

**ZONING and SITE PLAN  
REVIEW ORDINANCE**

**TOWN of FALMOUTH, MAINE**

**May 13, 2013**



**ZONING AND SITE PLAN REVIEW ORDINANCE**  
**Chapter 601**  
**TOWN OF FALMOUTH, MAINE**

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# TABLE OF CONTENTS

<b>SECTION 1. PURPOSES, AUTHORITY, SCOPE AND INTENT .....</b>	<b>7</b>
<b>SECTION 2. DEFINITIONS.....</b>	<b>8</b>
<b>SECTION 3. ESTABLISHMENT OF DISTRICTS .....</b>	<b>28</b>
3.1 Districts	28
3.2 "F" - Farm and Forest District	28
3.3 "RA" - Residential A District	30
3.4 "RB" - <b>Residential B</b> District	31
3.5 "RC" - Residential C District [Adopted, 8/30/73]	33
3.6 Village Center Districts (VC1, VC2 and VCC)	34
3.7 "BP" - Business and Professional District	50
3.8 "MUC" - Mixed Use Cluster District	51
3.9 "VMU" - Village Mixed Use District	52
3.10 "CO" - Route 100 Corridor Overlay District [Amended, 7/22/91]	54
3.11 "OSRD" - Open Space Residential District [Adopted, 3/27/89] [Repealed 6/19/06]	56
3.12 Conditional Rezoning [Adopted, 7/23/90]	56
3.13 "RCZO" -- Resource Conservation Zoning Overlay District	58
3.14 West Falmouth Crossing Master Planned Development District* [Adopted 1/26/98] [Amended 12/22/05; 6/15/09]	69
3.15 Village Center Overlay District [Adopted, 11/23/98][Repealed 5/13/13]	74
3.16 Retirement Community Overlay District [Adopted 11/23/98, Amended 10/13/09, 05/30/12]	74
3.17 Highland Lake Conservation Overlay District [Adopted 11/27/00]	80
3.18 Tidewater Master Planned Development District [Adopted, 4/4/05]	84
3.19 Conditional Zone – 234 Middle Road [Adopted 11/24/08; Effective 01/13/09]	91
3.20 Elementary School Redevelopment District (ESRD) [Adopted 05/30/12]	93
3.21 Water View Overlay District (WVOD) [Adopted 05/30/12]	95
<b>SECTION 4. GENERAL PROVISIONS.....</b>	<b>96</b>
<b>SECTION 5. SPECIFIC REQUIREMENTS .....</b>	<b>98</b>
5.1 Accessory Uses	98
5.1.1 Roadside Stands [Adopted 02/27/12]	98
5.2 Deposit of Waste Material	99
5.3 Boat Storage	99
5.4 Buffers	99
5.5 Off-Street Parking [Amended, 5/24/04][Amended 5/13/13]	99
5.6 Loading Area Requirements [Amended 5/13/13]	100
5.7 Animals	100
5.8 Dwelling Units	102
5.9 Multiplex	102
5.10 Installation of Manufactured Housing Units	102
5.11 Permanent Signs - General Provisions [Amended 5/26/09][Amended 1/24/11, 05/30/12]	103
5.12 Temporary Signs [Amended 5/26/09] [Repealed 5/30/12]	104
5.13 Regulations Applicable to Permanent Signs [Amended 5/26/09; 1/24/11; 5/13/13]	104

5.14	Maximum Size of Freestanding Signs (square feet of display area) [Amended 05/30/12]	106
5.15	Maximum Size of Wall Signs (square feet of display area) [Amended 05/30/12; 5/13/13]	106
5.16	Maximum Number of Freestanding Signs Per Lot [Amended 05/30/12; 05/13/13]	107
5.17	Free-Standing Signs - Other Requirements [Amended 1/24/11; 5/30/12; 5/13/13]	107
5.18	Wall Signs - Other Requirements [Amended 1/24/11]	107
5.19	Illumination of Signs [Amended 1/24/11]	107
5.20	Height Restrictions	107
5.21	Home Occupations [Amended 10/25/93, 04/09/12]	108
5.22	Accessory Structures	109
5.23	Service Stations and Garages	111
5.24	Junk Yards and Salvage Operations Prohibited	111
5.25	Congregate Housing	112
5.26	Recreational Vehicles	112
5.27	Private Ways	112
5.28	Extractive Industries	114
5.29	Cemeteries	114
5.30	Day Care Centers	115
5.31	Net Residential Area [Amended 8/26/96] [Amended 7/24/2000][Amended 7/11/2011]	115
5.32	Light Manufacturing	116
5.33	Transmission Towers [Adopted,4/23/90]	116
5.34	Placement or Removal of Fill Material [Adopted 7/22/91] [Amended 9/22/03]	118
5.35	Elderly Boarding Care [Adopted, 5/28/96]	118
5.36	Residential Growth Permit [Adopted 7/24/00] [Amended 5/24/04; 12/19/06; 5/13/13]	119
5.37	Preservation, Maintenance, and Inspection of Plant Materials [Adopted 7/23/01]	122
5.38	Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands [Adopted 12/18/01] [Amended 7/11/2011]	125
5.39	Erosion and Sedimentation Control [Adopted 9/22/03]	129
5.40	Diverse Housing in Mixed Use Developments [Adopted 5/24/04][Repealed 5/13/13]	135
5.41	Personal Use Airstrip [Adopted, 9/26/05]	135
5.42	Private Access Drives For Country Estates Lots [Adopted 12/22/05]	135

## **SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS..... 137**

## **SECTION 7. SHORELAND ZONING..... 143**

7.1	Purposes	143
7.2	Authority	143
7.3	Applicability [Amended 5/26/09]	143
7.4	Conflicting Regulations [Adopted 5/26/09]	143
7.5	Permits Required [Adopted 5/26/09]	144
7.6	Permit Application [Adopted 5/26/09] [Amended 3/14/11]	144
7.7	Plumbing Permit Required [Adopted 5/26/09]	144
7.8	Permits Issued by Planning Board [Adopted 5/26/09]	144
7.9	Special Exceptions [Adopted 5/26/09]	144
7.10	Expiration of Permit [Adopted 5/26/09]	145
7.11	Districts and Zoning Map	145
7.12	Interpretation of District Boundaries [Amended 5/26/09]	145
7.13	Establishment of Districts [Amended 5/26/09]	146
7.14	Table of Land Uses [Amended 5/26/09]	147
7.15	Land Use Standards [Amended 5/26/09]	148
7.16	Agriculture [Amended 5/26/09]	149
7.17	Campgrounds	149
7.18	Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting [Amended 5/26/09]	150

7.19	Erosion and Sedimentation Control [Amended 9/22/03]	152
7.20	Mineral Exploration and Extraction [Amended 5/26/09]	152
7.21	Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland [Amended 5/26/09]	153
7.22	Roads and Driveways [Amended 5/26/09]	154
7.23	Septic Waste Disposal [Amended 5/26/09]	155
7.24	Soils [Amended 5/26/09]	156
7.25	Structures and Lots, Principal and Accessory [Amended 5/26/09]	156
7.26	Timber Harvesting [Amended 5/26/09]	158
7.27	Water Quality	159
7.28	Individual Private Campsites [Adopted 5/26/09]	159
7.29	Essential Services [Adopted 5/26/09]	160
7.30	Archaeological Sites	160
<b>SECTION 8. BOARD OF ZONING APPEALS .....</b>		<b>162</b>
8.1	Appointment and Composition	162
8.2	Appeals	162
8.2.1	Mislocated Single Family Dwelling Appeal [Adopted 11/24/08]	162
8.3	Conditional Uses	163
8.4	Variances	164
8.5	Set-back Variance For Single-Family Dwellings [Adopted, 5/27/93]	164
8.6	Disability Variance	165
8.7	Conditions	165
8.8	Appeal Procedures	165
8.9	Meeting Procedures	167
8.10	Order of Applications	167
<b>SECTION 9. PLANNING BOARD SITE PLAN REVIEW .....</b>		<b>168</b>
9.1	Site Plan Approval Required [Amended 4/28/03]	168
9.2	Site Plan Review Procedure [Amended 3/14/11]	168
9.3	Planning Board Action	171
9.4	Effect of Final Approval	172
9.5	Transfer of Approval	172
9.6	Duration of Final Approval	172
9.7	General Site Plan Review Standards	172
9.8	Specific Performance Standards and Guidelines	173
9.9	Subdivision Standards	173
9.10	Parking Area Design Standards	173
9.11	Marking and Delineation of Parking Areas	174
9.12	General Circulation and Parking Design Guidelines	174
9.13	Waiver of Parking or Loading Requirements	175
9.14	Entrances Location and Design	175
9.15	Driveway Angles	176
9.16	Driveway Dimensions	176
9.17	Driveway Surfacing	177
9.18	Driveway Profile	177
9.19	Driveway Grades	177
9.20	Acceleration Lanes	177
9.21	Deceleration Lanes	177
9.22	Drive-Through Facilities	177
9.23	Lighting Design Standards	178
9.24	General Buffer Standards	179
9.25	Special Landscape and Buffer Requirements in the BP District	180

9.26	Special Landscaping and Buffer Requirements in the SB District [Amended 9/24/90][Repealed 5/13/13]	181
9.27	Special Landscape and Buffer Requirements in the CO District [Amended 7/22/91]	181
9.28	Other Landscaping Requirements	181
9.29	Standards for Residential Planned Developments	182
9.30	Minimum Five Acre Site Plan in the BP District.	184
9.31	Environmental Considerations [Amended 9/22/03]	184
9.32	Site Conditions	185
<b>SECTION 10.</b>	<b>ADMINISTRATION .....</b>	<b>186</b>
10.1	Permit Required	186
10.2	Issuance and Time Limits of Permits	186
10.3	Access to Properties for Inspections	186
10.4	Required Application Submissions	186
10.5	Investigation of Complaints	187
10.6	Revocation of Permits	187
10.7	Legal Prosecution of Violations	188
10.8	Certificates of Occupancy	188
10.9	Violations and Penalties	188
10.10	Amendments to the Zoning & Site Plan Review Ordinance	188

**CHAPTER 601**  
***THE ZONING AND SITE PLAN REVIEW ORDINANCE***

**SECTION 1. PURPOSES, AUTHORITY, SCOPE AND INTENT**

Conflict of Laws, Validity, Severability

- 1.1 This Falmouth Zoning and Site Plan Review Ordinance and its regulations are designed for all the purposes of zoning embraced in Maine Revised Statutes, among other things: to promote and conserve the health, safety, convenience, and welfare of the inhabitants; to encourage the most appropriate interrelationships of land uses and groups of land uses in the various parts of the town; to secure safety from fire, panic, epidemics, flooding and other dangers; to provide adequate access of light and air; to prevent overcrowding of real estate; to lessen congestion in the streets; to facilitate the adequate provisions of transportation, water, sanitary facilities, schools, parks and other public requirements, to strengthen the economic base and enhance the appearance of the business and commercial districts throughout the town; to protect significant natural, historic, and cultural resources, to preserve open space, and to preserve and increase amenities throughout the Town of Falmouth [Amended, 4/27/87; 12/22/05]
- 1.2 Under the authority of the Title 30 M.R.S.A. 1917 and 4962, any other enabling statutes, and all amendments thereto, the Town of Falmouth hereby regulates pursuant to this Ordinance the inspection, materials, construction, demolition, alteration, repair, height, bulk, area, ground coverage, location and use of buildings and structures, and the use of land, throughout the Town; and also hereby divides the Town into districts of defined and described herein, and shown on an official copy of the Town zoning map, as amended, including the Resource Conservation Zoning Overlay District Map, on file with the Town Clerk which map is hereby incorporated into this Ordinance. [Amended 12/22/05]
- 1.3 In general, this Ordinance is complementary to other Falmouth ordinances affecting the use, height, area and location of buildings and the use of land, but where this Ordinance imposes a greater restriction in any respect than is imposed by other laws, the provisions of this Ordinance shall control.
- 1.4 The invalidity of any section or provision of this Ordinance shall not affect the validity of any other section or provision.
- 1.5 It is the intent of this Ordinance that any use not specifically allowed as either a permitted use or a conditional use is specifically prohibited. The Town Council may amend this Ordinance to allow other permitted uses and conditional uses pursuant to Section 10.10.

## **SECTION 2. DEFINITIONS**

The word "shall" is mandatory and the word "may" is permissive. Terms not defined shall have the customary dictionary meaning. Other terms shall be defined as provided in this section.

**Accessory Apartment:** A separate and subordinate dwelling unit located within a single family detached dwelling. [Amended 5/24/04]

**Accessory Building or Use:** A subordinate building or use customarily incidental to, and located on the same lot with, the main building or use, such as a garage, workshop, and the like.

**Accessory Cottage:** A separate and subordinate dwelling unit that is located on the same lot as a single family detached dwelling but is contained in a detached garage or other out building, or is its own structure. [Adopted 5/24/04]

**Accessory Dwelling Unit:** An Accessory Apartment or Accessory Cottage. [Adopted 5/24/04]

**Acre:** A measure of land containing 43,560 square feet.

**Affordable Housing:** Decent, safe, and sanitary dwellings, apartments or other living accommodations for households making at or below eighty (80%) percent of the median household income as determined by the Maine Department of Economic and Community Development. [Adopted 3/27/89]

**Aggrieved Person or Party:** A person who participated in a hearing, if one is held under this ordinance, and who suffers a particularized injury as a result of the grant or denial of a permit, approval, or variance under this ordinance.

**Agriculture:** The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Alteration:** A change, addition, or modification, requiring construction, including any change in the location of structural members of buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative changes.

**Animal Husbandry:** Boarding, raising, breeding or keeping of animals, fowl or birds, for commercial purposes including, without limitations, swine, poultry, cattle and horses.

**Antenna:** A system of electrical conductors that emit or receive radio waves, including microwave dishes. [Adopted, 7/23/90]

**Aquaculture:** the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species (applies to Shoreland Zoning, Section 7). [Adopted 5/27/92]

**Art & Craft Studio:** A business or commercial establishment which provides working space for artists or craftspeople including facilities for classes or demonstrations and the sales of foods. Activities may include the sales of supplies or materials necessary for these activities. [Effective 1/25/88]

**Assisted Living Facility:** A residential facility that provides a State licensed program of assisted living services to consumers in private apartments in buildings that include a common dining area.

## **SECTION 2. DEFINITIONS (cont.)**

Services include medication management, 24-hour supervision, and assistance with the activities of daily living, social activities, transportation and other health-related services. [Adopted 10/13/09]

**Attic:** The unfinished portion or portions of a building which are located immediately below and wholly or partly within the roof framing.

**Auto Repair Service Garage** [Repealed 5/13/13]

**Auto Service Station** [Repealed 5/13/13]

**Automobile Dealership:** A facility that sells or leases new or used automobiles, light trucks or other similar motorized transportation vehicles. The facility may maintain an inventory of the vehicles for sale or lease on site and may provide on-site facilities for the repair and service of the vehicles as an accessory use. [Adopted 5/13/13]

**Automobile Graveyard:** A yard, field, or other area used as a place of storage for three or more unserviceable, discarded, worn-out or junked automobiles.

**Automobile Related Sales and Service** [Repealed 5/13/13]

**Automobile Sales:** [Repealed 5/13/13]

**Ballet Arts Facility:** A business establishment engaging in dance instruction and performances in ballet, tap, jazz and modern dance; or theatrical performances. [Adopted 5/24/04]

**Bank of Parking:** One row of parking, including access, in front of a building's primary façade, regardless of angle. [Adopted 5/13/13]

**Basement:** A space underneath a building having at least one-third (1/3) but not more than two-thirds (2/3) of its floor to ceiling height above the average finished grade within twenty (20) feet of the building and with a floor to ceiling height of not less than six and one half (6 1/2) feet.

**Bed and Breakfast Establishment:** A business, whether carried on in a commercial building or dwelling, which has a maximum of eight (8) bedrooms and which provides overnight accommodations and breakfast, but no other meals or cooking facilities, to guests for compensation. No guest may stay longer than seven (7) consecutive nights. [Amended, 5/27/93]

**Board:** The Board of Zoning Appeals of the Town of Falmouth.

**Boat Launching Facility:** A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers (applies to Shoreland Zoning, Section 7). [Adopted 5/27/92]

**Building:** Any structure designed or intended for the shelter, housing or enclosure of persons, animals, processes, equipment or property of any kind.

**Building Inspector:** The Building Inspector of the Town of Falmouth, also referred to as the Code Enforcement Officer.

**Built, Erected:** The words "built" and "erected" shall each contain the other and shall include the words "constructed," "reconstructed," "altered," "enlarged," "moved," and any others of like significance.

**Business and Professional Offices:** The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance businesses, psychiatrists, counselors, and the like, or in which a business conducts its administrative, financial or clerical operations including banks and other financial services. [Amended, 7/22/91, 5/27/93].

## **SECTION 2. DEFINITIONS (cont.)**

**Cellar:** A space, underneath a building, with less than one-third of its floor to ceiling height above the average finished grade within twenty (20) feet of the building or with a floor to ceiling height of less than six and one half (6 1/2) feet.

**Cemetery:** Property used for the interring of the dead.

**Change in Use:** The change from an existing use to another use, including without limitation, the addition of a new use to an existing use.

**Channel:** A water-course between defined banks created by the action of surface water and characterized by the lack of terrestrial vegetation and by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock.

**Church:** A building or structure, or groups of buildings or structures, designed, primarily intended or used for the conduct of religious services and accessory uses associated therewith.

**Coastal high hazard area:** The portion of the 100-year floodplain that is subject to storm related coastal flooding and that is identified as a coastal high hazard area on the most recent version of the FEMA floodplain maps for Falmouth. [Adopted 12/22/05]

**Code Enforcement Officer:** Code Enforcement Officer of the Town of Falmouth, also referred to as the Building Inspector.

**Commercial School** – A for-profit business facility or institution which provides instruction or tutoring by previous arrangement for a particular skill or subject to a group of students in a classroom or similar type setting and may include private lessons as an ancillary service. By way of example only, commercial schools may include schools for performing arts, fine arts, photography, driving, pottery, business, beauty, sports, language or driving.

**Common Open Space:** Land within or related to a subdivision that is set aside to conserve natural resource, scenic, cultural, historic, or archeological values, provide active or passive recreation, or accommodate support facilities related to the subdivision, and that is restricted from significant development or intensive use except for approved recreational or support facilities and protected in perpetuity in a substantially undeveloped state through legally binding fee ownership or conservation easements. [Adopted 12/22/05]

**Conditional Use:** A conditional use is a structure or use which is generally appropriate with restrictions in a given zone, which if controlled as location, size and off-site impacts may have no adverse effects upon the public health, safety or welfare. The only structures or uses which shall be permitted as conditional uses are those listed as conditional uses in Section 3 or specifically described as conditional uses in other provisions of this Ordinance.

**Conditional Rezoning:** The process by which a property owner or developer, in consideration for the rezoning of his property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

**Congregate Housing:** "Congregate Housing" means residential housing consisting of private apartments and central dining facilities and within which a congregate housing supportive services program serves elderly occupants. [Amended 10/13/09]

**Conservation Subdivision:** A subdivision meeting the requirements of Section 3.13.5 in which a significant portion of the site is set as common open space and permanently protected. [Adopted 12/22/05]

**Country Estate Lot:** An oversized residential lot that meets the requirements of Section 3.13.6 or 7. [Adopted 12/22/05]

## **SECTION 2. DEFINITIONS (cont.)**

**Country Estate Subdivision:** A subdivision consisting of Country Estate lots meeting the requirements of Section 3.13.6. [Adopted 12/22/05]

**Currently Developed:** Areas having at least one principal structure per five hundred (500) feet of shoreland or wetland frontage, when these areas extend for more than one thousand (1,000) feet (applies to Shoreland Zoning, Section 7). [Adopted 5/27/92]

**Day Care Center:** A private establishment providing day care for 13 or more persons which charges for their care and holds all legally required licenses and approvals.

**Day Care Home:** A private home providing day care for up to 12 persons which charges for their care and which holds all legally required licenses and approvals. A day care home may also include the part time care of up to 20 persons. Part time in this use shall mean: 1) 4 hours or less per day, per person, and 2) the total number of persons during the day not to exceed 20.

**Deck:** A level structure adjacent to a building elevated above the surface of the ground which may have a railing, but no roof, awning or other covering.

**Decorative Changes:** Repainting, residing, reroofing; adding, removing or replacing trim, railings, or other non-structural architectural details.

**Designated Great Pond, River, Saltwater Body, Stream or Wetland:** A water body or area of land represented on the Official Zoning Map and subject to regulation under various provisions of Section 7 Shoreland Zoning of this Ordinance. [Adopted 5/27/92; amended 5/26/09]

**Diverse Housing:** housing that is not age-restricted and is integrated with retail, service, office and/or restaurant uses in a mixed use development. [Adopted 5/24/04]

**Dormer:** A dormer is a modification of a roof which increases the elevation of a portion of that roof for the purposes of providing either more interior space or a window.

**Drive-Through Facility:** A use, otherwise allowed as a permitted or conditional use in the district where located, which is designed or used in such a manner as to permit customers or patrons to receive goods or services while remaining in their motor vehicles. [Adopted, 4/27/87]

**Dwelling:** A structure or portion thereof containing one or more dwelling units, but not including a motel, hotel, boarding house, tourist home, mobile home, or similar structure.

**Dwelling, Multiplex:** A building designed or intended to be used, or used exclusively for residential occupancy by three (3) or more families living independently of one another and containing three (3) or more dwelling units, including apartment buildings and condominiums, but excluding single-family dwellings with an accessory apartment permitted under Section 5.22.

**Dwelling, Single Family Detached:** A building designed or intended to be used exclusively for residential occupancy by one family only and containing only one (1) dwelling unit, or one (1) dwelling unit with an accessory apartment as permitted under Section 5.22, including a manufactured housing unit with no horizontal dimension smaller than twenty-four (24) feet.

**Dwelling, Two-Family:** A building in the Tidewater Master Planned Development District designed or intended to be used, or used exclusively for residential occupancy by two (2) families living independently of one another and containing two (2) dwelling units, including condominiums, but excluding accessory apartments as permitted under Section 5.22. [Adopted, 4/4/05]

**Dwelling Unit:** A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing

## **SECTION 2. DEFINITIONS (cont.)**

cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units. All dwelling units must contain a minimum of 600 sq. ft. of floor area. [Amended 5/26/09]

**Elderly Boarding Care:** Care for persons over the age of 60 which is greater than that necessarily attendant upon mere eating and lodging services but which is less than that attendant upon nursing home or hospital care. Elderly boarding care may include personal supervision, protection from environmental hazards, diet care, grooming care, hand and foot care, skin care, mouth and teeth care, shampooing, bathing, assistance in ambulation, supervision and assistance in the administration of medications, diversional or motivational activities, and stimulation of, or assistance in, activities of daily living or physical exercise. [Adopted 5/28/96]

**Elderly Boarding Home:** An owner occupied house having no more than four (4) elderly residents which for consideration is maintained wholly or partially for the purpose of providing elderly residents with boarding care. The term elderly boarding care does not include any facility otherwise providing residential services, health care, treatment, rehabilitation, or related services or other facilities within the definition of “health institution”, as defined in this Ordinance. Conversion of a single family dwelling to use as an elderly boarding home shall not be considered an expansion or enlargement requiring approval under Section 6 provided there is no enlargement of the structure. [Adopted 5/28/96]

**Emergency Operations:** Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate distribution or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

**Essential Services:** Facilities for the transmission or distribution of water, gas, electricity or communications or for the collection, treatment or disposal of wastes, including, without limitation, towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants and similar accessories but not buildings.

**Excavating Business:** The operation by a lot owner of the business of off-site land excavation incidental to construction of buildings, driveways, parking areas, streets and the like, including the on-site storage of vehicles and equipment and the maintenance of administrative offices associated therewith. [Amended, 4/25/88]

**Extractive Industries:** The excavation, processing or storage of soil, topsoil, peat, loam, sand, gravel, rock or other mineral deposits, not including:

- a. The excavation of material incidental to approved construction of buildings, driveways or parking areas;
- b. The excavation of material incidental to and at the site of construction or repair of streets; and
- c. The excavation, processing or storage of less than one hundred (100) cubic yards of material on a lot within a one year period.

**Family:** One or more persons occupying a dwelling unit, whether or not related to each other by birth, adoption or marriage, but not to consist of more than 6 unrelated persons.

**Farm Stand:** [Repealed 02/27/12]

**Farmer’s Market:** An open-air market that provides area farmers with the capability to market their products directly to consumers. Farm products that can be sold include, but are not limited to

## **SECTION 2. DEFINITIONS (cont.)**

vegetables, fruits, herbs, berries and other items grown for human food; natural fibers such as wool and linen; seedlings, plants, greenhouse or nursery stock, house plants, perennials and ornamentals; livestock products (but not livestock), products of the woodlot; items manufactured on the farm using any of the aforementioned products as ingredients; and non-commercial baked goods produced on the farm. [Adopted 7/23/01]

**Farming:** The cultivation of the soil for food products or other useful or valuable growth of the field or garden, nursery stock and non-commercial greenhouses, but excluding animal husbandry.

**Flood Plain:** Land subject to inundation by storm or flood water caused by overflow from the normal high water mark of any coastal or inland waters, or as defined or identified by the Flood Boundary Maps of the Town of Falmouth.

**Floodway:** The portion of the 100-year floodplain that must remain open and undeveloped and that is identified as a floodway on the most recent version of the FEMA floodplain maps for Falmouth. [Adopted 12/22/05]

**Floor Area, Gross:** The sum in square feet, of the total floor area of a building, as measured from the interior faces of the outside walls. In the Shoreland Zone, floor area shall include the horizontal area of any unenclosed portions of a structure such as porches and decks. [Adopted, 5/27/92]

**Floor Area Ratio:** The gross floor area of all buildings on a lot divided by the lot area. [Adopted 12/22/05]

**Forest Management Activities:** Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads (applies to Shoreland Zoning, Section 7). [Adopted 5/27/92]

**Forestry:** Management of forest land primarily for the growth and harvesting of trees.

**Foundation:** The supporting substructure of a building or other structure (excluding wooden sills and post supports in the Shoreland Zone and notwithstanding provisions in the FEMA Coastal Construction Manual), including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material. [Adopted 5/27/92; amended 5/26/09]

**Four Step Design Process:** A process for laying out a subdivision or Country Estate Development by identifying open space, home sites, access and lot lines as set forth in the Town of Falmouth's Land Subdivision Ordinance. [Adopted 12/22/05]

**Frontage, Shore:** The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation (applies to Section 7 Shoreland Zoning). [Adopted 5/27/92; amended 5/26/09]

**Frontage, Street:** The horizontal distance measured between the intersections of the side lot lines of a lot with the right-of-way of a street.

**Functionally water-dependent uses:** Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal 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, marinas, navigation aides, basins and channels, which cannot reasonably be located or operated at an inland site, and uses

## **SECTION 2. DEFINITIONS (cont.)**

which primarily provide general public access to marine or tidal waters (applies to Shoreland Zoning, Section 7). [Adopted 5/27/92]

**Gas Station:** A business establishment engaged in the sale of engine fuel (stored only in underground tanks), kerosene, motor oil and lubricants, directly to the public. All dispensing of fuels, lubricants, and fluids shall be done entirely on the property. [Adopted 5/13/13]

**Great Pond:** Any inland body of water which in a natural state has a surface area in excess of ten (10) acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres. [Adopted 5/27/92; amended 5/26/09]

**Grocery Retail:** A self-service retail store selling primarily food products for consumption off site. [Adopted 11/26/12]

**Habitable Attic:** An attic which has a stairway as a means of access and egress and in which the ceiling area at a height of 7 1/3 feet above the attic floor is not more than one third the area of the next floor below. Every bedroom and living area in a habitable attic shall have a second means of escape. This second means of escape shall either be 1) an egress window within 20 feet of grade, 2) a window which is directly accessible to the fire department rescue apparatus as approved by the Fire Chief, or 3) a window or door which opens onto an exterior balcony. [Adopted, 7/22/91]

**Half-Story:** An attic or habitable attic as defined. A half story shall also include a basement which has more than one third but less than half of its floor to ceiling height above the average finished grade within twenty feet of the building. [Amended, 7/22/91]

**Health Institutions:** A hospital, clinic, nursing home, boarding care facility and any other place for the treatment or diagnosis of human ailments other than a professional office.

**Home Occupation:** An accessory use of a dwelling unit for gainful employment as permitted in Section 5.21.

**Horticultural Nursery:** The growing, cultivation, storage, and sale of garden plants, seeds, flowers, trees, shrubs, and fertilizers, as well as the sale of garden tools and similar accessory and ancillary products, to the general public. [Adopted 5/13/13]

**Hotel:** A building with guest rooms used primarily for transient occupancy of individuals who are lodged, with or without meals, with the majority of the rooms having access through the main lobby of the building. [Amended 5/13/13]

**Household Pet:** A tame or domesticated animal living primarily within a dwelling unit and kept for the enjoyment of its occupants.

**Impervious Surface:** That portion of a site which is or will be improved with principal and accessory buildings and structures, and driveways, parking lots, pedestrian walkways, signs and other improvements on the surface of the ground which are more impervious than the natural surface of the site.

**Internal Drive** – A private street created in a VC District with or without a dedicated right of way which may provide frontage for purposes of establishing front setbacks for buildings. [Adopted 5/13/13]

**Invasive Species:** Species of plants as listed below. [Adopted 5/13/13]:

Scientific Name	Common Name
Alliaria petiolata	Garlic mustard

## SECTION 2. DEFINITIONS (cont.)

Scientific Name	Common Name
Berberis thunbergii	Japanese barberry
Celastrus orbiculata	Asiatic bittersweet
Cynanchum louiseae	Black swallowwort
Eleagnus umbellata	Autumn olive
Fallopia japonica	Japanese knotweed
Frangula alnus	Glossy buckthorn
Hydrilla verticillata	Hydrilla
Impatiens glandulifera	Himalayan balsam
Lonicera morrowii	Morrow honeysuckle
Lonicera tartarica	Tartarian honeysuckle
Lythrum salicaria	Purple loosestrife
Myriophyllum heterophyllum	Variable-leaf milfoil
Myriophyllum spicatum	Eurasian milfoil
Phragmites australis	Common reed
Poa nemoralis	Wood blue grass
Potamogeton crispus	Curly pondweed
Rhamnus cathartica	Common buckthorn
Rosa multiflora	Multiflora or Rambler rose

**Junkyard:** A yard, field or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap or junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste or scrap iron, steel or other ferrous or non-ferrous materials, including garbage dumps, waste dumps and sanitary landfills.

**Kennel:** An establishment in which more than four (4) dogs or four (4) cats more than one year old are housed, bred, boarded, trained or sold.

**Land Reclamation:** The placement of solid fill and materials in a formerly excavated gravel pit for the purpose of reclamation of such gravel pit, provided, however, that all necessary Maine Department of Environmental Protection permits have been obtained. [Amended, 4/25/88]

**Landscape Buffer:** An area within a property or site, generally adjacent to and parallel with a property line, either consisting of natural existing vegetation or created by the use of trees and shrubs, designed to limit continuously the view of and/or sound from the site to adjacent sites or properties. [Adopted 8/26/96]

**Landscaped Buffer Strip:** A landscaped area adjacent to and parallel with the front property line of a lot or parcel. The border strip may be crossed by drives, access roads or pedestrian ways but otherwise shall be maintained in a landscaped state. The border strip shall not be used for parking, the storage of material, equipment or wastes or the display of any equipment, material or products. [Effective 1/25/88]

## **SECTION 2. DEFINITIONS (cont.)**

**Library:** A public or private facility that provides physical and/or electronic availability of books, periodicals, and other information sources and media to the general public or members. [Adopted, 4/4/05]

**Light Manufacturing:** a business establishment engaged in the manufacturing, packaging, processing, assembling, or testing of goods or products, provided that all operations shall be carried on indoors and in such a manner as to confine smoke, fumes, dust, odors, and noise to the premises, and that no operations shall constitute a hazard by reason of the potential for fire, explosion, radiation release or other casualty. [Adopted, 4/27/87]

**Local farm and food products:** agricultural, marine, forestry, horticultural, viticultural, dairy, livestock, poultry, and bee raising products or the processed or manufactured products thereof grown, processed, packaged, and distributed by Maine citizens or businesses located wholly within the borders of Maine. [Adopted 02/27/12]

**Local home prepared foods:** food products processed or produced in a non-commercial kitchen in the state of Maine. [Adopted 02/27/12]

**Lot:** An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the Planning Board and recorded in the Cumberland County Registry of Deeds.

**Lot Area:** The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a designated wetland and areas within the right-of-way of streets as defined. [Adopted, 5/27/92]

**Lot Coverage:** That percentage of the lot covered by buildings.

**Lot Front:** On any lot bounded on more than one side by a street, or a lot bounded by both a street and ocean or lake frontage, the "lot front" shall be the street, lake or ocean frontage designated "lot front" in any building permit application for such lot.

**Lot Lines:** The property lines bounding a lot.

**Lot Line, Front:** The line separating the lot from a street and ordinarily regarded as the front of the lot. On any lot bounded on more than one property line by a street, the front lot line shall be that property line of the lot designated as "street frontage" in any building permit application for such lot.

**Lot Line, Rear:** The line opposite and most distant from the front lot line; or in the case of triangular or otherwise irregularly shaped lots, a line ten (10) feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

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

**Lot of Record:** A lot shown on a deed or subdivision plan recorded in the Cumberland County Registry of Deeds as of a certain date. [Adopted 12/22/05]

**Lot Width:** The width of any lot shall be measured wholly within the lot, at the required setback depth, along a line parallel to the front lot line. Lots located on a curved street shall be measured wholly within the lot, at the required setback depth, along a line parallel to a straight line connecting the intersections of the front lot line with the side lot lines.

## **SECTION 2. DEFINITIONS (cont.)**

**Manufactured Housing Subdistrict:** 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 Section 5.10.

**Manufactured Housing Unit:** A mobile home constructed after June 15, 1976, which complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974 and complies with the standards set forth below, or a modular home which the manufacturer certifies is constructed in compliance with the State of Maine's Manufactured Housing Act and Regulations and complies with the following additional standards:

- a. The unit shall be constructed with a pitched roof having a pitch of 3 in 12 or greater.
- b. The roof shall be covered with asphalt composition shingles or wood shingles or shakes which meet the requirements of the Falmouth Building Code.
- c. The exterior wall surfaces shall be covered with materials similar to traditional site-built housing units. These materials may include clapboards, simulated clapboards such as conventional vinyl or metal siding, wood shingles, or similar materials, but shall not include smooth, ribbed or corrugated metal or plastic panels except as permitted above.
- d. The minimum horizontal dimension of the unit as installed on the site shall be fourteen (14) feet.
- e. The minimum floor area of the unit shall be seven hundred and fifty (750) square feet.

**Manufacturing:** The making of goods and articles by hand or machinery including assembly, fabrication, finishing, packaging and processing.

**Marina:** A business establishment having frontage on the navigable water within the town and providing for hire off shore mooring or docking facilities for boats and accessory services and facilities such as: boat sales, rental and storage, marine supplies and equipment, marina engine and hull repairs, construction and outfitting of pleasure craft, fuel and oil, electricity, fresh water, ice, shower and laundry facilities and on-premises restaurant.

**Marquee:** A permanent structure fastened entirely to a building and projecting from the wall above an entrance to provide shelter for automobile passenger loading and unloading to the entrance.

[Adopted 5/13/13]

**Mineral Exploration:** Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Mixed Use Development:** A planned, integrated development involving two or more different uses including, but not limited to, office, residential, light manufacturing, and retail, in an architecturally harmonious environment with common access and utility systems. [Effective 1/25/88]

**Mobile Home:** A detached dwelling unit designed to be transported, after fabrication, on streets or highways on its own wheels, or on a flat bed or other trailer or on detachable wheels, and not meeting the definition of a manufactured housing unit.

**Motel:** A building or group of attached or detached buildings containing rental guest rooms with or without cooking facilities in each room, most rooms having a separate bathroom and outside entrance, designed or intended to be used by automobile transients.

## **SECTION 2. DEFINITIONS (cont.)**

**Multiplex:** A group of attached dwellings containing dwelling units arranged side by side or back to back or in other configurations.

**Municipal Use:** A governmental use funded in whole or in part by the Town of Falmouth including, by way of illustration, without limitation, municipal buildings, public schools, public parks, public recreational facilities, fire stations, and Town owned and operated antennae and towers serving public works, police, fire, or rescue agencies.

**Museum:** A non-profit institution operated principally for the purpose of preserving and exhibiting objects of historical, cultural, scientific or artistic interest and which may also engage in incidental retail sale of items related to its principal purpose.

**Neighborhood Variety/Convenience Store:** A store with up to 3,000 square feet of gross floor space intended to serve a residential neighborhood with a limited variety of foods, beverages and dry goods, including, but not limited to, newspapers, emergency home repair articles and other household items. It may also include the sale of prepared foods, for consumption on or off-site, provided that such sale is accessory to the principal use and does not use drive-through.

[Adopted 8/28/06]

**Net Leasable Area:** In a building or project, floor space that may be rented to tenants excluding common areas and space devoted to the heating, cooling, and other equipment of a building.

**Reserved** [Repealed 1/24/11]

**Nonconforming Structure, Use or Lot:** A structure, use, or lot, lawfully existing prior to the effective date of this Ordinance in 1965 or lawfully existing between that date and the effective date of the revision of this Ordinance in 1983, or the effective date of any amendment to this Ordinance, which is not a permitted structure, use or lot in the district where located pursuant to the provisions of this Ordinance, as amended.

**Normal High-Water Line:** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. In the case of coastal wetlands, the normal high-water line is considered to be the upland edge of the wetland, and not the edge of the open water (applies to Section 7 Shoreland Zoning). [Adopted, 5/27/92; amended 5/26/09]

**Normal High Water Mark, Coastal Waters:** That line on the shore of tidal waters which is ten (10) feet above mean low water sea level.

