

**SECTION 9 ADMINISTRATION, ENFORCEMENT, AND PENALTIES**

9.1 BASIC REQUIREMENTS..... 124  
9.2 PERMIT APPLICATION ..... 124  
9.3 CERTIFICATE OF OCCUPANCY REQUIRED..... 125  
9.4 ENFORCEMENT OFFICER ..... 125  
9.5 LEGAL ACTION AND VIOLATIONS ..... 126  
9.6 PENALTIES..... 126  
9.7 CONDITIONAL USE PERMITS..... 126  
9.8 SITE PLAN REVIEW.....130

**SECTION 10 BOARD OF APPEALS**

10.1 ESTABLISHMENT AND ORGANIZATION ..... 139  
10.2 PROCEEDINGS OF THE BOARD OF APPEALS ..... 139  
10.3 POWERS AND DUTIES OF THE BOARD OF APPEALS..... 139  
10.4 **VARIANCES** ..... 140  
10.5 APPEALS TO THE BOARD OF APPEALS ..... 141  
10.6 DECISIONS OF THE BOARD OF APPEALS..... 142  
10.7 REPETITIVE APPEALS ..... 143

**SECTION 11 AMENDMENTS**

11.1 AUTHORITY ..... 144  
11.2 PROCEDURE ON AMENDMENTS ..... 144  
11.3 REPETITIVE PETITIONS ..... 145

**SECTION 12 LEGAL STATUS PROVISIONS**

12.1 CONFLICT WITH OTHER LAWS ..... 146  
12.2 VALIDITY AND SEPARABILITY..... 146  
12.3 REPEAL OF PRIOR LAND USE ORDINANCE ..... 146  
12.4 EFFECTIVE DATE..... 146

**SECTION 13 LAND USE DISTRICT DESCRIPTIONS**

13.1 COMMUNITY COMMERCIAL SOUTH ..... 147  
13.2 BUSINESS / OFFICE PARK / INDUSTRIAL ..... 147  
13.3 HIGHWAY COMMERCIAL .....147  
13.4 COMMUNITY COMMERCIAL NORTH..... 148  
13.5 RURAL RESIDENTIAL..... 148  
13.6 RURAL CONSERVATION ..... 148  
13.7 SUBURBAN RESIDENTIAL ..... 149  
13.8 URBAN RESIDENTIAL ..... 150  
13.9 NATURAL RESOURCE CONSERVATION DISTRICT ..... 150  
13.10 MOBILE HOME PARK OVERLAY DISTRICT ..... 150  
13.11 TELECOMMUNICATION FACILITY OVERLAY ZONES ..... 151

**MUSEUM:** A non-profit institution or establishment operated principally for the purpose of preserving and exhibiting structures and/or objects of historical, cultural, scientific or artistic interest and containing associated facilities for meetings, education, restoration, and demonstration purposes. Sale of goods and services related to the museum's principle purpose is permitted as a subordinate and incidental use on the property. (Adopted June 13, 2012)

**NATIONAL GEODETIC VERTICAL DATUM (NGVD):** The national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program. NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)." (Adopted June 11, 2003)

**NEIGHBORHOOD CONVENIENCE STORE:** A retail business of less than 2,500 square feet of floor sales area intended to service the convenience of a residential neighborhood with such items as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items, but not motor vehicle fuels. (Amended June 13, 2007)

**NET RESIDENTIAL ACREAGE:** The gross acreage available for development excluding the area for streets or access and the areas which are unsuitable for development including areas of hydric soils, ponds, any portion of the site which is cut off from the main portion of the site by an existing road, water body, or similar physical condition which interrupts the continuity of the site, and slopes of 25% or more. (Amended November 7, 2000) (Amended June 13, 2007)

**NET RESIDENTIAL DENSITY:** The number of dwelling units per net residential acre.

**NEW CONSTRUCTION:** Structures for which the start of construction commenced on or after June 14, 1995 or the effective date of any amendment to this ordinance as well as any subsequent improvements to these structures. (Adopted June 11, 2003) (Amended June 13, 2007)

**NON-CONFORMING DEVELOPMENT:** A property which consists of a use that is permitted in the district in which it is located, on a lot that meets the dimensional requirements of this ordinance, and a structure that meets the setback and height requirements, but that does not comply with all of the standards of Sections 6, 7, or 8 of this Ordinance. (Adopted June 13, 2007)

**NON-CONFORMING LOT:** A lot that does not meet the minimum lot area, lot frontage, shore frontage, or access requirements of this Ordinance. (Amended June 10, 1997) (Amended June 13, 2007; June 9, 2010)

**NON-CONFORMING STRUCTURE:** A structure that does not meet the setback or height requirements of this ordinance. (Adopted June 13, 2007)

**NON-CONFORMING USE:** The use of land or structures that is not permitted in the district in which it is located. (Adopted June 13, 2007)

