 14.3.2)

#### **Sec. 78-94. Miscellaneous appeals--Limited reduction of yard size; limited expansion of lot coverage.**

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Limited expansion of lot coverage* means the expansion of maximum lot coverage by no more than the sum of five percent ~~of~~ in addition to the the requirement allowed in the zoning district.

*Limited reduction of yard size* means the reduction of a required front yard by no more than 25 percent or of a required side or rear yard by no more than 50 percent of the requirement of the zoning district in which the property is located.

~~*Lots in residential use*~~ *Previously developed lot* means a lot on which a ~~dwelling structure~~ dwelling structure exists on February 3, 1998 or a vacant nonconforming lot of record on which a ~~residential dwelling structure for which a use permitted in the zoning district where it is located~~ is proposed.

(b) *Authority.* The board of appeals shall have the power and duty to hear and decide requests for a limited reduction of required yard size or limited expansion of lot coverage for a lot ~~solely in residential use~~ in order to permit:

(1) The expansion or enlargement of an existing building or structure the use of which is permitted in the zoning district where the structure is located and the erection of an accessory structure on a previously developed lot; or

(2) The construction of a new building or structure on a vacant nonconforming lot of record.

(c) *Vote required; conditions.* A limited reduction of yard size or limited expansion of lot coverage may only be granted by a majority vote of those members present and voting and may include such conditions and safeguards as are appropriate under this chapter.

(d) *Requirements.* The applicant for a limited reduction of yard size or limited expansion of lot coverage must demonstrate the following:

(1) The existing buildings or structures on the lot for which the limited reduction of yard size or limited expansion of lot coverage is requested were erected prior to the effective date of the ordinance from which this section derives (February 3, 1998) or the lot is a vacant nonconforming lot or record;

(2) The requested reduction is reasonably necessary to permit the owner or occupant of the property to use and enjoy the property in essentially the same manner as other similar properties are utilized in the zoning district;

(3) Due to the physical features of the lot and/or the location of existing structures on the lot, it would not be practical to construct the proposed expansion, enlargement or new structure in conformance with the currently applicable yard size or lot coverage requirements; and

(4) The impacts and effects of the enlargement, expansion or new principal building or structure on existing uses in the neighborhood will not be substantially different from or greater than the impacts and effects of a building or structure which conforms to the yard size requirements.

(e) *Interpretation as variance to relieve hardship.* The granting of a limited reduction of yard size or limited expansion of lot coverage pursuant to this section shall not require or be construed as the granting of a variance to relieve hardship. Notwithstanding section 78-113 the denial of a variance requested under section 78-93(b) shall not preclude a subsequent application for a limited reduction of yard size/limited expansion of lot coverage under this section, and the denial of a request under this section shall not preclude a subsequent application for a variance under section 78-93(b). If an application for a variance is pending, the town shall not accept an application for limited reduction of yard size/limited expansion of lot coverage on the same property. If an application for a limited reduction of yard size/limited expansion of lot coverage is pending, the town shall not accept an application for a variance on the same property.

(Ord. of 9-18-2001, § 14.3.3.1; Ord. of 3-7-06)

#### **Sec. 78-95. Same--Nonconforming means of egress construction.**

(a) *Generally.* The board of appeals shall have the power and duty to hear and decide requests for the construction of means of egress stairways ~~or ramps~~ in order to permit:

(1) The expansion of a stairway which is legally nonconforming with regard to space and bulk requirements solely to conform to the building code as adopted by the town.

(2) The construction of a means of egress on a structure that is required by the town fire prevention code or that is required to make a structure or use accessible to a physically disabled person.

(b) *Vote; conditions.* An appeal to permit a nonconforming means of egress construction may only be granted by a majority of those members present and voting and may include such conditions and safeguards as are appropriate under this chapter.

(c) *Requirements.* Requirements are as follows:

(1) The use or structure is legally nonconforming, as set forth in section 78-176, if the use or structure is nonconforming.

(2) The requested stairway ~~or ramps~~ is the minimum structure, dimensionally, as required by the town building code.

(3) Due to the physical features of the lot or location of structures on the lot, it would not be practical to construct the proposed stairway ~~or ramps~~ in conformance with applicable space and bulk requirements.

(d) *Interpretation as variance to relieve hardship.* The granting of a request for a nonconforming means of egress pursuant to this section shall not be construed as the

granting of a variance to relieve hardship. Notwithstanding section 78-113, the denial of a variance requested under section 78-93(b) shall not preclude a subsequent application a nonconforming means of egress under this section, and the denial on a request under this section shall not preclude a subsequent application for a variance under section 78-93(b). If an application for a variance is pending, the town shall not accept an application for a nonconforming means of egress on the same property. If an application for a nonconforming means of egress is pending, the town shall not accept an application for a variance on the same property.  
(Ord. of 9-18-2001, § 14.3.3.2)

**Sec. 78-96. Limitation of powers.**

The board of appeals shall not have the power to:

- (1) Authorize the issuance of permits for conditional uses. The planning board shall have jurisdiction over conditional uses as provided in article VII of this chapter.
- (2) Grant a variance which would permit a use not allowed by the zoning district regulations.

(Ord. of 9-18-2001, § 14.3.4)

Secs. 78-97--78-110. Reserved.

**Subdivision III. Appeal Procedure**

**Sec. 78-111. Appeals only from decision of code enforcement officer.**

Administrative appeals from orders, decisions or determinations of the code enforcement officer shall be filed in the office of the code enforcement officer on forms authorized by the board of appeals no later than 30 days after the date of the written order, decision or determination from which the appeal is taken. The appeal application shall set forth in detail the grounds for the appeal. Variance appeals and miscellaneous appeals may be commenced without prior order, decision or determination made by the code enforcement officer. They shall be filed in the office of the code enforcement officer on forms authorized by the board of appeals. The application shall set forth in detail the grounds for the appeal.

(Ord. of 9-18-2001, § 14.4.1)

**Sec. 78-112. Expiration of approval.**

An approval granted by vote of the board of appeals under this division shall expire: (i) if a building permit is not obtained within six months of the date of approval, in those cases where the approval authorized construction activity; or (ii) if the use is not commenced and continued within six months of the date of approval, in those cases where the approval authorizes a use or a change of use. In addition, an approval granted by vote of the board of appeals which authorizes construction shall expire if the construction is not substantially completed within two years of the date of approval. The board of appeals may extend these expiration periods if a request for extension is received by the board before the expiration. These expiration periods are not tolled or stayed by the pendency of any other proceedings or permit applications for the same property.

(Ord. of 9-18-2001, § 14.4.2)

**Sec. 78-113. Repetitive appeals not permitted.**

If the board of appeals shall deny an appeal, a second appeal of a similar nature for the same property may not be brought before the board within one year of the date of denial by the board of the first appeal, unless, in the majority opinion of the board, substantial new evidence can be brought before the board or unless the board finds, in its sole and exclusive judgment, that an error or mistake of the law or misunderstanding of fact shall have been made.