**Normal High Water Mark, 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 the 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 -- 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.

## **SECTION 2. DEFINITIONS (cont.)**

**Nursing Facility:** “Nursing Facility” means an institution or a distinct part of an institution which is primarily engaged in providing skilled nursing care and related services for residents who require medical or nursing care, rehabilitation services or health-related care and services above the level of room and board. [Adopted 10/13/09]

**Open Space:** The portion of a lot or site which is maintained in its natural state or planted with grass, shrubs, trees or other vegetation and which is not occupied by buildings, structures or other impervious surfaces.

**Outdoor Display of Automobiles** – An area of a lot, used for the display of automobiles for purchase or lease, which use is accessory to a building used as an automobile dealership and located on the same lot. [Adopted 5/13/13]

**Outdoor Eating Areas:** An area designed to provide outdoor seating for customers as an accessory use to a restaurant or carry-out restaurant. This term shall not include areas set aside for employees. [Adopted, 5/28/96]

**Outdoor Recreation Facilities:** Any outdoor recreational use such as, but not limited to, golf courses, tennis courts, riding stables, swimming pools, or ice skating rinks, but not including campgrounds, drive-in movie theaters, race tracks, water slides, miniature golf and mechanical or motorized rides. [Adopted, 4/27/87]

**Outdoor Retail Display**– A dedicated area of a lot, used for display of merchandise or goods available for purchase from the business and directly accessible by the public, which use is accessory to a building used for retail on the same lot. [Adopted 5/13/13]

**Outdoor Sales and Storage:** The sale or storage of goods or materials outdoors as an accessory to a permitted or conditional use which is conducted in a building or permanent structure. [Adopted, 4/27/87]

**Parking Space:** An area abutting a street or drive measuring at least nine (9) feet in width by eighteen (18) feet in length, exclusive of space required for access and maneuvering, and intended or used for parking passenger vehicles.

**Patio:** A level area adjacent to a dwelling unit constructed of stone, cement or other materials located at ground level, with no railing or other structure above the level of the ground.

**Person:** An individual, firm, association, organization, partnership, trust, company or corporation.

**Personal Service:** An establishment where nonprofessional services, involving the care of a person or of their personal goods or apparel, are provided. This definition applies only to the Residential Community Overlay District (RCOD). [Adopted 10/13/09]

**Personal Use Airstrip:** A personal use airstrip is a grass landing strip to be used by fixed wing aircraft and which strip meets the requirements of Section 5.41. [Adopted, 9/26/05]

**Place of Worship:** A building or structure, or groups of buildings or structures, designed, primarily intended or used for the conduct of religious services and accessory uses associated therewith. [Adopted 5/13/13]

**Planning Board:** The Planning Board of the Town of Falmouth.

**Pond:** Any inland body of water, except a man-made body of water, completely surrounded by land held by a single owner.

## **SECTION 2. DEFINITIONS (cont.)**

**Primary Conservation Area:** The portion of a site containing: 1) land that meets the descriptions in subsections 5.31.1, Net Residential Area, c, d or f; 2) a protected natural resource as defined in subsection 5.38.3, Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands; or 3) land within a buffer or setback required by subsection 5.38.4. [Adopted 12/22/05]  
[Amended 12/17/07]

**Primary façade** – The first floor face of a building in a VC District which serves as the main pedestrian entrance and faces a public street or internal drive. [Adopted 5/13/13]

**Primary frontage** – In a VC District the frontage on which the main entrance of a building faces. [Adopted 5/13/13]

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

**Principal Use:** The primary use to which the premises are devoted or for which the premises are arranged, designed or intended to be used.

**Private Access Drive:** An alternative form of access to a Country Estate lot that meets the requirements of Section 5.40. [Adopted 12/22/05]

**Private Club:** A group of people organized for a common purpose to pursue common goals, interests or activities, such as social or recreational, and usually characterized by certain membership qualifications, payment of fees or dues, and a constitution and bylaws.

**Private School:** A private institution for education or instruction including a college, university, or school conducting classes pursuant to a program approved by the State Board of Education or similar governmental agency, but not including commercially operated schools, such as schools of beauty, culture, business, dancing, driving, music or recreation.

**Processing of Mineral Materials for Resale:** The handling, screening, or storage of soil, topsoil, peat, loam, sand or rock extracted from an off-site source for the purpose of resale. [Amended, 4/25/88]

**Public Utilities:** Are facilities for the transmission or distribution of water, gas, electricity, or communication; or for the collection, treatment, or disposal of wastes. This definition shall not include transmission towers or underground utilities. [Adopted, 7/22/91]

**Recent Flood Plain Soils:** The following soil series as described and identified by the National Cooperative Soil Survey (applies to Shoreland Zoning, Section 7) [Amended, 5/27/92]:

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

**Recreational Vehicle:** A vehicle or vehicular attachment not exceeding three hundred twenty (320) square feet in gross floor area designed for temporary sleeping or living quarters for one or more persons, including without limitation, a pick-up camper, travel trailer, tent trailer or motor home.

**Research Facilities:** Facilities involved in the intellectual or physical study and analysis of materials, organisms, or ideas. [Adopted 4/4/05]

**Residential Planned Development:** A planned, integrated residential development involving detached single-family dwellings, two-family dwellings or multiplexes or a combination thereof

## **SECTION 2. DEFINITIONS (cont.)**

in an architecturally harmonious environment with common access and utility system. [Effective 1/25/88]

**Restaurant:** An establishment where food and drink is prepared and served to or consumed by the public.

**Restaurant - Carry-out:** A restaurant which by design of physical facilities or by service or packaging procedures permits as a principal use the purchase of prepared, ready-to-eat food intended to be consumed off the premises. [Adopted, 4/27/87]

**Restaurant - Drive-Through:** A restaurant which may contain indoor and/or outdoor seating and has a drive-through facility which permits customers to obtain food and drink while remaining in their vehicles. [Adopted, 4/27/87]

**Retail and Service Establishment:** A business establishment engaged in the sale, rental, or lease of goods or services to the ultimate consumer for direct use or consumption and not for resale, and may include the display and sale of products and services outside of the building occupying up to and including 100 square feet of area. Fuel pumps are considered an accessory use to a retail and service establishment in all districts except VC1 and VC2. [Adopted 4/27/87] [Amended 5/13/13]

**Riding Stable:** Any land or structure designed, intended or used for the keeping of horses or ponies for hire, either with or without instructions in riding.

**Riprap:** Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less. [Adopted, 5/27/92]

**Road:** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motor vehicles. Within the Shoreland Zone, the term road includes driveways. [Amended, 5/27/92]

**Roadside Stand:** A permanent structure accessory to either a residential or farm use intended for retail of locally made products as identified in Section 5.1.1 of this ordinance. [Adopted 02/27/12]

**Salt Marsh:** Areas along coastal waters (most often along coastal bays) which support salt tolerant species, and where, at average high tide during the growing season, the soil is regularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Salt Meadow:** Areas which support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Secondary Conservation Area:** The portion of a site that has open space, recreational, natural resource, scenic, cultural, historic, or archeological value and should be considered for inclusion within the common open space of a conservation subdivision but is not within the Primary Conservation Area. [Adopted 12/22/05]

## **SECTION 2. DEFINITIONS (cont.)**

**Senior Center:** A facility with regular operating hours and staff that provide for a broad spectrum of health, social, nutritional and education services and recreational activities targeted for persons sixty (60) years of age and older. [Adopted 5/30/12]

**Service Garage:** A business establishment engaged in general repair, engine rebuilding, parts replacement, rebuilding or reconditioning of motor vehicles, body, frame or fender straightening and repair, painting and undercoating, Repair of motor vehicles shall performed inside an enclosed building. [Adopted 5/13/13]

**Setback:** The horizontal distance from the nearest part of a structure to a lot line or street line, whichever is closer to the structure. [Amended, 1/24/00]

**Setback, Front:** The setback from the front lot line. [Amended, 1/24/00]

**Setback, Normal High-Water Line:** The nearest horizontal distance from the normal high-water line of a water body or from the upland edge of a designated wetland to the nearest part of a structure, road, parking space or other regulated object or area (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Setback, Rear:** The setback from the rear lot line. [Amended, 1/24/00]

**Setback, Side:** The setback from a side lot line. [Amended, 1/24/00]

**Side Street:** Bucknam Road, Depot Road, Clearwater Drive and Fundy Road. This definition is applicable to the VC Districts. [Adopted 5/13/13]

**Sign:** An object, device, display or structure, or part thereof, situated outdoors which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.[Amended 1/24/11]

- a. **Advertising Sign:** A sign that directs attention to a business, or profession conducted, or to a commodity or service sold, offered, or manufactured, or to an entertainment offered on the premises where the sign is located.[Adopted 1/24/11]
- b. **A-Frame:** A portable sign composed of two surfaces of the same size and attached on one side so that the sign is hinged and can be easily placed or removed on the ground by one individual. [Adopted 5/26/09]
- c. **Billboard:** A structure designed, intended or used for advertising a product, property, business, entertainment, service, amusement or the like, and not located where the matter advertised is available or occurs. A billboard is deemed not to be a sign as otherwise defined herein.
- d. **Bulletin Board:** A sign in connection with any church, museum, library, school or similar public structure which includes general announcements of events or activities occurring at the institution, or a similar type message. [Adopted 5/30/12]
- e. **Directional Sign:** An unofficial or non-standard traffic control sign, containing no commercial message except logos, intended to direct or regulate the movement of traffic and/or pedestrians. This includes, but is not limited to, 'enter', 'exit', 'drive through', and directional arrow signs. These signs may be freestanding or mounted on a building. [Adopted 5/13/13]
- f. **Free Standing Sign:** A sign supported by one (1) or more uprights or braces permanently affixed into the ground.
- g. **Fuel Pump Canopy Sign:** A sign affixed to the vertical plane of a roof covering fuel pumps. [Adopted 5/13/13]

## SECTION 2. DEFINITIONS (cont.)

- h. Marquee Sign: A sign affixed to a marquee. [Adopted 5/13/13]
- i. Portable Sign: A sign not designed or intended to be permanently affixed into the ground or to a structure.
- j. Projecting or Blade Sign– A sign that is wholly or partly dependent upon a building for support, projects more than 12 inches from the wall and whose sign faces are perpendicular to the wall on which it is mounted. [Adopted 5/13/13]
- k. Property Identification Sign: a sign designed for the sole purpose of identifying a residential or commercial property or development as per Section 5.13, located at the primary entrance to the site.[Adopted 1/24/11][Amended 5/30/12]
- l. Roof Sign: A sign located upon or over a roof of a building.
- m. Temporary Sign: A sign designed, intended to be displayed or displayed for a limited period of time.[Amended 1/24/11, 5/30/12]
- n. Tenant Directory Sign – A sign fixed to a wall adjacent to an entrance of a building whose content is a list of tenants and their location within the building. [Adopted 5/13/13]
- o. Wall Sign: A sign attached to, supported by, or projecting from a building wall, awning, canopy or part thereof. Wall signs shall not project more than twelve inches beyond the roof edge or the face of the wall, awning or canopy to which they are mounted. [Amended 1/24/11] [Amended 5/13/13]
- p. Projecting Sign: A sign which is attached to and projects perpendicular from a building wall or other structure or a sign hanging from a projected roof. [Adopted 02/27/12]

**Sign Area**: The rectangular area of the sign containing all written and graphical content, measured as the smallest height and width dimensions that include all content and excluding any supporting structure such as a stone wall. (Applicable to property identification signs) [Adopted 1/24/11]

**Sign Display Area or Display Area**: The total area of one face of a sign, excluding supporting structures. For signs composed of two surfaces of the same size only one side of display area is measured for purposes of calculating allowable maximum display area.(Not applicable to property identification signs) [Adopted 1/24/11][Amended 5/30/12]

**Sign Refacing or Refacing**: The replacement of a portion of sign content such as a sign panel. [Adopted 1/24/11]

**Sign Supporting Structure**: The portion of a sign consisting of materials not included in the sign area, such as a stone wall or fence. [Adopted 1/24/11] [Amended 05/30/12]

**Site**: An area of land in single or multiple ownership or leasehold upon which a multiplex, conservation subdivision, commercial development or other similar development is located or to be located. [Amended 12/22/05]

**Site Inventory and Analysis**: The Site Analysis Sketch Plan, Site Analysis Narrative, and Existing Resources Site Analysis Plan and supporting data as set out in the Land Subdivision Ordinance that describe the site proposed to be subdivided and analyze the opportunities and constraints for open space preservation, subdivision, and development. [Adopted 12/22/05]

**Skilled Nursing Facility**: Skilled Nursing Facility” means an institution or a distinct part of an institution which is primarily engaged in providing skilled nursing care and related services for residents who require medical or nursing care or rehabilitation services on an inpatient basis and do not require acute level of care. [Adopted 10/13/09]

## **SECTION 2. DEFINITIONS (cont.)**

**Story:** That portion of a building contained between any floor and the floor or ceiling next above it, unless defined as an attic, cellar or half story.

**Stream:** A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which has two (2) or more of the following characteristics.

- a. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey seven-and-one-half (7.5) minute series topographic map or, if that is not available, a fifteen (15) minute series topographic map.
- b. It contains, or is known to contain, flowing water continuously for a period of at least six (6) months of the year in most years.
- c. The channel bed is primarily composed of mineral material such as sand and gravel, parent material, or bedrock that has been deposited or scoured by water.
- d. The channel contains aquatic animals such as fish, aquatic insects, or mollusks in the water or, if no surface water is present, within the stream bed.
- e. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

Stream does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale. [Adopted 5/27/92; amended 5/26/09]

**Street:** For the purposes of this Ordinance, the term street shall include:

- a. A way established or maintained under public authority;
- b. A way shown on a plan of a subdivision duly approved by the Planning Board and recorded in the Cumberland County Registry of Deeds;
- c. A private way 50 feet wide subject to the requirements of Section 5.27.
- d. The following existing private ways are hereby considered streets as a matter of right:

Pride Farm Road (Road 2)	Rockaway Road (Road 1)
Hideaway Lane (Road 4)	Shaw Road
Huston Road (Road 3)	Stagecoach Road
Madokawando Road	Sunset Road (Road 5)
Old Powerhouse Road	Thornhurst Road
Lowell Farm Road (Road 6)	

**Structure:** Any combination of materials covering more than 10 square feet constructed or erected above or below or upon the surface of the ground or water including a porch or deck. The term structure shall not include:

- a. a boundary wall or fence;
- b. an awning or tent for a specific event (limited to 6 days) for which a town permit has been issued;
- c. an uncovered and unenclosed patio or terrace;
- d. a retractable awning or shade used solely to screen a door or window;
- e. a backyard tent used for sleeping; or
- f. paving of driveways or parking lots, except in the Shoreland Zone.[Adopted 4/27/87]

**Tier I Personal Wireless Service Facility or Tier I Facility:** As defined in the Personal Wireless Service Facilities Ordinance. (Town of Falmouth Code of Ordinances, Chapter 8, Article X) [Adopted, 4/25/05]

## **SECTION 2. DEFINITIONS (cont.)**

**Tier II Personal Wireless Service Facility or Tier II Facility:** As defined in the Personal Wireless Service Facilities Ordinance. (Town of Falmouth Code of Ordinances, Chapter 8, Article X) [Adopted, 4/25/05]

**Tier III Personal Wireless Service Facility or Tier III Facility:** As defined in the Personal Wireless Service Facilities Ordinance. (Town of Falmouth Code of Ordinances, Chapter 8, Article X) [Adopted, 4/25/05]

**Timber Harvesting:** The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Town:** Municipality of Falmouth, Maine.

**Tradesman's Office:** The office of a self-employed craftsman or person in a skilled trade involving only the management of the business and including no exterior storage of vehicles, material or equipment. [Effective 1/25/88]

**Transition Zone:** The area between the edge of the property boundary abutting the Route One right of way and the sidewalk located within the Route One right of way. [Adopted 5/13/13]

**Transmission Tower:** Any free standing or guyed structure, except for amateur (ham) radio towers and municipally owned and operated towers, on which transmitting and/or receiving antennae and associated cable and supports are located. [Adopted, 4/23/90]

**Unfragmented Habitat Block:** An area with a minimum of one hundred fifty (150) acres of contiguous mature forest. [Adopted 12/22/05]

**Upland Edge:** The boundary between upland and wetland (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Variance:** A relaxation of the provisions of this Ordinance imposing restrictions of height, lot coverage, lot size, or setback as permitted by Section 8.4 of this Ordinance.

**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 (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Warehouse:** A structure or building used primarily for the storage of articles, goods or materials. [Adopted, 4/27/87]

**Waterbody:** Highland Lake, the Presumpscot and Piscataqua Rivers, tidal areas, and any designated stream (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Water crossing:** Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables, as well as maintenance work on these crossings (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]

**Wetlands:** See wetland, coastal; wetland, forested; wetland, freshwater; wetland, inland; and wetland of special significance. [Adopted, 5/27/92; amended 5/26/09]

**Wetland, Coastal:** All tidal and subtidal land; an area with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; or any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables, published by the National

## **SECTION 2. DEFINITIONS (cont.)**

Ocean Service. A coastal wetland may include portions of a coastal sand dune. [Amended 5/27/92; amended 5/26/09]

**Wetland, Forested:** A freshwater wetland dominated by woody vegetation that is twenty (20) feet tall or taller (applies to *Section 7 Shoreland Zoning*). [Adopted, 5/27/92; amended 5/26/09]

2.68 **Wetland, Freshwater:** A swamp, marsh, bog, and similar area that is inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances does support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and is not considered part of a great pond, coastal wetland, or stream.[Adopted 5/26/09]

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

**Wetland of Special Significance:** All coastal wetlands and great ponds are considered wetlands of special significance. In addition, a freshwater wetland which has one (1) or more of the following characteristics is considered a wetland of special significance.

- a. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled or imperiled, as defined by the Maine Natural Areas Program.
- b. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat.
- c. Location near a coastal wetland. The freshwater wetland is located within two hundred fifty (250) feet of a coastal wetland.
- d. Location near a great pond. The freshwater wetland is located within two hundred fifty (250) feet of the normal high water line and within the same watershed of any lake or pond classified as a great pond.
- e. Aquatic vegetation, emergent marsh vegetation, or open water. The freshwater wetland contains, under normal circumstances, at least twenty thousand (20,000) square feet of aquatic vegetation, emergent marsh vegetation, or open water, unless the twenty thousand (20,000) or more square foot area is the result of an artificial pond or impoundment.
- f. Wetland subject to flooding. The freshwater wetland area is inundated with floodwater during a one hundred (100) year flood event based on flood insurance maps produced by the U.S. Federal Emergency Management Agency or other site-specific information.
- g. Peatland. The freshwater wetland is or contains peatlands, except those that the Maine Department of Environmental Protection determines as previously mined peatland, or portion thereof, is not a wetland of special significance.
- h. Stream. The freshwater wetland area is located within twenty-five (25) feet of a stream, whether or not it is immediately adjacent. [Adopted 5/26/09]

**Wetland, Structure:** Piers, docks, wharves, breakwaters, causeways, uses projecting into water bodies:

- a. Temporary Wetland Structure: A structure which remains in the water for less than seven (7) months in any period of twelve (12) consecutive months.

## **SECTION 2. DEFINITIONS (cont.)**

- b. **Permanent Wetland Structure:** A structure which remains in the water for seven (7) months or more in any period of twelve consecutive months.

**Wholesale Establishment:** A business establishment engaged in the bulk sale of goods or materials, not manufactured or processed on the premises, for resale. [Adopted, 4/27/87]

**Wholly Enclosed Place of Assembly, Amusement, Recreation, Culture, and Government:** An establishment providing a) indoor recreation facilities such as a bowling alley, skating rink, swimming pool, tennis or racquet ball courts but not including a mechanical, electronic, video or computer game arcade; b) mechanical, electronic, video or computer games if such games are accessory to a principal use which conforms to the provisions of this Ordinance or (c) presentation of the performing arts and cinematography. In the Tidewater Master Planned Development District, such facilities are limited to public gatherings and activities related to approved uses of the Master Plan [Amended, 5/27/93; 4/4/05; 11/26/12]

**Zero Lot Line:** The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line. [Adopted, 3/27/89]

## **SECTION 3. ESTABLISHMENT OF DISTRICTS**

### **3.1 Districts**

The Town of Falmouth is hereby divided into the following classes of districts as shown on the Zoning Map:

1. Farm and Forest District - "F"
2. Residential District - "RA"
3. Residential District - "RB"
4. Residential District - "RC"
5. Village Center 1 – "VC1"
6. Village Center 2 – "VC2"
7. Village Center Civic – "VCC"
8. Mixed Use Cluster District - "MUC"
9. Village Mixed Use District - "VMU"
10. Route 100 Corridor Overlay District [Adopted 1/25/88] - "CO"
11. Business and Professional District - "BP"
12. Shoreland Zone:
  - a. Resource Protection District – "RP"
  - b. Limited Residential District – "LR"
  - c. Limited Commercial [Adopted 5/27/92] – "LC"
  - d. Stream Protection [Adopted 5/27/92] – "SP"
13. Open Space Residential District [Adopted 3/27/89] [Repealed 6/19/06] - "OSRD"
14. West Falmouth Crossing Master Planned Development District [Adopted 1/26/98] [Amended 12/22/05] – "WFCMPDD"
15. Retirement Community Overlay District [Adopted 11/23/98] - "RCOD"
16. Highland Lake Conservation Overlay District [Adopted 11/27/00]
17. Tidewater Master Planned Development District [Adopted 4/4/05] – "TMPDD"
18. Resource Conservation Zoning Overlay District [Adopted 12/22/05] – "RCZO"
19. Elementary School Redevelopment District [Adopted 05/30/12] - "ESRD"
20. Water View Overlay District [Adopted 05/30/12] – "WVOD"

### **3.2 "F" - Farm and Forest District**

The farm and forest district is an area which is not expected to be provided with public sewer, located in a generally rural area and intended to remain in that character. The district allows residential uses at low density and recreational and agricultural pursuits.

#### **Permitted Structures and Uses**

1. Accessory buildings & uses
2. Animal husbandry
3. Farming
4. Forestry
5. Municipal buildings & uses
6. Outdoor recreation
7. Single Family Detached Dwellings
8. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]
9. Tier III Personal Wireless Service Facilities [Adopted, 4/25/05]
10. Personal Use Airstrip [Adopted,

#### **Conditional Uses**

1. Accessory Dwelling Units
2. Cemeteries
3. Day care centers [Amended, 7/22/91]
4. Day care homes [Amended, 7/22/91]
5. Churches
6. Extractive Industries
7. Health Institutions
8. Home occupations
9. Kennels
10. Libraries
11. Museums
12. Private clubs

9/26/05]

13. Private schools

### 3.2 "F" - Farm and Forest District (cont.)

#### **Conditional Uses Cont.**

14. Riding stables

15. Amateur Radio Towers [Adopted, 4/23/90]

16. Public Utilities [Adopted, 7/22/91]

17. Veterinary Clinics [Adopted, 5/27/93]

18. Bed and Breakfast Establishments[Adopted 5/27/93]

19. Elderly Boarding Home [Adopted, 5/28/96]

20. Outdoor Eating Areas [Adopted, 5/28/96]

21. Roadside Stand [Adopted 02/27/12]

[Table amended 1/24/11]	<b>Minimum Lot Size</b>		<b>Max. Lot Coverage</b>	<b>Min. site size (acres)</b>
	<b>Lot Area (sq ft)</b>	<b>Lot Width (ft)</b>		
All Uses	--	250'	15%	--
Cemeteries	--	--	--	10
Day Care Centers	--	--	--	2
Churches	--	--	--	5
Health Institute	--	--	--	5
Private Clubs	--	--	--	3
Private Schools	--	--	--	3
Riding Stables	--	--	--	3
Single Family Detached & Other Uses	80,000	--	--	--

#### **Minimum Setbacks In Feet**

	<b><u>Front Setback</u></b>	<b><u>Side Setback</u></b>	<b><u>Rear Setback</u></b>
Cemeteries	50	50	50
Day Care Centers	50	50	50
Churches	50	50	50
Health Institutions	50	50	50
Private Clubs	50	50	50
Private Schools	50	50	50
Riding Stables	50	50	50
Kennels	50	50	50
Veterinary Clinics	50	50	50
Single Family Detached & Other Uses	25	20	40

## SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

### 3.3 "RA" - Residential A District

#### Permitted Structures and Uses

1. Accessory Building & Uses
2. Farming
3. Forestry
4. Municipal Buildings & Uses
5. Single Family Detached Dwellings
6. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]

#### Conditional Uses

1. Accessory Dwelling Units
2. Cemeteries
3. Day Care Centers [Amended, 7/22/91]
4. Day Care Homes [Amended, 7/22/91]
5. Churches
6. Congregate Housing
7. Health Institutions.
8. Home Occupations
9. Libraries
10. Marinas
11. Multiplexes
12. Museums
13. Private Clubs
14. Private Schools
15. Amateur Radio Towers [Adopted, 4/23/90]
16. Public Utilities [Adopted, 7/22/91]
17. Bed and Breakfast Establishments [Adopted, 5/27/93]
18. Elderly Boarding Home [Adopted, 5/28/96]
19. Outdoor Eating Areas [Adopted, 5/28/96]
20. Roadside Stand [Adopted 02/27/12]

	Minimum Lot Size		Max. Lot Coverage	Min. net residential area per dwelling unit (sq ft) [Adopted, 8/26/96]	Min. site size (acres)
	Lot Area (sq ft)	Lot Width (ft)			
All Uses	--	--	20%	--	--
Cemeteries	--	300	--	--	10
Day Care Centers	--	200	--	--	2
Churches	--	300	--	--	5
Congregate Housing	--	300	--	7,500	5
Health Institute	--	300	--	--	5
Multiplexes	--	200	--	15,000	2
Private Clubs	--	200	--	--	3
Private Schools	--	200	--	--	3
Single Family Detached & Other Uses	20,000	125	--	-- [Amended 1/24/11]	--

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.3 "RA" - Residential A District (cont.)**

##### **Minimum Setbacks In Feet**

	<b><u>Front Setback</u></b>	<b><u>Side Setback</u></b>	<b><u>Rear Setback</u></b>
Cemeteries	50	50	50
Day Care Centers	50	50	50
Churches	100	100	100
Congregate Housing	100	100	100
Health Institute	100	100	100
Multiplexes	50	50	50
Private Clubs	50	50	50
Private Schools	50	50	50
Single Family, Detached	25	20	40
Other Uses	25	20	40

#### **3.4 "RB" - Residential B District**

##### **Permitted Structures and Uses**

1. Accessory Buildings & Uses
2. Farming
3. Forestry
4. Municipal Buildings & Uses
5. Single Family Detached Dwellings
6. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]

##### **Conditional Uses**

1. Accessory Dwelling Units
2. Cemeteries
3. Day Care Centers [Amended 7/22/91]
4. Day Care Homes [Amended 7/22/91]
5. Churches
6. Congregate Housing
7. Extractive Industries
8. Health Institutions
9. Home Occupations
10. Libraries
11. Marinas
12. Multiplexes
13. Museums
14. Private Clubs
15. Private Schools
16. Amateur Radio Towers [Adopted, 4/23/90]
17. Public Utilities [Adopted, 7/22/91]
18. Bed and Breakfast Establishments [Adopted, 5/27/93]
19. Elderly Boarding Home [Adopted, 5/28/96]
20. Outdoor Eating Areas [Adopted, 5/28/96]
21. Neighborhood Variety/Convenience Store\* [Adopted 8/28/06]
22. Roadside Stand [Adopted 02/27/12]

\*Applies only in that part of the RB District bounded by I-295, the Turnpike Spur, and the Presumpscot River

### SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

#### 3.4 **"RB" - Residential B District** (cont.)

	<b>Minimum Lot Size</b>		<b>Max. Lot Coverage</b>	<b>Min. net residential area per dwelling unit (sq ft) [Adopted, 8/26/96]</b>	<b>Min. site size (acres)</b>
	<b>Lot Area (sq ft)</b>	<b>Lot Width (ft)</b>			
All Uses	--	--	20%	--	--
Cemeteries	--	300	--	--	10
Day Care Centers	--	200	--	--	2
Churches	--	300	--	--	5
Congregate Housing	--	300	--	7,500	5
Health Institute	--	300	--	--	5
Multiplexes	--	200	--	30,000	2
Private Clubs	--	200	--	--	3
Private Schools	--	200	--	--	3
Single Family Detached & Other Uses	40,000	150	--	-- [Amended 1/24/11]	--

#### **Minimum Setbacks In Feet**

	<b>Front Setback</b>	<b>Side Setback</b>	<b>Rear Setback</b>
Cemeteries	50	50	50
Day Care Center	50	50	50
Churches	100	100	100
Congregate Housing	100	100	100
Health Institutions	100	100	100
Multiplexes	50	50	50
Private Clubs	50	50	50
Private Schools	50	50	50
Single Family Detached and Other Uses	25	20	40

### SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

#### 3.5 "RC" - Residential C District [Adopted, 8/30/73]

##### Permitted Structures and Uses

1. Accessory Buildings & Uses
2. Farming
3. Forestry
4. Municipal Buildings & uses
5. Single Family Detached Dwellings
6. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]

##### Conditional Uses

1. Accessory Dwelling Units
2. Churches
3. Health Institutions
4. Libraries
5. Museums
6. Private Clubs
7. Private Schools
8. Amateur Radio Towers [Adopted, 4/23/90]
9. Public Utilities [Adopted, 7/22/91]
10. Bed and Breakfast Establishments [Adopted 5/27/93]
11. Elderly Boarding Home [Adopted, 5/28/96]
12. Outdoor Eating Areas [Adopted, 5/28/96]
13. Roadside Stand [Adopted 02/27/12]

[Table amended 1/24/11]	Minimum Lot Size		Max. Lot Coverage	Min. site size (acres)
	Lot Area (sq ft)	Lot Width (ft)		
All Uses	--	--	20%	--
Churches	--	300	--	5
Health Institute	--	300	--	5
Clubs	--	200	--	3
Private Schools	--	200	--	3
Single Family Detached & Other Uses	60,000	160	--	--

##### Minimum Setbacks In Feet

	<u>Front Setback</u>	<u>Side Setback</u>	<u>Rear Setback</u>
Churches	100	100	100
Health Institutions	100	100	100
Private Clubs	50	50	50
Private Schools	50	50	50
Single Family Detached & Other Uses	25	20	40

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.6 Village Center Districts (VC1, VC2 and VCC)**

**3.6.1 Purpose of the Districts:** The Village Center is planned as a mixed use area, providing the community with a vibrant retail and service, professional office and residential core. Specific purposes are:

- A. Provide and encourage greater intensity of land use;
- B. Capitalize on existing utility infrastructure;
- C. Allow mixed uses of commercial, residential and civic;
- D. Provide transportation infrastructure that supports motorists, pedestrian, transit riders and cyclists; and
- E. Create a building edge at the sidewalk.

#### **3.6.2 General Requirements**

If any portion of this section conflicts with any other section of this ordinance or the Subdivision Ordinance, the standards of this section shall prevail.

### SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

#### 3.6.3 Use and Maximum New Ground Floor Tenant Area Tables

##### 3.6.3.1 VC1 and VC2

<b><u>Permitted Uses, Conditional Uses and Maximum New Ground Floor Tenant Area (MNGFTA)</u></b>				
<b><u>Permitted Uses</u></b>	<b><u>VC 1 MNGFTA (sq. ft.)</u></b>	<b><u>Category of Use</u></b>	<b><u>VC 2 MNGFT A (sq. ft.)</u></b>	<b><u>Category of Use</u></b>
Accessory building or use	50,000	P	50,000	P
Art and Craft Studio <sup>1</sup>	na	P	na	P
Automobile dealership (sales, service, storage & rental)	na	X	50,000	P
Bed and Breakfast Establishment	50,000	P	50,000	P
Business and professional office <sup>2</sup>	50,000	P	50,000	P
Commercial School	20,000	P	20,000	P
Day care center	50,000	P	50,000	P
Dwelling Unit <sup>1</sup>	na	P	na	P
Gas Station	na	CU	na	CU
Home Occupation	na	P	na	P
Horticultural Nursery	na	P	na	P
Hotel	na	P	na	P
Light manufacturing <sup>1</sup>	na	P	na	P
Municipal use	50,000	P	50,000	P
Outdoor recreation facility, permanent structure	50,000	CU	50,000	CU
Outdoor retail display > 100 and ≤2,500 square feet as an accessory use	na	P	na	P
Outdoor display of automobiles as an accessory use to automobile dealership	na	X	No limit	P
Place of Worship	50,000	P	50,000	P
Private club	50,000	P	50,000	P
Private School	20,000	P	20,000	P
Restaurant, including carry-out/outdoor seating	50,000	P	50,000	P
Restaurant, drive-through	na	X	50,000	CU
Retail and service establishment, includes outdoor retail display not to exceed 100 sq. ft.	50,000	P	50,000	P
Retail, grocery <sup>3</sup>	60,000	P	60,000	P
Service garage	50,000	CU	50,000	CU
Tier I & Tier II Personal Wireless Service Facility	na	P	na	P
Tradesmen's Office <sup>1</sup>	na	P	na	P
Wholly enclosed place of assembly, amusement, recreation, culture, and government	50,000	P	50,000	P
<sup>1</sup> Permitted on upper floors only				
<sup>2</sup> Includes Veterinary Clinic				
<sup>3</sup> Retail, Grocery is limited to 60,000 gross square feet total for all floors				
P – Permitted; CU – Conditional Use Permit Required; X – Not permitted				

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.6.3.1.a Performance Standards for Horticultural Nursery**

1. Expansions or replacements of indoor or outdoor components of existing horticultural nurseries shall require site plan approval under Section 9 of this ordinance.
2. Greenhouses are exempt from the maximum setback requirements in Section 3.6.5.1 and architectural standards under Section 3.6.5.5 provided that they are located a minimum of 100 feet from any lot line adjacent to a public right of way.
3. Structures, including greenhouses, located within 100 feet of any lot line adjacent to a public right of way shall meet all requirements of Section 3.6.
4. The Planning Board may require screening measures to minimize the bulky appearance of and glare from greenhouses if visible from neighboring properties. Measures required shall be compatible with light and ventilation needs of the greenhouse operations.
5. Storm water runoff treatment shall meet current Low Impact Development standards.(See Maine Stormwater Best Practices Manual.)

#### **3.6.3.2 VCC, Village Center Civic**

<b>Permitted Uses, Conditional Uses and Maximum New Ground Floor Tenant Area (MNGFTA)</b>		
Accessory building or use	50,000	P
Municipal use	50,000	P
Private club	50,000	CU
Tier I & Tier II Personal Wireless Service Facility	Na	P
P – Permitted; CU – Conditional Use Permit Required; X – Not permitted		

### **3.6.4 Exemptions and Allowances for Existing Ground Floor Tenant Areas**

#### **3.6.4.a. Definition of terms.**

For the purposes of this section, the following terms shall be defined as:

1. “Existing building footprint” is defined as the building footprint existing as of November 26, 2012.
2. “Existing nonconforming tenant area” is defined as a ground floor tenant area existing as of November 26, 2012, which exceeds the ground floor tenant area limitations in Tables 3.6.3.1 and 3.6.3.2.
3. “Ground floor tenant area” is defined as the first floor indoor space occupied by an individual tenant, either by rent, lease or ownership and as measured from the interior wall faces.

#### **3.6.4.b. Determination of existing ground floor tenant area.**

When determining the ground floor area of existing tenant areas, the Code Enforcement Officer shall rely on current town records unless it is determined by the Officer that more accurate data exists.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

**3.6.4.c.** Existing nonconforming tenant areas, whether occupied or vacant as of November 26, 2012 shall be exempt from the Maximum Ground Floor Tenant Area requirements in Section 3.6.3.1 and 3.6.3.2.

#### **3.6.4.d. Use of existing ground floor tenant area.**

1. Notwithstanding the ground floor tenant area limitations specified in Table 3.6.3.1 and 3.6.3.2, any existing nonconforming tenant area, either vacant or occupied, may be reconfigured within an existing building footprint in the following manner.
  - a. Existing areas equal to or greater than 60,000 square feet shall not exceed the existing nonconforming tenant area.
  - b. Areas greater than 50,000 and less than 60,000 square feet may be expanded up to and including 60,000 square feet.
  - c. Conforming tenant areas may be incorporated into the reconfiguration of nonconforming tenant areas.
2. The number of times reconfiguration of tenant spaces may occur is unlimited provided that each reconfiguration meets the requirements in Section 3.6.4.d (1) above.
3. In no event shall there be an increase in the number of nonconforming ground floor tenant areas in any building except for buildings occupied by or approved for a single tenant area as of November 26, 2012. Tenant area in buildings occupied by a single nonconforming tenant may be reconfigured to create up to and including two nonconforming ground floor tenant areas.

#### **3.6.4.e. Alteration of existing building footprint.**

Existing building footprints may be altered to accommodate the reconfiguration or expansion of nonconforming tenant areas up to and including 60,000 square feet provided that the alteration occurs within the area created by the horizontal extension of the outermost existing building walls.

#### **3.6.4.f. Exemption for ground floor tenant area of approved site plans.**

Site plans approved by the Planning Board under Section 9 of this ordinance are exempt from the ground floor tenant area limitations in Section 3.6.3.1 and 3.6.3.2 above provided that the project has commenced in accordance with Section 9.6. Amendments or re-approvals to site plans requiring Planning Board approval are not exempt.

### **3.6.5. Village Center Performance Standards**

These standards govern the development and re-development of properties within the Village Center Districts and are intended to be integrated with 2013 Route One South Infrastructure Plan. These standards apply to any new development or redevelopment requiring site plan approval under Section 9 of this ordinance. Standards are required unless expressly noted that the approval authority may grant waivers.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.6.5.1 General Dimensional Requirements**

1. VC1 and VCC lot requirements:
  - a. Front setback from a public ROW or the sidewalk of an internal drive for buildings – minimum of 0 and maximum of 20 feet. Accessory structures and buildings are exempt provided that no access by the public is permitted.
  - b. Side and rear setbacks – none
2. VC2 lot requirements
  - a. Front setback from a public ROW or the sidewalk of an internal drive for buildings – minimum of 0 and maximum of 55 feet. Accessory structures and buildings are exempt provided that no access by the public is permitted.
  - b. Side and rear setbacks – none
3. The maximum height of buildings in all districts is 65 feet.