**NORMAL HIGH WATER MARK (OR LINE) OF COASTAL WATERS:** Along coastal or tidal waters, the elevations at which vegetation changes from predominately aquatic predominantly terrestrial. By way of illustration, coastal or tidal vegetation includes, but is not limited to: salt marsh grass salt meadow hay, black arrow grass, seaside lavender, silverweed, salt marsh bulrush, seaside plantain, orach, salt marsh sedge, salt marsh aster. In places where vegetation is not present, the high water mark shall be the identifiable debris or water line left by non-storm tidal action. (Amended June 13, 2007)

**NORMAL HIGH WATER MARK (OR LINE) OF INLAND WATERS:** That line on the shores and banks of non-tidal waters which is apparent because of the contiguous different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (by way of illustration, aquatic vegetation includes but is not limited to the following plants and plant groups: water lily, pond grasses, and terrestrial vegetation includes but is not limited to the following plants and plant groups: upland grasses, aster, lady slipper, wintergreen, partridge berry, sarsaparilla, pines, cedars, oaks, ashes, alders, elms, and maples). In places where the shore or bank is of such character that the high water mark cannot be easily determined (rock slides, ledges, rapidly eroding or slumping banks) the normal high water mark shall be estimated from places where it can be determined by the above method. In the case of wetlands adjacent to the Kennebunk River or

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

**TRUCK TERMINAL:** 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 the garaging of the trailer portion of a tractor trailer unit, and/or a storage facility for a motor freight business consisting of one or more truck tractors. On-site repair facilities dedicated only for the trucks associated with the terminal. The terminal shall not be used for long-term or permanent accessory storage or warehousing for principal land uses at other locations. (Adopted June 15, 2011)

**UPLAND EDGE OF A WETLAND:** The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of an inland wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller. (Amended June 9, 2010)

**VARIANCE:** A relaxation of the terms of this ordinance that relate to dimensional requirements such as lot size, setback, or lot coverage. (Amended June 13, 2007)

**VEGETATION:** All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level. (Adopted June 9, 2010)

**VEHICLE:** An automobile, truck or motorcycle. (Adopted November 2, 2010)

**VETERINARY HOSPITALS:** Any building used for the diagnosis and treatment of animals under the supervision of a licensed veterinarian. Such facilities shall not provide long-term lodging for animals on a fee basis and shall not be construed as a home occupation, kennel, or a professional office under the definitions and terms of this Ordinance. (Adopted June 13, 2007)

**VIEWSHED ANALYSIS:** The land area in which a new structure is visible with unaided viewing. An analysis of this area shall entail various perspectives throughout Arundel and for a distance of one mile from the proposed structure. (Adopted April 15, 1998) (Amended June 13, 2007)

**VIOLATION:** The failure of a structure or development to comply with the provisions or standards of this ordinance. (Adopted June 12, 1996) (Amended June 10, 1997) (Amended June 13, 2007)

**VOLUME OF A STRUCTURE:** The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

**WAREHOUSE:** A building, other than a self-storage warehouse, where materials are held in storage for commercial purposes or as part of a business operation. (Adopted June 13, 2007)

**WASTE:** This term shall include hazardous waste, solid waste, special waste, sludge, and septage.

**WATERBODY:** An impounded area of water, including but not limited to ponds, lakes, streams, and tidal waters, but excluding drainage ditches and other manmade structures constructed principally for stormwater control purposes. (Amended June 9, 2010)

**WATERCOURSE:** A periodic or perennial free-flowing body of water within a channel, including but not limited to streams, brooks, tributaries, and drainage swales. (Adopted June 9, 2010)

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

**WETLAND:** A coastal wetland or an inland wetland. (Adopted June 14, 2000) (Amended June 9, 2010)

**WETLANDS ASSOCIATED WITH BRIMSTONE POND AND THE KENNEBUNK RIVER:** Wetlands contiguous with or adjacent to a great pond or river, and which during normal high water, are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation

4.2.C Natural Resource Conservation District to be known as “NRC” (Adopted June 13, 2007)

#### **OVERLAY DISTRICTS**

4.2.D The Shoreland Zone is divided into three districts: (Amended June 14, 2000; June 9, 2010)

4.2.D.1 Resource Protection District to be known as “RP”. (Amended June 14, 2000)

4.2.D.2 Shoreland Overlay District to be known as “SO”. (Amended June 14, 2000)

4.2.D.3 Stream Protection District to be known as “SP”. (Adopted June 9, 2010)

4.2.E Mobile Home Park Overlay District to be known as “MH”.