(Ord. of 9-18-2001, § 14.4.3)

Secs. 78-114--78-140. Reserved.

**ARTICLE III. CONFORMANCE AND NONCONFORMANCE\***

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\***Cross references:** Buildings and building regulations, ch. 66.

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**DIVISION 1. GENERALLY**

**Sec. 78-141. Minimum requirements established.**

In interpreting and applying the sections of this chapter, they shall be held to be the minimum requirements for the promotion of health, safety, convenience and general welfare in the town. With the exception of the requirements of the historic overlay district (HO) which shall prevail over all other districts or subdistricts, whenever the requirements of this chapter conflict with or are inconsistent with another section of this chapter or any other lawfully adopted rules, regulations, or ordinances, the most restrictive or that imposing the higher standards shall govern.

(Ord. of 9-18-2001, § 4.1)

**Sec. 78-142. Conformance required.**

(1) No land or water area shall be used; no building or structure shall be erected, altered, enlarged, rebuilt, moved or used; and no premises shall be used unless in conformity with the sections of this chapter except those existing which, by this chapter, become lawfully nonconforming.

(2) Notwithstanding the requirements of subparagraph (1) above, the code enforcement officer may issue a permit allowing construction which does not conform to the minimum setback or building coverage requirements of this ordinance for the purpose of making a ~~dwelling structure~~ accessible to a person with a disability who resides in or regularly uses the ~~dwelling structure~~. The code enforcement officer shall restrict any such permit solely to the installation of equipment or construction of structures (including railing, wall or roof systems needed for the safety or effectiveness of the structure) that are necessary for access to or egress from the ~~dwelling structure~~ by the person with a disability. The permit shall be limited in duration to the time the person with a disability resides in or regularly uses the ~~dwelling structure~~. There shall be no time limitations for accessibility enabling structures created pursuant to this section for non-residential uses. Disability under this

subparagraph has the same meaning as physical handicap disability under Title 5, Section 4553-A of the Maine Revised Statutes.

(3) Notwithstanding the requirements of subparagraph (1) above, the code enforcement officer may issue a permit allowing construction which does not conform to the minimum yard space or building coverage requirements of this ordinance for the purpose of allowing the construction of additions and accessory structures. This shall be limited to:

(a) the reduction of a required front yard by no more than 25 percent or of a required side or rear yard by no more than 50 percent of the requirement of the zoning district in which the property is located and;

(b) the expansion of maximum lot coverage by no more than the sum of five percent in addition to the requirement allowed in the zoning district.

This reduction is only allowed if both of the following conditions exist:

(i) The existing buildings or structures on the lot for which the reduction of yard size or expansion of lot coverage is requested were erected prior to February 3, 1998, and;

(ii) The addition or accessory structure cannot be placed in conformance with the required setbacks or lot coverage.

If the proposed project does not qualify for this exception because there are conforming locations for the proposed construction on the property, the applicant may apply for a Miscellaneous Appeal pursuant to Section 78-94.

(Ord. of 9-18-2001, § 4.2.1; Ord. of 4-21-2009(4))

#### **Sec. 78-143. Land within street not part of lot.**

Land within the lines of a street, right-of-way or proposed right-of-way shown on a recorded subdivision plan which has not been vacated or deemed vacated by statute shall not be counted as part of a lot for the purpose of meeting the dimensional requirements of this chapter, even though the fee to such land may be in the owner of such lot.

(Ord. of 9-18-2001, § 4.2.2)

#### **Sec. 78-144. Lots of record.**

A single lot of record which, at the time of recording of its legal description in the county registry of deeds, met all minimum lot frontage and lot area requirements then applicable, but subsequently has become nonconforming as to the minimum lot frontage or lot area as a result of the passage of the ordinance from which this chapter derives or an amendment to this chapter may be built upon, provided that such lot is not owned by the same person as any other contiguous lot and provided that all other requirements of this chapter are met. Relief from such other requirements of this chapter may be granted only by the zoning board of appeals, only by a variance upon the showing of undue hardship, and only to the extent variances are available by the terms of this chapter.

(Ord. of 9-18-2001, § 4.2.3)

#### **Sec. 78-145. Merger of lots.**

(a) As used in this section the term "unimproved lot" includes any lot on which a seasonal structure, as defined in this chapter, is the principal structure or if the lot is occupied by an accessory use or structure as defined in this chapter.

(b) If two or more contiguous lots are owned by the same person and if any of the lots do not meet the requirements for lot frontage or lot areas established by this chapter, the lots shall be merged to the extent necessary to create a lot which complies with the lot frontage and lot area requirements of this chapter, and no portion of the lots so merged which does not meet the lot area and lot frontage requirements of this chapter may be built upon or may be sold if such sale would result in separate ownership of the nonconforming portion. Relief from the requirements of this section can be granted only by the zoning board of appeals and only by variance upon a showing of undue hardship.

(c) This section shall require merger only of the following:

(1) Unimproved lot with one another; and

(2) Unimproved lots with lots which are separately improved with a permanent yearround dwelling or a nonresidential principal structure.

(Ord. of 9-18-2001, § 4.2.4)

#### **Sec. 78-146. Access required.**

No building permit shall be issued for any principal building or principal structure and no principal building or principal structure shall be erected on any lot unless such lot has access from and the required street frontage on a street, as defined in section 78-1. No certificate of occupancy shall be issued for any principal building or principal structure and no principal building or principal structure shall be occupied on any lot which has its access and frontage on a private way until such private way has been constructed in compliance with the standards of chapter 74 pertaining to subdivisions and/or section 78-1414.

(Ord. of 9-18-2001, § 4.2.5; Ord. of 5-7-2002, § 4.2.5)

#### **Sec. 78-147. Principal residential buildings.**

Except for multiple multifamily buildings approved by the planning board under site plan and/or conditional use review or as part of a planned mixed-use development under division 14 of article VI of this chapter, no lot shall be developed with more than one principal residential structure. Existing lots containing more than one principal residential building may be subdivided only if each subdivided lot remains in conformance with the existing space and bulk requirements for the zoning district in which it is located.

(Ord. of 9-18-2001, § 4.2.6)

#### **Sec. 78-148. Omitted uses.**

Any use permitted in one zoning district of the town and not specifically prohibited in any other district shall be considered prohibited in such other districts. Any use not specifically allowed as either a permitted use or a conditional use is specifically prohibited. As new uses occur over time or existing uses are found to have been omitted, action allowing such shall be by amendment to this chapter.

(Ord. of 9-18-2001, § 4.4)

Secs. 78-149--78-175. Reserved.

## **DIVISION 2. NONCONFORMITIES**

### **Sec. 78-176. Continuation of nonconformance.**

Any lawful use of buildings, structures, premises, or parts thereof existing at the effective date of the ordinance from which this chapter derives or amendment of this chapter and made nonconforming by this chapter or any amendment thereto may be continued although such use does not conform with this chapter or amendment thereto, subject to this division.