**3.6.5.2 General Site Planning.** The goal is to create a village area of well-sited, attractive and functional buildings with an emphasis on building interaction with the streetscape. New buildings shall be designed as integral elements in the creation of a village scale landscape and shall be oriented toward an existing or new street or drive.

1. Corner Lots - Buildings located on a lot fronting more than one street or internal drive shall be placed at the intersection of the streets or internal drive so that the front setback is met for all frontages unless the site plan designates a future building site at the intersection.
2. New buildings on lots that have at least 70% of the frontage length within eighty (80) feet of the front lot line developed with buildings are exempt from meeting the setbacks provided that the existing buildings remain in place.
3. Businesses that provide shopping carts shall provide designated cart storage both in the parking lot and inside the store.
4. Outdoor retail display shall meet the following standards:
  - a. Shall be in a dedicated area;
  - b. Shall not interfere with approved parking areas, landscaping, stormwater management structures or vehicle and pedestrian circulation;
  - c. Shall only be open to the public during the same hours as the primary use;
  - d. The outdoor display of merchandise shall not exceed a maximum height of six (6' 0") feet; and
  - e. Areas immediately adjacent to a public right(s) of way shall be enclosed with a solid fence or wall to screen views from the right(s)-of-way. The maximum height of the enclosure shall be ten (10' 0") feet. The design of the fencing enclosure shall be compatible with the main building(s) and surrounding development.
5. Internal drives are encouraged to develop street frontage for existing buildings and provide more opportunity for infill development.
6. Neighborhood Compatibility –Sites developed adjacent to residential district boundaries shall be designed, where possible, so that service areas, parking lots, outdoor storage yards and other similar features do not face toward the district boundary. If orienting these areas toward adjacent residential district boundaries is

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

unavoidable, adequate year round screening and noise reduction shall be provided.  
(See Section 3.6.5.7, Landscaping and Screening)

7. 2013 Route One South Infrastructure Plan – The 2013 Route One South Infrastructure Plan (Plan) is hereby adopted as an addendum to this Ordinance. The permitting authority shall rely on the Plan as a guide for access management and streetscape improvements. The permitting authority shall have the authority to modify the improvements if it is determined that the goal of the improvement can be achieved by some other method and that the modifications are in the best interest of the Town and is of equal or greater benefit to the Town.

**3.6.5.3 Streetscape** –Site planning and architectural design shall complement and be integrated with the improvements made by the Town and recommended in the Plan. Buildings at or near the street edge are a necessary component of a village streetscape. Development along all street frontages should encourage pedestrian interest and provide safe movement.

1. When there is a gap between the sidewalk/proposed sidewalk on Route One or side streets and the front property line, the applicant shall confer with the Town regarding improvements within the right of way to provide a transition.
2. Street trees, curbing, pedestrian lighting and sidewalks are required components on both sides of all side streets. Where improvements are not installed by the Town as part of the Plan, the property owner shall be responsible for the installation of improvements.
3. Street Furnishings – Street furnishings, including outdoor seating or space for pedestrians and patrons are encouraged and may be placed in the public right-of-way with the permission of the Town if not provided on site adjacent to the street. Street furnishings are also encouraged on private property and should be located between the building and the sidewalk. They may include bicycle racks, benches, planters or other similar furnishings. Materials shall be durable and able to withstand heavy public use and Maine climate conditions. Street furnishings shall be secured in such a manner that they cannot be removed easily.

**3.6.5.4 Internal Drives** – Internal drives may be constructed to bring existing buildings into conformance with front setbacks, to provide street frontage and access for new buildings, to provide alternate routing to existing public streets and to provide pedestrian mobility.

1. Internal drives shall be designed with measures to provide maximum mobility for pedestrians and cyclists as well as motorists.
2. Internal drives may be used for loading zones provided the volume and frequency of deliveries can be accommodated.
3. Internal drives are subject to the construction standards in the Subdivision Ordinance, Appendix 5, (F), (G) and (I). The permitting authority may waive standards to promote traffic calming and pedestrian safety, mobility and comfort.
  - a. Lane widths – Travel lanes shall be no narrower than 9 feet and no wider than then 11 feet.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- b. Sidewalks - Sidewalks shall be installed on both sides of the internal drive. Sidewalks shall be a minimum of five feet in width and must be separated from the drive by vertical curbing. Where existing development provides a sidewalk along the frontage of existing buildings, no additional sidewalk is required along that portion of drive frontage and no additional curbing shall be required.
- c. Street trees – Trees shall be located at an interval of 30 feet on center and shall be of a species listed in the Shade Tree List published by the Town.
- d. Pedestrian lighting – Pedestrian lighting shall be installed at an interval of 60 feet on center and with a height of no greater than 14 feet.
- e. On street parking – On street parking is encouraged. If provided, parking spaces shall have minimum dimensions of 7 feet x 20 feet.
- f. Curbing and structured drainage facilities shall be provided.

**3.6.5.5 Architecture for new building development and redevelopment of existing buildings** –A high level of architectural quality is expected. The standards below apply to any new building or building expansion. Existing buildings are encouraged to be renovated to meet the standards.

- 1. General Design Standards
  - a. All buildings and building additions shall be designed by a Maine Licensed Architect unless otherwise waived by the Planning Board.
  - b. No particular architectural style is required but all styles shall incorporate good architectural design with respect to scale, proportion, massing and balance. They shall be human scaled and designed to create a positive contribution to the street upon which they sit. Architectural styles shall not be mixed on a single building.
  - c. Corporate, franchise or trademark architecture. Individual corporate image, trademark, or marketing architectural design elements and colors shall be incorporated only as secondary design elements to the development and not as dominant elements. These architectural design elements shall not define the character or style of the building or development.
  - d. Building Orientation – The primary facades and main pedestrian entrances of buildings shall be situated on a public street or internal drive with the emphasis on public streets where buildings face multiple public streets or internal drives.
  - e. At least one customer entrance shall be provided along a building face that fronts a public street or internal drive. Where frontages are on both a public street and a internal drive, one entrance shall be located on the public street.
- 2. Standards specific to redevelopment of and additions to nonconforming buildings due to setback requirements. Expansions shall not result in the increase of any nonconformity of the building. For purposes of this section increased nonconformity includes reducing the linear feet of a building which is parallel to and closest to a street frontage.
  - a. Additions shall be limited to 50% of the first floor gross square footage of nonconforming buildings as of the date of the adoption of this ordinance. Additions greater than 50% shall be considered a new building.
  - b. Additions of 50% or less made to existing nonconforming buildings are exempt from the maximum front setback provided that the area between the building and the primary frontage is improved in such a manner to promote and encourage pedestrian access to the building and to provide a visual connection to the primary

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- frontage. This may include but is not limited to sidewalk extensions, patios, outdoor seating, and street furniture. The Planning Board shall have authority to determine the extent of improvements necessary.
- c. Existing nonconforming buildings may be partially demolished. If more than 75% of the existing building, as of the date of the adoption of this section, is demolished and replaced, the resulting building is required to meet the setbacks and is considered a new building.
  - d. Parking areas between an existing building and the street may remain as long as screening as required in Section 3.6.5.10., Parking Areas is provided.
3. Exterior Wall Materials –Durable building materials shall be used such as brick, clapboard, wood shingles or stone. Synthetic or composite siding materials are acceptable if they are substantially identical in appearance as natural materials and of equal or greater durability. Concrete block, split face block, multi-colored brick, asphalt shingles, T-111, plywood, and metal siding are prohibited.
- a. Highly reflective materials (e.g. plastic panels, brushed aluminum, bronzed glass) are permitted only for windows and doorways.
  - b. Stain or paint shall be applied to wood building materials in such a manner that completely covers knotholes or other imperfections in the siding.
4. Façade design – Facades for buildings are to provide visual interest at the street level and shall be proportioned to human scale.
- a. Foursquare Design – All sides of a building should be equally attractive. Architectural details such as texture, pattern, color, and building form used on the front façade should be incorporated on all building facades.
  - b. Primary entrances to buildings shall be emphasized by detailing, massing, changes in materials, or other architectural methods. Entrances shall be proportional to the scale of the building.
  - c. Design elements that add depth and visual interest to building facades such as mixing materials and colors, decorative trim and molding, cornice details, stepped facades, and columns are encouraged. Decorative elements shall be consistent with the architectural character of the building and scaled appropriately.
  - d. Façade articulation – Façade articulations are required to reduce the apparent length, monotony and mass of larger buildings, creating the illusion of several smaller buildings with common walls and a consistent rhythm of facades. All buildings shall have sufficient relief which interrupts the horizontal and vertical plane of each wall. No wall surface shall exceed 50 feet without an interruption in the horizontal plane of the wall of a minimum of three feet.
  - e. Repeating Façade Treatments – Building facades shall include in their detailing some form of a repeating pattern that includes no less than one of these design elements that shall repeat horizontally: color change, texture change and material module change.
  - f. Multi-story Treatment - A building's style shall be consistent throughout; details from different eras and inconsistent styles shall not be mixed on a single building.
    - 1) Multistory buildings shall be designed to accommodate a pedestrian scale by providing a sense of “base,” “middle” (where applicable), and “top.”
    - 2) Standards.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- a) Ground-level facades along public streets or internal drives shall be given a “stronger” appearance than upper floors. Distinction of ground-level facades from other floors shall occur by incorporating a minimum of two of the following features: color change, texture change and material module change.
  - b) Ground floor ceiling height shall be taller than upper stories to emphasize the ground floor as the “base” of the buildings. Ground floor ceiling heights shall be a minimum of 10 feet.
  - c) Middle floors of the building shall be made distinct from the ground floor by a change in material or color, window treatment, incorporation of balconies, stepbacks, and signage.
  - d) Horizontal moldings, belt courses, or other features shall be utilized to create visual separation between each story of the building. Alignment of horizontal moldings shall be considered and relate to the moldings of adjacent building facades that are consistent with these standards, where feasible.
  - e) The top of the building shall emphasize a prominent edge when viewed against the sky, utilizing elements such as projecting parapets, cornices, upper level stepbacks, or pitched rooflines.
  - g. Murals – Murals may be used to treat existing blank facades and may include realistic architectural style detail similar to that on the front façade or artwork. Murals shall be approved by the permitting authority and may not be used as signage.
  - h. Marquees and Awnings – Marquees and awnings are permitted on buildings at a first floor entrance facing a public street or an internal drive. They may project over a public ROW provided that proof of insurance is provided. A minimum clearance of ten feet shall be maintained between the ground surface and the lowest element of the marquee or awning.
  - i. Functional Elements – All vents, down spouts, flashing, electrical conduits, meters, service connections and other functional elements shall be treated as integral parts of the design. Where appropriate, these elements shall be painted to match the color of the adjacent surface, unless used expressly as an accent.
  - j. Auxiliary structures, including freestanding pad structures, shall be architecturally consistent with the primary structures on the site in the use of color, material and detailing.
5. Fenestration – The patterns of windows and doorways shall be designed to reflect the internal function of the building in a fashion that complements its façade and form.
- a. Transparency Standards - Facades facing a public street or internal drive shall have a minimum of 30% of window space between the height of 3 and 8 feet. Retail buildings are encouraged to have a minimum of 70% of window space.
  - b. Windows shall generally be vertical or square in proportion rather than a horizontal ribbon window or other long horizontal window arrangements. Window frames should be recessed into the wall and shall have prominent detailing around the opening such as sills, shutters, relief, trim boards to create a frame around the opening.
  - c. Awnings – Fixed or retractable awnings are permitted at ground floor levels to provide protection for pedestrians. Awnings shall be designed as an integral part

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

of the building façade and should be sized to match window and doorway openings.

6. Roofs
  - a. Flat roofs are allowed only on multi-story buildings. Mechanical equipment on flat roofs shall be hidden from view from any street as well as any adjacent building by an enclosed parapet a minimum of 42 inches high or higher if necessary.
  - b. Cool or green roofs are encouraged for flat roofs.
  - c. Where the roof will be visible, the roofing materials shall be selected to complement the color and texture of the building's façade.
  - d. Roof design shall minimize the potential for snow to unload into the front setback or public right of way.
  - e. Gas Stations and Service Garage Canopies – Pitched roofs and fascia trim are required for canopies.
7. Service bays shall be oriented so that the openings are not directly accessed from Route One or a side street and are screened from view from the street. The Planning Board may waive this requirement if it determines that there is no other alternative.

**3.6.5.6 Pedestrian and Bicycle Movement** Development shall include a well-defined safe circulation system that encourages walking and cycling within the Village Center with connections to adjacent neighborhoods. This should be provided with pathways between sidewalks, sidewalks on public streets and sidewalks on internal drives.

1. Pedestrian circulation systems shall provide connectivity between internal pathways, sidewalks on adjacent public and internal streets, buildings and parking lots.
2. Sidewalks and pathways shall avoid crossing parking lots at entrances, service areas and other potential points of conflict where possible. Where such crossings are unavoidable, they shall be as direct as possible.
3. Pedestrian islands shall be installed in streets, drives and driveways where the crossing distance is greater than 32 feet. Pedestrian refuge islands shall be a minimum of six feet wide.
4. Where crosswalks occur, a change in materials, textures or colors shall be provided to emphasize the crossing and enhance visibility.
5. Bike racks shall be provided at a minimum of one at each customer entrance of a building and be placed so to minimize bicycle-pedestrian conflicts. Bike racks may be placed in a public right of way with permission of the Town.

**3.6.5.7 Landscaping and Screening** – A landscaping plan shall be designed to complement the proposed or redeveloped buildings, reinforce pedestrian circulation, highlight transitions between parking and the building, provide shade to parking areas, provide stormwater treatment, add seasonal interest to the property and provide appropriate screening to adjacent residential properties and districts.

1. The plan shall be developed in accordance with Section 5.37 of this Ordinance.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

2. An emphasis should be made to use indigenous species that are insect and disease resistant.
3. Invasive species of plants are prohibited.
4. Where appropriate, landscaping should be integrated with water quality treatment measures.
5. Plantings shall be integrated with the installation of underground utilities and lighting. Mature size of plantings shall be considered in relationship to lighting and signage.
6. Fence materials, where used, shall be durable and of high quality. Materials may include wrought or cast iron, stone, masonry, heavy-gauge aluminum, wood, galvanized steel or other similar material. Fences shall not exceed a height of six feet unless approved by the permitting authority.
7. Landscape elements shall be designed in conjunction with the lighting plan to eliminate dark spots and possible hiding places.
8. Machinery, HVAC equipment, trash collection, truck loading areas, utility meters and other service functions shall be incorporated into the overall design of the building and site so that the visual and acoustic impacts of these functions are fully contained and out of view of a public right of way, internal drive and abutting residential districts. Screening shall be of equal quality of the principal materials of the buildings and landscape and may consist of vegetation, berming or fencing or a combination of these elements to provide a year round opaque screen a minimum of six feet high or of sufficient enough height to block the view from an adjacent pedestrian.
9. Screening between sites in the VC Districts and adjacent residential districts shall provide a visual and acoustic buffer for uses within those residential districts, provide a transition between development in the two districts, shade paved and unpaved surfaces, and screen nighttime light from adjacent property. Screening shall consist of, at a minimum, a year round opaque screen a minimum of six feet high and ten feet deep consisting of a mix of landscaping, berming or fencing. The permitting authority may require additional screening if determined that the minimum does not provide adequate screening.

**3.6.5.8 Lighting** – In addition to the standards in Section 9.23, the following standards shall be met. Where the standards differ, the standards in this section shall prevail. The minimum level of lighting shall be provided to provide security, safety and visual appeal for both pedestrians and motorists.

1. The placement of lighting fixtures shall be at a pedestrian scale, downwardly directed, and shielded or reflected so as to avoid direct line of sight from pedestrians to the light source unless the light source is very low wattage and issues of glare do not exist.
2. The use of “shoe box” fixtures is prohibited.
3. Lighting from store windows, entryways, marquis, canopies, awnings, soffits, and other integral building features shall be integrated with and enhance sidewalk lighting.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

4. Materials used in the light fixtures, poles, and bases shall be of a uniformly high quality.
5. Luminaires shall be housed in a luminaire that is classified by IESNBA as a cut-off distribution. Maximum wattage is 250 watts or the lumen equivalent, except for pedestrian spaces where the maximum wattage is 100 watts or the lumen equivalent.
6. Non cut-off luminaires may be used but are limited to 100 watts or the lumen equivalent.
7. Maximum mounting height, including the base, is 20 feet for parking areas and 14 feet for pedestrian areas.
8. Parking Lot lighting:
  - a. Light poles shall be incorporated in landscaped areas wherever possible to avoid damage from vehicles.
  - b. Light poles installed in non-protected areas of lots may include a base no greater than one foot in height to prevent damage to the pole.

**3.6.5.9 Signage** –Buildings shall be marked with attractive, legible signs that reflect the needs of the individual businesses and complements the architecture and site detailing. Permitting of signs shall be as required in Section 5.11 of this ordinance except where provisions for permitting are noted in this section.

1. All buildings shall display the street number on the primary façade. The full street address may be displayed. The number or address must: a) be a minimum of 4.5 feet from the ground; b) have lettering a minimum of five inches in height; and c) have lettering a contrasting color with the surface on which it is mounted.
2. Freestanding Sign – Freestanding signs are designed primarily for motorists to gain entry to off street parking.
  - a. Quantity
    - 1) VC1 - One sign only is permitted at each intersection of an internal drive with a public street and at the intersections of a commercial driveway with a public street or an internal street. Signs may be placed in the ROW with the permission of the Town. No more than one sign is permitted for each public street frontage.
    - 2) VC2 - No more than two signs per lot per street or internal drive frontage. A minimum separation of 100 feet shall be maintained between all signs, measured along the abutting right of way or edge of an internal drive.
  - b. Minimum lettering shall be five inches in height.
  - c. Area
    - 1) VC1 - Maximum size is 64 square feet.
    - 2) VC2 – Maximum size is 100 square feet.
  - d. Height – Total height measured includes all framing and posts.
    - 1) VC1 - Maximum height is 12 feet
    - 2) VC2 – Maximum height is 16 feet
  - e. Signs may include a tenant directory.
  - f. Each sign or sign panel is limited to the business name with a logo. Phone numbers and advertising information such as products, goods and services are prohibited.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- g. The street name and number may be displayed.
  - h. Simple geometric shapes are required.
- 3. Projecting/blade Sign – Signs are designed for pedestrians.
  - a. May be projected over the public right of way with proof of insurance.
  - b. May be mounted on the first and second story only.
  - c. Maximum size of 9 square feet.
  - d. Shall clear 8 feet above the sidewalk.
  - e. Limited to one per building frontage for each business tenant on the first floor frontage.
- 4. Canopy, gas station - Signs are limited to two faces of the canopy and a maximum of 16 square feet on any one canopy side.
- 5. Wall Sign
  - a. Wall signs shall be incorporated into the façade of the building and shall not obscure architectural details. Signage shall be mounted on vertical surfaces without projecting above the fascia trim.
  - b. Wall signs are limited to two per business, with one located on the primary façade and one other on the side or rear façade.
  - c. Wall signs shall be a minimum of eighteen inches (18”) from the edge of a vertical wall.
  - d. Maximum size shall not exceed 64 square feet.
  - e. Maximum gross display area of wall signs shall not exceed ten percent (10%) of the wall area to which it is attached.
- 6. Marquee Sign
  - a. Permitted for performing arts center, auditorium, sports facility or cinema use only.
  - b. Manual reader boards are permitted.
  - c. Sign area shall be included as part of the calculation of wall area in Section 3.6.5.9.5.e.
  - d. Quantity – The sign may occupy all faces of the marquee.
  - e. Maximum size – 64 square feet
  - f. Letter Height – Maximum of six inches
- 7. Tenant Directory – Tenant directory signs shall be affixed to the wall adjacent to any customer entrance and are designed to be pedestrian oriented.
  - a. The name/address of the property and the individual tenant panels shall be coordinated in color and style.
  - b. The sign shall be located in an area between 3 and 8 feet in height on the building wall
  - c. Maximum size - 12 square feet.
- 8. Materials for all signs shall be limited to matte or dull finishes, except for lettering and accent gilding.
- 9. Directional signs are discouraged, except where necessary for maintaining traffic flow on to and within the site. Where located, the display area of a directional sign shall not exceed two square feet and the total sign height shall not exceed 4 feet. Content shall be limited to directional text such as “enter”, “exit”, “drive-thru” or the like. Logos are limited to twenty-five percent (25%) of the sign face.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

10. Nonconforming signs may be maintained in their current configuration and location. Content may be altered with approval from the Community Development Director or their designee. The Code Enforcement Officer may approve the relocation of a nonconforming sign provided that the relocation does not increase the nonconformity of the sign.
11. Electronic and manual reader boards are expressly prohibited except as provided for in Section 3.6.5.9.6 above. Existing reader boards may be maintained but may not be altered or replaced.
12. No signs are permitted above the second story, including signs in windows, with the exception that a wall sign, limited to the business or building name and one logo, is permitted on the third or fourth story.
13. Bulletin board signs may be located for a place of worship, private school, or municipal use.
  - a. Types – freestanding (VC2 and VCC only) or wall
  - b. Size – maximum of 24 square feet
  - c. Height – maximum of 6 feet
14. Signs sponsored by products with the product brand or name displayed on the sign are prohibited.
15. No sign shall have visible moving parts or consist of banners, ribbons, streamers, spinners or other similar devices.
16. No off premise sign, including business directional signs as defined in 23 MRSA §1903, shall be erected in a VC District, other than as allowed under Section 3.6.5.9.2 above.
17. Externally Lit Signs
  - a. Illumination level on the vertical surface of the sign shall be bright enough to provide a noticeable contrast with the surrounding building or landscape without causing undue spillover and glare.
  - b. Lighting fixtures illuminating signs shall be top mounted where possible and aimed and shielded so that light is directed only onto the sign facade.
  - c. Outlining signs is prohibited.
18. Internally Lit Signs
  - a. Internally lit signs shall consist of light lettering or symbols on a dark background. Letters and symbols shall constitute no more than 40% of the surface area of the sign.
  - b. Internally lit individual letters and symbols are preferred over whole panels that are internally lit.
  - c. Signs may be illuminated only during such hours as the establishment is open to the public.

**3.6.5.10 Parking Areas** (see also *Section 5.5-5.6 and Section 9.10-9.13 of this ordinance*) – Parking areas within the Village Center shall be designed to accommodate adequate parking while minimizing impervious surface.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

1. Parking shall be located to the maximum extent practicable toward the rear of buildings and located along property lines where joint use or combined parking areas with abutting properties are proposed, exist or are anticipated.
2. Parking shall be visually broken up to create a series of smaller outdoor spaces with no more than 20 cars grouped without separation. Landscaped islands between areas or banks of parking stalls shall be a minimum of 6 feet in width.
3. Vehicle accommodation is not permitted between any public street or internal drive and new buildings in the VC1 District.
4. One bank of parking and/or one access lane may be located between the street or internal drive and new buildings in the VC2 District. A bank of parking may only be allowed on one street frontage for buildings placed at or within 100 feet of the corner of a lot with frontage on two streets/internal drives.
5. Parking lots shall be designed to accommodate snow storage on site or a plan for off-site storage shall be approved.
6. Landscaping within parking lots shall be designed to create spaces, define edges, provide shading, add seasonal interest and provide water quality treatment for runoff.
7. Shade trees shall be planted to meet a minimum ratio of 1 tree for every 5 spaces. Trees shall be evenly distributed and planted to maximize the shading effect.
8. Shade trees shall be a species as listed on the Shade Tree List published by the Town or other suitable species as approved by the permitting authority.
9. The development of on-street parking on public streets in collaboration with the Town is strongly encouraged.
10. Shared parking is strongly encouraged to reduce vehicular traffic, minimize impervious surface and encourage pedestrian movements between buildings.
11. If parking is located adjacent to a public street or internal drive it shall be screened with a year round screen between the parking and the sidewalk. The screen shall have a height between 36" and 42" and consist of a combination of landscaping and fencing. Screening areas shall be between 4 and 7 feet in depth. Pedestrian access to the parking lot shall be provided from the sidewalk as well as from any internal drive or commercial driveway. Automobile headlight illumination from parking areas shall be screened from the street. Screening shall also be provided where parking is adjacent to buildings on adjacent lots unless there is approved shared parking.
12. Landscaped islands and strips may be designed to function as a storm water facility that captures, detains, absorbs and infiltrates storm water runoff and non-point pollutants originating on the parking surface being screened.

**3.6.5.11 Service Areas** – Provisions for servicing buildings, including loading docks, service entrances, trash disposal, utilities and mechanical equipment shall be provided in such a way that minimizes visual blight, offensive odors and excessive noise.

1. Accommodation of deliveries is encouraged to be provided at the front door or other shared entrance rather than a dedicated area.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

2. Where deliveries are of such a magnitude that dedicated areas are required, they shall be located in such a manner as to minimize the impact to adjacent streets, buildings, residential uses and districts.
3. Service areas shall be sheltered and/or screened with complementary architectural elements or landscape buffers to minimize visibility from adjacent properties, internal streets and public ways. Building materials shall consist of high quality wood fencing and gates, natural or painted, or masonry or cast-in-place concrete walls with exterior veneer to match architectural features of the primary building.

**3.6.5.12 Stormwater Management Facilities** – Stormwater management facilities shall be treated as an integral and attractive part of the landscape and be generally compliant with the recommendations of the 2013 Route One Stormwater Management Grant Report or other stormwater management plan as may be adopted by the Town. The location of bioretention areas, rain gardens, filter strips, swales, and constructed wetlands is permitted in required setback areas, parking islands and in buffer strips.

**3.6.5.13 Focal Points** –Focal points may be established at corners or intersections to create a sense of place, provide pedestrian continuity along the street, provide wayfinding and provide a more varied visual experience for pedestrians and motorists.

1. Focal points may include freestanding small structures, artwork and landscaping. Examples include pedestrian shelters, gazebos, bandstands, shade structures, bus stops, free-standing sculptures, flower gardens, flagpoles and fountains.
2. Focal points should be sized to reflect the importance of the transition.
3. With approval of the Town, they may be placed in the public right of way.
4. Focal points may include water quality treatment.

**3.6.5.14 Outdoor Spaces** – Human scaled outdoor spaces such as courtyards, outdoor seating, bus stops and pedestrian refuges are encouraged. If provided they should be designed to encourage pedestrian mobility, provide attractive visual features and provide for functional outdoor spaces. If constructed:

1. Spaces shall be highly visible to provide safety and presence.
2. Spaces shall be durable and maintained year round.
3. Spaces shall be well lit, either by street and pedestrian lighting or special lighting to assure safety during use.
4. Furnishings for spaces shall be chosen for their compatibility with the design elements of the 2013 Route One South Infrastructure Plan and be of durable materials able to withstand severe weather conditions and retain their appearance with minimal maintenance.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.7 "BP" - Business and Professional District**

To establish within the Town of Falmouth space for business and professional offices, with exceptions for certain other uses with appropriate site design. Uses locating in this District shall be located, sited and landscaped in such a manner as to preserve open space, control vehicle access and traffic, maintain appropriate setbacks, buffers and natural screening, and to screen parking areas from Route One and other roadways.

##### **Permitted Structures and Uses**

1. Business and professional offices
2. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]
3. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05]

##### **Conditional Uses**

1. Light manufacturing operations
2. Laboratory facilities
3. Private clubs
4. Research facilities
5. Warehouses and wholesale distributors not exceeding 30,000 SF in gross floor area and not having more than two off-street loading berths.
6. Hotels and motels, but only on the westerly side of U.S. Route One in the area between Bucknam Road and Johnson Road.
7. Public Utilities [Adopted, 7/22/91]
8. Churches [Amended, 7/22/91]
9. Outdoor Eating Areas [Adopted, 5/28/96]
10. Day Care Centers [Adopted, 7/23/01]
11. Ballet Arts Facilities [Adopted 5/24/04]
12. Commercial Schools not exceeding 2,000 square feet of net leasable area. [Adopted 5/27/08]

Minimum Lot Size		Maximum Impervious Surface	Minimum Setbacks (ft)		
Lot Area (sq ft)	Lot Width (ft)		Front	Side	Rear
40,000	200	50%	80	25	50

Min. setback between parking areas and roadways (ft)	Min. setback where residential district abuts (ft)	Max. height of structures (ft)	Min. distance between buildings at closest point
40	75	39	25

### SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

#### 3.8 "MUC" - Mixed Use Cluster District

To establish within the Town of Falmouth areas for well-planned mixed use developments with access to the region's major highway system.

##### Permitted Structures and Uses

1. Accessory buildings and structures
2. Business and professional offices
3. Wholly enclosed places of assembly, amusement, recreation, and government
4. Wholesale, warehousing and distributions facilities
5. Light manufacturing operations with no exterior storage of material, equipment or products
6. Retail businesses as part of a mixed use development
7. Multiplexes as part of a mixed use development
8. Research facilities
9. Restaurants (including carry-out or drive through restaurants)[Amended 11/14/12]
10. Residential planned developments as part of mixed use development
11. Municipal buildings and uses
12. Tradesman's offices
13. Single Family Detached Dwellings (only in established residential areas and except on lots fronting on Gray Road) [Adopted 5/28/96]
14. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]
15. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05]
16. Commercial Schools as part of mixed use development [Adopted 5/27/08]
17. Grocery retail as part of a mixed-use development. [Adopted 11/26/12]

##### Conditional Uses

1. Outdoor recreation facilities
2. Day Care Centers
3. Churches
4. Excavating Business
5. Land reclamation
6. Processing of Mineral materials for resale [Amended, 4/25/88]
7. Veterinary Clinic [Amended, 7/22/91]
8. Public Utilities [Adopted, 7/22/91]
9. Outdoor Eating Areas [Adopted, 5/28/96]
10. Day Care Homes [Adopted, 7/23/01]
11. Accessory Dwelling Units [Amended 11/27/06]

#### **"MUC" Mixed Use Cluster**

	Min. Lot Area (Sq ft)	Min. Lot Width	Max. Lot Coverage	Min. Setbacks			Min. net residential area per dwelling unit (sq ft)
				Front	Side	Rear	
Single family detached & Accessory dwelling units	20,000	125 ft.	20%	25	20	40	n/a [Ed. Note - correction made to column 3/9/09]
All other uses	--	200 ft.	30%	50	25	25	10,000 with public sewerage or 20,000 w/o public sewerage

### **SECTION 3. ESTABLISHMENT OF DISTRICTS** (cont.)

#### **3.9 "VMU" - Village Mixed Use District**

To establish within the Town of Falmouth areas for small scale, low intensity nonresidential uses which are compatible with the residential character of the district.

Areas designated as VMU are areas with historical development patterns as village centers.

##### **Permitted Structures and Uses**

1. Retail and service establishments with less than 5,000 SF of gross floor area
2. Professional offices
3. Art and craft studios
4. Tradesman's offices
5. Restaurants (not including carry-out or drive through restaurants) with less than sixty seats
6. Museums
7. Bed and Breakfast establishments
8. Single family detached dwellings
9. Multiplexes
10. Residential planned developments
11. Municipal buildings and uses
12. Accessory buildings and uses
13. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]
14. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05]
15. Commercial Schools with less than 5,000 SF of gross floor area
16. Grocery Retail with less than 5,000 SF of gross floor area

##### **Conditional Uses**

1. Accessory Dwelling Units
2. Cemeteries
3. Day care centers
4. Day care homes
5. Churches
6. Health institutions
7. Libraries
8. The conversion of an existing structure into multi-family housing with no more than three dwelling units
9. Congregate care facilities
10. Home occupations
11. Veterinary Clinic [Amended, 7/22/91]
12. Public Utilities [Adopted, 7/22/91]
13. Elderly Boarding Home [Adopted, 5/28/96]
14. Outdoor Eating Areas [Adopted, 5/28/96]

	Min. Lot Area (Sq ft)	Min. Lot Width	Max. Lot Coverage	Min. Setbacks			Min. net residential area per dwelling unit (sq ft)
				Front	Side	Rear	
All other uses	--	150 ft.	35%	25	15	15	10,000 sq with public sewerage - 20,000 w/o public sewerage

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.9 "VMU" - Village Mixed Use District (cont.)** **Additional Standards**

1. The conversion of an existing building or structure to another use shall be permitted only if off-street parking can be provided to meet the requirements of Section 5.5.
2. The enlargement of an existing building or structure shall be permitted only if off-street parking can be provided to meet the requirements of Section 5.5.
3. Any modification of any existing building or structure including, without limitation, any enlargement or change in use which results in an increase in the level of traffic generation, shall be permitted only if the vehicle entrance(s) meets the sight distance requirements set forth in Section 9.14 or improvements will be made to meet this requirement.
4. Notwithstanding the setback requirements above and in subsection 9.10.c, the area between the front lot line and a line drawn at the actual front setback depth and parallel to a straight line connecting the intersections of the front lot line with the side lot lines shall not be used for parking or service and shall be maintained as landscaped area except for necessary access roads and pedestrian ways.
5. In areas where the existing buildings have an established uniform setback relationship to the street, any new building or modification to an existing building shall maintain this established relationship notwithstanding the setback provisions of this section. An established uniform setback relationship is deemed to exist when the actual front setbacks for the two adjacent parcels on either side of and fronting on the same street as the subject parcel are within +/- 5 feet of the average actual front setback for the four (4) parcels. For lots near intersections, the parcels on the opposite side of the intersection and on the same side of the street shall be considered for this determination if necessary.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.10 "CO" - Route 100 Corridor Overlay District [Amended, 7/22/91]**

To establish additional development standards for all uses within one thousand (1,000) feet either side of the centerline of Route 100 (the Gray Road), throughout its length in Falmouth, to assure that the traffic capacity of Route 100 is maintained while the visual environment and rural character of the corridor is maintained.

#### **Permitted Structures and Uses**

1. Any use permitted in the underlying district which is not prohibited by this section except extractive industries.  
[Amended 12/22/05]
2. Residential Planned Developments.
3. Office, retail and service uses as part of a residential planned development provided that less than ten (10%) percent of the total lot area is devoted to the non- residential uses and the non-residential development does not have a separate vehicular access
4. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]
5. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05]

#### **Conditional Uses**

1. Any conditional use in the underlying district which is not excepted under this section

#### **Additional Standards**

1. The setback of residential planned development from Route 100 shall be fifty (50) feet.  
[Amended 12/22/05]
2. The minimum net residential area per dwelling unit may be reduced by ten (10%) percent for residential planned developments which maintain a one hundred (100) foot landscaped buffer zone between Route 100 and the nearest building. The net residential area per dwelling unit may be reduced an additional five (5%) percent for each additional fifty (50) feet of buffer width to a maximum reduction of twenty-five (25%) percent.  
[Amended 12/22/05]
3. Any residential lot created after the effective date of the subdivision, whether or not a part of a subdivision, shall have its required road frontage on a street other than Route 100 unless the Planning Board determines that physical conditions particular to the parcel justify the granting of a waiver from this requirement. A waiver shall be granted only if there will be no further subdivision of the parcel and one of the following conditions is met:
  - (a) There is too little road frontage to reasonably allow creation of a new way;
  - (b) The shape or physical condition of the parcel does not permit access to or creation of a street other than Route 100; or
  - (c) Common access will be utilized which will allow all proposed lots to be serviced by one new curb cut.

### SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

4. The limitation on curb cuts found in subsection 9.14.b, shall apply to all parcels within the Overlay District.
5. Notwithstanding the provisions of subsection 5.11 to 5.19, signs within the Overlay District shall be governed by the following additional requirements:
  - (a) The maximum size of freestanding advertising signs shall be 48 sq. ft.;
  - (b) The maximum number of freestanding signs per lot shall be one; and
  - (c) The maximum height of freestanding signs shall be twelve (12) feet.
6. All uses shall be required to maintain a landscaped border strip along the street right-of-way of Route 100 meeting the requirements of subsection 9.27. The width of the border strip shall be related to the setback of the building as shown on the following table:

<u>Width of Border Strip</u>	<u>Building Setback</u>
10 ft.	less than 25 ft.
15 ft.	25 to 49 ft.
20 ft.	50 to 74 ft.
25 ft.	75 to 99 ft.
30 ft.	100 ft. or more

7. Prior to the division of any existing lot of record having a gross lot area of ten (10) acres or more or five hundred (500) or more feet of street frontage on Route 100 and prior to the submission of a subdivision or site plan for all or a portion of a lot, the owner shall file a master development plan with the Planning Board.

The master development plan shall be conceptual in nature and shall be based upon a site inventory plan identifying the major development opportunities and constraints associated with the site. This inventory shall be prepared by a registered landscape architect or registered professional engineer and shall show in a conceptual manner natural drainage features, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant man-made and natural features of the site.

The master development plan shall address the overall use of the parcel, the overall vehicular circulation system within the parcel, the coordination of accesses onto Route 100, the general layout of utilities and drainage and provisions for buffering. The master development plan shall also demonstrate how the requirements of the Corridor Overlay District and the standards of this Ordinance will be met.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

Once the master development plan has been filed with the Planning Board, any division of land or application for approval shall be consistent with the plan unless a revised master development plan is filed.

8. The minimum separation of principal buildings, including multiplexes, shall be the height equivalent of the taller building.

#### **3.11 "OSRD" - Open Space Residential District [Adopted, 3/27/89] [Repealed 6/19/06]**

#### **3.12 Conditional Rezoning [Adopted, 7/23/90]**

On occasion, general zoning district designations and traditional zoning methods are inadequate to fully deal with the unusual nature or unique location of specific proposals for development. In these special situations, more flexible and adaptable zoning methods are needed to permit differing land uses in both developed and undeveloped areas.