4.2.F Telecommunication Facility Overlay Zones identified as “TFZ I”, “TFZ II” and “TFZ III”. (Adopted April 15, 1998)

## **SECTION 5 GENERAL PROVISIONS**

### **5.1 NON-CONFORMANCE**

#### **5.1.A General**

All buildings, whether being erected, demolished, altered, or repaired, all parcels of land and the uses of all buildings and land in the Town of Arundel must be in conformance with the provisions of this Ordinance, except those which by the provisions of this Section become nonconforming. All buildings, parcels of land and the uses thereof which are not in conformance with the provisions of this Ordinance are prohibited. (Amended June 10, 1997)

5.1.A.1 **Continuance, Enlargement, Reconstruction:** Any non-conforming structure, legally existing on the effective date of this ordinance, may be continued but may not be extended, expanded, reconstructed, enlarged, or structurally altered except as specified as follows:

5.1.A.2 **Transfer of Ownership:** Non-conforming structures, non-conforming lots of record, and non-conforming uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this ordinance.

5.1.A.3 **Restoration or Replacement:** This ordinance allows the normal upkeep and maintenance of non-conforming uses and structures; repairs, renovations, or modernization which do not involve expansion of the non-conforming use or structure; and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require. Any non-conforming use or structure which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his agent, may be restored or reconstructed within two (2) years of the date of said damage or destruction, provided that:

5.1.A.3.a Any non-conforming structure shall not be enlarged except in conformity with this ordinance and the Maine State Plumbing Code, and

5.1.A.3.b Any non-conforming use shall not be expanded in area. Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.

- 5.1.A.3.c Any structure subject to flood management provisions sustaining substantial damage shall not receive substantial improvement, except in conformity with this ordinance. (Amended 6/12/96)

**5.1.B. Non-Conforming Use**

5.1.B.1 **Resumption Prohibited:** A building or structure in which a non-conforming use is discontinued for a period exceeding two years, or which is superseded by a conforming use, may not again be devoted to a non-conforming use, even if the owner has not intended to abandon the uses. Resumption of a residential use of a structure in the shoreland district is permitted, provided that the structure has been used or maintained for residential purposes within the preceding five (5) year period.

5.1.B.2 **Structure Non-Conforming As To Use:** Any legally established, non-conforming structures as to use, existing on the effective date of this ordinance and / or made non-conforming by the provisions of this ordinance or any amendments made thereto, may be continued subject to the following provisions of this section. These provisions shall not apply to home occupations or to structures and uses that were not legally established. (Amended June 13, 2007)

- 5.1.B.2.a Residential dwellings, that are non-conforming uses, may be enlarged as long as the dimensional requirements of the district in which they are located are met. (Amended June 13, 2007)

- 5.1.B.2.b Non-Residential buildings or structures, that are non-conforming uses, may be enlarged, expanded, reconstructed or rebuilt by no more than 50% in area, calculated over the lifetime of the structure, from the date that said structure is made non-conforming, provided such expansion is approved by the Planning Board and meets the performance standards established in Section 7 and Section 8 and all dimensional requirements of the district in which they are located are met. (Amended June 13, 2007)

- 5.1.B.2.c A non-conforming use of a structure shall not be extended throughout other parts of the building or structure unless those parts of the building or structure that were arranged or designed for such use prior to the adoption of this ordinance. Such extension throughout the building shall comply with the regulations in Subsection 5.1B.2.b above. (Amended June 13, 2007)

5.1.B.3 **Change of Use:** A non-conforming, legally existing use may be changed to another non-conforming use provided that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and the impact on adjacent properties is less adverse than the impact of the former use as determined by the Planning Board. The determination of the appropriateness shall include consideration of the probable effects on traffic safety by volume and type, parking, noise, potential for litter, wastes generation, fumes, odors, erosion and sedimentation. The performance standards in Section 7 and Section 8 of this Ordinance shall apply to such requests to establish new non-conforming uses. (Amended June 9, 2010)

5.1.B.4 **Use of Land:** A non-conforming use of land may not be extended into any part of the remainder of a lot of land. A non-conforming use of land which is accessory to a non-conforming use of a building shall be discontinued at the same time the non-conforming use of the building is discontinued.

In the case of earth removal operations, the removal of earth may not be extended as a non-conforming use beyond the required set-back lines of the specific parcel upon which such operations were in progress when such use became non-conforming. Adjacent parcels in the same or different ownership shall not be eligible for exemption under the non-conforming use provisions unless earth removal operations were in progress on these parcels before these provisions were enacted.

The provision of required off-street parking for an existing non-conforming use shall not be considered the expansion of said use.

**5.1.C Non-Conforming Structures:**

**5.1.C.1 Enlargements Controlled**

- 5.1.C.1.a General Provisions

- A nonconforming structure is one that does not meet the setback requirements, does not meet the building height requirement, or is on a lot that exceeds the maximum lot coverage requirements.