(Ord. of 9-18-2001, § 4.3.1)

### **Sec. 78-177. Nonconforming use of land.**

Continuance of nonconforming use of land shall be subject to the following:

- (1) No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than that occupied at the effective date of the ordinance from which this chapter derives or amendment of this chapter.
- (2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter.
- (3) If any such nonconforming use of land ceases for any reason for a period of more than two years, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.

(Ord. of 9-18-2001, § 4.3.2)

### **Sec. 78-178. Nonconforming structures.**

(a) *Continuance.* Continuance of a nonconforming structure shall be subject to the following: No such nonconforming structure shall be altered or enlarged in a way which increases its nonconformity. A structure lawfully in existence prior to the effective date of the ordinance from which this chapter derives or subsequent amendment of this chapter, which does not meet the lot area or yard requirements of this chapter, may be repaired, maintained and improved. A legally nonconforming structure may be vertically expanded as defined in section 78-1, provided all of the following conditions are met:

- (1) The existing use of the structure is permitted in the district in which the structure is located.
- (2) The use of the structure does not change, unless the change is in compliance with all sections of this chapter, which apply to the new use.
- (3) There is no increase in the existing nonconformities and no new nonconformities are created. For the purpose of this subsection, vertical expansion of a structure as defined in section 78-1 shall not constitute an increase in the existing nonconformities.

(b) *Damaged nonconforming structures.* Should any nonconforming structure be destroyed or damaged by any means beyond the owner's control, it shall be rebuilt or restored within a period of two years or thereafter conform with chapter. If damaged to an extent of 50 percent or more of current value, repairs shall be commenced within six months, and thereafter carried to completion within two years, or the structure shall be removed at the owner's expense.

(c) *Demolition and replacement of nonconforming structures.* Should any nonconforming structure or portion thereof be demolished for any reason other than destruction or damage beyond the owner's control, it may be replaced within a period of two years or thereafter conform with this chapter. The replacement structure shall be solely within the footprint of the original structure and may be vertically expanded as allowed by section 78-178(a)(1) through (3). Any horizontal expansions or additions outside of the footprint of the original structure must conform to the space and bulk requirements for the zoning district where the structure is located.

(d) *Relocation of structures.* Should any nonconforming structure be moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(e) Any nonconforming building or structure which existed on or before February 3, 1998 may continue to be used and occupied, even though its original construction may have violated the space and bulk requirements of the zoning ordinance in effect at the time of construction, if it appears from the town's records that:

(1) A building permit was issued for the building or structure; and

(2) Since February 3, 1998, there has been no expansion or enlargement of the building or structure or alteration of the dimensions of the lot on which the building or structure is located which increased the nonconformity beyond that existing on February 3, 1998.

(Ord. of 9-18-2001, § 4.3.3; Ord. of 4-21-2009(4))

#### **Sec. 78-179. Nonconforming uses of structures.**

(a) *Generally.* No existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, moved or structurally altered except in changing the use of the structure to a conforming use.

(b) *Extension of nonconforming use.* Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

(c) *Superseded by permitted use.* If a nonconforming use of a structure or premises is superseded by a permitted use for a period of one year, the nonconforming use shall not be thereafter resumed.

(d) *Cessation of use.* If any such nonconforming use of a structure ceases for any reason for a period of more than two years, any subsequent use of such structure shall conform to the regulations specified by this chapter for the district in which such structure is located.

(Ord. of 9-18-2001, § 4.3.4)

#### **Sec. 78-180. Appeals from restrictions on nonconforming uses.**

Notwithstanding sections 78-177(1) through (3) and 78-179(b) through (d), a nonconforming use of land or a nonconforming use of a structure may be enlarged, increased, extended, moved to another portion of the lot or parcel, reconstructed, structurally altered, resumed after cessation for a period of more than two years, but less than ten years, or converted to another nonconforming use on the lot which it occupied on the effective date of the ordinance from which this chapter derives or amendment of this

chapter, upon approval of the planning board as conditional use pursuant to article VII of this chapter. The planning board may not approve any such enlargement, increase, extension, movement, construction, alteration, resumption or conversion, unless it finds that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.

(Ord. of 9-18-2001, § 4.3.5)

**Sec. 78-181. Authorized individual conditional use not deemed nonconforming use.**

When the planning board has authorized the issuance of a permit for a conditional use, the conditional use authorized in that particular case shall not be deemed a nonconforming use in the district in which it is located for the single property involved, only. An expansion of a conditional use shall be approved by the planning board pursuant to article VII of this chapter.

(Ord. of 9-18-2001, § 4.3.6)

Secs. 78-182--78-210. Reserved.

## **ARTICLE VII. CONDITIONAL USES**

### **DIVISION 1. GENERALLY**

**Sec. 78-1236. Scope.**

The planning board shall have the power to hear and decide only those conditional uses which are authorized by this chapter and which are specifically listed as conditional uses.

(Ord. of 9-18-2001, § 11)

**Sec. 78-1237. Authority.**

The planning board shall approve or approve with conditions all applications for conditional uses if it determines that the proposed conditional use meets all of the standards set forth in section 78-1240 and complies with all other applicable sections of this chapter or can be made to comply with the standards of section 78-1240 by the imposition of conditions as provided for under division 2 of this article. If the planning board determines that the proposed use does not meet one or more of the standards of division 2 of this article and cannot be made to comply by the imposition of conditions or if conditions that would cause the use to comply with the required standards are not acceptable to the applicant, the board shall deny the application. Proposed expansions to conditional uses shall be reviewed by the planning board and shall be in compliance with this article.

(Ord. of 9-18-2001, § 11.1)

**Sec. 78-1238. Application and review process.**

(a) *Application.* Application for conditional uses shall be filed with the planning board on forms provided for that purpose and shall be accompanied with appropriate fees as

specified in the schedule of license, permit and application fees in appendix A of this Code. The applicant shall provide all information required by the planning board to make its findings of fact as to each of the standards set forth in section 78-1240.

(b) *Review process.* The review process is as follows:

(1) *Determination of complete application.* Applications will be reviewed for their classification and completeness at the next regularly scheduled meeting of the planning board. If a conditional use review application is determined by the planning board to contain all relevant information necessary to make a reasonable and informed decision, the planning board shall designate the application as a complete application. Conversely, if the application is lacking data required by the planning board, the applicant shall provide the requested information before the application is designated as being complete. Applications failing to be designated as a complete application within six months from the date of submission to the planning board shall be denied by the board.

(2) *Public hearing.* Within 30 days of designating a conditional use application as a complete application, the planning board shall conduct a public hearing, during which abutters to the proposed project and any other members of the public shall have an opportunity to express their opposition or support for the proposed project. Notification of this public hearing shall be sent to all property owners within a 100-foot radius of the applicant's property line, a minimum of ten days prior to the hearing.

(3) *Site walk.* At any time during the review of the application, the planning board may conduct a site walk. The site walk shall be a legally advertised planning board meeting, at which time the board, representatives of the applicant, and any other interested parties will examine the proposed project site.