To achieve this flexibility, conditional rezoning is hereby adopted pursuant to authority granted under Title 30-A, M.R.S.A., § 4352. Conditional rezoning imposes stricter and more individualized restrictions on development than those imposed by the general zoning standards in order to mitigate potential negative impacts on subject, abutting, and nearby properties caused by the rezoning.

Such rezonings may also permit development that is more consistent with the growth management objectives of the Town.

All conditional rezonings by the Town Council must: 1) be consistent with the Comprehensive Plan and the Open Space Plan; 2) establish rezoned areas which are consistent with the existing and permitted uses within the original zones; and 3) only include restrictions which relate to the physical development or operation of the property.

- 3.12.1** Requests for conditional rezoning shall be submitted in writing to the Town Council with a fee as established by the Town Council. Upon receipt of a request for conditional rezoning, the Town Council may adopt an order referring the request to the Planning Board for review and recommendation. The Town Council shall conduct at least one public hearing before any property is rezoned under this subsection. Notice of the hearing shall be posted in the Town Hall at least fourteen (14) days before the public hearing and shall be published in a newspaper of general circulation at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. Notice shall also be sent to the owners of all abutting property at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

- 3.12.2** All development and use of rezoned property must comply with the performance standards of this Ordinance and with the use and spatial requirements of the zoning district in which the rezoned property is placed. Conditions imposed by the Town Council may be more restrictive, but not less restrictive, than the applicable requirements of this Ordinance. Conditions and restrictions shall relate to the physical development or operation of the property and may include, without limitation, the following:

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- a. Limitations on the number and types of permitted and conditional uses, and re-designation of permitted to conditional uses and vice versa.
- b. Restrictions on the scale and density of development, and on the days and hours of operation.
- c. Specifications for the design and layout of buildings or other improvements, including landscaping.
- d. Schedules for commencement and completion of construction.
- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects.
- f. Preservation of open space and buffers, and protection of natural areas and historic sites.
- g. Provisions for reservation or dedication of land for public purposes.
- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning.
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

**3.12.3** Preliminary site plan or subdivision review must be completed before the Town Council conducts its final hearing and takes final action to approve the request for rezoning. The Planning Board may conduct the preliminary site plan or subdivision review concurrently with Council review of the request for rezoning.

**3.12.4** If the Town Council rezones the proposed property under this section, the conditions, uses, and standards shall remain in effect unless and until such time as:

- a. one hundred and eighty (180) days pass without the filing of final site plans and subdivision plans to the Planning Board, unless the applicant shows that additional time is necessary due to required local, state, or federal permits or approvals;
- b. the Planning Board denies the request for final site plan or subdivision approval based upon the criteria and standards of those ordinances; or
- c. the developer abandons the project and the developer or property owner(s) request that the rezoning be rescinded. The Council may also initiate said rescinding if it is determined to be in the public interest.

## **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

### **3.13 “RCZO” -- Resource Conservation Zoning Overlay District**

[Adopted, 12/22/05] [Amended 5/29/07] [Amended 12/17/07]

#### **3.13.1 Applicability**

The provisions of the Resource Conservation Zoning Overlay (RCZO) District shall apply to those areas shown on the Resource Conservation Overlay and Resource Conservation Zoning Overlay Districts Map. The provisions of the RCZO District shall apply only to lots created after April 1, 2005. Any lot created prior to that date shall not be subject to these provisions and may be used and built upon without compliance with these requirements. Such pre-existing lots shall not be deemed to be nonconforming.

#### **3.13.2 Coordination with the Underlying Zone**

The RCZO District is an overlay district. The provisions of this district supplement the provisions of the underlying zoning district. Where the specific provisions of the RCZO District vary from the requirements of the underlying zone, these provisions shall govern. In general, the requirements of the RCZO overlay district apply to all new single-family residential development that requires review and approval by the Falmouth Planning Board, including legal subdivisions and private ways. It does not apply to house lots created prior to enactment of the overlay district or to individual house lots that can be created without Planning Board approval. It also does not apply to multiplex (condo or apartment) development, residential planned developments, or special zoning districts approved by the Town Council.

#### **3.13.3 Conformance with Other Standards**

All development and use of land within the RCZO District shall conform to all other requirements of the Zoning and Site Plan Review Ordinance except as specifically provided for in Section 3.13.

#### **3.13.4 Allowed Development Patterns**

The development of land within the RCZO District may occur in accordance with any one or a combination of the following development patterns:

- a. Conservation Subdivisions – A parcel of land may be subdivided into lots in accordance with the provisions of Sub-Section 3.13.5, Standards for Conservation Subdivisions.
- b. Country Estate Subdivisions – A parcel of land may be subdivided into lots in accordance with the provisions of Sub-Section 3.13.6, Standards for Subdivision Development Using Country Estate Lots.
- c. Country Estate Lots That Are Not Part of a Subdivision – Individual lots that are not part of a subdivision may be created in accordance with the provisions of Sub-Section 3.13.7, Country Estate Developments Not Involving a Legal Subdivision of Land.
- d. Exempt Lots – A single residential lot may be created from an existing lot of record in accordance with the provisions of Sub-Section 3.13.8, Exempt Lots.

## **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

### **3.13.5 Standards for Conservation Subdivisions**

**A. Purpose** – The preferred form of development within the Resource Conservation Zoning Overlay (RCZO) District is conservation subdivisions. This section establishes standards for conservation subdivisions that set aside a significant portion of the site as common open space that is permanently protected while allowing the homes to be clustered on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the common open space.

These provisions are designed to ensure that conservation subdivisions developed in the Town of Falmouth:

1. Preserve those areas of the site that have the highest natural resource value for conservation purposes;
2. Preserve identified historic, archeological, and cultural features located on the site;
3. Locate the buildings and structures on those portions of the site that are most appropriate for development,
4. Create continuous open spaces or “greenways” by linking the common open spaces in adjoining subdivisions wherever possible; and,
5. Minimize the impact of residential development on the Town, neighboring properties, and the natural environment.

**B. Maximum Density** - The maximum number of dwelling units that may be developed in a Conservation Subdivision shall be determined by dividing the calculated Net Residential Area of the parcel by the required Minimum Net Residential Area Per Dwelling Unit for the district in which the subdivision is located and rounding down to the maximum allowed whole number of units. If the subdivision involves only part of a parcel, the Net Residential Area shall be calculated for that portion of the parcel proposed to be included in the subdivision and the determination of the maximum number of dwelling units within the subdivision determined based upon that Net Residential Area.

**C. Required Common Open Space** – Common open space shall be designated as prescribed below: [Amended 12/17/07]

1. **Minimum Acreage Amount Required** – The acreage amount of common open space provided within the subdivision shall be equal to or greater than the sum of the following (rounded up to the nearest tenth of an acre):
  - a. thirty percent (30%) of the calculated Net Residential Area; plus, [Amended 1/24/11]
  - b. the area equal to the total number of acres of unsuitable area that were deducted from the unsuitable area of the parcel that is deducted from the gross area of the site to

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

determine the Net Residential Area under section 5.31.

2. Priorities for Land Included in Open Space – The land set aside in the common open space shall be proposed by the applicant based upon the following priorities. Final selection of the land to be set aside as common open space shall be determined by the Planning Board based on its assessments of the importance of the types of conservation areas in the context of the project's location and configuration. [Amended 12/17/07]

Priority 1 - Primary Conservation Areas as defined in section 2.0. [Amended 12/17/07]

Priority 2 - Secondary Conservation Areas that provide protection for unique or irreplaceable resources including the habitat of rare, significant, or endangered species, the upland habitat of vernal pools mapped by the Town, archeological or historic sites, landmarks, and cemeteries.

Priority 3 - Secondary Conservation Areas that provide for the continuation of resource systems into or through the site such as shorelands, river or stream corridors, wildlife travel corridors, trails, and unfragmented habitat blocks. The width of such corridors shall be as follows: [Amended 12/17/07]

- a. Shorelands, river or stream corridors - 100% of the width of any required vegetative buffer in addition to the required buffer
- b. Wildlife travel corridors – 300 feet
- c. Trail Corridors – 25 feet on either side of the trail

Priority 4 - Secondary Conservation Areas that are adjacent to other protected open space.

Priority 5 - Secondary Conservation Areas that maintain the rural character of roadsides.

Priority 6 - Secondary Conservation Areas that include identified scenic resources including viewsheds and agricultural fields along with the forested margin adjacent to these resources.

Priority 7 - Secondary Conservation Areas that encompass groups of small wetlands not included in #1, streams or ponds in a continuously forested area.

Priority 8 - Other Secondary Conservation Areas including fields, aquifer recharge areas, deer yards, and other identified habitat.

3. Use of the Common Open Space -- The common open space in a Conservation Subdivision shall not be used as the location for dwelling units or other nonresidential buildings or parking except as provided for below and shall only be used for the following purposes:
  - a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, and identified cultural or historic features such as stone walls,

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

cemeteries, and similar identified features or resources;

- b. Outdoor recreation uses and facilities including related accessory structures and buildings that are compatible with the overall scale and character of the subdivision provided that no more than 25% and a maximum of 3 acres of the common open space is altered or developed for recreational facilities and that any building shall have a gross floor area of less than two hundred (200) square feet and the total gross floor areas of all such buildings shall be less than one thousand (1,000) square feet;
- c. Indoor community or recreational facilities that primarily serve residents of the subdivision, having a total gross floor area for all such facilities of less than two thousand (2,000) square feet, and that are compatible with the overall scale and character of the subdivision;
- d. Forest management and agricultural uses including animal husbandry that are specifically approved by the Planning Board as part of the subdivision approval;
- e. Support facilities necessary for the subdivision including individual or community wells, stormwater management facilities, underground utility lines and related facilities such as sewer pump stations, small community storage buildings, and similar buildings and structures that are needed for the operation of the subdivision but not including personal storage buildings or sheds;
- f. Individual or group subsurface wastewater disposal systems or parts thereof, provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities;
- g. Other appropriate uses that are compatible with the overall scale and character of the subdivision and that are specifically approved by the Planning Board.

Permanent provisions for the use, ownership, and maintenance of the common open space including provisions for screening and buffering shall be established subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Land Subdivision Ordinance.

- 4. Stewardship Requirements -- Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Land Subdivision Ordinance, subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Land Subdivision Ordinance.

- 5. Common open space shall not be included in residential lots. [Adopted 5/29/07]

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

**D. Standards for Individual Residential Lots** -- Lots that are created for residential development as part of a conservation subdivision, and the subsequent development of those lots, shall conform to the following standards:

1. **Minimum Lot Size** -- Individual lots that are created as part of a Conservation Subdivision may be smaller than the required minimum lot size for the district in which it is located. The size of the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot sizes will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate sewage disposal. In no case shall any lot served by a subsurface wastewater disposal system be less than twenty thousand (20,000) square feet in area nor any lot served by the public sewer system be less than ten thousand (10,000) square feet in area.
2. **Minimum Lot Width** -- The minimum lot width for lots in a conservation subdivision shall be one hundred twenty-five (125) feet. The Planning Board may reduce the minimum lot width by up to fifty (50%) percent provided that the project is developed according to an approved master development plan where each individual lot is subject to design review of the lot layout and building design according to parameters and guidelines submitted by the developer and approved by the Planning Board. Said design parameters shall include maximum lot coverage, floor area ratio, and major building axis line relationship to street line (parallel or perpendicular) for each lot to ensure that each lot will be developed in a way that coordinates with adjacent lots, prevents building crowding, and provides adequate yard spaces and privacy screening, while avoiding a repetitive pattern of housing orientation and design throughout the project.
3. **Minimum Street Frontage** -- The minimum street frontage for lots in a conservation subdivision may be reduced to not less than one hundred twenty-five (125) feet unless a master development plan is submitted per subsection 2 above. Lots that have their required street frontage on a turning circle may have less street frontage than the required minimum, but in no case shall any lot have less than fifty (50) feet of street frontage. The amount of frontage for the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot frontages will allow for the creation of a high quality living environment for the residents of the subdivision and provide adequate access to the residences and other facilities,
4. **Minimum Front Setback** -- The minimum front setback for lots in a conservation subdivision shall be between fifteen (15) and twenty-five (25) feet. The Planning Board shall approve the minimum front setback for each lot as part of the subdivision approval. The size of the minimum front setback for each lot shall be shown on the subdivision plan and may vary from lot to lot or in different areas of the subdivision. In approving the minimum setbacks, the Planning Board shall find that the setbacks will: 1) allow the principal building to be sited in accordance with the Four Step Design Process, 2) allow for the creation of a high quality living environment for the residents of the subdivision, 3) allow for the preservation of significant natural resources, and 4) provide for adequate privacy for each unit based upon the character of the lot and proposed landscaping of the lot.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

5. Minimum Building Separation/Setbacks – When a side or rear yard of a lot containing a residence or other building abuts the external perimeter or property line of a Conservation Subdivision, the minimum side and rear yard setbacks shall be the required minimum setback for the underlying district in which the subdivision is located. The minimum side and rear yard setbacks from internal property lines within a Conservation Subdivision shall be determined by the Planning Board as part of the subdivision approval and may be less than the required setbacks established by the district regulations. The size of the minimum setbacks for each lot shall be shown on the subdivision plan and may vary from lot to lot or in different areas of the subdivision. In approving the minimum setbacks, the Planning Board shall find that the setbacks will: 1) allow the principal building to be sited in accordance with the Four Step Design Process, 2) allow for the creation of a high quality living environment for the residents of the subdivision, 3) allow for the preservation of significant natural resources, and 4) provide for adequate privacy for each unit based upon the character of the lot and proposed landscaping of the lot. In all cases, the separation distance between principal buildings within the subdivision, whether on the same lot or on different lots, shall conform to the requirements of the Town's building code and the NFPA fire protection codes based upon the type of construction and the use of the buildings.

**E. Layout and Design of the Subdivision** – The subdivision, including the location of the common open space, lots, and streets, shall be laid out in accordance with the Four Step Design Process set forth in the Land Subdivision Ordinance. Documentation of the Four Step Process shall be provided as part of the subdivision application.

**F. Streetscape Buffers Adjacent to Existing Public Streets --** A vegetated buffer strip shall be maintained along any public street existing as of April 1, 2005 that is adjacent to a Conservation Subdivision to minimize the visual impact of the Conservation Subdivision on the streetscape. The depth of the buffer strip shall be at least one hundred (100) feet. This provision shall be reduced to twenty-five (25) feet for individual residential lots that front on public streets that existed as of April 1, 2005. No parking, buildings, structures, or recreational facilities, with the exception of trails required under Appendix 1(N) of the Subdivision Ordinance, shall be permitted within this buffer strip but accessory structures such as signs, walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip. The treatment of the buffer strip shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board as part of the approval of the subdivision, to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]

Trails required under Appendix 1(N) of the Subdivision Ordinance may be located within the buffer strip. [Adopted 5/29/07]

**G. Perimeter Buffers --** A vegetated buffer strip shall be maintained along the external perimeter or property line of the Conservation Subdivision, with the exception of property lines along public streets, to minimize the impact of the Conservation Subdivision on

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

abutting properties. The width of the buffer strip shall be at least fifty (50) feet. If the buffer strip abuts a water body or wetland, the width and treatment of the buffer strip shall be expanded to comply with the most restrictive requirements of Section 7, Shoreland Zoning and Section 5.38, where applicable. No parking, buildings, structures, or recreational facilities, with the exception of trails required under Appendix 1(N) of the Subdivision Ordinance, shall be permitted within this buffer strip but accessory structures such as walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip shall be naturally vegetated or landscaped and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board, to assure that the buffer strip will be permanently protected and maintained.

[Amended 5/29/07]

Trails required under Appendix 1(N) of the Subdivision Ordinance and street right of ways for future street connections may be located within the buffer strip. [Adopted 5/29/07]

Access roads may be located in the buffer strip where the Planning Board determines through the 4-Step Design Process that the resulting road location and subdivision design best achieves the purposes of a conservation subdivision as listed in Section 3.13.5.A.1-5.

[Adopted 5/29/07]

**H. Conceptual Long Range Development Plan** -- When a Conservation Subdivision will not utilize the entire parcel and there is potential for future subdivision or development of the parcel or any of the lots being created, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current subdivision proposal will not compromise important conservation values or the long term development of the parcel as a Conservation Subdivision. This plan shall show the relationship of the proposed subdivision area to the balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of the parcel and shall show, in general terms, the potential street network, open space areas, and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements for Conservation Subdivisions and preserves the significant natural resource and conservation values of the entire parcel.

**I. Alteration of Natural Resources** – [Adopted 12-17-07] The Planning Board may allow the alteration of only those protected resources and their associated buffers and setbacks, as defined in Section 5.38, for those improvements listed in Section 5.38.5. B. with a finding that:

- 1) The resulting subdivision design best achieves the purposes of a conservation subdivision as listed in Section 3.13.5.A.1-5 and as determined through the 4-Step Design Process (see Land Subdivision Ordinance, Appendix 9);
- 2) The design is integrated with the natural topographic conditions and minimizes the need for cuts and fills;
- 3) That the impacts on the resource(s) and their respective buffers and setbacks as defined in

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

Section 5.38 have been minimized; and

- 4) The design and function of the improvements incorporate accepted best management practices.

#### **3.13.6 Standards for Subdivision Development Using Country Estate Lots**

**A. Purpose** – The alternative form of development within the Resource Conservation Zoning Overlay (RCZO) District is the use of Country Estate lots either as part of a subdivision or as individual lots that do not constitute a subdivision. This section establishes standards for a subdivision using Country Estate lots. The standards are intended to assure that the layout of the lots respects those areas of the site that have natural resource value, protects the rural character of the RCZO District, and provides reasonable access to lots for public safety purposes.

**B. Standards for Individual Lots** – Country Estate lots shall conform to the following standards:

1. **Minimum Lot Size** – The minimum lot size for a Country Estate lot is three hundred fifty thousand (350,000) square feet
2. **Minimum Net Residential Area Per Unit** – The minimum net residential area per unit is forty-thousand (40,000) square feet. [Amended 1/24/11]
3. **Minimum Lot Width** – The distance between the opposing lot lines measured through the principal building on the lot shall be three hundred (300) feet
4. **Minimum Lot Access Requirements** – A Country Estate lot shall have frontage on a public street, approved private way, or an approved private access drive meeting the provisions of Section 5.42. A Country Estate lot shall have the following minimum street frontage based upon the type of street:

- a public street in existence as of April, 1, 2005	400 ft
- a public street created after April 1, 2005	200 ft
- an approved private way	100 ft
- an approved private drive for country estates	25 ft

5. **Minimum Property Line Setback** – All principal buildings shall be setback a minimum of seventy-five (75) feet from any property line. Accessory buildings and structures with less than two hundred (200) square feet of footprint area shall be set back a minimum of fifty (50) feet from any property line. Any other accessory buildings and structures shall be setback a minimum of seventy-five (75) feet from any property line.

**C. Layout and Design of the Development** – Any subdivision shall be laid out in accordance with the Four Step Design Process set forth in the Land Subdivision Ordinance. This process shall be used to guide the location of building sites, lots, and access to minimize the impact on identified Primary and Secondary Conservation Areas. Documentation of the Four Step Process shall be provided as part of the review of the project.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

**D. Streetscape Buffers** – A vegetated buffer strip shall be maintained on any Country Estate lot that fronts on or otherwise abuts any public street existing as of April 1, 2005 to minimize the visual impact of the development on the streetscape. The depth of the buffer strip shall be at least fifty (50) feet. No parking, buildings, structures, or recreational facilities shall be permitted within this buffer strip but accessory structures such as signs, walls, underground utility structures, and drainage facilities may be located within this buffer as well as trails required under Appendix 1(N) of the Subdivision Ordinance. The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street. The buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip. The treatment of the buffer strip shall be subject to approval by the Planning Board as part of the approval of the development. Appropriate legal mechanisms shall be established to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]

**E. Perimeter Buffers** -- A vegetated buffer strip shall be maintained along the external perimeter or property line of the Conservation Subdivision, with the exception of property lines along public streets, to minimize the impact of the Conservation Subdivision on abutting properties. The width of the buffer strip shall be at least fifty (50) feet. If the buffer strip abuts a water body or wetland, the width and treatment of the buffer strip shall be expanded to comply with the most restrictive requirements of Section 7, Shoreland Zoning and Section 5.38, where applicable. No parking, buildings, structures, or recreational facilities, with the exception of trails required under Appendix 1(N) of the Subdivision Ordinance, shall be permitted within this buffer strip but accessory structures such as walls, underground utility structures, and drainage facilities may be located within this buffer. The buffer strip shall be naturally vegetated or landscaped and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board, to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]

Trails required under Appendix 1(N) of the Subdivision Ordinance and street right of ways for future street connections may be located within the buffer strip. [Adopted 5/29/07]

Access roads may be located in the buffer strip where the Planning Board determines through the 4-Step Design Process that the resulting road location and subdivision design best achieves the purposes of a conservation subdivision as listed in Section 3.13.5.A.1-5. [Amended 5/29/07]

**F. Conceptual Long Range Development Plan** -- When a development involving Country Estate lots will not utilize the entire parcel and there is potential for future subdivision or development of the parcel, the application for approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current development proposal will not compromise important conservation values or the long term development of the parcel. This plan shall show the relationship of the proposed lots to the balance of the parcel and to adjacent land. This plan shall analyze the conservation and development potential of the remaining area of

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

the parcel and shall show, in general terms, the potential access and development areas in a manner that demonstrates that both the proposed development and the future development can occur so that it conforms to the requirements of the RCZO District and preserves the significant natural resource and conservation values of the entire parcel.

#### **3.13.7 Country Estate Developments Not Involving a Legal Subdivision of Land**

Any proposed division of land in the Resource Conservation Zoning Overlay District that will create two (2) or more Country Estate lots within any five (5) year period shall be done in accordance with a plan approved by the Planning Board. If the division does not create a subdivision, this plan may be combined with a plan for a private way or a plan for a private access drive. If the division is not subject to review and approval by the Planning Board under one of these provisions, Planning Board approval of a Plan for a Country Estate Development shall be required prior to the sale or transfer of any of the lots. The plan and its review shall conform to the following requirements:

- a. The plan showing the Country Estate Development shall be prepared by a registered land surveyor. The plan shall be labeled "Plan for a Country Estate Development" and shall provide an approval block for the signatures of the Planning Board members. The plan shall delineate each of the lots to be created and the proposed access for each lot.
- b. The applicant shall submit an Existing Resources and Site Analysis Plan and documentation of the Four Step Design Process for the site as provided for in the Land Subdivision Ordinance. These submissions shall cover those areas of the site proposed for division. The Existing Resources and Site Analysis Plan shall be prepared by a registered landscape architect unless the Planning Board determines that the project does not require these services due to the absence of primary or secondary conservation areas as defined by this ordinance and as indicated in Section 3.13.5.C.2.
- c. The approved plan shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.
- d. In reviewing requests for approval of a Plan for a Country Estate Development under this subparagraph, the Planning Board shall apply such standards and criteria, and may impose such conditions, as are applicable to conditional uses under subsections 8.3 and 8.7 of this Ordinance and the provisions of the RCZO District.
- e. After a Plan for a Country Estate Development has been approved by the Planning Board, no further Country Estate lots shall be created from the initial lot or by the further division of any of the Country Estate lots without the prior approval of such lots by the Planning Board under this subsection.

#### **3.13.8 Exempt Lots**

Any lot of record as of April 1, 2005 may be divided to create one additional exempt lot whether or not such division is a subdivision, provided that all of the following conditions are met:

1. The lot of record shall be held in separate ownership from any abutting property.
2. Both of the lots created by the division shall meet the minimum lot size requirements for the

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

underlying district including minimum lot size, minimum lot width, and minimum street frontage and the minimum suitable building area per lot requirement of Section 5.31.2 a.

3. If the division is a subdivision as defined by this ordinance or the Land Subdivision Ordinance, the division shall be subject to review and approval by the Planning Board in accordance with the subdivision regulations.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.14 West Falmouth Crossing Master Planned Development District\*** [Adopted 1/26/98] [Amended 12/22/05; 6/15/09]

To create a planned development at the West Falmouth Crossing interchange that will be in keeping with the semi-rural character of West Falmouth and surrounding neighborhoods. To permit maximum creativity in site design and to ensure high quality construction with special attention to landscaping, lighting, building orientation and form, coordination of architecture, and signage. To accomplish these goals, the Town Council may approve a Master Development Plan that guides the site plan review process in keeping with general performance standards of the ordinance, but with more flexibility granted to developers and the Planning Board in implementing the approved Master Development Plan. *\*(Formerly Exit 10 Master Planned Development District)*

##### **Permitted Structures and Uses**

1. Accessory buildings and structures
2. Business and professional offices
3. Wholly enclosed places of assembly, amusement, recreation, and government
4. Retail business as part of a mixed use development
5. Research facilities
6. Restaurants (not including carry-out or drive through service)
7. Municipal buildings and uses
8. Tradesman's offices
9. The following additional uses if specifically shown on a Master Development Plan approved by the Town Council:
  - a. Motels and hotels
  - b. Restaurants with carry out and/or drive through service
  - c. Movie theaters
  - d. Service establishments
  - e. Convenience stores with gas pumps as an accessory use
  - f. Outdoor recreational facilities
  - g. Light manufacturing operations with no exterior storage of material, equipment or products
  - h. Wholesale, warehousing, and distribution facilities
  - i. Automobile related sales and services
10. Farmer's Markets [Adopted 7/23/01]
11. Tier I Personal Wireless Service Facilities [Adopted, 4/25/05]
12. Tier II Personal Wireless Service Facilities [Adopted, 4/25/05]
13. Commercial schools as part of a mixed use development [Adopted 5/27/08]
14. Grocery Retail as part of a mixed use development [Adopted 11/26/12]

(Note: The Town Council may require design specific information for Master Plan approval of items 9.a. through i.)

##### **Conditional Uses**

1. Day care centers
2. Churches
3. Veterinary clinic
4. Public utilities
5. Outdoor eating areas

#### **3.14.A** For projects for which a Master Development Plan has not been approved, the dimensional requirements shall be as follows: [Amended, 5/27/99]

Minimum Lot Area Sq.	Minimum Lot Width	Maximum Lot Coverage	Minimum Setbacks		
			Front	Side	Rear

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

None	200 ft.	30%	50	25	25
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**3.14.B** For projects for which a Master Development Plan has been approved, the dimensional requirements shall be as follows: [Amended, 5/27/99]

- (1) 50 foot setback Leighton Road,
- (2) 40 foot setback from Route 100; and
- (3) 25 foot setback from the boundary lines of all properties that are not part of the approved Master Development Plan (other than Leighton Road and Route 100).

#### **3.14.1 Planning Board Waivers**

In approving site plans for development in the West Falmouth Crossing Master Planned Development District, the Planning Board shall waive or reduce these space and bulk requirements if it finds that all of the following conditions have been met:

- a. A Master Development Plan for the site has been approved by the Town Council in accordance with the standards and procedures set forth below; and,
- b. The waiver or reduction is consistent with the approved Master Development Plan; and,
- c. The amount of the reduction is appropriate to reasonably accommodate the development.

#### **3.14.2 Exit 10 Design Guidelines**

All development in the West Falmouth Crossing Master Planned Development District shall be consistent with the Exit 10 Design Guidelines dated December 9, 1997. In approving site plans for development in the district, the Planning Board must find that the proposed development will be carried out in a manner that is consistent with the design guidelines. In making determinations of consistency, the Planning Board may require peer review analyses provided by qualified design professionals. [Amended 11/10/08; Effective 01/01/09]

#### **3.14.3 Master Development Plan Sign Controls**

The number, size and location of signs shall conform to the requirements set forth in this ordinance, unless a Master Development Plan has been approved. If a Master Development Plan has been approved by the Town Council, the provisions of Section 3.10, Route 100 Corridor Overlay District (CO), as well as Sections 5.11 through 5.20 of this Ordinance shall not be applicable insofar as they relate to number, size and location of signs in the area covered by the approved Master Development Plan. The Planning Board may approve signage for a parcel within an approved Master Development Plan if it finds that the proposed signage in terms of number, size and location is consistent with the Exit 10 Design Guidelines. [Amended, 5/27/99; 6/15/09]

#### **3.14.4 Master Development Plan Approval**

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

In addition to the requirements of the Route 100 Corridor Overlay District for the preparation and filing of a Master Development Plan with the Planning Board, the owner of a parcel of land may seek Town Council approval of a Master Development Plan that will supersede the standard Mixed Use Cluster zoning. If the owner seeks such approval and the Council approves the Master Development Plan, all subsequent development activities in the area covered by the Plan shall be consistent with the approved Master Development Plan.

#### **3.14.5 Master Development Plan Submissions**

The Master Development Plan shall identify the proposed location, size, and use type of all buildings and shall show parking locations, roads and drives, and buffer zones. The Master Development Plan shall be conceptual in nature and shall be based upon a site inventory plan identifying the major development opportunities and constraints associated with the site. This inventory shall be prepared by a registered landscape architect or registered professional engineer and shall show in a conceptual manner natural drainage features, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant man-made and natural features of the site.

#### **3.14.6 Master Development Plan Procedure**

The Town Council shall hold a public hearing on a proposed Master Development Plan within forty-five (45) days, but not sooner than twenty one (21) days of the submission of a Master Development Plan. At least ten (10) days prior to the hearing, the Council shall notify by mail the owners of all property abutting the property covered by the Master Development Plan. For the purposes of this section, the owners of the property shall be considered to be the parties listed by the tax assessor for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Council.

Notwithstanding the foregoing, with respect to a Master Development Plan filed at least twenty-one days prior to the adoption of this Ordinance, the Town Council may hold such public hearing on such proposed Master Development Plan at the same meeting at which the Town council adopts this Ordinance so long as notice of the filing of such Master Development Plan has been provided by mail to the owners of all property abutting the property covered by the Master Development Plan at least ten (10) days prior to such hearing.

#### **3.14.7 Master Development Plan Findings and Conditions**

In approving Master Development Plans under this provision, the Town Council shall find that the proposed development is consistent with the purpose of the West Falmouth Crossing Master Planned Development District, the Route 100 Study, and the Town's adopted comprehensive plan. Prior to approving a Master Development Plan, the Town Council may request reports from the Town Planner, Fire Chief, and Public Works Director containing their recommendations as to the development proposal. The Town Council may consider attaching conditions to the zoning approval including:

- a. Limitations on the number and types of permitted and conditional uses;
- b. Restrictions on the scale and density of development;
- c. Conceptual design and layout of buildings or other improvements, including buffering;
- d. Time frames for commencement and completion of public infrastructure;

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects;
- f. Preservation of open space and buffers, and protection of natural areas and historic sites;
- g. Provisions for reservation or dedication of land for public purposes;
- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning; and,
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

#### **3.14.8 Master Development Plan Time Limits [Amended 10/10/2012]**

If the Town Council grants approval of a Master Development Plan, the applicant's legal rights, duties or privileges determined thereby, shall expire if the development is not commenced within two (2) years of the date on which approval was granted and shall expire as to any portion of the development that is not substantially completed within twenty (20) years of the date on which approval was granted. The Council may extend these time limits upon showing by the applicant that additional time is needed due to required local, state, or federal permits or approvals, or because of market conditions. This provision shall be retroactive and shall apply to any master development on or after January 26, 1998.

#### **3.14.9 Master Development Plan Filing and Transfers**

A copy of the approved Master Development Plan shall be filed with the Town Planner and shall be included in all subsequent applications for site plan review. In approving a Master Development Plan, the Town Council may designate certain public improvements to be undertaken by the developer that are of particular importance to the Council (the "Designated Public Improvements"). Prior to the date that such Designated Public Improvements have been completed and accepted by the Town, the approval of the Master Development Plan may not be assigned without Town Council approval. The Town Council shall approve such transfer if the proposed transferee can demonstrate to the Council's satisfaction that it has the technical and financial capacity to complete the Designated Public Improvements. After the Designated Public Improvements have been completed and accepted by the Town, the approval of the Master Development Plan may be assigned without the need for Town Council approval.

#### **3.14.10 Master Development Plan Amendments**

Any amendment to the Master Development Plan, other than a "Minor Revision", as defined below, must first be approved by the Town Council before becoming effective. The approval of an amendment to the Master Development Plan, other than a Minor Revision, must comply with the same procedural requirements set forth above for the approval of the original Master Development Plan. A Minor Revision is any proposed change to a Master Development Plan that does not significantly expand the overall square footage of the improvements on the project, change the use of any portion of the project to a use that requires Town Council approval, as set forth above, or modify any conditions that may have been placed upon the project by the Town Council in approving the original Master Development Plan. A Minor Revision may be approved by the Planning Board.

#### **3.14.11 Master Development Plan Zoning Reversion**

If the Town Council rezones a West Falmouth Crossing Master Planned Development, the permitted uses and development standards shall be governed exclusively by the provisions of this subsection 3.14 and not by the underlying district in which such land is located unless and until such time as:

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- a. one hundred and eighty (180) days pass without the filing of final site plans and subdivision plans to the Planning Board, unless the applicant shows that additional time is needed due to required local, state, or federal permits or approvals; or,
- b. the developer abandons the project and the developer or property owner(s) request that the rezoning be rescinded.

In such cases, the land tract shall revert to the original or underlying zoning.

#### **3.14.12 Master Development Plan Height Limitations**

No building shall exceed three (3) stories or thirty-nine (39) feet in height, as measured from the average finished grade within twenty (20) feet of the Building; provided, however, that if a Master Development Plan has been approved by the Town Council and such plan sets forth a height limitation, the height limitations set forth in such approved Master Development Plan, including any notes thereto, shall be applicable and shall control any contrary provision in this Ordinance. [Adopted 3/26/01]

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.15 Village Center Overlay District [Adopted, 11/23/98][Repealed 5/13/13]**

#### **3.16 Retirement Community Overlay District [Adopted 11/23/98, Amended 10/13/09, 05/30/12]**

The Retirement Community Overlay District is intended to provide flexibility and creativity in the design and development of retirement communities that provide a continuum of care and a range of living environments for older residents in locations that are appropriate for this type of development. The overlay district is designed to foster high quality communities that are an asset to the Town and are integrated into the neighborhood..

##### **3.16.1 Initial Designation of Overlay Districts [Repealed 05/30/12]**

##### **3.16.2 Effect of Designation as an Overlay District**

The Retirement Community Overlay District is intended to function as an overlay district. As such, the requirements of the underlying zoning district will remain in force and will apply to all use of land and buildings within the Overlay District except as specifically modified by the provisions of this section. The designation of an Overlay District is intended to recognize that a planned retirement community has special considerations that do not apply to other uses and to allow for additional flexibility in the permitting of these uses in return for an increased level of community oversight.

##### **3.16.3 Designation of or amendment to a Retirement Community Overlay District**

The Town Council may designate or amend a Retirement Community Overlay District in accordance with the following procedures and standards:

- a. **Procedure** - The Town Council shall consider requests for the designation of a Retirement Community Overlay District. Requests for the designation of a district may be initiated by the Planning Board, the Long-range Planning Advisory Committee (LPAC), or the owners of at least 75% of the total land area proposed to be included in the district. Designation requests by property owners shall be made in writing and shall provide the information set forth below.

The Council shall hold a public hearing on the request within forty-five (45) days, but no sooner than twenty-one (21) days, of its receipt by the Town provided that the Community Development Director or their designee has determined that all of the required information has been provided. Notice shall be given by first class mail at least fourteen (14) days prior to the hearing to all owners of property within the proposed district or amendment thereto and all owners of property within five hundred (500) feet of the proposed district of the public hearing.

For the purposes of this section, the owners of property shall be considered to be the parties listed by the Tax Assessor for the Town of Falmouth as those against whom taxes are assessed at the time of notice. Failure of any property owner to receive notice of the public hearing shall not necessitate another hearing nor invalidate any action of the Town Council.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- b. **Standards** - In considering requests for the designation or amendment of a Retirement Community Overlay District, the Council may vote to create or amend such a district only if it finds that:

1. The designation of the Overlay District is consistent with the Town's Comprehensive Plan,
2. The designation will result in the development or expansion of a quality retirement community,
3. The community is or will be served by public sewerage and public water with adequate capacity to serve the development,
4. The community will provide a continuum of care that offers a variety of levels of care and a range of services to elderly and/or disabled residents,
5. The community will be designed to provide a sense of a unified development with a common design character,
6. The community will include housing for at least one hundred fifty (150) residents in a range of accommodations,
7. The designation of the district will not have an unduly negative impact on neighboring properties, and
8. The area to be designated is located in a Residential A (RA), Residential B (RB), or Village Mixed Use (VMU) District.

- c. **Submission Requirements** - If the request for the designation of a Retirement Community Overlay District is initiated by the owners of the property within the proposed overlay district, the request shall be accompanied by the following:

1. A narrative description of the range of care and service options to be offered and a discussion of how these are consistent with the definition of a retirement community.
2. A conceptual master plan showing, in general terms, the proposed location and size of buildings, roads and drives, parking areas, recreational facilities, and other development features. The conceptual master plan shall be prepared by a registered landscape architect, registered architect, or registered professional engineer and shall be based upon a site analysis plan identifying the major developmental opportunities and constraints associated with the proposed district. The site analysis plan shall show in a conceptual nature the primary drainage features and patterns of the proposed district, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant manmade and natural features of the proposed district.

The Town Council may waive the provision for the submission of a conceptual master plan for the designation of an overlay district in conjunction with a retirement community existing as of the date of adoption of this section if the proposed overlay district includes the property that is already in use as a retirement community.

A request for the designation of a Retirement Community Overlay District initiated by the Planning Board or the Long-range Planning Advisory Committee

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

that does not involve a specific development proposal is not subject to these submission requirements.

- d. **Repeal** - The Town Council may repeal any Overlay District and terminate all rights in the overlay provisions if:
  - 1. Necessary Subdivision or Site Plan approvals have not been obtained for the retirement community within two (2) years of the Town Council's vote to create or amend the overlay district, or
  - 2. Substantial construction has not been begun on the improvements shown on the approved Subdivision or Site Plan within three (3) years of the Town Council's vote to create or amend the district.