A non-conforming structure may be added to, reconstructed or enlarged only if the addition, reconstruction or enlargement is not closer to the lot line to which the existing structure does not meet the setback requirement, is no taller than an existing structure that does not meet the building height requirements, does not make the maximum lot coverage more nonconforming, or a variance is obtained. In addition, state laws must be adhered to. (Amended June 13, 2001) (Amended June 11, 2003) (Amended June 11, 2008, June 9, 2010)

5.1.C.1.b Telecommunication Facilities

A telecommunication facility/structure or alternative structure used for wireless telecommunications purposes which existed prior to the effective date of the telecommunications amendments to this Ordinance and which was in compliance with the Land use Ordinance prior to the effective date of said amendments, may continue in existence as a nonconforming structure. (Adopted April 15, 1998)

Enlargements to or expansions of telecommunication structures/facilities located outside the telecommunications overlay zones and legally existing prior to the enactment of the Telecommunication Structure/Facility amendments to this ordinance shall be permitted if the enlargements conform to all requirements, other than siting, of the then current telecommunications structure/facilities ordinance. Routine maintenance, including replacement of an existing tower or antenna with a new tower or antenna similar in structure and height, shall be permitted for existing telecommunication towers upon issuance of a building permit issued by the Code Enforcement Officer. New construction other than routine maintenance shall comply with the requirements of this ordinance. The Code Enforcement Officer and/or Town Planner shall determine whether expansion proposed for a nonconforming telecommunication facility satisfies the standards of 8.13. (Adopted April 15, 1998)

5.1.C.1.c Patios, Decks and Porches

The addition of an open patio, with no structures elevated above ground level, shall not constitute the expansion of a non-conforming structure, except within the Shoreland Overlay District. The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a non-conforming structure, except within the Shoreland Overlay District. (Amended June 12, 1996, June 10, 1997, June 13, 2001, June 9, 2010)

The placing of a foundation below a lawfully existing non-conforming structure shall not constitute the expansion of the structure so long as the first floor space of the structure is not increased. (Amended June 13, 2001; June 9, 2010)

5.1.C.2 **Lack of Required Parking or Loading Space:** The use of a structure which does not provide the minimum off-street parking and/or loading spaces, shall not be enlarged, expanded, or altered, unless the minimum parking/loading requirements are provided for the existing and proposed uses, or a variance is obtained. (Amended June 13, 2001)

5.1.C.3 **Conditional Use:** Existing, lawful, structures made non-conforming by this ordinance, may receive conditional use approval in accordance with the provisions of this ordinance, regardless of the fact that the existing structure may not be in conformance in regards to setbacks, building height and lot coverage.

5.1.D **Non-Conforming Lots of Record:**

5.1.D.1 **Single Vacant Lots:** Excluding lots in approved subdivisions subject to Section 5.1.E., a vacant non-conforming lot of record may be built upon provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership at the time of or since adoption or amendment of this ordinance, and that all provisions of this ordinance except lot area and frontage can be met. Variances to setback or other requirements not involving lot area or frontage shall be obtained from the Board of Appeals. (Amended November 7, 2000)

5.1.D.2 **Built Lots:** A non-conforming lot of record, that was built upon prior to the enactment or subsequent amendment of this ordinance is subject to the following restrictions. The structure(s) may be repaired, maintained, or improved, and may be enlarged in conformity with all dimensional

requirements of this ordinance except lot area, lot width or frontage. If any proposed enlargements cannot meet the dimensional requirements of this ordinance, a variance pursuant to Section 10.4 is necessary before any building permits are issued. ( Amended June 10, 1997)

5.1.D.3 **Contiguous Built Lots:** If two or more contiguous lots of record are in same or common ownership at the time of or since adoption or amendment of this ordinance, and if all or some of the lots do not meet the dimensional requirements of this ordinance, and if the existing structure is not accessory to a use on the adjoining lot in common ownership and is used as a separate conforming use for that district the non-conforming lots may be conveyed separately or together, providing the State Minimum Lot Size Law and Plumbing Code are complied with. (Amended June 10, 1997)

5.1.D.4 **Contiguous Lots - Vacant or Partially Built:** If two or more contiguous lots are in same or common ownership of record at the time of or since adoption or amendment of this ordinance, and if any of these lots do not individually meet the dimensional requirements of this ordinance or subsequent amendments, and if one or more of the lots is vacant, or contains only an accessory structure, the lots shall be combined to the extent necessary to meet the dimensional standards of the district in which it is located, except as provided by Section 5.1.E. (Amended June 10, 1997)

#### 5.1.E **Vested Rights**

Non-conforming use rights cannot arise by the mere filing of a notice of intent to build, an application for building permits, or an application for required state permits and approvals. Such rights arise when actual construction has begun, or in the case of pending applications, when the review process on a complete application commences. For such construction to be legal at the time it is commenced the owner must be in possession of and in compliance with validly issued permits, both state and local. Lots within any subdivision, legally recorded in the York County Registry of Deeds, made non-conforming by this ordinance are deemed to have vested rights for 5 years from the effective date of this ordinance. A pending application shall be deemed complete when so designated by a formal vote of the Planning Board.