(4) *Conditional use review ruling.* Within 60 days of the public hearing, the planning board shall either approve, approve with conditions, or deny the application based on the application's conformance with the applicable performance standards and regulations of this chapter. At the time of decision, the planning board will issue findings of fact documenting the application's compliance or noncompliance with the standards of section 78-1240 and all other standards established in this article, article VIII of this chapter, and other relevant sections of this chapter.

(Ord. of 9-18-2001, § 11.2)

### **Sec. 78-1239. Appeals.**

Decisions of the planning board on conditional use applications are not appealable to the town board of appeals, but may be appealed to the superior Court pursuant to M. R. Civ. P. 80(b).

(Ord. of 9-18-2001, § 11.7)

### **Sec. 78-1240. Standards.**

Before authorizing any conditional use, the planning board shall make written findings certifying that the proposed use is in compliance with the specific requirements governing individual conditional use and demonstrating that the proposed use meets the following standards:

(1) The proposed use will not result in significant hazards to pedestrian or vehicular traffic, on-site or off-site.

(2) The proposed use will not create or increase any fire hazard.

- (3) The proposed use will provide adequate off-street parking and loading areas.
- (4) The proposed use will not cause water pollution, sedimentation, erosion, or contamination of any water supply.
- (5) The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.
- (6) The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.
- (7) The proposed use will provide adequate waste disposal systems for all solid and liquid wastes generated by the use.
- (8) The proposed use will not adversely affect the value of adjacent properties.
- (9) The proposed use will be compatible with existing uses in the neighborhood, with respect to the generation of noise and hours of operation.
- (10) The applicant's proposal must include any special screening or buffering necessary to visually obstruct the subject property from abutting uses or to ensure the continued enjoyment of abutting uses.
- (11) The applicant's proposal must adequately provide for drainage through and for preservation of existing topography within its location, particularly in minimizing any cut, fill, or paving intended.
- (12) The applicant must be found to have adequate financial and technical capacity to satisfy the criteria in this section and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

(Ord. of 9-18-2001, § 11.3)

Secs. 78-1241--78-1265. Reserved.

## **DIVISION 2. CONDITIONS**

### **Sec. 78-1266. Authority.**

Upon consideration of the standards listed in section 78-1240, the planning board may attach such conditions as it finds necessary to ensure compliance with those standards and all other applicable requirements of this chapter. Such conditions may include but are not limited to specifications for type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; hours of operation; operation controls; professional inspection and maintenance; sureties; location of piers, docks, parking and signs; and types of construction. Violation of any conditions of approval shall be a violation of this chapter.

(Ord. of 9-18-2001, § 11.4)

### **Sec. 78-1267. Home occupations.**

The purpose of the home occupation provision is to permit the conduct of only those businesses that are reasonably compatible with the residential districts in which they are located. Home occupations shall comply with the following conditions:

- (1) The occupation or profession shall be carried on wholly within the principal single-family detached dwelling unit or owner-occupied two-family dwelling or within a building or other structure accessory thereto.

(2) The occupation or profession shall be carried on by household members occupying the dwelling unit and one nonresident employee.

(3) There shall be no exterior display, no exterior sign except as expressly permitted by division 5 of article VIII of this chapter, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.

(4) No nuisance shall be generated, including but not necessarily limited to offensive noise, vibration, smoke, dust, odors, heat, glare, traffic or parking.

(5) The traffic generated by such home occupation shall not increase the volume of traffic so as to create a traffic hazard or disturb the residential character of the immediate neighborhood.

In addition to the off-street parking provided to meet the normal requirements of the residential use, adequate off-street parking shall be provided for the vehicles of the users of the home occupation. No more than two parking spaces serving the home occupation shall be permitted. Such off-street parking shall not be located within any required front yard areas and shall be screened from abutting properties.

(6) No retail sales shall be permitted, except those sales which are incidental to the services provided by the home occupation.

(7) The home occupation may utilize:

a. Not more than 20 percent of the dwelling unit floor area, provided that for the purposes of this calculation unfinished basement and attic spaces are not included.

b. Unfinished attic and basement spaces

c. One accessory structure. The floor area utilized in the accessory structure shall not exceed 50 percent of the total floor area of the dwelling unit as previously calculated.

(8) There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation.

(9) There shall be no alteration to the character or usefulness of the dwelling unit or accessory structure for normal residential purposes.

(10) A single sign identifying the name, address, and profession of a permitted home occupation or a lawfully existing nonconforming home occupation is permitted, provided such sign is nonilluminated and does not exceed two square feet. Freestanding signs shall not exceed six feet in height and shall be located on the principal property. Wall-mounted signs shall be located on the principal building and shall not extend beyond the first story.

(11) The following uses shall not be operated as home occupations:

a. Facilities for the repair of motor vehicles.

b. Automobile towing services.

(Ord. of 9-18-2001, § 11.5.1)

**Cross references:** Businesses, ch. 18.

### **Sec. 78-1268. Child care facilities.**

(a) All child care facilities, ~~family day care homes~~, family day care providers, group day care homes, ~~day care center facilities~~, and nursery schools shall comply with the following conditions:

(1) Required play areas for children shall be permitted in rear and side yards only.

(2) All play areas shall be enclosed by a fence 48-inch in height above finished grade. Fence gates shall be latched at the top.

- (3) ~~Day care facilities~~ Child care centers are prohibited in multifamily housing units.
- (4) Individual child care facilities shall be situated no closer to another child care facility than five times the minimum frontage requirement for the zoning district within which the proposed facility is located.
- (5) Off-street parking shall be provided as follows: One parking space per each nonresident employee and a minimum of one parking space per every four children, or portion thereof, of the total number allowed under the state license.
- (b) All child care facilities, ~~family day care homes~~, family day care providers, group day care homes, ~~Day care center facilities~~ child care centers, and nursery schools shall comply with the following conditions, if applicable:
- (1) ~~Family day care homes~~ family day care providers not subject to inspection by the state fire marshal's office shall request an inspection and written report by the local fire inspector's office determining that there are no fire safety hazards present in the home. If fire safety hazards are found to exist, the applicant shall comply with the recommended corrective actions prior to the issuance of a statement of compliance by the code enforcement officer.
- (2) Group day care homes, ~~day care facilities~~ child care centers and nursery schools shall comply with the following conditions:
- a. Access shall be permitted only from the following arterial and collector streets: Ross Road, Cascade Road (Route 98), Portland Avenue, Saco Avenue (Route 5), Old Orchard Road, Ocean Park Road (Route 5), and West Grand Avenue or Temple Avenue in the neighborhood commercial district.
- b. Such facilities shall be permitted only on lots that fully comply with the minimum lot and frontage requirements of the zoning district within which they are located, except that state-licensed facilities existing on the effective date of the ordinance from which this chapter derives shall be allowed to continue upon demonstration of an existing license active. If the use ceases for any reason, for a period of 12 months, any subsequent use of the property shall conform to the regulations specified in the zoning district where the property is located.
- (Ord. of 9-18-2001, § 11.5.2)

**Sec. 78-1269. Private schools.**

Private schools, exclusive of private business or trade schools, shall comply with the following conditions:

- (1) The lot shall be a minimum of one acre.
- (2) The lot shall be enclosed by an effective fence or vegetative screen, a minimum of four feet in height.
- (3) Lot coverage shall not exceed 30 percent of the lot area.
- (Ord. of 9-18-2001, § 11.5.3)

**Sec. 78-1270. Installations of public/private utility facilities.**

Public utility installations shall comply with the following conditions:

- (1) There shall be no overnight parking of vehicles or machinery, except in an enclosed building.
- (2) There shall be no emission of noise or electronic vibration or radiation detectable beyond the premises.