#### **3.16.4 Subdivision and/or Site Plan Approval**

The Planning Board, prior to its approval of a Subdivision or Site Plan, shall find that the application is generally consistent with the conceptual master plan if such a plan was approved as part of the designation process.

#### **3.16.5 Permitted Uses**

In addition to the uses allowed in the underlying zoning district, the following uses shall be permitted uses in any Retirement Community Overlay District:

- a. Living arrangements and services for the elderly and/or people with disabilities including, but not limited to:
  - 1) congregate housing,
  - 2) independent housing with residential support services,
  - 3) assisted living facility,
  - 4) nursing facility or skilled nursing facility,
  - 5) adult day care,
  - 6) senior center,
  - 7) health institution or;
  - 8) memory loss care.
- b. Associated uses, provided that use or uses are incidental and subordinate to the residential facilities, are designed and will function as an integral part of the community and are to serve primarily the residents. Uses include, but are not limited to:
  - 1) indoor and outdoor recreational facilities
  - 2) financial services,
  - 3) medical and dental services,
  - 4) maintenance facilities
  - 5) personal services, or
  - 6) places of worship

#### **3.16.6 Space and Bulk Standards**

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

Notwithstanding the requirements of the underlying zoning district, a retirement community and all uses, buildings, and structures associated with it shall be governed by the following provisions:

- a. **Minimum site size** - a retirement community shall include a minimum of thirty (30) acres. Individual lots within the community shall be a minimum of twenty thousand (20,000) square feet in size.
- b. **Minimum net residential area per elderly dwelling unit** - for each dwelling unit occupied by an elderly or disabled household there shall be a minimum of six thousand (6,000) square feet of net residential area within the overall area of the retirement community.
- c. **Minimum net residential area per care bed** - for each bed in an assisted living facility or other accommodation for the elderly or person with disabilities there shall be a minimum of two thousand (2,000) square feet of net residential area within the overall area of the retirement community.
- d. **Minimum lot width** - any individual lot within a retirement community shall have a width of one hundred (100) feet.
- e. **Maximum lot coverage** - the total portion of the overall area of the retirement community covered by buildings and structures shall be not more than twenty (20) percent.
- f. **Maximum building height** - no building shall exceed four (4) stories or forty-five (45) feet as measured in accordance with Section 5.20.
- g. **Minimum building separation** - all buildings and structures shall be separated by a minimum of ten (10) feet at the closest point. This separation shall not apply to units in attached housing.
- h. **Maximum building area** - any building located within seventy-five (75) feet of the perimeter of the overall site shall have a total floor area of less than five thousand (5,000) square feet. The maximum size of any building shall be a total floor area of one hundred thousand (100,000) square feet.
- i. **Minimum setbacks** - These provisions are designed to allow smaller buildings to be located near the perimeter of the retirement community while requiring that larger buildings be more centrally located within the site. Therefore, the required minimum setback of buildings and structures shall be as defined below.

The minimum setback from the external perimeter of the district shall be as follows:

<b>Building Height</b>	<b>Minimum Setback</b>
Not more than two (2) stories or thirty (30) feet	Fifty (50) feet
Not more than three (3) stories or forty (40) feet	Ninety (90) feet
Not more than four (4) stories or forty-five (45) feet	One hundred fifty (150) feet

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- 1) The setback requirement from a perimeter street shall not apply to an existing building or any portion of an existing building that is located within the required setback provided that:
    - a) the building will not be expanded in the direction of the street,
    - b) the height of the building will not be increased, and
    - c) the gross floor area of the building will not be increased by more than sixty (60) percent or two thousand (2,000) square feet, whichever is less.
  - 2) The setback from internal street rights-of-way shall be twenty-five (25) feet.
- j. **Single Family Dwelling** – Notwithstanding the provisions of Section 4.4.a, more than one single family dwelling may be permitted on a lot.

#### **3.16.7 Development Along Adjacent Roads**

When the development proposal provides for the construction or expansion of a building visible from an existing road, special consideration shall be paid to the design of the building and site. In general, buildings shall be designed so that they appear to face the road. No service or storage areas shall be located between the building and the road. Curb cuts onto roads shall be minimized where practical. Parking lots shall be located internally where practical, rather than between the buildings and the existing road. If a side walk or pedestrian way exists along the existing road, provisions shall be made to link it with the proposed buildings.

#### **3.16.8 Design Elements**

The design of the retirement community shall reflect an overall sense that the entire community is part of a single development with a pedestrian friendly, neighborhood scale. As such, the buildings shall convey a common character but need not be similar in either design or scale. In general, high intensity, high traffic uses and core facilities should be sited in central locations within the community where feasible, with lower intensity uses on the perimeter.

- a. Common elements such as signs, lighting, and site furniture and improvements should be used where practical to establish a sense of community.
- b. Where appropriate, provisions for pedestrian linkages should be made to bring the elements of the retirement community together.
- c. Notwithstanding Section 5.13.g, the Planning Board may approve off premise signs provided a master sign plan for the District is approved by the Planning Board. The master sign plan shall provide for compatible design elements such as color, form, materials and lighting. All signs shall comply with 23 M.R.S.A. Chapter 21, Maine Traveler Information Services.[Amended 5/30/12]

#### **3.16.9 Ocean View Retirement Community (OVRC)**

The Ocean View Retirement Community is designated as a Retirement Community Overlay District as depicted on the Official Zoning Map and the Approved OVRC Conceptual Master Plan dated May 30, 2012.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

The requirements of the RCOD shall apply to the OVRC except as specifically modified in this sub section.

**a. Building Height and External Setbacks**

<b>Building Height &amp; External Setbacks</b>	<b>Minimum Setback to External Lot Lines</b>
Not more than two (2) stories or thirty (30) feet	Thirty (30) feet
Not more than three (3) stories or forty (45) feet	Ninety (90) feet
Not more than four (4) stories or sixty (60) feet	One hundred fifty (150) feet

Notwithstanding the table above, buildings shall maintain a minimum setback of twenty (20) feet from the Elementary School Redevelopment District (ESRD) boundary.

- b. Internal Setbacks:** There shall be no required setback from internal lot lines, or from internal street rights of way, within the District.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.17 Highland Lake Conservation Overlay District** [Adopted 11/27/00]

##### **3.17.1 Purpose**

The District is established in order to protect Highland Lake from the phosphorus contained in stormwater runoff from developed areas.

##### **3.17.2 District Boundaries**

The boundaries of the District coincide with the watershed of Highland Lake and are depicted on the official Zoning Map of Falmouth.

##### **3.17.3 Requirements**

- a. Any project that requires private way, site plan or subdivision approval by the Planning Board shall prepare a phosphorus control plan according the following requirements:
  - (1) The project shall not export available phosphorus in stormwater runoff at a rate of more than .053 lbs/acre/year.
  - (2) The phosphorus control plan shall be prepared in accordance with the manual entitled: Phosphorus Control in Lake Watersheds: A Technical Guide to Evaluating New Development, by the Maine Department of Environmental Protection, 1992, or its most recent revision.
- b. The construction of a single family home, the expansion of more than 200 square feet of building footprint on an existing home, or the clearing of trees and moving of soil material for the purpose of building a single family home, requires a phosphorus control permit from the Code Enforcement Officer.
  - (1) A phosphorus control and sedimentation and erosion control plan that shows how the project shall meet the requirements of this ordinance shall be submitted to the Code Enforcement Officer for approval. The plan shall be prepared by a professional who is qualified for the task as determined by the Code Enforcement Officer. The plan shall show lot boundaries, the limits of the area that will be cleared for development, the direction of stormwater flow, the location of streams, wetlands, and waterbodies, if any, and the location and type of phosphorus control and sedimentation and erosion control measures to be installed and maintained as part of the project.

The plan shall meet the following requirements:

- a) A buffer strip 50 feet wide consisting of natural forestland that meets the requirements of Section 3.17.4 shall be retained along the property boundaries downslope of the developed area of the lot. The buffer strip shall intercept and treat the stormwater runoff from at least 90% of the developed area of the lot, including at least 90% of the area consisting of buildings, driveways, and other impervious surfaces. If lot size, lot shape, existing development on the lot, or topography make a 50 foot buffer impractical, as determined by the Code

Enforcement Officer, then a phosphorus control plan shall be prepared and implemented according to Section 3.17.5. If the lot is located in a subdivision with a phosphorus control plan approved by the Planning Board, then a

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

phosphorus control plan shall be submitted that shows what phosphorus control measures, if any, are located on the property and how they shall be maintained.

- b) Erosion and sedimentation control measures shall be implemented according to the requirements of Section 5.39. [Amended 9/22/03]
- (2) A written notice that the property is regulated by a phosphorus control permit shall be filed at the Cumberland County Registry of Deeds within ten days of plan approval. A copy of the notice filed at the Registry shall be submitted to the Code Enforcement Office within this same time period as proof of the filing.
- (3) A phosphorus control plan may be amended with the approval of the Code Enforcement Officer. The amended plan shall be filed at the Code Enforcement Office.
- (4) A review fee as established by the Town Council shall accompany applications for phosphorus control permits.[Amended 8-27-07]

#### **3.17.4 Natural Forestland Buffers**

##### **a. General Intent**

The standards of this section are designed to protect the natural ability of forestland to remove phosphorus from stormwater runoff. For this reason, failure to protect the buffer area according to these standards is a violation of the phosphorus control permit.

##### **b. Measurement of Buffer**

Buffers shall consist of upland and run parallel to lot lines. The width of the buffer shall be measured 50 feet horizontally and perpendicular to the lot line. Buffers are not required below portions of the lot that will remain undeveloped. If a wetland lies on the downslope side of the lot in a position where the buffer should be located, the buffer shall be laid out parallel to the upland edge of the wetland rather than the lot boundary.

##### **c. Maintenance Standards**

- (1) Stormwater runoff must enter the buffer as sheet flow. Creating drainage channels through the buffer strip is not permitted.
- (2) No soil, rock, construction debris, vehicle bodies or parts, pollutants, trash, fill material, or debris may be placed, stored, or dumped in the buffer strip.
- (3) No trucks, cars, dirt bikes, ATVs, bulldozers, backhoes, or other motorized vehicles may be permitted within the buffer strip.
- (4) Any level spreader directing flow to the buffer strip must be regularly inspected and adequately maintained to preserve the function of the level spreader.
- (5) Removal of trees and other vegetation is permitted only if an evenly distributed stand of trees and other vegetation is maintained. The buffer must score a minimum of 12 points in any 25 foot by 25 foot section (625 square feet) as determined by the following rating system:

Diameter of Tree at 4 ½ Feet above Ground Level in Inches	Points
--	--------

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

2-4	1
4-12	2
> 12	4

- (6) Where existing trees and other vegetation result in a rating score less than 12 points, no trees may be cut or sprayed with biocides except for the normal maintenance of dead, windblown, or damaged trees and for pruning of tree branches below a height of 12 feet provided that two thirds of the tree's canopy is maintained.
- (7) Structures are not permitted within the buffer area, except that signs, fence posts or utility poles that are already located within the area selected as a buffer may remain if the Code Enforcement Officer determines that these structures do not impair the functional value of the buffer for filtering stormwater runoff.
- (8) No undergrowth, ground cover vegetation, leaf litter, organic duff layer, or mineral soil may be disturbed or removed from the buffer strip.

#### **3.17.5 Phosphorous Control According to Table 1**

##### **a. Purpose of the Table**

Table 1 provides flexibility for preparing phosphorus control plans on lots where a 50-foot natural forestland buffer is impractical due to site constraints.

##### **b. Scoring the Plan**

The plan must score at least 15 points. The points must be earned using one filtering method and three or more treatment areas. The points are added from the filtering method and the treatment areas to achieve the total score. More than one filtering method may be used on the plan in order to treat runoff from the developed area on the lot. However, only the filtering method with the lowest point value can be included in the calculation for phosphorus control. Credit for areas to be treated only includes the developed portions of the property, as shown in the Table. The Other Options section is to be used only if the project cannot score the minimum number of points based solely on the treatment of stormwater runoff. Credit for phosphorus control is only permitted if the stormwater runoff enters buffer strips as sheet flow. Channeling of stormwater flow through buffer strips is not permitted.

### SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)

Table 1 – Phosphorus Control Options		
BMP	Point Value/BMP	Points
<b>Filtering Method</b>		
1. Natural forestland buffer with intact duff layer and canopy. The buffer must meet the measurement and maintenance requirements of Section 3.17.4.	45' wide = 9 40' wide = 8 35' wide = 7 30' wide = 6 25' wide = 5	
2. Non-wooded buffer consisting of old fields, orchards, and cutover lands where grass and herbs at least 6 inches high are left to grow at ground level.	100' wide = 3 75' wide = 2 50' wide = 1	
3. Landscape buffer consisting of closely spaced trees and shrubs in a prepared planting bed. The topsoil must contain at least 6 inches of sandy loam, unless excavating the plant bed would disturb the roots of existing trees and shrubs within the buffer area. At least two inches of organic mulch such as decomposed bark or wood chips must be maintained on the soil surface. A level spreader may be needed in sloping areas in order to intercept and distribute the runoff into the buffer as sheet flow.	20' wide = 7 15' wide = 5 10' wide = 3	
4. Structural filter bed or phosphorus control pond.	3	
<b>Treatment Areas</b>		
5. Lawn runoff, including tennis courts, basketball courts, and related impervious surfaces used mainly by pedestrians.	90-100% of area = 3 75-89% of area = 2 60-74% of area = 1	
6. Roof runoff, including other impervious surfaces associated with buildings, such as decks, porches, walkways, and patios.	90-100% of area = 2 75-89% of area = 1	
7. Driveway runoff, including other impervious surfaces associated with parking, maintenance, and storage of motor vehicles, boats, RVs, and trailers.	90-100% of area = 3 75-89% of area = 2 60-74% of area = 1	
8. Road runoff from public and private ways, exclusive of the areas described in No. 7. Credit may not be obtained for public and private ways that are already managed for phosphorus control under the terms of a private way, subdivision, or site plan permit.	1 pt / 1,000 s.f. of road surface up to a max. of 4 pts.	
<b>Other Options (Extra credit only)</b>		
9. Driveway, parking, and other vehicular access areas are paved, covered with crushed stone, grass pavers, dry laid pavers, or other permanent and nonerodible surfaces. Gravel and stonedust are not considered permanent, nonerodible surfaces.	100% of area = 2 90-99% of area = 1	
10. An unstable and eroding shoreline along the lake or natural stream channel is stabilized. Credit is only allowed if the erosion is the result of factors beyond the control of the property owner.	1 pt. / 50 ft. of shoreline up to a max. of 3 points	
<b>Total Score</b>		

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.18 Tidewater Master Planned Development District** [Adopted, 4/4/05]

The purpose of the Tidewater Master Planned Development District is to allow the development of the Tidewater area into a high quality, mixed use commercial-residential neighborhood while preserving a significant portion of the area as open space including much of the historic Tidewater Farm. The standards and procedures of the district are designed to permit maximum creativity in site design and to ensure high quality construction with special attention to landscaping, lighting, building orientation and form, coordination of architecture, and signage. To accomplish these goals, the Town Council may approve a Master Development Plan that guides the site plan review process in keeping with general performance standards of the ordinance, but with more flexibility granted to developers and the Planning Board in implementing the approved Master Development Plan.

##### **3.18.1 Allowed Uses**

#### **Tidewater Master Planned Development District**

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **Permitted Structures and Uses**

1. Accessory buildings and structures
2. Single family detached dwellings
3. Two-family dwellings
4. Multiplexes
5. Apartments on the upper floors of a mixed-use building
6. Business and professional offices
7. Research facilities
8. Wholly enclosed places of assembly, amusement, recreation, and government
9. Outdoor facilities for recreation, entertainment and culture
10. Retail and service establishments and commercial schools [Adopted 5/27/08]
11. Restaurants (not including drive through service)
12. Outdoor eating areas
13. Hotels
14. Municipal buildings and uses
15. Day care centers
16. Churches
17. Health Institutions
18. Libraries
19. Museums
20. Private clubs
21. Farming
22. Animal Husbandry
23. Forestry
24. Riding Stables
25. Farmer's Markets
26. Grocery Retail [Adopted 11/26/12]

The use of land, buildings and structures within the Tidewater Master Planned Development District shall be consistent with the adopted Master Development Plan. The following uses shall be specifically allowed in accordance with the Master Development Plan:

#### **Conditional Uses**

1. Public utilities
2. Light manufacturing operations with no exterior storage of material, equipment or products
3. Home occupations
4. Roadside Stands [Adopted 02/27/12]

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.18.2 Dimensional Standards**

The placement of buildings, structures, parking, and site improvements shall be generally consistent with the adopted Master Development Plan. All buildings and structures within the district shall conform to the following dimensional standards:

##### **A. Lot Size**

There shall be no requirement for the minimum size of lots within the District. Notwithstanding other provisions of the ordinance, more than one principal building may be located on a lot.

##### **B. Lot Width and Street Frontage**

There shall be no requirement for the minimum width of lots within the District. The requirement that lots must have frontage on a street shall not apply to buildings and structures that are developed in conformance with the adopted Master Development Plan.

##### **C. Front Setback**

1. Single-family and two-family dwelling units from the right-of-way of public streets -	20 feet
2. Single-family and two-family dwelling from the edge of the travelway of private streets	20 feet
3. Non-residential and mixed use buildings and multiplexes from the right-of-way of public streets	None
4. Non-residential and mixed use buildings and multiplexes from the edge of the travelway of private streets	None

##### **D. Side and Rear Setback**

All principal buildings shall be separated by a minimum of twenty (20) feet but there shall be no required setback from internal lot lines within the District.

##### **E. Maximum Building Height**

All buildings within the District shall be limited to a maximum of three (3) stories. This requirement shall not apply to towers, spires, and similar architectural features. The maximum height of such features shall be sixty (60) feet.

##### **F. Perimeter Buffer**

No buildings or structures shall be located within twenty (20) feet of the boundary of the Master Planned Development District and this area shall be maintained as a naturally vegetated or landscaped buffer strip except where the boundary is adjacent to an existing non-residentially developed parcel.

## **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

### **3.18.3 Additional Standards and Requirements**

Notwithstanding other provisions of the ordinance, the placement of buildings, structures, parking, and site improvements shall be generally consistent with the adopted Master Development Plan and development within the Tidewater Master Planned Development District shall conform to the following standards:

#### **A. Off Street Parking and Loading**

Parking shall be provided for uses within the District in conformance with the provisions of Section 5.5 except as follows:

- on street parking in conformance with the approved Master Development Plan may be counted toward the parking requirement for non-residential uses
- parking does not have to be located on the same lot as the use it serves provided that such parking is located within five hundred (500) feet of the use
- parking may be located in the area adjacent to the property or lot line in conformance with the adopted Master Development Plan provided such parking is appropriately screened
- the required number of parking spaces for all dwelling units including multiplex units shall be two (2) spaces per unit

#### **B. Wetland Buffers**

The requirements of Section 5.38 shall not apply to development, including single-family dwellings, that is in accordance with the approved Master Development Plan and a plan for the protection of wetlands is submitted and approved as part of the development review process.

#### **C. Multiplex Standards**

The requirements of Section 5.9 shall not apply to multiplex development that is in conformance with the approved Master Development Plan.

#### **D. Road Standards**

1. New public streets constructed as part of the Tidewater development shall conform to the standards for public streets set forth in the Town's Subdivision Ordinance except as provided in this section.
2. Tidewater Lane that will provide access to the open space, Foundation facilities, and the inn will be a public road. The first 1,165 lineal feet from Clearwater Drive will be paved. The remaining section of this road will be built with a gravel surface until such time as the volume of traffic dictates paving of the road as set forth in the Master Development Plan.
3. Private streets and access drives shall be built to the Town's construction standards for private ways but shall not be required to conform to the design standards for public streets or private ways. These facilities shall conform to the adopted Master Development Plan and the following minimum requirements except as provided in 4:
  - 24 feet wide travelway

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- 3 foot gravel shoulders
  - open drainage
  - pedestrian facilities provided on one side of all streets that are not dead ends – these facilities can include stonedust or similar paths that are separate from the travelway
4. To minimize the impact on wetlands, both public and private streets will be narrowed where they cross wetlands. In these situations, a minimum travelway width of twenty (20) feet will be provided. Side slopes in these areas may be increased to a ratio of 1:2.

#### **E. Standards for Animal Husbandry**

1. All animal husbandry shall be conducted in accordance with a written management plan that is subject to review and approval by the Town Council. The management plan shall specify the types of animals and the maximum number of each type of animals that will be on the premise together with any related activities including the slaughtering, processing, and/or sale of animals. The plan shall identify how the external impacts of the animal husbandry and related activities including noise, odors, and run-off will be managed and minimized.
2. The Town Council shall approve the management plan only if it finds that the animal husbandry and related activities will be consistent with the Master Development Plan and will not create a nuisance for residents of the Tidewater development or adjacent residential properties. In approving the management plan, the Council may impose conditions on the activities or operation of the animal husbandry to assure that the impact is minimized.
3. There shall be no swine or cattle kept on the premises except as incidental to an agricultural, educational, or community use.

#### **3.18.4 Planning Board Waivers**

In approving site plans for development in the Tidewater Master Planned Development District, the Planning Board shall waive or reduce the space and bulk requirements if it finds that all of the following conditions have been met:

- a. A Master Development Plan for the site has been approved by the Town Council in accordance with the standards and procedures set forth below; and,
- b. The waiver or reduction is consistent with the approved Master Development Plan; and,
- c. The amount of the reduction is appropriate to reasonably accommodate the development.

#### **3.18.5 Design Guidelines**

All development in the Tidewater Master Planned Development District shall be consistent with the Tidewater Village Design Guidelines and schematic plans / elevations for homes and town homes approved as part of the Master Development Plan. In approving site plans for development in the district, the Planning Board must find that the proposed development will be carried out in a manner that is consistent with the design aspects of the Master Development Plan and the Development Parameters for the Tidewater Master Planned Development District. In making determinations of consistency, the Planning Board may require peer review analyses provided by qualified design professionals.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.18.6 Master Development Plan Sign Controls**

The Master Development Plan shall include an overall design concept for signage within the Tidewater development. The signs in each phase of the development shall conform to this overall concept. The number, size and location of signs shall conform to the requirements set forth in Sections 5.11 through 5.20 of this Ordinance unless specific deviations from these requirements have been approved as part of the Master Development Plan.

#### **3.18.7 Master Development Plan Approval**

Prior to the issuance of any permits or approvals within the District, the owner of a parcel of land shall seek Town Council approval of a Master Development Plan that will supersede the existing zoning. Once the owner seeks such approval and the Council approves the Master Development Plan, all subsequent development activities in the area covered by the Plan shall be consistent with the approved Master Development Plan.

#### **3.18.8 Master Development Plan Submissions**

The Master Development Plan shall identify the proposed location, size, and use type of all buildings and shall show parking locations, roads and drives, and buffer zones. The Master Development Plan shall be conceptual in nature and shall be based upon a site inventory plan identifying the major development opportunities and constraints associated with the site. This inventory shall be prepared by a registered landscape architect or registered professional engineer and shall show in a conceptual manner natural drainage features, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant man-made and natural features of the site.

#### **3.18.9 Master Development Plan Procedure**

The Town Council shall hold a public hearing on a proposed Master Development Plan within forty-five (45) days, but not sooner than twenty one (21) days of the submission of a Master Development Plan. At least ten (10) days prior to the hearing, the Council shall notify by mail the owners of all property abutting the property covered by the Master Development Plan. For the purposes of this section, the owners of the property shall be considered to be the parties listed by the tax assessor for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Council.

Notwithstanding the foregoing, with respect to a Master Development Plan filed at least twenty-one days prior to the adoption of this provision of the Ordinance, the Town Council may hold such public hearing on such proposed Master Development Plan at the same meeting at which the Town Council adopts this section of the Ordinance so long as notice of the filing of such Master Development Plan has been provided by mail to the owners of all property abutting the property covered by the Master Development Plan at least ten (10) days prior to such hearing.

#### **3.18.10 Master Development Plan Findings and Conditions**

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

In approving Master Development Plans under this provision, the Town Council shall find that the proposed development is consistent with the purpose of the Tidewater Master Planned Development District and the Town's adopted comprehensive plan. Prior to approving a Master Development Plan, the Town Council may request reports from the Town Planner, Fire Chief, and Public Works Director containing their recommendations as to the development proposal. The Town Council may consider attaching conditions to the zoning approval including:

- a. Limitations on the number and types of permitted and conditional uses;
- b. Restrictions on the scale and density of development;
- c. Conceptual design and layout of buildings or other improvements, including buffering;
- d. Time frames for commencement and completion of public infrastructure;
- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects;
- f. Preservation of open space and buffers, and protection of natural areas and historic sites;
- g. Provisions for reservation or dedication of land for public purposes;
- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning; and,
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

#### **3.18.11 Master Development Plan Time Limits**

If the Town Council grants approval of a Master Development Plan, the applicant's legal rights, duties or privileges determined thereby, shall expire if the development is not commenced within two (2) years of the date on which approval was granted and shall expire as to any portion of the development that is not substantially completed within ten (10) years of the date on which approval was granted. The Council may extend these time limits upon showing by the applicant that additional time is needed due to required local, state, or federal permits or approvals, or because of market conditions.

#### **3.18.12 Master Development Plan Filing and Transfers**

A copy of the approved Master Development Plan shall be filed with the Town Planner and shall be included in all subsequent applications for site plan review. In approving a Master Development Plan, the Town Council may designate certain public improvements to be undertaken by the developer that are of particular importance to the Council, as listed in Exhibit B of the Limited Development Agreement Public-Private, between Tidewater, LLC and the Town of Falmouth. Prior to the date that such Designated Public Improvements have been completed and accepted by the Town, the approval of the Master Development Plan may not be assigned without Town Council approval. The Town Council shall approve such transfer if the proposed transferee can demonstrate to the Council's satisfaction that it has the technical and financial capacity to complete the Designated Public Improvements. After the Designated Public Improvements have been completed and accepted by the Town, the approval of the Master Development Plan may be assigned without the need for Town Council approval.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.18.13 Master Development Plan Amendments**

Any amendment to the Master Development Plan, other than a “Minor Revision”, as defined below, must first be approved by the Town Council before becoming effective. The approval of an amendment to the Master Development Plan, other than a Minor Revision, must comply with the same procedural requirements set forth above for the approval of the original Master Development Plan. A Minor Revision is any proposed change to a Master Development Plan that does not significantly expand the overall square footage of the improvements or the number of dwelling units in the project, change the use of any portion of the project from one type or category of use to another type, or modify any conditions that may have been placed upon the project by the Town Council in approving the original Master Development Plan. A Minor Revision may be approved by the Planning Board.

#### **3.18.14 Master Development Plan Zoning Reversion**

Once the Town Council approves the creation of the Tidewater Master Planned Development District, the permitted uses and development standards shall be governed exclusively by the provisions of this subsection 3.18 and not by the provisions of the previous zoning district in which such land is located unless and until such time as:

- a. one (1) year passes without the filing of final site plans and subdivision plans to the Planning Board, unless the applicant shows that additional time is needed due to required local, state, or federal permits or approvals; or,
- b. the developer abandons the project and the developer or property owner(s) request that the rezoning be rescinded.

In such cases, the land tract shall revert to the original zoning without the need for formal action by the Town Council.

### **3.19 Conditional Zone – 234 Middle Road [Adopted 11/24/08; Effective 01/13/09]**

#### **3.19.1. Purpose.**

Pursuant to Section 3.12 of the Zoning and Site Plan Review Ordinance, Conditional Rezoning, the property identified by Assessor’s Map U23 – 002 is rezoned due to the unique architecture of the mercantile structure in a residential district, the historic use characteristics of the structure and its physical location relative to the existing travel lanes of Middle Road (Route 9).

#### **3.19.2. Zone Changed from RB to MSRD with Conditions.**

The zoning map for the Town of Falmouth, Maine, is amended as shown on the attached fragmentary map entitled, "Fragmentary Map for Property Rezoned from Residential B (RB) to Middle Road Special District (MRSD), with Conditions and Restrictions, adopted November 24, 2008” This fragmentary map is hereby incorporated in and made a part of said zoning map.

#### **3.19.3. Conditions and Standards for Zone Change to MRSD.**

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

Wherever inconsistencies exist between these provisions and other provisions of the Zoning and Site Plan Review Ordinance, the provisions within this section shall prevail. The property described in Section 3.19.1 above shall be limited as follows:

- A. Existing Use – At the time of the adoption of this section, the use of the property consists of one second floor residential unit.
- B. Change, Expansion or Addition – Site Plan approval by the Planning Board must be obtained prior to any change of use, addition of a new use, structural alteration or modification of lot lines or site improvements. The Planning Board shall apply the requirements of Section 9 of this Ordinance except that, where Section 9 is more restrictive, the standards of this section shall apply.
- C. Site Access – Prior to establishment of a use other than a single-family dwelling under this section, the property owner is required to obtain the necessary approvals to establish a curb cut to Middle Road and to complete construction in conformance with approved permits.
- D. Permitted Uses:
  - 1. Single – Family Detached Dwellings
  - 2. Accessory Building and Use
- E. Conditional Uses
  - 1. Accessory Dwelling Units
  - 2. Home Occupation
  - 3. Multiplex
  - 4. Bed and Breakfast Establishment
  - 5. Neighborhood Variety /Convenience Store
  - 6. Retail and Service Establishments
  - 7. Professional Office
  - 8. Restaurant with no drive-thru
  - 9. Outdoor Eating Area
  - 10. Commercial School
  - 11. Tradesmen Office
  - 12. Art and Craft Studio
- F. Space and Bulk Regulations – The existing lot size, maximum lot coverage, net residential area per dwelling unit, minimum site size, structure height and setbacks shall be considered conforming within this district for all permitted uses.
- G. Off-Street Parking [Amended 03/09/09]
  - 1. Dimensional Requirements - Off-street parking shall be limited to the square footage amount equal to the existing paved and gravel surface area on the site currently used for parking. This area may be reconfigured to maximize the amount of parking. All spaces, access and aisle widths shall meet the minimum dimensional requirements as specified in Sections 5 and 9 of this Ordinance.
  - 2. Required Parking – No minimum amount of off-street parking spaces or loading areas are required.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

- H. Building Conditions –No additions are permitted that increase the building footprint or peak height of the building. Architectural changes may be permitted through Site Plan review approved by the Planning Board and the Board shall use the Route One Design Guidelines as a basis for architectural review.
- I. Lighting - All lighting must conform to Section 9 of this Ordinance and shall be designed and installed to minimize spillover and glare onto abutting residential properties. Mounting heights for all external fixtures shall not exceed fourteen (14) feet with exception of sign lighting.
- J. Signage – A comprehensive signage plan shall be part of any site plan approval. Existing advertising signs documented under paragraph B. above may be used in their current location and configuration. The Planning Board may permit reductions in size, or a change in location or configuration provided the redesigned sign conforms to the Route One Design Guidelines. No internally lit signs are permitted. Number and dimensions of additional signs are regulated as in the Residential B (RB) District.
- K. Landscaping and Screening - Year-round screening for parking, utility structures, and garbage disposal from the abutting properties is required for all uses other than single family dwellings to provide appropriate visual separation between non-residential and adjacent residential uses.
- L. Protection of Natural Resources – The property shall comply with any and all requirements elsewhere in this ordinance that provide for the protection of natural resources.

#### **3.20 Elementary School Redevelopment District (ESRD) [Adopted 05/30/12]**

- 3.20.1 Purpose** - The District is established to redevelop the area on the site of the historic Plummer, Mason-Motz and Lunt Schools. The site is unique due to the type, size and placement of buildings, the history of use of the property as elementary schools and its proximity to OceanView Retirement Community.
- 3.20.2 Conformance with Other Requirements** – All development and use of land within the ESRD District shall conform to all other requirements of the Zoning and Site Plan Review Ordinances except as specifically provided for in this section.
- 3.20.3 District Boundaries** - The boundaries of the ESRD are as depicted on the Official Zoning Map.
- 3.20.4 Subdivision and/or Site Plan Approval** - The Planning Board, prior to its approval of a Subdivision and/or Site Plan shall find that the application is generally consistent with the Approved Conceptual Master Plan dated May 30, 2012.
- 3.20.5 Permitted Uses**
  - a. Municipal buildings and uses
  - b. Living arrangements and services for the elderly and/or people with disabilities including, but not limited to: congregate housing, independent housing with residential

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

support services, assisted living facility, nursing facility or skilled nursing facility, adult day care, senior center, health institution or memory loss care.

- c. outdoor recreational facilities
- d. wholly enclosed place of assembly, amusement, recreation, culture and government
- e. auditorium
- f. business and professional offices
- g. accessory building
- h. private school
- i. retail and service establishments limited to 2,000 gross square feet

#### **3.20.6 Dimensional Standards**

##### **a. Lot Requirements**

All Uses	Minimum Lot Size		Max. Lot Coverage	Min. net residential area per dwelling unit	Min. site size
	Lot Area	Lot Width			
	na	na			

b. **Setbacks:** There are no required setbacks.

c. **Building Height** - No building shall exceed four (4) stories or sixty (60) feet.

**3.20.7 Master Sign Plan** – Any permanent sign installed within the District shall be depicted on a master sign plan as approved by the Planning Board. The master sign plan shall be in accordance with Sections 5.11 – 5.19 and shall provide for compatible design elements such as color, form, materials and lighting.

#### **3.20.8 Parking**

- a. **Setbacks** – The Planning Board may waive the front yard parking setback requirements of Section 9.10.C if the location of the parking is consistent with the Approved Conceptual Master Plan.
- b. **Off-Street Parking** – The Planning Board shall determine the minimum number of off-street parking spaces required. The number and proximity of on-street parking spaces may be considered when determining the minimum number of off-street spaces required.
- c. **Shared Parking** – The Planning Board may allow shared parking on multiple lots and between all uses.

**3.20.9 Underground Utilities** – Notwithstanding Section 9.7.d, existing above ground utility lines may remain above ground. New utilities shall be placed underground.

### **SECTION 3. ESTABLISHMENT OF DISTRICTS (cont.)**

#### **3.21 Water View Overlay District (WVOD) [Adopted 05/30/12]**

To establish within the Town of Falmouth an area as shown on the attached fragmentary map entitled, “Proposed Waterview Overlay District” and dated February 23, 2012. Non-conforming single family dwellings and nonconforming lots shall receive a Conditional Use Approval from the Board of Zoning Appeals and comply with Sections 8.3 and 8.7.

## **SECTION 4. GENERAL PROVISIONS**

The following general provisions shall apply to all districts:

- 4.1** No structures that require a building permit shall be erected or used, and no lot shall be used or divided, unless in conformity with the provisions of this Ordinance. All structures and lots, and uses of structures and lots, which fail to conform with the provisions of this ordinance are prohibited, except as provided herein. [Amended, 2/28/05]
- 4.2** When a lot is situated in part in the Town of Falmouth and in part in an adjacent municipality, the provisions of this Ordinance shall be applied to that portion of such lot as lies in the Town of Falmouth in the same manner as if the entire lot were situated in Falmouth.
- 4.3** When a lot is transected by a zoning district boundary, the regulations set forth in this Ordinance applying to the larger part by area of such lot may also be deemed to govern in the smaller part beyond such zoning district boundary but only to an extent not more than thirty (30) linear feet in depth beyond said zoning district boundary.
- 4.4** Access Requirements for Lots [Amended 12/22/05]
- a. Only one single family detached dwelling shall be permitted on a lot.
  - b. No dwelling shall be erected except on a lot that fronts on a street as defined, and the minimum street frontage, measured along the lot line at the street, shall be at least equal to the minimum lot width, except:
    1. As provided in Sections 6.7 and 6.8 for “grandfathered lots.”
    2. As provided in Section 3.13.6 and 3.13.7. for country estates lots served by private drives.
- 4.5** Land within the lines of a street on which a lot abuts shall not be counted as part of such lot for the purpose of meeting the area requirements of this Ordinance even though the fee to such land may be in the owner of such lot.
- 4.6** Any land taken by eminent domain, or conveyed for a public purpose for which the land could have been or was taken by eminent domain, shall not be deemed to be transferred in violation of the lot size, lot coverage and setback provisions of this Ordinance.
- 4.7** **Setbacks for Accessory Structures** [Adopted, 2/28/05] [ Amended 3/27/06]
- Storage sheds, swimming pools, tennis courts and children’s play structures that are accessory structures, in all Districts may encroach into required side or rear setbacks in accordance with the following requirements:
- a. Storage sheds and children’s play structures that are accessory to a residential use may be located in a rear or side setback provided that they are not more than one hundred (100) square feet in area and not exceeding ten (10) feet in height.

- b. In the Farm and Forest District and all Residential Districts, the drip line and/or edge of the accessory structure may be located no closer than 3 feet to side and rear lot lines. (*International Building Code 2003, Table 602, b; no fire resistance rating required in accessory structures when accessory to Group R3 {1 & 2 family dwellings} and the separation distance is 3 feet or more.*)
- c. No accessory structure shall be located closer to the street than the front setback required for the principal building, except fences, gates, mailboxes, newspaper receptacles, signs, or similar roadside structures with less than 100 square feet of footprint, as well as entry pillars and statues. On any such structure with lights, there shall be no glare onto the public roadway, and no flashing lights shall be permitted.

## SECTION 5. SPECIFIC REQUIREMENTS

The following specific requirements shall apply to uses in all districts except as noted:

### 5.1 Accessory Uses

An accessory use shall not include any use injurious or offensive to the neighborhood as initially determined by the Building Inspector.

Parking or storage for more than one commercial motor vehicle is specifically prohibited as an accessory use in the Farm and Forest and Residential Districts except as an accessory to a farm, truck garden, nursery, or home occupation approved under Section 5.21.

#### 5.1.1 Roadside Stands [Adopted 02/27/12]

Roadside stands are exempt from Section 9, Planning Board Site Plan Review. The Board of Zoning Appeals may permit a roadside stand as a Conditional Use. In addition to meeting the standards in Sections 8.3 and 8.7, roadside stands shall meet the following requirements and be shown on a scaled drawing of the lot and building elevation plan submitted as part of a Conditional Use Application.