### 5.2 Non-Conformance in a Shoreland Zone District (Adopted June 9, 2010)

#### 5.2.A. Non-Conforming Structures in the Shoreland Zone

5.2.A.1 **Expansions.** A non-conforming structure may be added to or expanded after obtaining a permit from the Planning Board as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.

(a) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 5.2.A.3 and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

(b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 5.2.A.2 Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 5.2.A.1.a above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

**5.2.A.2 Relocation.**

A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

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

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

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

**5.2.A.3 Reconstruction or Replacement.**

- a. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 5.2.A above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 5.2.A.2 above.



- b. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.
- c. In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 5.2.A.2 above, the physical condition and type of foundation present, if any.

#### **5.2.A.4 Change of Use of a Non-conforming Structure.**

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

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

### **5.2.B Non-conforming Uses in the Shoreland Zone**

**5.2.B.1 Expansions:** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 5.2.A.1(a) above.

**5.2.B.2 Resumption Prohibited:** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

**5.2.B.3 Change of Use:** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 5.2.A.4 above.

### **5.2.C Non-conforming Lots in the Shoreland Zone**

**5.2.C.1 Non-conforming Lots:** A non-conforming lot of record as of the effective date of this amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

5.2.C.2 **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

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

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

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- b) Any lots that do not meet the frontage and lot size requirements of Section 5.2.C.1 are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

#### **5.2.D. Special Exceptions in the Resource Protection District.**

Excepting structure setback requirements, the Planning Board may approve a permit for one (1) single family residential structure on an existing lot located in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

5.2.D.1. **No Alternative Location:** There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.

5.2.D.2. **Pre-existing Lot of Record:** The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.

5.2.D.3. **Minimum Site Standards:** All proposed buildings, sewage disposal systems and other improvements are:

- (a) Located on natural ground slopes of less than 20%; and
- (b) Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain

elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

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

5.2.D.4 **Maximum Building Footprint:** The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

5.2.D.5 **Minimum Setback:** All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

### 5.2.E. Disability Variances in the Shoreland Zone

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

5.2.E.1 **Application Process:** Any applicant seeking a Disability Variance within the Shoreland Zone shall file a variance appeal and shall be reviewed by the Arundel Zoning Board of Appeals in accordance with the provisions of Section 10.4 of this Ordinance and Sections 5.2.E. 2 and 5.2.E. 3 below.

5.2.E.2 **DEP Notification:** A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

5.2.E.3 **Limitations:** The Arundel Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

### 5.3 Principal Residential Buildings (Section added June 9, 2010)

Except for multifamily buildings approved by the Planning Board under Conditional Use Review or Subdivision Review, no lot shall be developed with more than one principal residential building. Existing lots containing more than one principal residential building may be subdivided only if each subdivided lot remains in conformance with the space and bulk requirements for the zoning district in which it is located.

7.4.H Certificate of Compliance.

No land or structures within a special flood hazard area shall be occupied or used until a Certificate of Compliance is issued in writing by the Codes Enforcement Officer subject to the following provisions. (Amended June 11, 2003)

- 7.4.H.1 For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer, an Elevation Certificate completed by a Professional Land Surveyor, for compliance with Sections 7.4.G.6, 7.4.G.7, or 7.4.G.8. (added June 11, 2003)
- 7.4.H.2 The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance. (added June 11, 2003)
- 7.4.H.3 Within 10 working days, the Code Enforcement Officer shall:
  - 7.4.H.3.a review the Elevation Certificate and the applicant's written notification; and,
  - 7.4.H.3.b upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance. (all of 7.4.H.3 added June 11, 2003)

7.4.I **Review of Subdivision and Development Proposals**

When a development, subdivision, or land use is proposed in a flood plain area, the Arundel Planning Board shall assure that during a development plan or subdivision review that the plans:

- 7.4.I.1 All such proposals are consistent with the need to minimize flood damage. (added June 11, 2003)
- 7.4.I.2 All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages. (Amended June 11, 2003)
- 7.4.I.3 Adequate drainage is provided to reduce exposure to flood hazards. (Amended June 11, 2003)
- 7.4.I.4 All proposals include base flood elevations and flood boundaries, and, in a riverine floodplain, floodway data based on engineering practices recognized by the Federal Emergency Management Agency. (Amended June 11, 2003)
- 7.4.I.5. Any proposed development plan must include a condition of plan approval requiring that requires structures on lots in the development be constructed in accordance with Subsection 7.4.G and such requirement will be included in any purchase and sales agreement, deed, lease, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat or plan to be signed by the Planning Board as part of the approval process. (Amended June 11, 2003)