(3) No building or structure in excess of 80 square feet shall be located within 50 feet of a residential lot line.

(4) Off-street parking areas shall be screened by an effective fence or vegetative screen from abutting residential properties.

(Ord. of 9-18-2001, § 11.5.4)

**Sec. 78-1271. Cemeteries.**

(a) Cemeteries, mausoleums, vaults, mortuaries, and columbarias shall be set back a minimum of 50 feet from the front property line.

(b) Memorial gardens shall be set back a minimum of 15 feet from the property line.

(Ord. of 9-18-2001, § 11.5.5)

**Sec. 78-1272. Accessory dwelling unit.**

The purpose of the sections concerning accessory dwelling units is to provide a diversity of housing for residents while protecting the single-family character of residential neighborhoods. Accessory dwelling units are allowed as conditional uses in all residential districts and shall comply with the following conditions:

(1) The accessory dwelling unit shall be accessed via the living area of the primary structure, and all other entrances to the accessory dwelling unit shall appear subordinate to the main entrance. Any proposed additions to the main structure or accessory structures shall be designed to be subordinate in scale and mass to that of the main structure and compatible with the architectural style and quality of the main structure.

(2) The accessory dwelling unit shall have at least 500 square feet of floor area but shall not exceed 50 percent of the floor area of the main dwelling unit. Floor area measurements shall not include unfinished attic, basement or cellar spaces nor public hallways or other common areas.

(3) The dwelling shall be served by a single electrical service.

(4) Only one accessory apartment shall be permitted per lot. It shall be made part of the main residence.

(5) Accessory apartments shall not be permitted for any nonconforming structure or use, where nonconformity is due to the use of the premises, as opposed to nonconforming dimensional requirements.

(Ord. of 9-18-2001, § 11.5.6)

**Sec. 78-1273. Contractor storage yard 2.**

(a) A contractor storage yard 2 may be permitted in the rural district, provided the following conditions are met to the satisfaction of the planning board:

(1) Driveway entrances from the street to parking and storage areas shall not be located within 100 feet of any adjacent residential property.

(2) All parking and storage areas shall be visually blocked from both the street and abutting properties by a solid fence, earth barrier, and/or vegetative planting that at the time of installation shall not be less than ten feet in height.

(3) Any storage yard illumination shall consist of shielded downlight fixtures and shall not shed more than 0.1 footcandle at the property line.

(4) All materials likely to produce odors, dust, or debris shall be contained within a closed structure.

(b) Storage yards shall be permitted only on parcels supporting a single-family detached dwelling or a duplex, and the storage area and/or associated accessory structures must be located in the rear yard area of the residential unit yard.

(Ord. of 9-18-2001, § 11.5.7)

**Sec. 78-1274. Automotive or boat sales, service and/or repair.**

Automotive or boat sales, service and/or repair facilities may be permitted where allowed as a conditional use, provided the following conditions are fulfilled to the satisfaction of the planning board:

(1) Sales display and retail customer parking areas shall be permitted in the front yard setback provided that a 15-foot in depth, curbed buffer strip is constructed between the street curb and the parking/display areas and planted in accordance with requirements as established by the planning board.

(2) Vehicle, equipment, and material storage areas, not directly associated with sales displays, shall be located in the side or rear yard of the property and shall be visually blocked from both the street and abutting properties by a solid fence, earth barrier, and/or vegetative planting that at the time of installation shall not be less than six feet in height.

(3) Properties abutting a residential use shall not install parking, loading, material storage, or equipment storage facilities within ten feet of the side or rear property line.

(4) Freestanding signage containing the stock logo of a vehicle manufacturer shall not exceed 40 square feet in area and shall be no taller than 20 feet in height.

(5) Any storage yard illumination shall consist of shielded downlight fixtures and shall not shed more than 0.2 footcandle at the property line.

(6) Effective measures for the storage, control, and disposal of all fuels, lubricants, and grease/fuel byproducts shall be provided in accordance to standards established by the department of environmental protection.

(Ord. of 9-18-2001, § 11.5.8)

**Sec. 78-1275. Adult business.**

Adult businesses may be permitted in the GB-1 district, provided the customer entrance to the adult business is no closer than 1,000 linear feet, measured in a straight line without regard to intervening structures or objects, to the nearest point on the boundary of any property which is:

(1) Occupied by a licensed day care facility, school, park, playground, church, or public building; or

(2) Occupied by another adult business.

(Ord. of 9-18-2001, § 11.5.9)

**Sec. 78-1276. Mineral extraction.**

All mineral extraction standards shall comply with the performance standards of section 78-1240 and division 9 of article VIII of this chapter.

(Ord. of 9-18-2001, § 11.5.10)

Secs. 78-1277--78-1305. Reserved.

**DIVISION 3. WIRELESS TELECOMMUNICATIONS FACILITIES\***

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**\*Cross references:** Businesses, ch. 18; utilities, ch. 58.

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**Sec. 78-1306. Purpose.**

The purpose of this division is to establish performance standards for the construction of wireless telecommunications facilities (WTF) in the town that:

- (1) Encourages public access to telecommunications service;
- (2) Facilitates fair and equal competition among wireless telecommunications service providers; and
- (3) Requires the construction of telecommunications facilities in a manner that protects the public health, safety, welfare, and preserves the visual cultural character of the town and its neighborhoods.

(Ord. of 9-18-2001, § 11.6)

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**Sec. 78-1307. Location and use requirements.**

(a) *Location of private facilities.* Wireless telecommunications facilities and wireless telecommunications towers may be located within the town zoning districts in accordance with the following table:

TABLE INSET:

Zoning District	New Tower Construction	Collocation on an Existing Tower	Architectural Siting
R-1, R-2, R-3, R-4, R-5	Not permitted	Not permitted	Conditional use
Rural district	Not permitted	Not permitted	Conditional use
Downtown districts 1 and 2	Not permitted	Not permitted	Conditional use
Beachfront resort district	Not permitted	Not permitted	Conditional use
Neighborhood commercial	Not permitted	Not permitted	Conditional use
General business 1 and 2	Not permitted	Not permitted	Conditional use
Industrial	Conditional use	Conditional use	Conditional use
PMUD	Conditional use	Conditional use	Conditional use
SRP, SP	Not permitted	Not permitted	Not permitted
Shoreland activity (SA)	Not permitted	Not permitted	Conditional use