1. Outdoor display area in conjunction with a roadside stand is permitted and shall be limited to 200 gross square feet.
2. Minimum of three parking spaces shall be provided meeting the ordinance requirements under Section 5, with the exception of Section 5.5.g.
3. Products sold are limited to:
  - a. Local home prepared foods,
  - b. Local farm and food products, and
  - c. Products registered as Maine Made by the Maine Department of Economic and Community Development
4. Roadside stands shall only be located on lots that have a minimum of 125 feet of lot width and are at least twenty thousand (20,000) square feet in size.
5. Minimum setbacks for all improvements related to a roadside stand – Roadside stands are exempt from setback requirements elsewhere in this ordinance.
  - a. Front - 10 feet from the front lot line
  - b. Side - 50 feet from the side lot lines, and
  - c. Rear - 40 feet from the rear lot line.
6. Conversion of roadside stands to another use is permitted only if all appropriate setbacks are met.
7. Maximum floor area
  - a. FF District - 400 gross square feet
  - b. All other Districts where permitted - 300 gross square feet
8. Maximum building height - one story and 24 feet
9. Permanent Signs - One two square foot wall or projecting sign. Permanent signs are exempt from Section 5.13.n. but shall not extend beyond lot lines.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

### **5.2 Deposit of Waste Material**

Garbage, rubbish or other wastes shall be dumped only in areas designated by the Town except that soil, gravel, rock or other material may be deposited for the purpose of regrading or landscaping.

### **5.3 Boat Storage**

No vessel exceeding twenty-four (24) feet in length shall be stored or parked on any residential property unless the vessel is stored or parked so as not to violate the minimum front and side setbacks for structures and is not less than ten (10) feet from the rear lot line.

### **5.4 Buffers**

- a. No structure shall be erected or any use permitted in nonresidential districts unless a buffer strip at least seventy-five (75) feet wide is provided and maintained between any adjoining residential district and the nonresidential structure or use. Such buffer area shall be for the purpose of eliminating or minimizing any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Falmouth.
- b. All buffer areas shall be developed and maintained within the 75 foot required setback except that no more than 45 feet shall be required for such purpose. The remaining setback area may be used for parking and loading.

### **5.5 Off-Street Parking** [Amended, 5/24/04][Amended 5/13/13]

- a. To match actual demand for parking with supply the permitting authority shall determine the number of off-street parking spaces required. The number and proximity of on-street parking spaces shall be considered when determining the number of spaces required. The table below provides the minimum number of parking spaces required for the uses listed. Parking for uses not listed shall be determined by the permitting authority.

(1)	Dwelling	
	a. Single Family	2 spaces per unit
	b. Multiplex	1 space per unit
	c. Accessory Dwelling Unit	1 space per unit
	d. Units in VC1 and VC2	1 space per unit
(2)	Motel, bed and breakfast, hotel	1 space per sleeping room
(3)	School	5 spaces per room used for purpose of instruction.
(4)	Health Institution (bed facilities only)	1 space for every 3 beds and 1 for each employee based on the highest expected average employee occupancy.
(5)	Place of worship, enclosed place of assembly	1 space for every 5 seats of assemblage
(6)	Retail and service establishment	1 space for every 500 square feet of gross floor area or permanent outdoor retail display area.

## SECTION 5. SPECIFIC REQUIREMENTS (cont.)

(7)	Restaurant, indoor seating only	1 space for every 3 seats
(8)	Business and professional office	1 space for every 500 square feet of gross leasable area, exclusive of common and bulk storage areas.
(9)	Warehousing, wholesaling, manufacturing	1 space for every 1,000 square feet of gross leasable area
(10)	Day Care Home	2 per dwelling unit plus 2 additional spaces.
(11)	Day Care Center	1 per full-time employee plus 1 space for every four persons attending the day care center at any one time.
(12)	Congregate Housing Facility	1 space per dwelling unit
(13)	Elderly Boarding Home	2 per dwelling unit plus 1 space per non-owner elderly resident.
(14)	Ballet Arts Facility	1 space for every 200 sq. ft. of office area and 1 space for every 500 sq. ft. of instruction/performance space. [Added 5/24/04]

- b. Shared and off-site parking may be approved by the Planning Board provided the applicant provides evidence of legal rights to the parking in perpetuity. Off-site and shared parking shall be located within 1,300 feet, measured from a customer entrance, and be accessible by sidewalk or pathway.
- c. A parking space shall measure at least nine (9) feet in width by eighteen (18) feet in length, exclusive of space required for access and maneuvering.
- d. In any residential district, parking areas for non-residential uses shall be set back at least twenty-five (25) feet from any property line.
- e. Parking Standards in the Retirement Community Overlay District: [Adopted 10/13/09]

Assisted Living	1 space for every 3 beds and 1 for each employee
Skilled Nursing- Nursing –Memory Care	one space per 10 beds plus 1 for each employee
Congregate Housing	1 space per dwelling unit.
Single or Multi Family, Attached or Detached Dwelling	2 spaces per dwelling unit

### 5.6 Loading Area Requirements [Amended 5/13/13]

In connection with every building or group of buildings which is to be occupied by a non-residential use, loading areas shall be provided appropriate to the individual business as determined and approved by the Planning Board. The applicant shall provide documentation regarding the appropriate type of loading area required.

### 5.7 Animals

- a. Household pets are allowed in all districts. Animals kept for personal use or enjoyment not falling within the definitions of household pets, including but not

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

limited to wild animals, horses, cattle, sheep, goats, swine, and poultry are permitted only in accordance with the provisions of this section.

- b. Regulations for Animals Other Than Household Pets Kept for Personal Use or Enjoyment [Amended 10/27/08]:

	<b><u>F</u></b>	<b><u>RB &amp; VMU</u></b>	<b><u>RA &amp; RC</u></b>	<b><u>All Other Districts</u></b>
Minimum Lot Size	40,000 sq ft	40,000 sq ft	40,000 sq ft	Not Permitted
Animals Specifically Prohibited	None	Swine	Swine and Cattle	Not Permitted

- c. The keeping of more than one horse or head of cattle shall require an additional 10,000 square feet per animal in addition to the minimum lot size.

- d. No animals of any kind shall be boarded, raised, kept or bred for commercial purposes in residential districts RA, RB and RC [Amended 12/12/11].

- e. Keeping of Poultry [Adopted 10/27/08; Amended 12/12/11]:

1. General Restrictions

- No roosters shall be permitted in any district with the exception of Farm and Forest.
- No slaughtering shall be permitted in any district with the exception of Farm and Forest.
- Lots 40,000 square feet or greater in the F, RB and VMU Districts are exempt from the requirements in paragraph 2 below.
- Notwithstanding paragraph 5.7.b. above, no minimum lot size in RA and RC Districts is required.

2. The following requirements shall be met for the keeping of poultry on lots less than 40,000 square feet in F, RB and VMU and all lots regardless of size in RA and RC.

- Fencing and enclosed coops shall be setback a minimum of twenty (20) feet from all property lines.
- Poultry shall be contained by fencing or other suitable materials installed in such a manner and to a sufficient height to restrict poultry from leaving the fenced area.
- Enclosed coops, if utilized, shall not exceed one (1) in number, 100 gross square feet or 12 feet in height.
- Waste Storage and Removal - Provision must be made for the storage and removal of chicken manure. All stored manure shall be covered by a fully

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

enclosed structure with a roof or lid over the entire structure. No more than three (3) cubic feet of manure shall be stored. All other manure not used for composting or fertilizing shall be removed. In addition, the henhouse, chicken pen and surrounding area must be kept free from trash and accumulated droppings. Uneaten feed shall be removed in a timely manner.

### **5.8 Dwelling Units**

All dwelling units shall contain at least six hundred (600) square feet of floor area, except as provided in Section 2.47 and Section 5.22.

### **5.9 Multiplex**

- a. A dwelling in a multiplex shall contain no more than six (6) dwelling units. In a site with more than one multiplex, dwellings shall contain an average of four (4) or fewer dwelling units.
- b. In order to integrate open space within a multiplex site, multiplex buildings shall be located at least two hundred (200) feet apart.
- c. Multiplexes in the VC Districts are exempt from a. and b. above. [Adopted 5/13/13]

### **5.10 Installation of Manufactured Housing Units**

The following standards shall apply to the installation of any manufactured housing units on a residential lot:

- a. The wheels, any undercarriage or transporter unit and the tongue shall be removed and the unit shall be placed on a permanent foundation. Any element that is essential to the structural integrity of the unit is exempt.
- b. The foundation shall comply with the requirements of the Town's building code for residential structures. At a minimum the foundation shall consist of a four (4) foot frost wall completely surrounding the perimeter of the unit with a slab or crawl space.
- c. The exterior plumbing shall comply with the Maine State Plumbing Code.
- d. The exterior electrical connections shall comply with the National Electrical Code.
- e. The unit shall be sited on the lot so that the acute angle between an imaginary line running parallel to the short axis of the unit, and a line parallel to a straight line connecting the intersections of the front lot line with the side lot lines, is not less than thirty (30) degrees. This requirement shall not apply if the width of the front building face including the unit and any permanently attached additions is more than twenty-four (24) feet, or if minimum setback distances cannot be met upon impositions of this standard.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

### **5.11 Permanent Signs - General Provisions** [Amended 5/26/09][Amended 1/24/11, 05/30/12]

a. Purpose. The purpose of regulating signs is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor advertising, outdoor advertising signs, and outdoor signs of all types; to protect property values, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community; to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public right of way, provide more open space and curb the deterioration of natural beauty and community environment and to promote Falmouth as a distinctive community.

b. Sign Permits. After the effective date of this ordinance and except as otherwise herein provided, no person shall erect or move any signs without first applying for and obtaining a sign permit. Applications shall be on forms prescribed and provided by the town setting forth such information as may be required for a complete understanding of the proposed work. Signs requiring an approval from the Planning Board or Community Development Director must in addition obtain a permit from the Building Official prior to installation. [Amended 1/24/11]

(1) Signs permitted by the Building Inspector. [Adopted 1/24/11]

(a) [Repealed 05/30/12],

(b) Signs not otherwise requiring approval by the Planning Board or Community Development Director.

(c) Refacing of any existing sign in any district other than those listed in 3(c) below. [Adopted 5/30/12]

(2) Signs requiring Planning Board Approval. [Adopted 1/24/11]

(a) Any new sign in excess of twenty (20) square feet of display area.[Amended 5/30/12]

(b) Any new sign located in the BP, VC1, VC2, VCC, TMPDD, WFCMPDD or CO Districts. [Amended 5/13/13]

(c) Property Identification Signs.

Submittal requirements shall include such information referenced in Sections 9.2.a

(4) and 9.7.e. of this ordinance.

(3) Signs requiring approval by the Community Development Director or the Director's designee. [Adopted 1/24/11]

(a) Replacement or alteration of signs equal to or less than twenty (20) square feet of display area in the BP, VC1, VC2, VCC, TMPDD, WFCMPDD or CO Districts. [Amended 5/13/13]

(b) Replacement or alteration of signs equal to or less than twenty (20) square feet of display area previously approved by the Planning Board.

(c) Refacing of any existing sign in the BP, VC1, VC2, VCC, TMPDD, WFCMPDD or CO Districts. [Amended 5/13/13]

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

Submittal requirements shall include the information referenced in Sections 9.2.a (4) and 9.7.e. and any other requirements as may be deemed necessary by staff for a complete understanding of the proposed work.

- c. Permit Fees. No sign permit shall be issued until the prescribed fee has been paid as established by the Town Council. [Amended 8/27/07]
- d. Maintenance and Conformance of Signs. No sign shall be erected or altered except in conformity with the provisions herein. The sign must be kept clean, neatly painted and free from all hazards, such as, but not limited to, faulty wiring and loose fastenings, and must be maintained at all times in such safe condition so as not to be detrimental to the public health or safety or detrimental to physical appearance or scenic or natural beauty of the community, or constitute a distinction or obstruction that may contribute to traffic accidents.
- e. General Safety Standards for Signs. No sign, whether new or existing, shall be permitted that causes a sight, traffic, health or welfare hazard, or results in a nuisance, due to illumination, placement, display, or manner of construction.
- f. Exceptions. For the purpose of this ordinance, the term "sign" does not include signs erected and maintained for public safety and welfare or pursuant to and in discharge or any governmental function, or required by law, ordinance or governmental regulation, or to "name signs" not exceeding one (1) square foot in display area identifying occupants of the premises where such sign is located.
- g. Any sign located in the BP, WFCMPDD, TMPDD, or CO District shall comply with the applicable design guidelines. [Amended 5/13/13]

### **5.12 Temporary Signs** [Amended 5/26/09] [Repealed 5/30/12]

Refer to Part II, Section 8 Article XI of the Falmouth Code of Ordinances.

### **5.13 Regulations Applicable to Permanent Signs** [Amended 5/26/09; 1/24/11; 5/13/13]

The following provisions relating to permanent signs are applicable in all districts except where otherwise noted. Signs within the VC Districts are regulated under Section 3.6.

- a. Signs identifying the name, address, and profession of a permitted home occupation or a lawfully existing nonconforming home occupation are allowed provided such sign does not exceed two (2) square feet of display area, is non-illuminated, and is mounted flat against the wall of the principal building.[Amended 1/24/11]
- b. A bulletin board or similar sign in connection with any church, museum, library, school or similar public structure is allowed.
- c. No sign shall project over a public right of way.
- d. No sign shall have visible moving parts, blinking, moving or glaring illumination, or any part consisting of banners, pennants, ribbons, streamers, spinners or other similar devices.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- e. A string of lights shall not be used for the purpose of advertising or attracting attention unless as an integral part of a permitted sign.
- f. Any sign which no longer advertises a bona-fide business conducted, product sold, activity or campaign being conducted, or public notice, shall be taken down and removed by the owner, agent or person having the beneficial use of the building or premises upon which such sign may be found within ten (10) days after written or personal notification from the Building Inspector. [Amended 5/30/12]
- g. No billboards or other off-premises signs, including official business directional signs as defined in 23 MRSA, subsection 1903, shall be constructed, erected, or maintained in any district, except as expressly permitted by the terms of this Ordinance. [Amended 5/30/12]
- h. Directional signs solely indicating ingress and egress placed at driveway locations, containing no advertising material, having a display area not exceeding three (3) square feet, and not extending higher than seven (7) feet above ground level, are permitted.
- i. Nonconforming signs may continue but may not be altered or relocated on the same premises without approval by the Board of Zoning Appeals as a conditional use. Nonconforming signs located within the public right of way shall not be permitted to be altered or relocated within the public right of way. [Adopted 4/27/87]
- j. Identification signs indicating the location of, or direction to, a separate function performed within one portion of that building may be erected over or by the doorway or entrance to such portion of the building. The sign display area shall not exceed ten (10%) percent of the area of such doorway or entrance to such portion of the building.[Amended 5/30/12]
- k. No sign shall be erected in a floodplain.
- l. [Repealed 5/30/12]
- m. No portable or roof signs shall be permitted unless otherwise specified. [Amended 5/26/09]
- n. Minimum lot line setbacks for all signs shall be fifteen (15) feet unless otherwise specified.
- o. Maximum gross display area of wall signs shall not exceed ten (10%) percent of the wall area to which it is attached.
- p. Property Identification Signs – Property Identification Signs shall be regulated by the following requirements: [Adopted 1/24/11]
  - 1) Districts allowed – Signs are permitted in BP, RA, RB, RC and FF. Signs in residential districts are limited to subdivisions approved by the Planning Board.
  - 2) Setbacks
    - a) Sign Area – The entire sign area shall be located between 0 and 15 feet from the street right of way.
    - b) Supporting Sign Structure
      - (1) Front Lot Line – No setback required.
      - (2) Side property lines – Minimum of 5 feet.
  - 3) Location – Signs in the BP District may only be erected at one entrance on US Route One. In residential districts signs may be located at each entrance.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- 4) Sight Distance– The sign must be designed to provide adequate sight distance for exiting traffic as determined by the permitting authority.
- 5) Type of Sign – Signs may either be a free standing sign or be incorporated into a wall or fence made of materials such as stone, brick or wood.
- 6) Dimensions
  - a) Overall Height including supporting structure shall not exceed six (6) feet above natural ground. Height shall be measured as an average height from the original elevation to the top of the structure.
  - b) Height to Width Ratio – All signs shall be oriented horizontally with a height equal to or less than the width.
  - c) Letter size shall be between five (5) and fifteen (15) inches in height.
- 7) Relationship to free-standing advertising signs – In the BP District, a minimum of a sixty (60) foot separation shall be maintained between any property identification sign and a free standing advertising sign. Existing free standing advertising signs shall be relocated to meet this requirement.
- 8) Number – No more than two signs are permitted per entrance and shall be located on opposite sides of the driveway or street.
- 9) Total size one face – The maximum sign area shall not exceed 24 square feet. The Planning Board may allow a larger sign area if necessary to accommodate the property name. The sign area of the street number and name is exempt from the total sign area.
- 10) Design Style – Signs shall meet the requirements of the Route One Design Guidelines.
- 11) Content
  - a) The name, symbol, logo or other graphic identification of the property.
  - b) Properties that access directly to US Route One shall include the street number on the sign. The number shall be a minimum of six inches in height and be visible twenty four hours a day year round. Visibility may be achieved by external lighting or by flat reflective paint applied to the numbers.
  - c) Multiple tenant listings and advertising are prohibited.

### **5.14 Maximum Size of Freestanding Signs (square feet of display area) [Amended 05/30/12]**

Type of sign	F	RA, RB & RC	BP, MUC & VMU	CO
Bulletin Board	24	24	24	24
Home Occupation	2	2	-	2
Advertising	16	-	100	48

### **5.15 Maximum Size of Wall Signs (square feet of display area) [Amended 05/30/12; 5/13/13]**

Type of sign	F	RA, RB & RC	BP, MUC & VMU	CO
Bulletin Board	24	24	24	24

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

Home Occupation	2	2	-	
Advertising	50	-	100	48

### **5.16 Maximum Number of Freestanding Signs Per Lot** [Amended 05/30/12; 05/13/13]

<b><u>District</u></b>	<b><u>Permanent</u></b>
F	1
RA, RB & RC	1
BP, MUC & VMU	2
CO and ESRD	1
RCOD	Determined by the Planning Board

### **5.17 Free-Standing Signs - Other Requirements** [Amended 1/24/11; 5/30/12; 5/13/13]

Unless otherwise provided, free standing advertising signs in the BP, CO, ESRD, RCOD, MUC, TMPDD, WFCMPDD and VMU districts shall conform to the following:

- a. Maximum length and height sixteen (16) feet. In the CO, ESRD and RCOD Districts, height shall be limited to twelve (12) feet.
- b. Minimum distance between signs one hundred (100) feet.
- c. [Repealed 05/30/12]

### **5.18 Wall Signs - Other Requirements** [Amended 1/24/11]

Unless otherwise provided, wall signs shall conform to the following:

- a. Maximum height seven (7) feet above the eaves.
- b. No wall sign shall extend beyond the wall to which it is attached or party wall separating occupancies.

### **5.19 Illumination of Signs** [Amended 1/24/11]

Illumination of Signs shall meet the requirements of applicable design guidelines where required under Section 9.7. In addition, the following restrictions shall apply.

- a. Internal Illumination  
Internal illumination of signs shall be permitted only in the MUC district between the hours of 7:00 a.m. and 11:00 p.m., except that this time restriction shall not apply to the illuminated signs of retail establishments during such hours as the establishments are lawfully open to the public.

Within the RA, RB, RC, FF, BP, ESRD, RCOD and VMU Districts, no sign with internal illumination shall be permitted.

- b. External Illumination – Signs may be externally illuminated in any district provided light fixtures are shielded and no spill over occurs to the street or adjacent properties.

### **5.20 Height Restrictions**

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- a. No building shall exceed two and one-half (2 1/2) stories or thirty-five (35) feet in height, as measured from the average finished grade within twenty (20) feet of the building. This restriction shall not apply to farm buildings not used for human habitation, windmills, antennas, transmission towers, church steeples, flagpoles, chimneys, skylights, and penthouses or other extensions for mechanical equipment. On public school campuses and in the BP and MUC Districts, no building shall exceed three (3) stories or thirty-nine (39) feet so measured. All three (3) story buildings shall be protected by an automatic fire suppression system in accordance with the Falmouth Building and Fire Safety Ordinance. [Amended 2/22/99]
- b. Notwithstanding any provision of paragraph (a) to the contrary, single family detached dwellings are not restricted by number of stories but may not exceed thirty-five (35) feet in height. [Adopted 5/28/96]
- c. The top floor of any building of gambrel or mansard roof design shall be considered a full story.

### **5.21 Home Occupations** [Amended 10/25/93, 04/09/12]

- a. The purpose of the Home Occupations provision is to permit the conduct of only those businesses which are reasonably compatible with the residential districts in which they are located. Home occupations are limited to those uses which may be conducted within a residential dwelling or accessory structure without substantially changing the appearance or condition of the residence or accessory structure.

Business uses conducted wholly within a residence or accessory structure which are incidental to the residential use of the property and are of no impact to the surrounding properties are permitted as a matter of right if they conform with the following criteria:

- (1) are carried on only by a member or members of the family residing in the dwelling unit;
  - (2) there is no exterior display, sign, or advertising that would indicate the presence of the home occupation;
  - (3) there are no objectionable conditions such as noise, vibrations, smoke, dust, electrical disturbance, odors, heat, glare, or activity at unreasonable hours;
  - (4) there is no traffic generated by the home occupation.
  - (5) the dwelling or accessory structure is not altered substantially to accommodate the home occupation; and
  - (6) no more than one vehicle used primarily for the home occupation shall be kept on the property.
- b. All other home occupations or professions which are accessory to and compatible with a residential use in an RA, RB, VMU, or F district may be permitted as a conditional use, if approved by the Board of Zoning Appeals after public hearing with due notice given, and if the home occupation conforms with the following criteria:
    - (1) It does not materially injure the character or usefulness of the dwelling unit or accessory structure for normal residential purposes.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- (2) It is carried on wholly within the dwelling or accessory structure.
- (3) It is carried on primarily by a member or members of the family residing in the dwelling unit. Not more than two persons other than family members residing in the dwelling unit shall be employed on the premise in connection with the home occupation.
- (4) There is no exterior display, no exterior sign other than those permitted in Section 5.13 a., no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
- (5) Objectionable conditions such as noise, vibration, smoke, dust, electrical disturbance, odors, heat, glare, or activity at unreasonable hours, shall not be permitted.
- (6) 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.
- (7) In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the vehicles of each employee and the vehicles of the maximum number of users the home occupation may attract during peak operating hours.
- (8) The home occupation may utilize:
  - (a) Not more than twenty (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 fifty (50%) percent of the total floor area of the dwelling unit as previously calculated.
- (9) 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 other than one sign, as permitted in Section 5.13 a.

### **5.22 Accessory Structures**

#### **5.22.1 Accessory Dwelling Units [Amended 5/24/04]**

The purpose of the provisions concerning Accessory Dwelling Units, which include Accessory Apartments and Accessory Cottages is to provide a diversity of housing for town residents while protecting the single family character of residential neighborhoods. Accessory apartments may be utilized for rental purposes as well as in-law accommodations.

- a. Accessory Dwelling Units are allowed as conditional uses in the RA, RB, RC, F, MUC and VMU Districts. [Amended 11/27/06]
- b. Any request for an Accessory Dwelling Unit shall include a plot/site plan showing the following:
  - (1) lot boundaries and dimensions at scale
  - (2) zoning district
  - (3) date of plan

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- (4) property owner with deed reference
  - (5) lot area
  - (6) location and setback of all buildings
  - (7) rights of way, public and private
  - (8) all easements
  - (9) street names
  - (10) sewerage facilities
  - (11) off-street parking spaces
- c. Any request for an Accessory Dwelling Unit shall include a building plan showing the following:
- (1) separate floor layout of all finished levels
  - (2) all plumbing facilities, kind and location
  - (3) use of all rooms
  - (4) all entrances/exits
  - (5) all partitions, temporary or permanent
  - (6) location and type of all major appliances
- d. Any request for an Accessory Dwelling Unit shall conform to all provisions of the Maine State Plumbing Code and no dwelling that is served by an on-site wastewater disposal system shall be modified to create an Accessory Dwelling Unit until a site evaluation has been conducted by a licensed soil evaluator which demonstrates that a new system can be installed to meet the disposal needs of both dwelling units.
- e. Outside stairways (either open or enclosed) that service Accessory Dwelling Units on upper stories are permitted, provided that they are integrated into and consistent with the architecture of the building, as opposed to having a tacked on, obtrusive appearance
- f. Only one Accessory Dwelling Unit shall be permitted per lot.

### **5.22.2 Accessory Apartments [Amended 5/24/04]**

- a. The single family dwelling unit shall have only one main entrance and all other entrances shall appear subordinate to the main entrance. An entrance leading to a foyer with entrances leading from the foyer to the two dwelling units is permitted.
- b. After completion, the main dwelling unit shall have at least 1,260 square feet. The Accessory Apartment shall have at least three hundred sixty (360) square feet. These floor areas shall be exclusive of garages, porches, or unfinished basements. The floor area of an accessory apartment shall not exceed the following percentage of floor area of the single family dwelling unit to which it is accessory, or the following fixed amounts, whichever are applicable:

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If the floor area of the single family dwelling unit is:	The floor area of the accessory apartment shall not exceed:
Under 2,000 square feet	40%

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## SECTION 5. SPECIFIC REQUIREMENTS (cont.)

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2,000 sq. ft. or more, but less than 3,000 sq. ft.	35% or 800 sq. ft., whichever is greater
3,000 sq. ft. or more, but less than 5,000 sq. ft.	30% or 1,050 sq. ft., whichever is greater
Over 5,000 sq. ft.	20% or 1,500 sq. ft., whichever is greater

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*Example of the above formula:*

*For a 600 square foot Accessory Apartment, the finished floor area of the dwelling unit must be not less than 2,100 square feet:*

*600 sq. ft Accessory Apartment / 40% = 1,500 sq ft principal dwelling unit.*

*1,500 sq. ft. principal dwelling + 600 sq. ft. Accessory Apartment = 2,100 sq. ft.*

- c. Any exterior modifications to the single family dwelling associated with construction or installation of an accessory apartment shall be consistent with the architectural style of the single family dwelling in terms of exterior materials, roof form, and window spacing.
- d. An existing single family dwelling that is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height or setback requirements may be expanded to incorporate an Accessory Apartment subject to the requirements of Section 6.2 for the expansion of other nonconforming single family dwellings.

### **5.22.3 Accessory Cottages** [Adopted 5/24/04] [See sunset provision in Section 5.36.d. (2)] [Amended 3/27/06]

- a. An Accessory Cottage shall contain at least three hundred and sixty (360) square feet of floor area. The floor area of an Accessory Cottage shall not exceed forty (40%) percent of the floor area of the single family dwelling to which it is accessory or eight hundred fifty (850) square feet, whichever is less.
- b. For an Accessory Cottage which will be located within a new structure, the exterior materials, roof form, and window spacing and proportions of the Accessory Cottage shall approximate those of the existing or proposed single family dwelling unless the new structure is designed in a traditional New England form such as a barn.
- c. For an Accessory Cottage located within an existing garage or other outbuilding, the structure is not required to approximate the exterior features of the existing single family dwelling, but any exterior modifications should be consistent with the architectural style of that structure unless the building is upgraded per the requirement for new structures.
- d. Accessory Cottages are permitted on nonconforming lots, but the buildings in which they are located, whether existing or proposed, shall meet the minimum property line setbacks and the lot coverage requirements for the district in which they are located.

### **5.23 Service Stations and Garages**

Washing, lubricating, and major repairing of motor vehicles shall be performed inside enclosed buildings and all dispensing of fuels, lubricants, and fluids shall be done entirely on the property of the service station or garage.

### **5.24 Junk Yards and Salvage Operations Prohibited**

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

Junk yards, salvage operations, and automobile dismantling operations are expressly prohibited in the BP, VC1, VC2, and VCC Districts. [Amended 5/13/13]

### **5.25 Congregate Housing**

All congregate housing facilities shall be serviced by public sewer and water systems with adequate capacities to handle the reasonably foreseeable needs of the development.

### **5.26 Recreational Vehicles**

A recreational vehicle may be stored or parked on a residential lot as an accessory use to a dwelling unit, subject to the following standards:

- a. Location:
  1. It is located inside a garage or other structure; or
  2. It is located:
    - a) No closer to the front lot line than the front building line of the principal structure or in compliance with the front setback requirement for the district; and
    - b) In compliance with the side and rear setback requirements for the district; or
    - c) At least ten (10) feet from side and rear property lines and, in the opinion of the Code Officer, adequately screened from neighboring residences by evergreens and other natural visual buffering materials.
- b. No recreational vehicle stored as an accessory use to a dwelling unit under this subsection shall be occupied during such storage;
- c. Guests of residents of the Town of Falmouth who are traveling in or with a recreational vehicle may occupy that recreational vehicle on the land of said residents of Falmouth, but only on a completely temporary basis not to exceed seven (7) days in any ninety (90) day period.

### **5.27 Private Ways**

The Planning Board may approve the use of a fifty (50) foot private way to provide frontage and access to individual lots of land in accordance with the following provisions:

- a. A plan showing the private way shall be prepared by a registered land surveyor. The plan shall be labeled "Plan of a Private Way" and shall provide an approval block for the signatures of the Planning Board members. The plan shall delineate the proposed way and each of the lots to be served by the private way.
- b. A street plan, cross section, drainage plan, and an erosion and sedimentation control plan meeting the requirements of Section 5.39 shall be submitted for each private way serving two (2) or more lots. Submissions of approved plans shall also meet the requirements of Section 9.2.a.5, Geographic Information System (GIS) Plan Submissions and Specifications. [Amended 9/22/03; 3/14/11]
- c. The plan shall bear notes that the Town of Falmouth will not be responsible for the maintenance, repair, or plowing of the private way and that further lot divisions utilizing the private way are prohibited without prior approval of the Falmouth Planning Board.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- d. If the private way is to provide access to two (2) or more lots, a maintenance agreement shall be required by the Planning Board and recorded in the Cumberland County Registry of Deeds. The maintenance agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.
- e. The construction of private ways shall meet the following minimum standards:

	<b><u>Number of Lots Served</u></b>		
	<b>1</b>	<b>2 to 3</b>	<b>4 or more</b>
Minimum Roadway Width	12’*	16’	Same as Local Residential Streets
Minimum Subbase (Heavy Road Gravel)	12”	15”	“
Wearing surface (Fine Gravel)	2”	2”	“
Maximum length of dead end	2000 <sup>1</sup>	1500 <sup>1</sup>	“
Maximum Grade	10%	8%	“
Minimum Grade	0.5%	0.5%	“
Turn around at Dead End	Hammer Head or “T”	Hammer Head or “T”	“
Storm Water Drainage	Approval of Public Works Director		

\*One turnout to provide space for 2 vehicles to pass shall be provided for every 500 feet of the private way.

Note 1 – The limitation on the length of a dead end shall not apply to private ways in the Resource Conservation Zoning Overlay District that serve only Country Estate lots. [Adopted 12/22/05]

- f. The plan shall be recorded in the Cumberland County Registry of Deeds within ninety (90) days of the date of the Planning Board approval. If the plan is not recorded within this time period, the approval of the Planning Board shall be null and void.
- g. In reviewing requests for approval of private ways under this subparagraph, the Planning Board shall apply such standards and criteria, and may impose such conditions, as are applicable to conditional uses under subsections 8.3 and 8.7 of this Ordinance.
- h. The owner or owners shall convey to the Town an easement, described by metes and bounds, for sewer purposes over the entire right of way and shall record the easement in the Cumberland County Registry of Deeds.

After a private way has been approved by the Planning Board to provide access to a lot or lots, no further lots shall be created which are to be provided access by means of the

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

private way without the prior approval of the use of the private way for access to such lots by the Planning Board under this subsection.

- j. At least five (5) days prior to commencing construction of the private way in accordance with the ordinance specifications and with adequate provision for storm drainage, the applicant shall pay an inspection fee as established by the Town Council. Such fee shall be made payable by check to the Town of Falmouth, stating the purpose of the fee. [Amended, 7/23/01][Amended 8/27/07]
- k. If the private way will serve two (2) or more Country Estate lots in the Resource Conservation Zoning Overlay District, the applicant shall submit a Site Inventory and Analysis Plan and documentation of the Four Step Design Process for the site as provided for in the Land Subdivision Ordinance. [Adopted 12/22/05]

### **5.28 Extractive Industries**

Extractive industries may be permitted by the Board of Zoning Appeals as a conditional use subject to the requirements of Section 8.3 and 8.7 and the specific requirements of this section.

- a. Any extractive industry which requires a permit from the Maine Department of Environmental Protection under the Site Location of Development Act shall obtain written approval from the Department of Environmental Protection prior to filing an application with the Board of Zoning Appeals.
- b. The Board of Zoning Appeals may require a performance guarantee in accordance with Section 11 of the Falmouth Subdivision Ordinance, sufficient to cover the cost of rehabilitation of the site at the conclusion of operations.
- c. A buffer strip of not less than one hundred (100) feet shall be maintained between the location of any extraction of materials and all property lines.
- d. All areas of standing water exceeding two (2) feet in depth shall be entirely enclosed by a fence.
- e. No extraction of materials shall be permitted which creates a slope steeper than two (2) feet horizontal to one (1) foot vertical.
- f. Operation of equipment and extraction of materials from the site shall be permitted only Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m.
- g. Suitable traffic control measures shall be made available by the operator at all access points to public streets. Truck routes shall be restricted to collector and arterial streets, unless otherwise specified by the Board of Zoning Appeals. All loads shall be covered or trimmed a minimum of three (3) inches below the edges of the sideboard of truck bodies to prevent spillage of materials being transported.
- h. Upon cessation of the extraction of materials or upon the expiration of the Board of Zoning Appeals approval, the site shall be rehabilitated in accordance with a plan approved and endorsed by the Cumberland County Soil Conservation Service and approved by the Board of Zoning Appeals.

### **5.29 Cemeteries**

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- a. All burial plots and structures used for interment, including mausoleums, vaults and columbarie shall be set back at least fifty (50) feet from all property lines.
- b. A cemetery may be permitted as an accessory use to a church, provided that the area of the cemetery does not exceed two (2) acres, that the fifty (50) foot setback requirement is met, and that the church is located on a conforming lot.

### **5.30 Day Care Centers**

- a. All outside play equipment shall meet the required front, side, and rear setback requirements.
- b. Outside play areas shall be buffered from adjoining uses by appropriate fencing or plantings.
- c. Day care centers may be permitted in a residential district on the same lot with a single family dwelling if the lot size meets the lot size requirement for a day care center.

### **5.31 Net Residential Area** [Amended 8/26/96] [Amended 7/24/2000][Amended 7/11/2011]

#### **5.31.1** Net residential area shall be determined by subtracting from the gross acreage the following:

- a. 10% for roads and parking.
- b. Land which is cut off from the main parcel by a road, existing land uses, or where no means of access has been provided, so that it is isolated and unavailable for building purposes or for common use.
- c. Land shown to be in the flood way or coastal high hazard area on the Flood Boundary of Flood Insurance Rate Maps of the Town of Falmouth.
- d. Other land which is unsuitable for development in its natural state because of topography, drainage, or subsoil conditions. Specific conditions include but are not limited to:
  - (1) Areas having sustained slopes in excess of twenty-five (25%) percent or unstable soils subject to slumping, mass movement, or accelerated erosion.
  - (2) Areas classified as wetlands by state or federal law. [Amended, 8/26/96]
  - (3) Areas characterized predominately by "coastal wetlands" as that term is defined in 38 M.R.S.A. subsection 472(2). [Amended 12/22/86.]
- e. Land in rights-of-way or easements.
- f. Land in Resource Protection Districts.

#### **5.31.2 Minimum Net Residential Area Per Lot** [Amended 1/24/11; 3/14/11;7/11/2011]

- a. Residential lots created after August 26, 1996 must meet the lesser of the following lot area requirements:
  - 1. At least 50% of the total lot area consists of land that that does not fall within one or more of the categories in Section 5.31.1.b through f; or
  - 2. After deducting land that falls within one or more of the categories in Section 5.31.1.b through f, the lot area equals at least the following square footage:

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- (a) Residential A – 15,000
  - (b) **Residential B** - 20,000
  - (c) Residential C - 30,000
  - (d) Farm and Forest – 40,000
  - (e) Village Mixed Use – 15,000
  - (f) Mixed Use Cluster – with sewer 7,500, without sewer 15,000.
- b. For residential planned developments, at least seventy-five (75%) percent of any lot shall consist of land that does not fall within the categories of Section 5.31.1. [Adopted 8/26/96] [Amended 7/24/2000; 12/22/05]
- c. Notwithstanding subsections a and b above, lots created prior to August 26, 1996 and altered in either of the following ways shall not be considered new lots for purposes of this section: [Adopted 7/11/2011]
  - 3. subsequently divided if the division is for purposes of conveyance to a governmental or non-profit agency for the sole purpose of protecting natural resources in perpetuity or providing public access to protected natural resource areas; or
  - 4. encumbered with an easement or other legal instrument held by a governmental or non-profit agency for the purposes of protecting natural resources in perpetuity or providing public access to protected natural resource areas.