7.4.J **Appeals and Variances**

The Board of Appeals of the Town of Arundel, upon written application of an aggrieved party, shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration of the provisions of this Section. The Board of Appeals may grant a variance from the requirements of this section consistent with state law and the following criteria: (Amended June 11, 2003)

- 7.4.J.1 Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- 7.4.J.2 Variances shall be granted only upon findings by the Board of Appeals, based on evidence presented by the applicant that:
  - 7.4.J.2.a there has been a showing of good and sufficient cause;
  - 7.4.J.2.b there has been a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public

safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances;

7.4.J.2.c the variance will not conflict with other state, federal or local laws or ordinances; and

7.4.J.2.d failure to grant the variance would result in "undue hardship" as defined in Title 30-A M.R.S.A. §4353 Subsection 4. (all of 7.4.J.2 amended June 11, 2003)

7.4.J.3 variances shall only be issued upon a determination that the variance is the minimum necessary , considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary. (Amended June 11, 2003)

7.4.J.4 Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:

7.4.J.4.a other criteria of Section 7.4.J and Section 7.4.G.11 are met; and

7.4.J.4.b the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. (all of 7.4.J.4 added June 11, 2003)

7.4.J.5 Any variance issued by the Board of Appeals shall note in writing that:

7.4.J.5.a issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage; (Amended June 11, 2003)

7.4.J.5.b construction below the base flood level increases risks to life and property; and,

7.4.J.5.c the applicant acknowledges in writing that he is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a flood plain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality and that are related to the use of land located in a floodplain.

7.4.J.6 The Board of Appeals shall submit a copy of its decision to the Codes Enforcement Officer and the Planning Board as appropriate. (Amended June 11, 2003)

7.4.J.7 An appeal of a decision of the Board of Appeals shall be in accordance with Section 10.6.F.

#### 7.4.K **Enforcement.**

7.4.K.1 In addition to any other actions, the Code Enforcement Officer, upon determination that a violation of Subsection 7.4 exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:

7.4.K.1.a The name of the property owner and address or description of the property sufficient to confirm its identity or location; (Amended June 11, 2003)

7.4.K.1.b A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance.

7.4.K.1.c A clear statement that the public body making the declaration has authority to do so and citation to that authority;

7.4.K.1.d Evidence that the priority owner has been provided notice of the violation and the prospective denial of insurance; and,

7.4.K.1.e A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

#### 7.5 **LIGHTING**

7.5.A Lighting may be provided which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of the traveling public on adjacent roadways. Lighting fixtures shall be shielded or hooded so that the lighting

## **SECTION 10 BOARD OF APPEALS**

### **10.1. ESTABLISHMENT AND ORGANIZATION**

A Board of Appeals is hereby established which shall consist of five (5) members and two (2) associate members. The term of office of a member or associate is three (3) years serving staggered terms. A municipal officer or his spouse may not be a member or associate member of the Board of Appeals. When a regular member of the Board is unable to act because of interest, physical incapacity or absence, an associate member shall act in his stead. Members of the Board of Appeals shall be appointed by the Town Manager in accordance with the Town Charter. When there is a permanent vacancy, the Town Manager shall appoint a new member to serve for the remainder of the unexpired term. Members of the Board of Appeals may be removed from office by the Town Manager for cause upon written charges and after public hearing. The Board of Appeals shall elect a chairman and secretary from its own membership.

### **10.2 PROCEEDINGS OF THE BOARD OF APPEALS**

The Board of Appeals shall adopt rules necessary to the conduct of its affairs, in keeping with the provisions of this ordinance and Title 30-A, §2691 and §4353 of the Maine Revised Statutes Annotated. Meetings shall be held at the call of the Chairman and or by a request of a majority of the Board or Selectmen. The Chairman, or in his absence, the Acting Chairman, shall preside at all meetings of the Board and may administer oaths and compel the attendance of witnesses. A quorum of the Board, consisting of three members, shall be present to conduct official business. All meetings shall be open to the public. The Secretary shall keep minutes of the Board's proceedings, showing the vote of its members upon each question, or of absence or failure to vote, and shall keep records of its examinations, official actions and all correspondence, all of which shall be a public record and be filed in the Town Clerk's offices. The Board of Appeals may adopt by-laws which provide for procedures related to the conduct of business before the Board and conduct of its membership. A quorum of the Board shall be at least 3 members, present and eligible to vote, in order to conduct official business requiring a decision on appeal.

### **10.3 POWERS AND DUTIES OF THE BOARD OF APPEALS**

The Board of Appeals shall have the following powers:

#### **10.3.A Administrative Review & Interpretations of the Ordinance.**

To hear and decide appeals where it is alleged there is a zoning violation or error in any order, requirement, decision, interpretation, or determination made by, or failure to act by, the Codes Enforcement Officer or reviewing authority, in the enforcement or administration of this ordinance. When an error of an administrative procedure or interpretation is determined by the Board of Appeals, the matter shall be remanded to the Codes Enforcement Officer or appropriate review authority for reconsideration.