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(b) *Priority of locations.* New wireless telecommunications facilities must be located according to the priorities listed in this subsection. The applicant shall demonstrate to the planning board that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility. The priorities, from highest to lowest, are as follows:

- (1) First priority: architectural siting on an existing structure in the Industrial district.
  - (2) Second priority: architectural siting on an existing public or private structure in the PMUD district.
  - (3) Third priority: architectural siting on an existing public or private structure in the GB-1, GB-2, DD-1, DD-2, or BRD district.
  - (4) Fourth priority: a new tower or facility in an industrial district.
  - (5) Fifth priority: a new tower or facility in the PMUD district.
  - (6) Sixth priority: any other location allowed by subsection (a) of this section.
- (c) *Location of public wireless telecommunication facilities.* Wireless telecommunication facilities may be constructed on land or facilities owned, leased, or operated by the town in any zoning district, provided that the facility meets all performance standards for wireless communication facilities contained in this division.
- (d) *Exemptions.* The following uses are exempt from this division:
- (1) An emergency wireless telecommunication facility established temporarily for emergency use by public officials.
  - (2) Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
  - (3) Parabolic antennas of less than 12 feet in diameter that serve as accessory uses to a property other than a wireless telecommunications facility.
  - (4) Maintenance or repair of an existing wireless telecommunications facility, provided that the use is not expanded and the height of towers or structures is not increased.
  - (5) Temporary wireless telecommunications facilities constructed and or used for a single period of less than 100 days.
  - (6) Antennas as accessory uses: any antenna serving as an accessory use affixed to a residential structure and functioning in conformance with all other pertinent sections of this chapter.
- (e) *Prohibited uses.* Construction and/or architectural siting of wireless telecommunications facilities are prohibited on or attached to the following:
- (1) Any building or structure determined by the code enforcement officer to be physically incapable of supporting the proposed wireless telecommunications facility.
  - (2) Any building or structure determined by the code enforcement officer to be in violation of the town blighted buildings ordinance.
  - (3) Trees, shrubs, or any form of vegetation.
  - (4) Any use that increases or expands the nonconformity of an existing structure, building, or use in any zoning district.
- (Ord. of 9-18-2001, § 11.6.1)

**Sec. 78-1308. Site plan/conditional use review required.**

All expansions of existing wireless telecommunications facilities and construction of new wireless telecommunications facilities shall be reviewed under this article pertaining to conditional uses and article IV of this chapter pertaining to site plan review. Site plan review shall be either administrative or plenary, as follows:

- (1) *Administrative site plan approval.* Procedures for administrative site plan approval are as follows:
  - a. *Expansion of existing facility.* Administrative site plan approval is required for any expansion of an existing wireless telecommunications facility which:

1. Increases the height of an existing antenna on a transmission tower by no more than ten feet;
  2. Increases the size of an accessory structure to the wireless telecommunications facility by no more than 500 square feet in area and no more than 15 feet in height; or
  3. Involves collocation of wireless telecommunications facilities on an existing wireless telecommunications tower which is not increased in height.
- b. *Review by town planner and code enforcement officer.* Where an expansion of an existing wireless telecommunications facility qualifies for administrative site plan approval under subsection (1)a of this section, the town planner and code enforcement officer shall be substituted for the planning board as the reviewing authority for the conditional use under this article.
- (2) *Plenary site plan approval.* All other expansions and all new construction shall require plenary site plan review and conditional use review by the planning board.  
(Ord. of 9-18-2001, § 11.6.2)

**Sec. 78-1309. Submission requirements.**

The applicant for a wireless telecommunications facility shall submit the following materials and information in addition to submission requirements specified in article IV of this chapter and this article:

- (1) *Copy of Federal Communications Commission license.* A copy of the Federal Communications Commission license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current Federal Communications Commission regulations.
- (2) *Certification.* Certification by the applicant that the proposed facility complies with all Federal Communications Commission standards for radio emissions.
- (3) *Topographic map.* A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on rooftops, within a five-mile radius of the proposed facility, unless this information has been previously made available to the town. This requirement may be met by submitting current information, within 30 days of the date the application is filed, from the Federal Communications Commission tower registration database.
- (4) *Site plan.* In addition to plenary site plan requirements in article IV of this chapter, a site plan for a wireless telecommunications facility shall:
  - a. Be prepared and certified by a professional engineer registered in the state.
  - b. Show location, type, and height of the proposed facility, and its antenna capacity.
  - c. Show on-site and abutting land uses.
  - d. Show means of access.
  - e. Demonstrate compliance with all applicable American National Standards Institute (ANSI) technical and structural codes.
- (5) *Visual impact assessment.* In order to determine whether the proposed wireless telecommunications facility will adversely impact the visual quality of the surrounding environs, a visual impact assessment of the facility shall be submitted including the following elements:
  - a. *Elevation drawings.* Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level.

b. *Viewshed analysis.* Viewshed analysis as follows:

1. A viewshed map of the proposed facility showing all locations from which the proposed wireless telecommunications facility would be visible during the summer and winter. The map shall specifically identify visibility from residential neighborhoods, tourist accommodations, recreational areas including the beach, roads and highways, historic and cultural facilities, commercial areas, and future development areas for both day and night conditions.

2. The foreground, midground, and background distance zones from the proposed wireless telecommunications facility shall be designated on the viewshed map. Standard viewer height shall be five feet and standard motorist height shall be 3.5 feet.

c. *Photo simulations.* Photo simulations of the proposed facility taken from perspectives determined by the planning board during the preapplication conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and proposed method of screening.

d. *Visual quality assessment.* An evaluation of the impact of the proposed wireless telecommunications facility on existing visual quality, utilizing replicable and statistically reliable qualitative methods. With prior planning board approval, visual impact assessment models, such as the Bureau of Land Management's visual resource management system, are acceptable tools in generating the qualitative analysis.

e. *Mitigation plan.* An outline of the applicant's strategy for mitigating the adverse visual impacts identified in the visual impact assessment. This includes the use of landscaping, fencing, color modification, and re-siting of the facility. Mitigation plans shall be tested for effectiveness utilizing the same visual impact assessment model employed in the submission requirement in subsection (5)d of this section.

(6) *Service strategy.* A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.

(7) *Historic resources.* Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed or eligible for listing in the National Register of Historic Places (see 16 USC 470w(5); 36 CFR 60 and 800) located within the viewshed of the proposed wireless telecommunications facility.

(8) *Agreement of collocation cooperation.* A signed statement stating that the owner of the wireless telecommunications facility and his successors and assigns agree to:

a. Respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response.

b. Negotiate in good faith for shared use of the wireless telecommunications facility by third parties.

c. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for collocation.

d. Require no more than a reasonable charge for shared use, based on market rates in the community and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity,

depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of such costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

(9) *Performance surety.* A surety bond approved by the planning board, paid and maintained by the applicant for the entire life of the facility to pay for the costs of removing the facility if it is abandoned.

(10) *Agreement to emission compliance reports.* A binding agreement that the applicant will submit annual emission reports to the town demonstrating compliance with Federal Communications Commission electromagnetic emission standards for the facility.