### **5.32 Light Manufacturing**

Light manufacturing shall conform to the following standards:

- 1. There shall be no exterior storage or assembly of materials or products.
- 2. There shall be no activity which is defined as a high hazard in the current BOCA Basic Building Code.
- 3. Noise inherently and recurrently generated shall not exceed 65 DBA between the hours of 7:00 a.m. and 7:00 p.m. and 55 DBA between the hours of 7:00 p.m. and 7:00 a.m. as measured at the property boundary using the A frequency weighting network and the fast response on a sound level meter manufactured according to standards prescribed by the American Standards Association.
- 4. No vibrations or odors shall be noticeable at the property line. [Adopted 4/27/87]

### **5.33 Transmission Towers** [Adopted, 4/23/90]

To regulate the location and erection of transmission towers in all districts in order to:

- minimize adverse visual effects of towers through careful design, siting, and vegetative screening; and
  - avoid potential damage to adjacent properties from tower failure and falling ice through engineering and careful siting of tower structures.
- a. All transmission towers in the Farm and Forest District, with the exception of amateur (ham) radio towers and municipal transmission towers, shall be located so that the tower base is at or above elevation four hundred (400') feet based on United States Geological Survey datum referred to mean sea level. No transmission tower shall exceed two

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- hundred (200') feet in height as measured from the tower base to the highest point of the tower and any attached receiving or transmitting device.
- b. The tower base shall be set back from all property lines by a distance of one hundred (100%) percent of the total tower height, including any attached transmitting or receiving devices. Accessory structures and guy wire anchors shall meet the minimum setback of the zoning district.
  - c. To ensure that towers have the least practicable adverse visual effect on the environment, towers that are 200 feet or less in height and are not subject to special painting or lighting standards of any federal agency shall have a galvanized finish or be painted in a skytone above the top of surrounding trees and shall be painted in an earthtone below treetop level.
  - d. Unless existing vegetation provides a buffer strip the width of the required setback as calculated in subsection b, the Board shall require that all property lines along roadways or visible to existing abutting or nearby buildings (within 1/4 mile radius) be landscaped as follows:
    - 1. With six to eight (6-8') foot evergreen shrubs planted in an alternate pattern, five (5') on center and within fifteen (15') feet of the site boundary.
    - 2. With at least one row of deciduous trees, not less than 2 1/2" to 3" caliper measured three (3') feet above grade, and spaced not more than twenty (20') feet apart and within twenty-five (25') feet of the site boundary.
    - 3. With at least one row of evergreen trees at least four to five (4-5') feet in height when planted, and spaced not more than fifteen (15') feet apart within forty (40') feet of the site boundary.
    - 4. In lieu of the foregoing, the Board may determine that the existing vegetation must be supplemented to meet an equivalent means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the Board may require the applicant to provide a visual impact analysis by a qualified professional.
  - e. Accessory facilities in the Farm and Forest District may not include offices, long-term vehicle storage, other outdoor storage, or broadcast studios, except for emergency purposes, or other uses that are not needed to send or receive transmission signals.
  - f. Transmission towers erected after the effective date of this ordinance amendment shall meet all applicable requirements of federal and state regulations and shall be designed and installed in accordance with the standards of the Electronic Industries Association (EIA) Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.
  - g. Within twelve (12) months of the effective date of this ordinance amendment, all existing transmission towers shall be inspected and analyzed by a qualified professional engineer. The engineer shall submit a letter of opinion under his seal to the Code Enforcement Officer (CEO) stating the condition of the tower, the maximum safe loading capacity, and steps that must be taken to correct any safety deficiencies. Safety inspections of all existing and newly erected towers shall be conducted annually thereafter by the tower owner/operator, and an inspection checklist developed by the

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

CEO shall be submitted for his review and approval. Any structural alterations that may be necessary to increase the loading capacity or to bring a tower into compliance shall require conditional use approval of the Board of Zoning Appeals.

- h. The provisions of this subsection 5.33 shall apply to all transmission towers existing in the Town on the date of enactment of the Personal Wireless Service Facilities Ordinance and shall continue to apply to such existing transmission towers notwithstanding the enactment of the Personal Wireless Service Facilities Ordinance. No new transmission towers may be erected after enactment of the Personal Wireless Services Facilities Ordinance except in compliance with that ordinance. [Adopted, 4/25/05]

### **5.34 Placement or Removal of Fill Material** [Adopted 7/22/91] [Amended 9/22/03]

Definition of Fill Material: Fill material shall mean clean soil material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity.

The purpose of this provision is to control erosion, protect wetlands, minimize storm water runoff and minimize other nuisances associated with filling and other earth moving activities. It is intended that this provision shall apply to both approved construction for which a building permit has been issued, as well as activities that do not require a building permit.

- a. The following guidelines shall govern the placement or removal of fill material in all districts: [Amended, 5/28/96]
  - 1. Normal excavation or removal of fill for which a building permit has been issued, no permit required
  - 2. 0 - 15 cubic yards, no permit required
  - 3. 16 - 1000 cubic yards, CEO permit required
  - 4. over 1000 cubic yards, Planning Board permit required
- b. All activities regulated under this section shall implement erosion and sedimentation control measures as required in Section 5.39. [Amended 9/22/03]
- c. Fill shall not be placed within ten (10) feet of drainage ways, streams or wetland areas without approval by the Planning Board.
- d. Roadways and other public areas shall be kept clean of mud, dirt, debris or other material that may constitute a hazard or nuisance to the public.
- e. Adequate traffic control shall be provided on public roadways to ensure safe access and passage during construction activities.
- f. Submissions of approved plans shall also meet the requirements of Section 9.2.a.5, Geographic Information System (GIS) Plan Submissions and Specifications. [Adopted 3/14/11]

### **5.35 Elderly Boarding Care** [Adopted, 5/28/96]

The elderly deserve special consideration because of their unique physical, social, financial, and psychological needs. The purpose of allowing elderly boarding care is to support the elderly by:

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- a) reducing the economic hardship which can accompany home ownership; and
- b) providing alternatives to the isolation of living alone and to the impersonal aspects of institutionalization.

At the same time, property values and the character of neighborhoods are protected by permitting only those housing options that are compatible with surrounding uses and do not overburden town services.

Each elderly boarding home must obtain conditional use approval and pass inspection by the Code Enforcement Officer for compliance with all relevant building codes. In addition, proof of a current State license shall be required if the elderly boarding home is required to be licensed by the Maine Department of Human Services.

### **5.36 Residential Growth Permit** [Adopted 7/24/00] [Amended 5/24/04; 12/19/06; 5/13/13]

- a. Applicability** - A building permit for the construction of a new single family detached dwelling, or Accessory Cottage shall be issued by the Code Enforcement Office only if the application includes a valid residential growth permit issued in accordance with the provisions of this section.
- b. Purpose** - The purpose of this section is to:
  - 1) Provide for the local housing needs of the Towns existing residents.
  - 2) Plan for continued residential population growth of the Town at a rate that is compatible with the orderly and gradual expansion of community services, including education, fire and police protection, road maintenance, waste disposal, health services, etc.
  - 3) Avoid a situation in which the rapid completion of major subdivisions, housing many families with school-age children, could outstrip the towns capability to expand its schools and other services soon enough to avoid serious overcrowding.
  - 4) Ensure fairness in the allocation of building permits.
- c. Exemption** - The following are exempt from the provisions of this section and the requirement to obtain a residential growth permit.
  - 1) The repair, replacement, reconstruction or alteration of any existing building or structure
  - 2) The construction or alteration of a nonresidential building or structure
  - 3) The construction or alteration of congregate housing, elderly boarding homes, housing units that are part of a retirement community, elderly boarding care facilities, and accessory apartments in an existing single family detached dwelling. [Amended 12/19/06]
  - 4) The construction of any dwelling unit meeting the definition of affordable housing. [Adopted 12/19/06]
  - 5) Dwelling units established in the VC Districts. [Adopted 5/13/13]
- d. Maximum rate of residential construction:**

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- 1) The Town shall issue no more than 65 residential growth permits for new single family detached dwelling units or manufactured housing units to be built/placed every calendar year. This annual total shall be subject to the review procedure set forth below and shall commence in calendar year 2003. [Amended 4/28/03; 12/19/06]
  - 2) The Town shall issue no more than 10 residential growth permits for new Accessory Cottages in each calendar year. This annual total shall be subject to the review procedure set forth below. [Adopted 5/24/04] [Amended 3/27/06; 12/19/06]
  - 3) The Town shall issue no more than 35 residential growth permits for new Diverse Housing units to be built every calendar year. This annual total shall be subject to the review procedure set forth below. [Adopted 5/24/04] [Amended 12/19/06]
  - 4) The Town shall issue no more than 65 residential growth permits for new duplex or multiplex dwelling units to be built every calendar year. This annual total shall be subject to the review procedure set forth below. [Adopted 12/19/06]
- e. Legal authority** - This section is adopted pursuant to Home Rule Powers as provided for in Article VIII-A of the Maine Constitution and 30-A M.R.S.A. §2101 et seq., and as provided for in Title 30-A M.R.S.A. §4360. [Amended 4/28/03]
- f. Periodic review** -The operation of this section shall be reviewed by the Comprehensive Plan Advisory Committee (CPAC) periodically (but not less frequently than once every three years), to ensure that the annual maximum growth rate has not become inconsistent with the Town's capital improvement capability to establish or enlarge needed public facilities and services, and to be in compliance with Title 30-A M.R.S.A §4360. Based on its review, CPAC may recommend amending this section as provided in Section 11. [Amended 12/19/06]
- g. Violations** - It shall be a violation of this section for any person to build or place a single family detached dwelling unit within the Town, without first having obtained a residential growth permit and building permit in accordance with this section from the Code Enforcement Officer, unless such construction or placement constitutes an exception under this section.
- h. Application** -
- 1) A growth permit application must be completed by the lot owner of record, including all endorsements and certifications.
  - 2) Application shall be on forms provided by the town. The Code Enforcement Officer may request additional information and shall have the authority to require that the application be revised or supplemented in order to meet state or local requirements.
  - 3) The application for a residential growth permit shall be accompanied by a fee as established by the Town Council. [Amended 8/27/07]

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- 4) The growth permit application shall be accompanied by a complete application for a building permit.
- i. Issuance procedure** - Growth permit applications shall be submitted to the Code Enforcement Officer who shall endorse each with the date and time of receipt. In the event two or more growth permit applications are received simultaneously, the Code Enforcement Officer shall determine their order by random selection. The Code Enforcement Officer shall review growth permit applications in the same order as they are received. The Code Enforcement Officer shall review all growth permit applications for completeness and accuracy. When the Code Enforcement Officer finds an application to be complete, he shall approve it, endorsing the date and time of approval on the application.
- j. System for ranking application** - The system for ranking growth permit applications shall be first come, first served based on when the application is approved and signed by the Code Enforcement Officer.
- k. Submitting false information; reconsideration of disapproved applications** -
  - 1) Any person submitting false information on an application shall be subject to the penalties provided by law and shall not be eligible to apply for a growth permit for a period of one year.
  - 2) Growth permit applications which are not approved by the Code Enforcement Officer because of incomplete or inaccurate information shall be automatically re-ranked and reconsidered upon resubmission following corrections.
- l. Amendment of the building permit** - The single family home for which the building permit is issued shall be constructed substantially as specified on the growth permit and building permit applications. Minor changes shall be permitted to accommodate field and design changes during construction but the home shall substantially conform to the design submitted for the permit including:
  - 1) There shall be no substantial change in the architectural style or height of the building. The location of the home on the lot shall not be substantially changed except for minor changes to adjust for on-site conditions.
  - 2) The area of the building footprint shall not be changed by more than +/- ten percent (10%) of the total area of the footprint.
  - 3) The gross floor area of the home shall not be changed by more than +/- ten percent (10%) of the gross floor area of the building.Changes to the building of a greater magnitude shall require that the applicant re-apply for a residential growth permit. This resubmission shall be treated as a new application and shall be ranked in accordance with section j. based upon the date the resubmittal is approved.
- m. Nontransferability** - A residential growth permit application and the resulting growth permit shall be site-specific, and shall be valid for construction only on the

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

lot specified in the application. However, the growth permit shall be transferable to new owners of the lot, if the property is sold or otherwise legally transferred.

- n. Conflict with other provisions** - This section shall not repeal, annul or in way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit or provision of law.

### **5.37 Preservation, Maintenance, and Inspection of Plant Materials [Adopted 7/23/01]**

#### **5.37.1 Purpose**

The purpose of these requirements is to ensure that existing and new plant materials that are incorporated into new development achieve optimal growth, overall health, and their intended environmental and aesthetic function in spite of the often harsh conditions created by development.

#### **5.37.2 Applicability**

The requirements of this section apply to plant materials regulated by Shoreland Zoning Permits, Phosphorus Control Permits, Site Plans, and Subdivision Plans prepared in accordance with the following Town ordinances:

1. Buffers in Section 3.13 (Resource Conservation Overlay District)
2. Section 3.10(6) (Landscaped Border Strips)
3. Phosphorus control buffers in Section 3.17.4 (Highland Lake Conservation Overlay District)
4. Clearing of Vegetation for Approved Construction and Other Uses in Section 7.10 (Shoreland Zoning)
5. Section 9.24 (General Buffer Standards)
6. Section 9.25 (Special Landscape and Buffer Requirements in the BP District)
7. Section 3.6.5.1 (Performance Standards for the VC Districts) [Amended 5/13/13]
8. Section 9.27 (Special Landscape and Buffer Requirements in the CO District)
9. Section 9.28 (Other Landscaping Requirements)
10. Section H of Appendix 1 of the Subdivision Ordinance (Landscape Requirements)
11. Section III, Landscape Design (Village Center Design Guidelines)
12. Section IV, Landscape Design (Exit 10 Design Guidelines)

#### **5.37.3 Landscape Architect Required**

The owner of the project shall retain the services of a landscape architect registered in Maine and familiar with local growing conditions, in order to consult with the Town on design issues, prepare landscape plans and specifications, and perform inspections of newly installed plant material. The Town may waive this requirement on projects that are small or lacking in complexity.

#### **5.37.4 Preservation of Existing Plant Materials**

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- A. Trees that are to be preserved under the terms of the ordinances listed in Section 5.37.2 shall be protected from the adverse impacts of new development due to the following causes:
  - 1. Cutting or removal of trees;
  - 2. Damage to trunks, branches, leaves, and bark;
  - 3. Excavation of soil, changes of grade, or the cutting of roots;
  - 4. Storage of soil, building materials, construction equipment, or any other materials of any kind on the ground surface; and,
  - 5. Soil erosion and sedimentation.
- B. The protected tree and root zone area shall include the following:
  - 1. For individual trees: the area defined by the drip line of the crown, or, one and a half feet radius from the tree trunk for every one inch of caliper, whichever is greater;
  - 2. For groups of trees, hedges, and forestland: the area defined by the drip line of all the trees in the group.
- C. In order to allow the efficient layout of buildings, utilities, and other structures, the protected tree and root zone area for an individual tree may be reduced to a radius of one foot for every one inch of caliper, so long as the preserved area is reduced by no more than 30%, and means are taken to compensate for the loss of roots through fertilizing, proper root pruning, and other means as necessary. Root pruning shall result in clean cuts without tearing, splitting, or cracking of remaining root tissues. The Town may require that root pruning be performed by a licensed arborist.
- D. A tree and root zone protective barrier shall be installed around the perimeter of all groups of trees and individual trees to be preserved prior to site clearing and the commencement of construction. The protective barrier shall consist of snow fencing attached to posts no less than 10 feet apart, unless an alternative barrier is approved by the Town. The Town shall approve the location and type of all tree and root zone protective barriers prior to site clearing. The tree and root protective barriers shall be maintained until construction is complete. Tree and root protective barriers shall not be removed until approved by the Town.
- E. If, during site clearing or the construction period, trees within a protected area are removed, or if they are damaged to such an extent that they must be removed for safety reasons or because they have a poor chance of recovery, then the trees shall be replaced according to a restoration plan as determined by the Town. The restoration plan shall attempt to restore the environmental and visual benefits of the trees that have been removed to the greatest extent practicable, while taking into account the following factors:
  - 1. The need to protect sites with that are environmentally sensitive, such as steep slopes and buffers next to wetlands, streams, and waterbodies;
  - 2. The visual impact of the planting relative to the intent of the Town design standards for screening between different land uses, definition of space, and

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- complementing architectural elements in the landscape;
- 3. The environmental benefit of the plantings relative to ameliorating dust, noise, glare, heat, wind and other harsh conditions created by development;
- 4. The need for shade;
- 5. The space available for new plantings;
- 6. The quality of the soil and drainage conditions.

The owner shall pay for all costs associated with the site analysis, planning, and restoration of the damaged area.

- F. On plans submitted for approval, groups of trees and individual trees to be preserved shall be identified with lines and shading that clearly distinguishes these areas from other information appearing on the documents. The plans shall indicate in bold text that the group of trees or the individual tree is not to be disturbed.

### **5.37.5 Consultations Regarding the Use of Plant Materials in Design**

- A. The owner's landscape architect shall consult with the Town in order to properly interpret the design intent of the ordinances. The consultation process shall consist of one or all of the following steps, depending on the size and complexity of the project:
  - 1. A meeting prior to submission of sketch plans, in order to determine the potential impact of the project on existing plant materials and to discuss the role of new plant materials in landscape design according ordinance standards;
  - 2. One or more meetings during the submission of preliminary and final plans, in order to refine issues of potential misunderstanding and conflict between Town standards and the plans submitted for approval;
  - 3. A meeting on site prior to site clearing and construction in order to approve the protection of existing plant materials;
  - 4. One or more meetings during or after construction to ensure that plant materials are installed according to approved plans.
- B. The Town may waive the consultation requirement on projects that are small, that lack complexity, or in instances where the Town has waived the requirement that the owner retain the services of a landscape architect.

### **5.37.6 Plant Maintenance**

- A. The owner's landscape architect shall prepare a written narrative that describes who shall maintain the plant materials and what their maintenance responsibilities are according to the following schedule:
  - 1. During the installation period until acceptance by the owner;
  - 2. During the guarantee period that begins from the date of acceptance by the owner;
  - 3. After the guarantee period.
- B. The responsibilities to be assigned during each of the phases described in Paragraph A shall include, but are not limited to, the following:

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

1. Protection of trees and shrubs from physical damage due to activities on the site, such as construction, storage of building materials, snow storage, and parking;
  2. Watering, fertilizing, and mulching of trees and shrubs;
  3. Removal of staking and guy wires;
  4. Erosion and sedimentation control;
  5. Mowing, aerating, fertilizing, liming, and raking leaves on lawns;
  6. Insect control;
  7. Replacement of dead, diseased, or damaged trees, shrubs, and lawns.
- C. The plant materials shown on approved plans are a permanent part of plan approval. If plants die, or they do not provide the proper level of screening specified in the ordinance, then they must be replaced or reinforced with additional material. This responsibility continues after the construction period is complete and passes on to new owners of the property.
- D. The Town may waive the requirement for a written narrative on projects that are small or lacking in complexity, but it shall not waive the requirement that plant materials be maintained.

### **5.37.7 Inspections and Reports**

- A. The owner's landscape architect shall perform inspections and submit reports that verify that the work conforms to approved plans and specifications. The following reports are required:
1. Verification that trees, shrubs, and lawns and their installation conform to approved plans and specifications;
  2. Notification that the owner has accepted plant materials and landscaped areas, and copies of the field reports that were used by the owner to justify acceptance;
  3. Description of any changes in the design of plant materials or landscape elements that are significantly different from those shown on approved plans and specifications.
- B. The Town's inspection shall be based on satisfactory reports submitted by the owner's landscape architect.
- C. The Town may waive the requirement for inspections and reports on projects that are small, that lack complexity, or in instances where the Town has waived the requirement that the owner retain the services of a landscape architect.

## **5.38 Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands** [Adopted 12/18/01] [Amended 7/11/2011]

### **5.38.1 Purpose**

The purpose of these requirements is to protect water quality, aquatic life, and wildlife habitat in and adjacent to streams, ponds and wetlands town-wide, and, to protect private and public property from flooding and poor drainage conditions caused by locating

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

buildings in or close to these areas. The regulations are intended to protect natural resource areas that are not currently covered by Shoreland Zoning and the Highland Lake Conservation Overlay District.

The regulations distinguish between high and low value wetlands. High value wetlands generally have surface water for a prolonged period during the growing season, or, they are located in close proximity to other wetlands, ponds and streams. These are the two most important factors in determining how well a wetland functions in terms of providing benefits to the community. Although the absence of surface water or their location makes low value wetlands less beneficial, the Town is interested in these areas because their poor drainage conditions pose a hazard for development.

### **5.38.2 Applicability**

- A. The requirements of this section 5.38 apply only to the construction of: 1) new single family dwellings and their accessory structures and lawns, when constructed upon lots created after the effective date of this section, whether by subdivision or otherwise; and 2) private ways which are subject to review under section 5.27. For purposes of this subsection 5.38.2, subdivision and private way applications that have had at least one substantive review before the effective date of this section shall not be subject to the requirements of this section. Alterations and enlargements of single family dwellings and their accessory buildings existing on the effective date of this section are not subject to the requirements of this section. The requirements apply to the construction of new single family dwellings and their accessory buildings, private ways, and subdivision plans in residential districts.
- B. In the event that the requirements of this section overlap the requirements of Shoreland Zoning or the Highland Lake Conservation Overlay District, the requirements of Shoreland Zoning or the Highland Lake Conservation Overlay District shall apply.
- C. Notwithstanding subsections a and b above, lots created prior to December 18, 2001 and altered in either of the following ways shall not be considered new lots for purposes of this section:[Added 7/11/11]
  - 1. subsequently divided if the division is for purposes of conveyance to a governmental or non-profit agency for the sole purpose of protecting natural resources in perpetuity or providing public access to protected natural resource areas; or
  - 2. encumbered with an easement or other legal instrument held by a governmental or non-profit agency for the purposes of protecting natural resources in perpetuity or providing public access to protected natural resource areas.

### **5.38.3 Protected Resources**

- A. **Stream.** A “river, stream, or brook” as defined by the Maine Natural Resources Protection Act.
- B. **Pond.** A naturally occurring inland body of water, but not including great ponds as defined by the Maine Natural Resources Protection Act.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- D. **Vernal Pool.** A naturally occurring temporary to permanent inland body of water that forms in a shallow depression and typically fills during the spring or fall and may dry during the summer. The vernal pool contains no viable populations of predatory fish, and it provides the primary breeding habitat for wood frogs, spotted salamanders, blue-spotted salamanders and fairy shrimp. The presence of any one or more of these species is usually conclusive evidence of a vernal pool. Only vernal pools that have been mapped or identified by a governmental agency prior to project approval shall be considered as being within this definition.
- E. **Floodplain.** The area adjacent to a stream or pond that is inundated during a 100-year flood event, as indicated on flood insurance maps of the Federal Emergency Management Agency, or by field indicators such alluvial deposits, scoured soils, silt-covered leaves and vegetation, water-borne debris, topography, and other site-specific evidence, or by a flood elevation analysis of a qualified professional.
- F. **High Value Wetland.** A freshwater wetland, as defined by the Maine Natural Resources Protection Act, which meets one or more of the following criteria:
1. Contains a pond or a vernal pool;
  2. Lies within the floodplain of a stream or a pond;
  3. The soils are very poorly drained as defined by the USDA Natural Resources Conservation Service;
  4. More than 50% of the dominant species in all strata of the vegetation consist of facultative wetland (FACW) or obligate wetland (OBL) plant species, as listed in the National List of Plant Species that Occur in Wetlands, by the U.S. Fish and Wildlife Service, latest edition.
- G. **Low Value Wetland.** A freshwater wetland, as defined by the Maine Natural Resources Protection Act, which does not meet the criteria of a high value wetland.

### **5.38.4 Buffers and Setbacks Required**

- A. A buffer consisting of natural forestland not less than 50 feet wide shall be left undisturbed between streams, floodplains, ponds, vernal pools, and high value wetlands and all areas cleared for development, including, but not limited to, lawns, gardens, landscaped plant beds, driveways, parking lots, buildings, and other structures.
- B. No structure shall be located closer than 75 feet from streams, floodplains, ponds, vernal pools, and high value wetlands.
- C. No structure shall be located closer than 50 feet from low value wetlands greater than 4,000 square feet in total area.
- D. Buffers and setbacks shall be measured as follows:
1. Streams: from the edge of the stream channel, or from the edge of the floodplain

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- adjacent to the stream if one is present;
- 2. Floodplains: from the limit of the area inundated by floodwater;
- 3. Ponds and vernal pools: from the high water mark, or from the upland edge of the wetland adjacent to the pond or pool if one is present;
- 4. Wetlands: from the upland edge of the wetland.
- 5. Where uncertainty exists as to the precise boundaries of protected resources for the purposes of establishing buffers and setbacks, the Planning Board shall be the final authority as to location. In making determinations, the Planning Board may require applicants to file plans drawn and approved by qualified professionals and may consider the advice of state and federal agencies and peer reviewers.

### **5.38.5 Exemptions**

A. Buffers and setbacks are not required adjacent to the following areas:

- 1. Swales, ditches, and impoundments created for drainage purposes;
- 2. Artificial impoundments of streams constructed prior to the enactment of this amendment;
- 3. Low value wetlands, averaging thirty (30') feet or less in width, as determined by measuring the width of five (5) evenly spaced sections, that function primarily as drainage swales in upland areas.

B. Subject to the following qualification, buffers and setbacks do not apply to the following improvements: [Amended 12-17-07]

- 1. Stormwater management facilities;
- 2. Road crossings, bridges, culverts, and the installation of utilities needed to access property on the other side of wetlands and water bodies; and
- 3. Docks, boat ramps, and other structures necessary for direct access to water bodies.

In order to qualify for the exemptions in this paragraph B, the design and location of the improvements must:

- 1. Be integrated with the natural topographic condition and minimize the need for cuts and fills;
- 2. Minimize impacts on protected resources and their respective buffers and setbacks as defined in subsection 5.38.3;
- 3. Incorporate accepted best management practices; and
- 4. Be determined by the permitting authority to be the best alternative.

### **5.38.6 Non-forested Areas**

Buffer areas that consist of fields, orchards, or cutover land shall comply with the requirements of this section by allowing the buffer area to regenerate to forest cover naturally. The Town may, however, require that the buffer area be replanted and the site stabilized if the soils on the site are exposed or eroding.

### **5.38.7 Maintenance of Forested Buffers**

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- A. Buffers shall remain undisturbed, except for the removal of trees that pose a safety hazard. No tree cutting or clearing of vegetation can be done within the buffer without prior approval of the Code Enforcement Officer.
- B. No trash, building materials, compost piles, buildings, automobiles, equipment, machinery, car parts, gravel, rocks, soil, or debris of any kind shall be placed or stored in the buffer area.
- C. Stormwater runoff shall enter the buffer area as sheet flow only. Channeling stormwater runoff through the buffer area is not permitted.

### **5.38.8 Enforcement of Buffers**

- A. For building permits where a buffer is required, a written notice that the property contains a buffer shall be filed at the Cumberland County Registry of Deeds within ten days of plan approval. A copy of the notice filed at the Registry shall be submitted to the Code Enforcement Office within the same time period as proof of the filing.
- B. On subdivision plans, the location of buffers and setbacks shall be shown using bold lines, shading, and other techniques to ensure that the buffer areas and the setbacks stand out clearly from background information. The buffers and setbacks shall be labeled and text shall indicate that the buffers are not to be disturbed.
- C. The boundaries of buffer areas shall be marked on site with snow fencing or equivalent measures and approved by the Code Enforcement Officer prior to site clearing.

## **5.39 Erosion and Sedimentation Control [Adopted 9/22/03]**

### **5.39.1 Purpose**

The exposing of soils due to construction activities or the removing and placement of fill materials increases the risk of water pollution, uncontrolled stormwater runoff, and the degradation of the filtering benefits of naturally forested buffers and other vegetated areas. Exposed soils also increase the risk of damage to private and public property, such as stormwater control facilities, roads, water supplies, and buildings. The frequency and severity of these problems can be reduced by requiring the implementation of standard erosion and sedimentation control practices.

### **5.39.2 Applicability**

The provisions of this section apply to the erosion and sedimentation control plans and procedures required by Building Permits, Phosphorus Control Permits, Private Way Permits, Fill Permits, Shoreland Zoning Permits, Site Plans, and Subdivision Plans.

### **5.39.3 Definitions**

- a. *Best Management Practices*: Standardized techniques for designing, installing, and maintaining erosion and sedimentation control measures as explained in the manual identified in Section 5.39.5(a).

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- b. *Disturbed area*: That part of the land surface on which fill material has been placed, or from which vegetation, pavement, or structures have been removed, exposing bare soil.

### **5.39.4 General Standards**

Erosion and sedimentation control measures shall protect the following resources to the greatest practical extent given current best management practices:

- a. Water quality and wildlife habitat values of streams, waterbodies, wetlands, and buffer areas;
- b. Stormwater management facilities, buildings, roadways, and water supplies;
- c. Existing vegetation that is to be retained in conformance to approved plans and specifications;
- d. Public and private property adjacent to or in close proximity to the disturbed area.

### **5.39.5 Requirements**

- a. Erosion and sedimentation control measures shall be designed and implemented according to the *Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices*, by the Cumberland County Soil and Water Conservation District and the "Maine Erosion and Sediment Control BMPs", by the Maine Department of Environmental Protection, March 2003, or its most recent revision; except to the extent a specific provision in this Ordinance is different from or more restrictive than the provision in these reference manuals.
- b. The boundaries of natural and manmade vegetated buffers and other designated clearing limit lines required under Town ordinances and State law shall be marked with construction fencing, snow fencing, or other temporary barriers acceptable to the Code Enforcement Officer prior to site clearing, grading, placing or removing fill materials, and other forms of soil disturbance. Site clearing or soil disturbance activities may not begin until the Town has inspected and approved the boundaries of the buffer areas.
- c. Temporary erosion and sedimentation control measures shall be in place throughout the period that soils are exposed on the site. Soils are considered to be exposed as soon as trees, shrubs, grass and other vegetation are removed from the ground surface as a result of land clearing operations prior to development. The measures shall include, but are not limited, to the following activities, as applicable:
  - (1) Interception of stormwater runoff and containment of sediment originating from disturbed areas;
  - (2) Diversion of runoff away from disturbed areas;
  - (3) Protection of existing stormwater management facilities, roadways, buildings, and vegetation adjacent to or in close proximity to disturbed areas;
  - (4) Proper placement and compaction of fill materials, in order to ensure their structural stability;
  - (5) Temporary stabilization of exposed soil areas before major storms or a prolonged period of wet weather.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- d. Temporary erosion and sedimentation control measures shall be maintained throughout the construction period and shall include, but are not limited to, the following activities:
  - (1) Repair or replacement of sediment filtering devices, such as silt fences, hay bales, and sediment control berms.
  - (2) Cleaning of sediment trapping devices such as sediment basins and check dams.
  - (3) Cleaning of permanent stormwater management facilities, such inlets, catch basins, storm drains, detention ponds, drainageways, and plunge pools.
  - (4) Restoration of areas that have been damaged by erosion or sedimentation. Cleanup shall include sediment that has escaped into streams, waterbodies, wetlands, buffer areas, roadways, water supplies and stormwater management facilities, unless attempts at restoration would cause more harm than benefit to the resource, as determined by the Town.
- e. Permanent erosion and sedimentation control measures shall be implemented that keep the site permanently stabilized as soon as reasonably possible after completion of soil disturbance activities. These measures shall include, but are not limited to, the following measures, as applicable:
  - (1) Revegetation of all exposed areas that are not covered by buildings, pavement, or other structural surfaces;
  - (2) Stabilization of steep slope surfaces through one or more techniques, such as rip rap, diversion ditches, benches, and vegetation;
  - (3) Hardening of areas subject to concentrated or increased runoff, such as drainageways, inlets, and outlets, with riprap, concrete wing walls, stone plunge pools and other means.
- f. After complete site stabilization, silt fences and hay bales shall be removed from the project site. Sediment control berms shall be removed or smoothed over in order to blend with the landscape. Litter, building materials, and building debris shall be removed from the project site as well as buffer areas, streams, and wetlands.

### **5.39.6 Plans**

- a. Erosion and sedimentation control plans shall be submitted in writing. In areas outside of the Shoreland Zone and the Highland Lake Conservation Overlay District, the Town may waive the requirement for a written erosion and sedimentation control plan on projects that are deemed to pose little risk to sensitive natural and cultural resources due to their small size, simplicity, and location.
- b. The level of detail shown on the plans shall be based on the size and complexity of the project. The Town may require the plans to be prepared by a professional engineer if warranted by the size or complexity of the project, or by the potential impacts of the project on natural resources or public and private property.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- c. The Town may require that previously approved erosion and sedimentation control plans be modified if, during the performance of the project, the measures indicated in the plan do not appear to be adequate or are failing in their intended purpose.

### **5.39.7 Inspections**

- a. The minimum inspections required are the following, except that the Town may waive Inspections Number 2 and 3 if the project is small or lacking in complexity:
  - (1) Prior to site clearing or soil disturbance to confirm location of naturally vegetated or manmade buffers required by Town ordinances and State law;
  - (2) During the construction phase to determine if temporary erosion and sedimentation controls have been installed correctly and are working properly;
  - (3) After completion of soil disturbance activities to determine that the site is permanently stabilized and temporary measures can be removed.
- b. It is the responsibility of the developer to notify the Town that an inspection is due, under sub-section a. The lack of an inspection by the Town shall not absolve the developer of the responsibility to install and maintain erosion and sedimentation controls as required under this ordinance and State law.
- c. The Town may require that the developer hire a professional engineer, landscape architect, or other licensed professional with expertise in the erosion control measures specified in the plans to conduct inspections and prepare reports for consideration by the Town.
- d. The Town or its representatives may inspect the project at any time and require corrective action.
- e. Temporary control measures shall not be removed until the site has been permanently stabilized and approval from the Town has been obtained.

### **5.39.8 Enforcement**

Erosion and sedimentation controls shall be maintained throughout the construction period. Failure to maintain these devices may result in a stop work order, revocation of permits, or other disciplinary measures allowed by law. Fines may be imposed pursuant to 30-A M.R.S.A. §4452 at a rate of \$100.00 to \$2,500.00 per day per violation. The cost of clean up operations in the event that erosion and sedimentation controls fail shall be borne by the developer.

## **5.39A Post-Construction Stormwater Management [Adopted 09/14/09]**

### **5.39A.1 Purpose**

It is recognized that development activity poses potential impacts of flooding, adds pollution to water resources, and increases erosion and sedimentation. The purpose of this section is to ensure adequate long-term operation and maintenance of post-construction stormwater facilities.

This section is intended to protect town-wide stormwater infrastructure and water quality and ensure the Town's compliance with the Maine General Discharge Permit, which falls under the rules of NPDES Phase II and the EPA clean water act.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

### **5.39A.2 Applicability**

A Post Construction Stormwater Management Plan is required for any site development or redevelopment activity involving one acre (43,560 square feet) or more of disturbed land area that discharges to the Town's Municipal Separated Storm Sewer System (MS4) including but not limited to impervious surface, paving, clearing, filling or alteration of vegetative cover, etc..

In any instance where the standards or other provisions of State or Federal stormwater rules conflict with Town ordinances, the stricter standard shall apply.

### **5.39A.3 Submission Requirements**

- a. The plan shall be submitted to the permitting authority in conjunction with other required permit applications.
- b. The plan shall conform to the applicable submission requirements of Section 8 of DEP Chapter 500 Rules available at [www.maine.gov/dep/stormwater](http://www.maine.gov/dep/stormwater).
- c. The plan preparer shall be a professional qualified in stormwater management.

**5.39A.4 Permitting Requirements** - Prior to any site disturbance involving any property governed by the Plan, the following conditions shall be met:

- a. The plan shall be approved by Parks and Public Works Department
- b. A stormwater maintenance agreement shall be recorded at the Registry of Deeds.
- c. The stormwater management plan shall be approved by the permitting authority and referenced in a plan note on any other related plan approved in conjunction with the stormwater management plan.
- d. If an offer of dedication or Town acceptance is proposed, the applicant shall be responsible for the maintenance of these Stormwater Management Facilities until such time (if ever) as they are accepted by the Town.

**5.39A.5 Standards for the Post-Construction Stormwater Management Plan** – The application shall include a plan which shall:

- a. specify the property owner, responsible party for post-construction monitoring, and plan preparer.
- b. identify the qualified third party inspector who will perform the inspections.
- c. reference the stormwater maintenance agreement. Perpetual easements will be provided to the Town allowing access for secondary maintenance, repair, replacement and improvement of the Stormwater Management Facilities.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- d. include a note documenting that the responsible party, his/her/its successors, heirs and assigns, shall have the legal obligation to operate, repair, maintain and replace the Stormwater Management Facilities.

### **5.39A.6 Requirements for Compliance**

Any party responsible for Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan shall demonstrate compliance with the Plan as follows:

- a. The responsible party shall provide the Parks and Public Works and the Community Development Departments with an annual report documenting that the stormwater management facilities are adequately maintained and are functioning as intended. If the facilities are not adequately maintained or functioning as intended, the qualified third party inspector shall provide a record of the deficiency and the responsible party will take corrective actions to remediate the deficiency within the time frame established by the Parks and Public Works Department.
- b. The responsible party shall at least annually, inspect, clean and/or maintain the Stormwater Management Facilities, including, but not limited to, any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures. This shall be in accordance with the cleaning and maintenance requirements set forth in the approved Post-Construction Stormwater Management Plan.
- c. The responsible party shall repair any deficiencies found during inspection of the Stormwater Management Facilities in a timeframe as established by the Parks and Public Works Department.
- d. The responsible party shall, on or by July 1 of each year, provide a completed and signed certification to the Director of Parks and Public Works, in a format acceptable to the Department. The certification shall describe any deficiencies found during inspection of the Stormwater Management Facilities and certify that the deficiencies of any Stormwater Management Facilities have been remediated.
- e. The required inspection(s) must be conducted by a qualified third-party inspector if the property is subject to a DEP stormwater permit. The third-party inspector shall perform an initial inspection to determine the status of the Stormwater Management Facilities. If the initial inspection identifies any deficiencies with the facilities, the same third-party inspector shall re-inspect the facilities after they have been maintained or repaired to determine if they are performing as intended and certify the same to the Director of Parks and Public Works
- f. The qualified third party inspector must meet the following criteria:
  - 1. Have a college degree in an environmental science or civil engineering, or comparable expertise;
  - 2. Have a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities; and
  - 3. Have the ability to determine if stormwater facilities are performing as intended.