#### **10.3.B Variances.** (Amended June 14, 2000)

To grant variances upon appeal in specific cases, but only within the limitations set forth in this ordinance. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of the ordinance and it may impose such conditions as it deems necessary, to this end. (Amended June 14, 2000)

#### **10.3.C Appeals**

Any aggrieved party may appeal the decision of the Codes Enforcement Officer, Planning Board or Review Board, within 30 days after applicant has been notified of a decision as follows:

##### **10.3.C.1 Appeals involving administration procedures or interpretation of this ordinance may be heard and decided by the Board of Appeals, as detailed below:**

10.3.C.1.a When errors of administration procedure are found, the case shall be referred back to the appropriate official or board for rectification.

- 10.3.C.1.b When the true intent and meaning of this ordinance has been misconstrued or wrongfully interpreted, the Arundel Board of Appeals may modify or reverse the order of action but may not alter the conditions attached by the Codes Enforcement Officer, Planning Board or Review Board. All changes in conditions, shall be made by the Codes Enforcement Officer, Planning Board or Review Board in accordance with the Arundel Board of Appeal's interpretation.
- 10.3.C.1.c Appeals involving administration procedure or interpretation shall lie from the decision of the Codes Enforcement Officer, Planning Board or Review Board to the Arundel Board of Appeals and from the Arundel Board of Appeals to the Superior Court according to State law.
- 10.3.C.1.d Appeals involving conditions imposed by the Codes Enforcement Officer, Planning Board or Review Board, or a decision to deny approval, shall be from the Codes Enforcement Officer, Planning Board or Review Board to the Superior Court, according to State law, when such appeals do not involve administration procedures or interpretation.

#### **10.4 VARIANCES**

Variations may be permitted only under the following conditions:

No variations shall be granted to an applicant seeking a variance from those dimensional requirements established for maximum tower height standards as established in the telecommunication overlay zones by the provisions of Section 8.13 relating to Telecommunications Structures /Facilities. (Amended April 15, 1998) (Amended June 14, 2000)

- 10.4.A Except as set forth above and in Sections 10.4.B and 10.4.C, variations may be granted by the Board of Appeals for a deviation in the setback requirements and from dimensional requirements for lot frontage, lot area, height, structure size, lot coverage and open space requirements. The Board shall not grant a variance unless it finds that all the following criteria are met: (Amended June 14, 2000)
  - 10.4.A.1 The land in question cannot yield a reasonable return unless a variance is granted;
  - 10.4.A.2 The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - 10.4.A.3 The granting of a variance will not alter the essential character of the locality; and
  - 10.4.A.4 The hardship is not the result of action taken by the applicant or a prior owner.
  - 10.4.A.5 The proposed use will not cause or result in unsafe, unhealthful or nuisance conditions.
  - 10.4.A.6 When considering a variance for other than maximum height in Telecommunications Facilities Overlay Zone III, the Appeals Board may require further size information, such as balloon tests, expanded viewshed analysis, or other informational aids before considering an appeal to height designations when an applicant does not have a sufficient number of collocators. (Adopted April 15, 1998)

#### **10.4.B Disability Variance**

A disability variance may be granted by the Board of Appeals from setback requirements to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property.

- 10.4.B.1 The Board shall restrict the variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the property. The Board shall limit the variance to the duration of the disability or to the time the person with the disability lives on the property. Disability shall have the same meaning as a physical or mental handicap as under MRSA 5, §4553.

#### **10.4.C Setback Variance For A Detached Single Family Dwelling**

A setback variance of up to 20%, may be granted by the Board of Appeals, from setback requirements, to a property owner for his primary year round residence when the strict application of the standards would cause an undue hardship to the applicant and his property. The Board shall not grant a variance if the

variance would cause the dwelling to exceed the lot coverage and unless it finds that all the following criteria are met:

- 10.4.C.1 The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- 10.4.C.2 The granting of a variance will not alter the essential character of the locality; and
- 10.4.C.3 The hardship is not the result of action taken by the applicant or a prior owner.
- 10.4.C.4 The granting of the variance will not substantially reduce or impair the use of the abutting property;
- 10.4.C.5 The granting of the variance is based upon the demonstrated need, not convenience, and no other feasible alternative is available.
- 10.4.D [Repealed June 14, 2000]

## **10.5 APPEALS TO THE BOARD OF APPEALS**

### **10.5.A Making an Appeal**

An appeal may be taken to the Board of Appeals by an aggrieved person from any decision of the Code Enforcement Officer. Such appeal shall be taken within thirty (30) days of the decision appeals from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