(11) *Certification of electromagnetic noninterference.* Data conclusively demonstrating that the proposed wireless telecommunications facility will not adversely impact the effective operation of other existing electromagnetic and radio devices within the immediate site of the proposed facility.

(12) *Public notification.* Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

(13) *Waiver of submission requirements.* The planning board may waive any of the submission requirements in this section if it finds that such submissions would not provide relevant information necessary for the board to render a reasonable decision.

(Ord. of 9-18-2001, § 11.6.3)

#### **Sec. 78-1310. Approval standards for towers.**

An application for approval of a wireless telecommunications facility tower under section 78-1308(2) must meet the following standards:

(1) *Design for future collocation.* A new wireless telecommunications facility must be designed and constructed to accommodate expansion for future collocation of at least three additional wireless telecommunications facilities or providers, unless the planning board determines that the particular circumstances of the new wireless telecommunications facility or of the property upon which it is located make future collocation infeasible or unlikely.

(2) *Height.* A new wireless telecommunications tower must be no more than 150 feet in height.

(3) *Setbacks.* A new or expanded wireless telecommunications facility must comply with the setback requirements for the zoning district in which it is located or be set back 105 percent of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:

a. In the industrial district, the setback may be reduced to no less than the setback requirement for the zoning district by the planning board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.

b. The planning board may reduce the property line setback for towers supporting communications equipment used by the town emergency services to no less than the setback requirement for the zoning district, provided that the facility is designed to collapse in a manner that will not harm other property.

(4) *Landscaping.* A new wireless telecommunications facility and related equipment must be screened from view from abutting properties, to the maximum extent practicable

with vegetation. Existing plants and natural landforms on the site shall also be preserved to the maximum extent practicable.

(5) *Fencing.* A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

(6) *Lighting.* A new wireless telecommunications facility must be illuminated only as necessary to comply with Federal Aviation Administration or other applicable state and federal requirements. Site security lighting for ground support facilities shall be restricted to shielded downlights that produce no more than 0.5 footcandle at the site property line as approved by the planning board.

(7) *Color and materials.* Except as otherwise required by state or federal law, a new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Muted colors, earth tones, and subdued hues shall be used.

(8) *Structural standards.* A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

(9) *Visual impact.* A new or expanded wireless telecommunications facility must have no unreasonable adverse impact to existing visual quality within the viewshed of the proposed wireless telecommunications facility. Adverse visual impact shall be defined as any one or combination of the following effects:

a. The scale, size, coloration or lighting of the wireless telecommunications facility dominates the observer group's midground or foreground field of view or is positioned within the landscape to serve as a focal point in the background and adversely impacts existing visual quality.

b. The proposed wireless telecommunications facility is visually dominant or visually incompatible with the existing visual quality of major tourist gateways into the town including the following:

1. Saco Avenue corridor.
2. Cascade Road corridor extending to Old Orchard Street.
3. East Grand Avenue corridor extending from Scarborough to Old Orchard Street.
4. West Grand Avenue corridor extending from Saco to Old Orchard Street.

c. The scale, orientation, position, and design of the proposed wireless telecommunications facility visually conflicts with the pattern, texture, and scale of the surrounding built environment.

d. The proposed wireless telecommunications facility is highly visible from critical recreation areas such as the beach and Memorial Park during the peak season from May 1 to October 15 of every calendar year.

e. The wireless telecommunications facility visually dominates and introduces a visually incompatible element into the setting, form, scale and character of a historic district, site, or structure which is currently listed on or is eligible for listing on the National Register of Historic Places.

(Ord. of 9-18-2001, § 11.6.4)

**Sec. 78-1311. Standards for architectural siting (AS) on existing structures.**

Wireless telecommunications facilities proposing to locate on existing buildings structures, flagpoles, or utility poles must meet all the following criteria:

(1) Antennas, receivers, lightning rods, guy wires, and any other wireless telecommunications facility equipment shall be attached to an existing building in such a manner as to not project above the roofline, ridgeline, peak, or steeple of the structure as observed from public lands and ways, or from historic sites and buildings.

(2) A wireless telecommunications facility antenna or equipment attached to a building or structure roof shall not contrast with the color, texture, or linear orientation of the roofing materials.

(3) No wireless telecommunications facility equipment shall be mounted on any structure or located on any property that is in violation of the BOCA National Property Maintenance Code, 1993 edition, or any other building code so adopted by the town council. Buildings or properties in violation of the BOCA National Building Code, 1993 edition, or any other building code so adopted by the town council, or any structure in a dilapidated condition shall be rehabilitated in a manner approved by the planning board prior to the attachment of wireless telecommunications facility equipment.

(4) Wireless telecommunications facility equipment shall be designed to be visually compatible with the texture and color of the background building material.

(5) Mitigation measures of architectural siting of a wireless telecommunications facility shall conform to the dominant architectural period of the host structure.

(6) Wireless telecommunications facility equipment shall be located on the structure so as to be visually compatible with the rhythm and proportion of voids (windows and doors) and solids (facade) of the background structure.

(7) Wireless telecommunications facility equipment shall not project beyond the facade of the building or structure in a manner that visually compromises the profile of the structure at the predominant angle of viewer observation. It is advised that wireless telecommunications facility equipment be visually disguised as architectural detail or incorporated into architectural detail where feasible, especially in locations within the historic districts, on historic structures of moderate to high historic/architectural value, or in areas of high viewer populations.

(8) Ground facilities shall be screened from the street and all adjacent properties in all districts except the industrial district. Buffering shall consist of evergreen vegetation that achieves 90 percent yearround visual obstruction from all potential viewer populations at the time of planting, solid wooden fencing, earth mounding, or combination thereof. The planning board may approve a buffer which achieves less than 90 percent visual obstruction where the proposed ground facility is a building and the planning board determines that the location, style, and architectural detailing of the building are visually compatible with other buildings in the immediate vicinity of the site and with the character of the surrounding neighborhood.

(Ord. of 9-18-2001, § 11.6.5)

**Sec. 78-1312. Amendment to approved application.**

Any changes to an approved application made under this division must be approved by the planning board or the town planner and code enforcement officer in accordance with section 78-1309.

(Ord. of 9-18-2001, § 11.6.6)

**Sec. 78-1313. Abandonment.**

(a) A wireless telecommunications facility that is not operated for a period of 12 consecutive months shall be considered abandoned. The code enforcement officer shall notify the owner of an abandoned facility, in writing, and order the removal of the facility within 90 days of the owner's receipt of the written notice. The owner of the facility shall have 30 days from the receipt of the notice to demonstrate to the code enforcement officer that the facility has not been abandoned.

(b) If the owner fails to show that the facility has not been abandoned, the owner shall remove the facility. If the abandoned facility is not removed within 90 days from the owner's receipt of the original notice, the town may remove the facility at the owner's expense pursuant to 17 M.R.S.A. §§ 2851--2859. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its preconstruction condition, including the removal of roads and reestablishment of vegetation.