- 10.5.A.1 Such appeal shall be made by filing with the Board of Appeals a written notice of appeal specifying the grounds for such appeal. For a variance appeal the applicant shall submit:
  - 10.5.A.1.a a sketch drawn to scale showing lot lines, location, of existing building and other physical features pertinent to the variance request.
  - 10.5.A.1.b a concise written statement stating what variance is requested.
- 10.5.A.2 Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board all the papers specifying the record of the decision appealed from. Each appeal shall be accompanied by an administrative fee of one hundred (\$100.00) to cover advertising and administrative costs. If the actual cost of advertising exceeds one hundred (\$100.00) the applicant shall pay the balance. The administrative fee may be increased by the Board of Selectmen, after a public hearing, upon determination that the revenues generated do not cover the administrative costs. The Board of Appeals shall hold a public hearing on the appeal within forty-five calendar (45) days. (Administrative Fee increased to \$250.00 by the Board of Selectmen on May 28, 2002 after Public Hearing.)
- 10.5.A.3 A copy of each variance request within the Shoreland Zone including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

### **10.5.B Procedure On Appeal**

- 10.5.B.1 At least ten (10) days prior to the date of the hearing on such appeal, the Board shall cause to be published in one issue in a newspaper of general circulation in the town a notice which includes:
  - 10.5.B.1.a the name of the person appealing.
  - 10.5.B.1.b a brief description of the property involved.
  - 10.5.B.1.c a brief description of the decision appealed from, or the nature of a variance appeal.
  - 10.5.B.1.d the time and place of the Board's hearing.



- 10.5.B.2 At least ten (10) days prior to the date set for hearing, the Board shall give similar written notice to:
- 10.5.B.2.a all property owners of record whose properties lie within 500 feet of the affected property;
  - 10.5.B.2.b the person making the appeal; and
  - 10.5.B.2.c the Planning Board and any other parties of record.
- 10.5.B.3 The notice will be sent by U.S. Mail, postage prepaid to those persons as listed on the town's tax records.

**10.5.C Hearings**

- 10.5.C.1 The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts.
- 10.5.C.2 The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the Chairman.
- 10.5.C.3 At any hearing, a party may be represented by agent or attorney. The hearing shall not be continued to other times except for good cause.
- 10.5.C.4 If a party does not attend a hearing and is not otherwise represented, its case will be deemed to have been withdrawn without prejudice to refile the appeal. The \$100 filing fee will not be refunded to any applicant whose appeal is withdrawn in this manner.
- 10.5.C.5 The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- 10.5.C.6 The transcript or tape recording of testimony, prepared by the Board, and the exhibits, together with all papers and requests filed in the proceedings, shall constitute the public record.

**10.6 DECISIONS OF THE BOARD OF APPEALS**

- 10.6.A The concurring vote of a quorum of the members of the Board, present and voting, shall be necessary to reverse any order, requirement, decision or determination of the Code Enforcement Officer, or to decide in favor of the applicant on any matter on which it is required to pass under this ordinance, or to affect any variation in the application of this ordinance.
- 10.6.B The Board shall decide all appeals within thirty (30) days after hearing, and shall issue a written decision on all appeals.
- 10.6.C All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis for, upon all the material issues of fact, law or discretion presented, and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Planning Board, agency or office and the Selectmen within seven (7) days of the decision date.
- The Board may reconsider any decision within 30 days of its decision. A vote to reconsider and action thereon shall occur and be completed within 30 days of the original vote. Additional hearings may be held to receive further evidence and testimony.
- 10.6.D Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall issue a Permit in accordance with the conditions of the approval, unless the applicant needs a Conditional Use Permit.
- 10.6.E A variance secured under the provisions of this ordinance by vote of the Board of Appeals shall expire if the work or change involved is not completed within two (2) years of the date on which the variance is authorized.

- 10.6.F Appeals may be taken from any decision of the Board of Appeals within 45 days of the vote on the original decision to Superior Court as provided by law.
- 10.6.G The Chairman of the Board of Appeals shall notify the Department of Environmental Protection of variances granted in the Shoreland Zone within fourteen (14) days of the decision.
- 10.6.H A variance granted by the Board of Appeals is voided unless the applicant records a certificate, within 90 days of the written approval (the date stated on the written approval), in the York County Registry of Deeds, which includes the following:
  - 10.6.H.1 Name of the property owner;
  - 10.6.H.2 Book and Page reference of last recorded deed in the property's chain of title;
  - 10.6.H.3 Statement of the variance, including any conditions, and the date of approval.

**10.7 REPETITIVE APPEALS**

- 10.7.A The Board of Appeals may not consider a second appeal of the same or similar nature for the same property within two years of the date of a denial of an appeal, unless, in a majority opinion of the Board, substantial new evidence is submitted that in the Board's judgment would indicate that an error in law or misunderstanding of facts, has been made. (Adopted June 12, 1996)