(c) If a surety has been given to the town for removal of the facility, the owner of the facility may apply to the planning board for release of the surety when the facility and related equipment are removed to the satisfaction of the planning board.

(Ord. of 9-18-2001, § 11.6.7)

Secs. 78-1314--78-1355. Reserved.

**Sec. 78-1625. Prohibited signs.**

To preserve public safety and control nuisances to adjacent property owners, the following signs and display characteristics are expressly prohibited:

(1) Any rotating signs, signage with moving parts, ~~flashing illumination, illumination that depicts movement,~~ or emits noise or sound effects, excepting bonus area signage permitted in the DD-1, DD-2, BRD and AO district performance standards and such portions of a sign as consist solely of indicators of time and/or temperature or changeable message signs permitted by this Ordinance pursuant to the following standards:

a. The property must be located in the General Business 1, General Business 2, DD1, DD2, AO or Industrial Zoning District.

b. The applicant must demonstrate to the satisfaction of the chief of police that the sign will not constitute a driving hazard.

c. Each message shall be a fixed static display with a five second hold rate of change minimum between changes including the use of subtle transitions such as fade, dissolve, travel and scrolling or similar transitions and with frames that appear to move or change in size, or be revealed sequentially rather than at once including the movement of illumination or the scintillation or varying of light intensity as long as the intermittent lighting is used to change messages and not solely to attract attention. Definitions related to changeable message signs shall have the meanings from 23 M.R.S.A. § 1914(11-A). Time and temperature signs are allowed to change display with a two second message hold rate.

- (2) Any sign and/or illumination that obstructs motorist or pedestrian sight lines, distracts motorist attention from traffic control mechanisms, or casts direct glare into the eyes of pedestrians or motorists.
  - (3) Internally illuminated signs, except where specifically provided in the DD-1, DD-2, AO, and BRD district regulations.
  - (4) Any sign illumination that casts in excess of 0.5 footcandle of illumination onto an adjacent property.
  - (5) Any signage, excepting retractable awnings, that protrudes over a public street or private way or protrudes more than four feet over a public sidewalk and provides less than nine feet of clearance between the bottom of the sign and the sidewalk.
  - (6) Any additional signage suspended from a sign that protrudes over a public way or sidewalk.
  - (7) Rooftop signs located at the peak of a gable or hip roof or above the top of the fascia of a shed or flat roof.
  - (8) Any window or freestanding signage that impedes firefighting access.
  - (9) Signage located in public/private walkways or that obstructs or presents a hazard to pedestrian traffic.
  - (10) Any internally lighted letter board sign which remains on a lot for more than three months unless such sign is permanently anchored to the ground or to a building.
- (Ord. of 9-18-2001, § 5.4.4)

Sec. 78-1627. Temporary signs.

The following temporary signs may be permitted and exempt from the size and dimensional requirements of the zoning district, provided that the signage does not pose a safety hazard and meets all relevant conditions prescribed:

- (1) *Window posters.*
  - (a) Temporary signage placed inside of building windows announcing community events, provided the signage is removed within five days following the event.
  - (b) [Temporary posters or banners placed inside building windows advertising sales, special events or bargains.](#)
  - (c) [Exterior banners for a period not exceeding 30 consecutive days announcing sales, events or similar activities.](#)
- (2) *Business holiday displays.* Temporary holiday lighting, outdoor displays and other decoration of buildings or structures during holiday seasons when such decoration is customary.
- (3) *Real estate signs.* Real estate signs advertising the sale of a property on nonilluminated signs not exceeding an aggregate total of eight square feet in residential districts and 15 square feet in business districts. All signs shall be removed from the premises within two days following the transfer of the property.
- (4) *Community festivals, carnivals, and special events.* Any signage erected by a business, charitable organization, or public organization directly associated with a public festival, carnival, or special community event approved by the town council.
- (5) *Yard sales/garage sales.* Nonilluminated signs advertising a yard sale/garage sale only on a residential property provided all signage is removed within 48 hours of the termination of the yard sale.

(6) *Project signs.* Nonilluminated signs announcing an approved and impending land development project and listing the consultants and contractors involved in the project. Project signs shall be limited to one sign per site and shall not exceed 32 square feet in sign area. Sign duration is a limit of two years.  
(Ord. of 9-18-2001, § 5.4.6)

Sec. 78-1629. Performance standards for signs in all districts.

The following performance standards for signs are applicable to all districts of this chapter:

- (1) All proposed signs shall be sited on the same parcel as the principal building and may be freestanding, located in windows, attached to the building wall at any location below the roof eave or on projecting awnings.
- (2) No signage may be located in a public street, sidewalk, or within any sidewalk or entrance used by the public except a side walk "A" frame signboard not exceeding 2 feet by 2 feet that has received a permit from the Code Enforcement Officer pursuant to Section 78-1623 of this Article. Sidewalk signs are not included in the allowable square footage allowances.
- (3) Any business owner with signage protruding over a town way, path, or sidewalk shall file with the town clerk a certificate of insurance showing that the owner is covered by a minimum of \$250,000.00 of liability insurance and that the town is a named insured with respect to any injury to person or property caused by the protruding sign.
- (4) Open banners. Flags or banners manufactured with the generic word "open" shall be permitted for display on any licensed business property or storefront located in any of the business districts. Such banners and flags shall be exempt from aggregate sign area and dimension requirements specified in the zoning district, provided no advertisement of a business or product is contained thereon and the banner or flag is removed at the close of the business day.
- (5) No illumination source for any sign shall be located within a public right-of-way or on public lands except for municipal uses and community events licensed by the town council.
- (6) Permitted sign area is not transferable between sides of the building located on a corner lot.

Sec. 78-1631. General exemptions.

- (a) *Municipal and state signs.* Signs or signage installed by or at the direction of the town or the state are fully exempt from this division.
- (b) *Designated landmark signage.* Signs receiving special designation from the planning board as landmark signage shall be exempt from section 78-1624. In designating an existing sign as landmark signage, the planning board shall require the applicant to meet three of the following four criteria:
  - (1) The sign is an outstanding example of signage and graphic communication from a specific architectural and design period.
  - (2) The sign has been located on the same premises or business for at least 40 years.
  - (3) The sign is a distinctive example of graphic communication that is unique and recognized by the general public as a landmark within the town.

(4) The signage is compatible with and complements the architectural quality of the principal structure.

(c) *Cornerstones and plaques.* Memorial signs, names of historic buildings and commemorative plaques, and cornerstone dates are exempt from the standards of this division, provided that such signage is permanently affixed to or engraved into the building or freestanding, as long as the signage does not exceed four square feet.

(d) *Menu Boards and Food Selection information.* Menus, food selection and pricing information affixed to restaurants, food stands and other licensed victualer establishments are exempt from the standards of this division provided that such signage does not exceed 1 square foot for each 12 square feet of facade of the building.

Per Order of the Municipal Officers this 4<sup>th</sup> day of October, 2011.

A True Copy

Attest:

s/Kim M. McLaughlin  
Kim M. McLaughlin, Town Clerk