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

- g. In order to determine compliance with this section and with the Post-Construction Stormwater Management Plan, the Director of Parks and Public Works, Community Development Director, or their designee, may request to enter upon a property at reasonable hours after making a good faith effort to contact the owner, occupant or agent to inspect the Stormwater Management Facilities.
- h. Non-compliance with the plan that is not resolved within a reasonable time frame shall be referred to the Maine Department of Environmental Protection (MDEP).

### **5.40 Diverse Housing in Mixed Use Developments** [Adopted 5/24/04][Repealed 5/13/13]

#### **5.41 Personal Use Airstrip** [Adopted, 9/26/05]

Personal Use Airstrips shall meet the following standards and limitations:

- a. The airstrip surface shall be limited to grass only and there shall be no exposed gravel or paving.
- b. The maximum length shall be two thousand three hundred feet (2300').
- c. The edges of the airstrip shall be located at least two hundred and fifty feet (250') from any abutting property line.
- d. Planes using the airstrip shall be limited to visual flight operations and shall only operate between 7 a.m. and 9 p.m.
- e. There shall be no lighting of the landing strip or any control tower, except for low-intensity landscape lighting utilized to identify the perimeter of the landing strip, and which is activated only for approach and take-off.
- f. The airstrip shall not be used for any commercial purposes such as, without limitation, sky-diving, flying lessons, rental of landing rights, or commercial maintenance or repair of aircraft. The airstrip shall not be permitted to be used as a base for sky-diving, either personal or commercial.
- g. There shall be no more than one airstrip per property. The airstrip may not serve more than one lot nor shall deeded rights be granted in that airstrip to others.
- h. The personal use airstrip may be used for "fly-ins" only with the approval of the Town Council and with such reasonable conditions as the Town Council may impose.

#### **5.42 Private Access Drives For Country Estates Lots** [Adopted 12/22/05]

The Planning Board may approve the use of a private access drive to provide access to Country Estate lots in the Resource Conservation Zoning Overlay District in accordance with the following provisions:

- a. A private access drive may be used to provide access to not more than three (3) Country Estate lots in the Resource Conservation Zoning Overlay District.
- b. The private access drive shall be located in a deeded right-of-way or easement with a width of not less than twenty-five (25) feet. The right-of-way or easement may be part of one or more of the lots but the area within the right-of-way or easement shall not be counted toward meeting the minimum lot area or minimum net residential area

## **SECTION 5. SPECIFIC REQUIREMENTS (cont.)**

requirement for the lot(s).

- c. The private access drive shall meet the design and construction requirements for private ways set forth in Section 5.27, except that private access drives serving Country Estate lots shall not be subject to the dead end length limitations and no sewer easement will be required by the Town. The width of the right of way shall be as indicated in subsection b. above.

## **SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS**

- 6.1** A nonconforming structure, use, or lot is permitted to continue as it existed prior to the date such structure, use, or lot became nonconforming under the provisions of this Ordinance, as amended.
- 6.2** Except as provided in this subsection, a nonconforming structure or use shall not be extended or enlarged in any manner except as may be permitted as a variance. The following requirements shall apply to expansion or enlargement of structures which are nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height or setback requirements. [Amended 1/24/00]
- a. Except for lots located in the Water View Overlay District the extension, enlargement, or development of a structure which is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height, or setback requirements, is permitted provided the extension or enlargement is not located between the lot lines and the required setback lines and does not compound nor create a lot coverage or height violation. [Amended 10/25/04; 7/24/06; 5/30/12]
  - b. The Board of Zoning Appeals may permit as a conditional use in accordance with Section 8.3 and 8.7, the extension or enlargement of a single family detached dwelling which is nonconforming solely due to lot size, lot width, lot frontage, lot coverage, height or setback requirements, provided the extension or enlargement [Amended, 10/25/04]:
    - (1) Shall not increase lot coverage above 50%; and,
    - (2) Shall not extend closer to the lot lines than the existing structure; and,
    - (3) Shall not create or compound a violation of the height restrictions in Section 5.20. [Amended 7/24/06]
    - (4) No part of the extension or enlargement (of a single family detached dwelling) may be closer than ten (10) feet from all property lines and twenty (20) feet from buildings on any adjoining lot.
  - c. The Board of Zoning Appeals may permit as a conditional use in accordance with Section 8.3 and 8.7, the extension or enlargement of a multiplex dwelling unit subject to the following requirements [Amended, 10/25/04]:
    - (1) No part of the extension or enlargement of a multiplex dwelling unit may be closer than twenty (20) feet from all property lines and thirty (30) feet from buildings on any adjoining lot.
    - (2) If the multiplex dwelling to be enlarged is in the condominium or unit owner form of ownership, the Board of Zoning Appeals may approve the extension or enlargement only of a limited common element or area and only after

## **SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS (cont.)**

such extension or enlargement has been approved by the condominium association or association of unit owners in accordance with the provisions of the Maine Condominium Act or Unit Ownership Act, as the case may be, and with applicable bylaws of the association.

- (3) The applicant for the extension or enlargement of a multiplex dwelling unit shall provide notice of the application and the Board of Zoning Appeals' hearing thereon to the owners of dwelling units which are attached to the unit proposed to be extended or enlarged. [Amended 1/24/00]

- d. A structure other than a single family detached dwelling or a multiplex dwelling unit which is nonconforming due to lot size, lot width, lot frontage, lot coverage, height or setback requirements, may be expanded or enlarged subject to Planning Board Site Plan Review, provided that the extension or enlargement is not located between the lot lines and the required setback lines, and does not compound nor create a lot coverage or height violation. [Amended, 1/24/00]

Any single family detached dwelling located in the BP, MUC, or VC Districts which is nonconforming solely because of its use, may be expanded or enlarged in accordance with the preceding requirements. [Amended 12/22/86] [Amended 5/13/13]

- 6.3** Once converted to a conforming structure, use, or lot, no structure, use, or lot shall revert to a nonconforming status.

- 6.4** The change of a use, which is nonconforming because it is not allowed either as a permitted or conditional use in the district in which it is located, to another nonconforming use may be permitted by the Board of Zoning Appeals as a conditional use subject to the requirements of subsection 8.3 and 8.7, and after finding by the Board that the proposed use will be an improvement over the prior use in terms of the standards set forth in subsections 8.3 and 8.7.

- 6.5** Replacement of Destroyed or Damaged Nonconforming Structures [Amended, 10/25/04]

- a. Any nonconforming structure or portion thereof that is unintentionally damaged or destroyed by accident or by malicious acts of persons other than the property owner shall only be rebuilt or replaced subject to the requirements of this subsection:

- (1) For nonconforming structures located outside of the Shoreland Zone, the destroyed or damaged structure may be replaced or rebuilt with approval of the Zoning Board of Appeals, provided that the exterior dimensions of the reconstruction are no larger than the dimensions of the structure prior to the destruction or damage. Damaged or destroyed structures that are rebuilt under this subsection shall not be subject to the provisions of the Zoning Ordinance for lot size, lot width, lot frontage, lot coverage, or height limitations, but the new structure shall be placed on the lot such that the setback requirements are met to the greatest extent practical, even if this means that a new foundation must be installed.

## **SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS (cont.)**

- (2) As required by state law, for nonconforming structures located in the Shoreland Zone a determination of the extent of damage shall be made to ascertain that the structure has been damaged to the extent of more than fifty (50%) percent of its value prior to the destruction or damage, and in making the determination of moving the building to meet setbacks to a water body, tributary stream or wetland to the greatest practical extent, the Board shall consider the following factors [Amended 5/26/09]:
- i. The size of the lot;
  - ii. The slope of the land;
  - iii. The potential for soil erosion;
  - iv. The location of other structures on the property or on adjacent properties;
  - v. The location of the septic system, if any, and other on-site soils suitable for septic system replacement;
  - vi. The type and amount of vegetation to be removed to accomplish the relocation; and,
  - vii. The type and condition of any foundation which may have been part of the original structure.
- (3) When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Board of Zoning Appeals or its designee 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 [Adopted 5/26/09]:
- i. Trees removed in order to relocate a structure must be replanted with at least one native tree, minimum 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. [Adopted 5/26/09]
- 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. [Adopted 5/26/09]
- ii. 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. [Adopted 5/26/09]

## **SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS (cont.)**

- (4) 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. [Adopted 5/26/09]
- b. Nothing in this provision shall prevent a property owner from taking temporary measures to protect a nonconforming structure or portion thereof, which is unintentionally damaged or destroyed, from further damage.
- c. 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 6.11.a, 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 6.5.a.3 above. [Adopted 5/26/09]

**6.6** If a nonconforming use or the use of a nonconforming structure or lot is discontinued for twelve (12) consecutive months, such use shall no longer be permitted.

**6.7** A nonconforming single vacant lot outside of the WVOD, and not adjoined by another vacant lot in common ownership, may be built upon subject to the lot coverage and setback requirements of this Ordinance for the district where located, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicles. For purposes of this Section 6.7, the term “vacant lot” shall mean a nonconforming lot that was vacant on and has remained vacant since the effective date of this Zoning Ordinance in 1965. [Amended 10/25/04; 7/24/06; 5/30/12]

Within the WVOD, a nonconforming single vacant lot not adjoined by another vacant lot in common ownership, may be built upon subject to the lot coverage and setback requirements of this Ordinance for the district where located, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicles and provided that that owner has conditional use approval from the Board of Zoning Appeals. For purposes of this Section 6.7, the term “vacant lot” shall mean a nonconforming lot that was vacant on and has remained vacant since the effective date of this Zoning Ordinance in 1965. [Adopted 5/30/12]

**6.8** Two or more nonconforming vacant adjoining lots in common ownership shall be consolidated to form one or more lots conforming so far as possible to the lot area and width requirements of this Ordinance. If possible, the lots shall be consolidated so that no nonconforming lot or lots are formed. The lot or lots so formed may be built upon as a

## **SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS (cont.)**

matter of right, subject to the lot coverage and setback requirements of this Ordinance for the district where located, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicle.

- 6.9** The owner or owners of a nonconforming lot shall apply to the Board for a conditional use to relocate or tear down either wholly or partially a dwelling or dwellings located thereon and build or replace the same in whole or in part. As a condition to applying for such a conditional use, the lot must be consolidated with any adjoining lot or lots in common ownership and not occupied by a dwelling, to form one or more lots conforming so far as possible with the lot area and width requirements of this Ordinance. The Board may grant the conditional use only if the following additional criteria are met: [Amended, 5/27/92; 7/24/06]
- a. The reconstructed dwelling shall be used as a single family detached dwelling;
  - b. The lot coverage shall not exceed fifty (50%) percent;
  - c. A minimum setback of ten (10) feet from all lot lines shall be maintained;
  - d. The reconstruction shall be no closer than twenty (20) feet to other buildings on any adjoining lot; and
  - e. There are provided two off-street parking spaces for each dwelling unit.
- 6.10** A non-conforming structure which is accessory to a single family detached dwelling may be rebuilt within the existing footprint without a variance provided that the structure is not extended or enlarged in any manner; that the structure, as rebuilt, complies with all applicable fire safety codes; and that conditional use approval is obtained from the Board of Zoning Appeals. [Adopted, 5/27/93] [Amended 7/24/06]
- 6.11** In addition to the prior sections dealing with non conforming structures, the following provisions shall apply to the expansion of nonconforming structures located in the Shoreland Zone subject to conditional use approval by the Board of Appeals [Adopted, 5/27/92]:
- a. If any portion of a structure or an attached accessory structure is less than the required setback from the normal high-water line of a water body or tributary stream or upland edge of a designated wetland, that portion of the structure shall not be expanded in floor area or volume, by 30% or more, during its lifetime. If a replacement structure conforms with the requirements of Section 6.5, 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. [Amended 5/28/96; Amended 5/26/09]
- Construction or enlargement of a foundation beneath an existing structure need not be considered in the area or volume of expansion provided that the space within that foundation meets the definition of a cellar.

## **SECTION 6. NONCONFORMING STRUCTURES, USES AND LOTS (cont.)**

- 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 Board of Zoning Appeals or its designee, basing its decision on the criteria specified in Section 6.5.a.2. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 6.11.a, 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. [Adopted 5/26/09]
- c. Notwithstanding the height restriction of Section 6.2 b.(3), in the Residential "B" portions of the Shoreland Zone around Highland Lake, a foundation may be constructed under an existing structure [Amended, 5/27/93].
- d. No structure which is less than the required setback from the normal high-water line of a water body or the upland edge of a designated wetland shall be expanded toward the water body or wetland.

## **SECTION 7. SHORELAND ZONING**

### **7.1 Purposes**

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

### **7.2 Authority**

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

### **7.3 Applicability [Amended 5/26/09]**

- a. The Shoreland Zone includes and applies only to those land areas:
  - 1) Within two hundred and fifty (250) feet, horizontal distance, of the normal high water line of any designated great pond, river, or salt water body; or,
  - 2) Within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, or of a non-forested, fresh water wetland of ten (10) or more contiguous acres; or,
  - 3) Within one hundred (100) feet, horizontal distance, of the normal high water line of any designated stream or brook.
  - 4) Flood plains along rivers, as defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils, or other site-specific information.  
[Amended 5/26/09]
- b. The provisions of the zone also apply to any structure built on, over, or abutting a dock, wharf, pier, or other structure extending below the normal high-water line of a water body. [Amended 5/26/09]
- c. The provisions of the shoreland zone shall apply where applicable, in addition to any other provisions of this ordinance.

### **7.4 Conflicting Regulations [Adopted 5/26/09]**

The shoreland districts shall overlay the districts described in Section 3, and notwithstanding any other provision of the Ordinance, no use shall be allowed in a shoreland district which is not allowed as a permitted use or approved as a conditional use in the applicable underlying zone. Where a Shoreland Zone regulation appears to be in conflict with any other state or local rule, regulation, statute or restriction, the more restrictive requirement shall have precedence.

## **SECTION 7. SHORELAND ZONING (cont.)**

### **7.5 Permits Required** [Adopted 5/26/09]

No person shall engage in any use of land requiring a permit in the district in which it would occur, or expand or change an existing nonconforming use, or renew a discontinued use or convert a seasonal dwelling to a year-round dwelling occupied on a year-round basis as the principal dwelling place of the occupant, without first obtaining a permit.

### **7.6 Permit Application** [Adopted 5/26/09] [Amended 3/14/11]

Applications for permits shall be submitted in accordance with requirements of the Community Development Department. Submissions of approved plans shall also meet the requirements of Section 9.2.a.5, Geographic Information System (GIS) Plan Submissions and Specifications.

### **7.7 Plumbing Permit Required** [Adopted 5/26/09]

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

### **7.8 Permits Issued by Planning Board** [Adopted 5/26/09]

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- a. will not result in unsafe and unhealthful conditions;
- b. will not result in water pollution, erosion, or sedimentation to surface waters;
- c. will adequately provide for the disposal of all wastewater;
- d. will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- e. will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- f. will protect archaeological and historic resources as designated in the Comprehensive Plan;
- g. will avoid problems associated with flood plain development and use; and
- h. is in conformance with the Land Use Standards of Section 7.

### **7.9 Special Exceptions** [Adopted 5/26/09]

In addition to the criteria specified in Section 7.8 above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

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

## **SECTION 7. SHORELAND ZONING (cont.)**

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

- (a) Located on natural ground slopes of less than 20%; and
- (b) Located outside the 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.

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 100 feet, horizontal distance. In determining the greatest practical extent, the Planning Board or its designee 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 wetlands.

### **7.10 Expiration of Permit [Adopted 5/26/09]**

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

### **7.11 Districts and Zoning Map**

Official Shoreland Zoning Map - The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

- 1) Resource Protection
- 2) Limited Residential
- 3) Limited Commercial
- 4) Stream Protection

### **7.12 Interpretation of District Boundaries [Amended 5/26/09]**

The Boundaries of the Shoreland Zone exist by reference to the definition set forth in Section 7.3. The Official Zoning Map is intended to be as precise as reasonably may be determined with respect to showing the Shoreland Districts referred to in Section 7.11 herein. Where uncertainty exists as to exact location of District boundary lines, the Planning Board shall be the final authority as to location.

## **SECTION 7. SHORELAND ZONING (cont.)**

### **7.13 Establishment of Districts [Amended 5/26/09]**

#### **a. Resource Protection District**

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed need not be included within the Resource Protection District.

- 1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006. [Amended 5/26/09]
- 2) Flood plains along rivers, as defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. This district shall also include 100 year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- 3) Areas of two (2) or more contiguous acres with sustained slopes of twenty (20%) percent or greater. In such areas, the boundary of the Resource Protection District shall extend a distance of fifty (50) feet, horizontal distance, beyond the top of slope moving away from the water body. Small areas of slopes less than twenty (20%) percent may be included where there is a consistent and well defined top of bank, or where such areas are completely surrounded by steeper slopes.
- 4) Any forested or non-forested wetland area of two (2) or more contiguous acres falling within the 250 foot limit of the shoreland zone, which is not surficially connected to a water body during normal spring high water.
- 5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

#### **b. Limited Residential District**

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

#### **c. Limited Commercial District**

The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District. This district includes areas of two (2) or more contiguous acres in size devoted to, or appropriate for, a mix of

## SECTION 7. SHORELAND ZONING (cont.)

residential and low intensity business and commercial uses. Industrial uses are prohibited.

d. Stream Protection District

The Stream Protection District includes all land areas within one hundred (100) feet, horizontal distance, of the normal high-water line of a designated stream.

### 7.14 Table of Land Uses [Amended 5/26/09]

All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 7. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Yes: Allowed (no permit required)  
No: Prohibited  
PB - Planning Board  
CEO - Code Enforcement Officer  
BZA - Board of Zoning Appeals

SP: Stream Protection  
RP: Resource Protection  
LR: Limited Residential  
LC: Limited Commercial

TABLE 1 - LAND USES IN THE SHORELAND ZONE

LAND USES (see note 1) [Amended 5/26/09]	SP	RP	LR	LC
1. Forest management activities except for timber harvesting	yes	yes	yes	yes
2. Timber harvesting	yes	CEO	yes	yes
3. Clearing of vegetation for approved construction and other allowed uses	CEO	CEO	yes	yes
4. Mineral exploration	no	CEO	yes	yes
5. Emergency operations	yes	yes	yes	yes
6. Agriculture	yes	CEO	yes	yes
7. Aquaculture	yes	PB	PB	yes
8. Principal structures and uses:				
A. One and two family residential	BZA	PB (2)	CEO	CEO
B. Multi-unit residential	no	no	PB	PB
C. Commercial	no	no	no	PB
D. Industrial	no	no	no	no
E. Governmental and Institutional	no	no	PB	PB
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes	BZA	PB	CEO	CEO
9. Structures accessory to allowed uses	BZA	PB	CEO	CEO
10. Piers, docks, wharves, bridges, and other structures and uses extending over or below the normal high-water line or within a wetland				
A. Temporary	PB	PB	CEO	CEO
B. Permanent	PB	PB	PB	PB
11. Conversions of seasonal residences to year-round residences	CEO	no	CEO	CEO
12. Private sewage disposal systems for allowed uses	CEO	CEO	CEO	CEO
13. Essential services	PB	PB	PB	PB
14. Public and private recreational areas involving minimal structural development	PB	PB	CEO	CEO

## SECTION 7. SHORELAND ZONING (cont.)

15. Individual, private campsites	CEO	CEO	CEO	CEO
16. Campgrounds	no	no	PB	PB
17. Road construction	PB	PB	PB	PB
18. Driveway construction	PB	PB	CEO	CEO
19. Parking facilities	no	no (3)	CEO	CEO
20. Marinas	no	no	PB	PB
21. Public Utilities, including sewage collection and treatment facilities	PB	PB	PB	PB
22. Filling and earthmoving of < 10 cubic yards	CEO	CEO	yes	yes
23. Filling and earthmoving of > 10 cubic yards	PB	PB	PB	PB
24. Uses similar to allowed uses	CEO	CEO	CEO	CEO
25. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
26. Uses similar to uses requiring a PB permit	PB	PB	PB	PB

**Note 1:** Uses not specifically listed and not similar to listed uses require an interpretation from the Board of Zoning Appeals.

**Note 2:** Single family structures may be allowed by special exception only according to the provisions of Section 7.9 Special Exceptions. Two-family residential structures are prohibited.

**Note 3:** Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the Planning Board. [Adopted 5/26/09]

### 7.15 Land Use Standards [Amended 5/26/09]

All land use activities within the shoreland zone shall conform to the land use standards contained in Sections 7.15 through 7.30.

#### A. Minimum Lot Standards

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1) (a) Residential		
(i) Within the Shoreland Zone Adjacent to Tidal Areas	30,000sq.ft./ dwelling unit	150
(ii) Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000 sq.ft./ dwelling unit	200
(b) Commercial per principal structure		
(i) Within the Shoreland Zone Adjacent to Tidal Areas	40,000 sq.ft.	200
(ii) Within the Shoreland Zone Adjacent to Non-tidal Areas	60,000 sq.ft.	300
(c) Public and Private Outdoor Recreational Facilities		
(i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	40,000 sq.ft.	200

## **SECTION 7. SHORELAND ZONING (cont.)**

- (2) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (3) The minimum width of any portion of any lot within two hundred (200) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- (4) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

### **7.16 Agriculture [Amended 5/26/09]**

- a. All spreading or disposal of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).
- b. Manure shall not be stored or stockpiled within seventy-five (75) feet, horizontal distance, of the normal high water line of a water body or the upland edge of designated wetlands.
- c. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, or the spreading, disposal or storage of manure within the shoreland zone shall require a Soil and Water Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
- d. There shall be no new tilling of soil within seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of designated wetlands. Operations, including farmland that is fallow due to crop rotation normal to those operations, in existence on the effective date of this Ordinance and not in conformance with this provision may be maintained.
- e. Newly established livestock grazing areas shall not be permitted within seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of designated wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions, may continue, provided that such grazing is conducted in accordance with a Soil and Water Conservation Plan.

### **7.17 Campgrounds**

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

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

## SECTION 7. SHORELAND ZONING (cont.)

### 7.18 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting [Amended 5/26/09]

The upland area immediately adjacent to a water body is known as the "riparian zone." It functions to protect the water quality and wildlife values of the water body. Vegetation within riparian zones: 1) provides essential habitat for a diversity of wildlife species, 2) serves as a natural filtration system for nutrients, sediments, and other pollutants, 3) maintains suitable water temperatures for aquatic life, and 4) provides food for a variety of fish and aquatic wildlife. Vegetative cover also stabilizes shorelines preventing erosion damage to property and deterioration of water quality. Finally, vegetation provides a visual screen between water uses and development. For all of these reasons, restrictions must be placed on the removal of vegetation on properties adjacent to waterbodies.

- a. The cutting or removal of vegetation in the Resource Protection District shall be limited to that which is necessary for uses expressly authorized in that district.
- b. In other shoreland districts, within a strip of land extending one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of a designated wetland, a buffer strip of vegetation shall be preserved as follows:
  - 1) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created.
  - 2) Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. For the purposes of this section a "well-distributed stand of trees" adjacent to a great pond classified Great Pond Act or a river or stream flowing to a great pond classified Great Pond Act, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system:

<b>Diameter of Tree at 4 ½ feet above ground level (inches)</b>	<b>Points</b>
2 – 4 inches	1
>4 – 8 inches	2
>8 – 12 inches	4
>12 inches	8

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

Notwithstanding the above provisions, no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter, measured at four and one-half (4 1/2) feet above ground level may be removed in any ten (10) year period.

## SECTION 7. SHORELAND ZONING (cont.)

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

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

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

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 7.18.2.b “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been planted into the plot.

- 3) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath as described in subsection 1) above.
- 4) Pruning of tree branches on the bottom 1/3 of the tree is allowed.
- 5) In order to maintain a buffer strip of vegetation when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present. Plantings must be sufficient to create a new forest canopy that will meet the requirements of Section 7.18.b.2 within ten (10) years.

The provisions contained in this subsection b shall not apply to structures or uses which require direct access to the water as an operational necessity, such as public beaches, piers, docks, and retaining walls, nor to other functionally water dependent uses. Clearing of vegetation for structures or uses that require direct access to the water as an operational necessity shall be limited to the minimum

## **SECTION 7. SHORELAND ZONING (cont.)**

amount necessary. Areas disturbed beyond these limits shall be replanted according to the requirements of this subsection.

- c. At distances greater than one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of a designated wetland, cleared openings for development, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, twenty-five (25) percent of the lot area or ten thousand (10,000) square feet, whichever is greater, including land previously cleared.
- d. At distances greater than one hundred (100) feet, horizontal distance, of the normal high-water line of Great Ponds and seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of a designated wetland, removal of trees within areas not cleared for development shall be limited to forty (40) percent of the volume of trees four (4) inches or more in diameter, measured four and one-half (4 1/2) feet above ground level, in any ten (10) year period. For the purposes of these standards, volume may be considered equivalent to basal area.
- e. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except to remove safety hazards or as allowed by this Ordinance.
- f. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

### **7.19 Erosion and Sedimentation Control [Amended 9/22/03]**

- a. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan according to Section 5.39.
- b. Natural and man-made drainage ways and drainage outlets shall be protected from erosion by water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

### **7.20 Mineral Exploration and Extraction [Amended 5/26/09]**

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface per acre. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitations.

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

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of this section.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal

## **SECTION 7. SHORELAND ZONING (cont.)**

high-water line of a great pond classified Great Pond Act or a river flowing to a great pond classified Great Pond Act, or within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.

- (3) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - (a) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
  - (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
  - (c) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (4) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

### **7.21 Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland [Amended 5/26/09]**

- a. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- b. The location shall not interfere with existing developed or natural beach areas.
- c. The facility shall be located so as to minimize adverse effects on fisheries.
- d. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
- e. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- f. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- g. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

## **SECTION 7. SHORELAND ZONING (cont.)**

NOTE: New permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A., Section 480-C.

### **7.22 Roads and Driveways [Amended 5/26/09]**

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

- a. Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified Great Pond Act or a river that flows to a great pond classified Great Pond Act, and one-hundred (100) feet, horizontal distance, from the normal high-water line of a waterbody or the upland edge of a designated wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road and/or driveway setback requirement to no less than fifty (50) feet, horizontal distance, upon clear demonstration by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, stream, or wetland.

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

This paragraph shall neither apply to approaches to water crossings nor to roads nor driveways that provide access to permitted structures, nor to facilities located nearer to the shoreline due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this section except for that portion of the road or driveway necessary for direct access to the structure.

- b. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body.
- c. New roads and driveways are prohibited in a Resource Protection District except to provide access to permitted uses within the district, or as approved by the Planning Board upon a finding that no reasonable alternative route or location is available outside the district, in which case the road and/or driveway shall be set back as far as practicable from the normal high-water line of a designated water body, stream, or upland edge of a wetland.
- d. Road and driveway banks shall be no steeper than a slope of three (3) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 7.11.
- e. Road and driveway grades shall be no greater than ten (10) percent except for short segments of less than two hundred (200) feet, which shall be no greater than twelve (12) percent, unless the Planning Board approves a higher percentage if it finds that that is needed to minimize cuts and fills and maximize erosion control.
- f. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet

## SECTION 7. SHORELAND ZONING (cont.)

plus two times the average slope in width between the outflow point of the ditch or culvert and the normal high-water line of a designated water body, stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

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

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

<b>Grade (Percent)</b>	<b>Spacing (Feet)</b>
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60

- 2) Drainage dips may be used in place of ditch relief culverts only where the road or driveway grade is ten (10) percent or less.
- 3) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed across the road at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- 4) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.
- h. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

### 7.23 Septic Waste Disposal [Amended 5/26/09]

- a. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (“Rules”), and the following:
- 1) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and
  - 2) a holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Rules, among other requirements, include:

- 1) The minimum setback for new subsurface sewage disposal systems, excluding fill extensions, shall be no less than one hundred (100) feet, horizontal distance, from the normal high-water line of a perennial water body. The minimum setback distances from water bodies for new subsurface sewage disposal systems shall not be reduced by variance on vacant lots.

## **SECTION 7. SHORELAND ZONING (cont.)**

- 2) Replacement systems shall meet the standards for replacement systems as contained in the Rules.
- b. Prior to the conversion of a seasonal dwelling to a year-round dwelling, the Code Enforcement Officer must determine that the existing septic system is capable of properly disposing of all wastes which would be generated by year-round use. If the Code Enforcement Officer determines that the existing septic facilities are not adequate, a new septic system shall be installed prior to, or in connection with, the proposed conversion.

### **7.24 Soils [Amended 5/26/09]**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, or commercial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals.

Certified persons may include Maine Certified Soil Scientists, Maine Licensed Professional Engineers, Maine Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

### **7.25 Structures and Lots, Principal and Accessory [Amended 5/26/09]**

- a. Unless otherwise provided for in Section 7.15, no dwelling or other structure shall be erected except on a lot which meets the minimum lot size and other dimensional requirements established under Section 3 for the underlying district over which the applicable shoreland district is located.
- b. Land below the normal high-water line of a water body or upland edge of a designated wetland shall not be included toward calculating minimum lot area.
- c. Any lot abutting a great pond, river, designated stream, or tidal water shall have a minimum width at all points of two hundred (200) feet measured in a straight line between, or parallel to, a line between the points of the intersection of the side lot lines at the normal high water line.
- d. All structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a designated wetland. The water body or wetland setback provision shall neither apply to structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.
- e. For principal structures adjacent to coastal bluffs, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified

## **SECTION 7. SHORELAND ZONING (cont.)**

on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Licensed Professional Engineer, a Maine Certified Soil Scientist, a Maine Certified Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Zoning Appeals.

- f. The lowest floor elevation or openings of all buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils. Accessory structures may be placed in accordance with the standards of the Floodplain Management Ordinance and need not meet the elevation requirements of this paragraph.
- g. The total footprint area of all structures, parking lots, and other non-vegetated surfaces within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, as located within the shoreland zone, including land area previously developed.
- h. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
  - (1) The site has been previously altered and an effective vegetated buffer does not exist;
  - (2) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - (3) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - (4) The total height of the wall(s), in the aggregate, are no more than 24 inches, unless the Planning Board approves a greater height if it makes a positive finding that such is required in order to minimize erosion control, maximize slope stability, and is of an appropriate esthetic nature;
  - (5) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
  - (6) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
  - (7) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

## **SECTION 7. SHORELAND ZONING (cont.)**

- (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
  - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
  - (iii) Only native species may be used to establish the buffer area;
  - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
  - (v) A footpath not to exceed the standards in 7.18.b may traverse the buffer;
- i. Notwithstanding the requirements stated above, stairways or similar structures may be allowed, with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils, provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

### **7.26 Timber Harvesting [Amended 5/26/09]**

In accordance with 38 M.R.S.A. section 438-B (5), the Town of Falmouth has chosen to have the statewide standards apply to timber harvesting and timber harvesting activities by authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas as stated in this section. It has notified the Director of the Bureau of Forestry within the Department of Conservation of this repeal. This authorization shall take effect on the date that is consistent with the effective date of the statewide timber harvesting standards. Then, beginning on the effective date of the statewide standards, the Bureau of Forestry will administer and enforce those standards within that municipality and section 7.26 shall be deleted.

- a. Within the shoreland area along the Presumpscot River zoned Resource Protection due to the presence of steep slopes or multiple natural resources, a buffer strip meeting the standards set forth in Section 7.18.b. shall be maintained between the normal high water line of the waterbody and a line extending fifty (50) feet, horizontal distance, inland from the top of slope.

Within the Resource Protection District along Mill Creek, a buffer strip meeting the standards set forth in Section 7.18.b. shall be maintained within one hundred and fifty (150) feet, horizontal distance, of the upland edge of the coastal wetland or the normal high-water line if no wetland is present.

- b. Except in areas as described in subsection a. above, timber harvesting shall conform with the following provisions:
- 1) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at four and one-half (4 1/2) feet above ground level on any lot in any ten (10) year period is permitted. In addition:

## **SECTION 7. SHORELAND ZONING (cont.)**

- a) Within seventy-five (75) feet, horizontal distance, of the normal high-water line of a water body or the upland edge of a designated wetland, there shall be no clearcut openings, and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
- b) At distances greater than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a designated wetland, harvesting operations shall not create single clearcut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clearcut openings shall be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered to be equivalent to basal area.
- 2) No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body shall be removed.
- 3) Timber harvesting equipment shall not use designated stream channels as travel routes except when:
  - a) Surface waters are frozen; and
  - b) The activity will not result in any ground disturbance.
- 4) All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- 5) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- 6) Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet from the normal high-water line of a water body or upland edge of a designated wetland.

### **7.27 Water Quality**

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body..

### **7.28 Individual Private Campsites [Adopted 5/26/09]**

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

## **SECTION 7. SHORELAND ZONING (cont.)**

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

### **7.29 Essential Services [Adopted 5/26/09]**

- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

### **7.30 Archaeological Sites**

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

## **SECTION 7. SHORELAND ZONING (cont.)**

**Note:** The Maine Historic Preservation Commission maintains listings and locations of Historic Places in Falmouth.

## **SECTION 8. BOARD OF ZONING APPEALS**

### **8.1 Appointment and Composition**

- a. There shall be a Board of Zoning Appeals consisting of five (5) members and one or two associate members, all of whom shall be residents of the Town of Falmouth. The members of the Board shall be appointed by the Municipal Officers of the Town of Falmouth. Terms of members shall be for three (3) years. The associate members shall be appointed for a term of three (3) years and shall act on the Board in place of members who may be unable to act due to a conflict of interest, absence, or physical incapacity. The Chairman shall designate which associate member shall serve in the stead of an absent member. The members of the Board shall annually elect one of their number chairmen to preside at all meetings of the Board. The members of the Board shall annually elect a secretary who shall provide for the keeping of the minutes of the proceedings of the Board, which shall show the vote of each member upon each question.
- b. Neither a municipal officer nor his spouse may be a member or associate member of the Board.
- c. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.
- d. A member of the Board may be dismissed for cause by the municipal officers before the expiration of his term.

### **8.2 Appeals**

Appeals shall lie from the decision of the Building Inspector to the Board of Zoning Appeals and from the Board of Zoning Appeals to the Superior Court according to the provisions of Maine Revised Statutes.

The Board of Zoning Appeals shall have the authority to hear and decide administrative appeals where it is alleged there is an error in any order, requirements, decision, or determination made by the Building Inspector in the enforcement of this Ordinance. The action of the Building Inspector may be modified or reversed by the Board, by majority vote.

#### **8.2.1 Mislocated Single Family Dwelling Appeal [Adopted 11/24/08]**

In addition to other powers conferred by this section 8.2, the Board of Zoning Appeals shall have authority to hear and decide appeals taken from decisions made by the Code Enforcement Officer that an existing single family dwelling or its attached garage violates the setbacks for the zoning district in which it is located and that the violation must be remedied by removal or relocation of the portion of the structure which encroaches into the setback or by the acquisition of abutting property. If the Board finds that the violation exists, as found by the Code Enforcement Officer, it may nevertheless grant the appeal and render a decision that permits the existing structure to remain but shall not authorize any expansion, enlargement or relocation of the structure within the required setback area provided that the Board finds that the following criteria are met:

- a. It would not serve the public interest to require the removal or relocation of the structure or the acquisition of abutting property;

- b. Allowing the structure to remain in its existing location would not be contrary to the public health, safety or welfare and would not unreasonably detrimentally affect the use or market value of abutting properties;
- c. The setback violation is not the result of a willful, premeditated act or of gross negligence on the part of the petitioner, a predecessor in title or agent of either;
- d. The petitioner has no reasonably available alternative to this appeal.

The appeal application must be accompanied by a survey, stamped by a Maine professional licensed land surveyor, showing the property boundaries and the location of the offending structure.

Any appeal granted under this section shall be conditioned upon the petitioner's entering into a Consent Agreement with the Town, acting through the Town Council, which provides that the Town will not bring an enforcement action with respect to the violation if the petitioner pays a civil penalty to the Town stated in the Consent Agreement. The Consent Agreement shall reference the action of the Board and shall become effective upon signing by the petitioner and the Code Enforcement Officer and payment of the civil penalty. The Consent Agreement shall be recorded at the Cumberland County Registry of Deeds by the Town.

### **8.3 Conditional Uses**

Conditional uses may be granted by the Board of Appeals after considering the characteristics and location of the proposed use and of other properties in the surrounding neighborhood, provided that the petitioner shall submit to the Board statements in writing, which may be accompanied by diagrams or photographs which shall become part of the record of such petitions, demonstrating that the proposed use:

- a. will meet the definition and specific requirements set forth in this Ordinance for such particular use;
- b. will be compatible with the general character of the neighborhood with regard to design, scale, and bulk of proposed structures;
- c. will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, light or glare.
- d. will not have a significant adverse effect on adjacent or nearby property values;
- e. will not have a significant adverse impact on water views from adjacent and nearby properties and public right of ways; [Adopted 7/24/06]
- f. will not result in significant hazards to pedestrian or vehicular traffic or significant traffic congestion;
- g. will not result in significant fire danger;
- h. will not result in significant flood hazards or flood damage, drainage problems, ground or surface water contamination, or soil erosion;
- i. will be served adequately by, but will not overburden, existing public services and facilities, including fire protection services, sanitary sewers, roads, water and storm drainage systems.
- j. upon a showing that a proposed use is a conditional use in the district where it is to be located, a conditional use permit shall be granted unless the Board determines that the

## **SECTION 8. BOARD OF ZONING APPEALS (cont.)**

proposed use will not meet one of the standards set forth in paragraphs a. through i. of this subsection, or paragraphs a. through g. of subsection 8.7, due to unique or distinctive characteristics or effects associated with the proposed use or its location which differ substantially from the characteristics or effects which would normally occur from such a use in that district. [Adopted, 4/27/87.]

### **8.4 Variances**

- a. Variances may be granted by the Board from the restrictions imposed by this Ordinance on height, lot size, lot coverage and setback, only where strict application of this Ordinance, or a provision thereof, would cause undue hardship to the petitioner and his property.
- b. The words "undue hardship" as used in this subsection mean:
  - (1) that the land in question cannot yield a reasonable return unless a variance is granted;
  - (2) that the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
  - (3) that the granting of a variance will not alter the essential character of the locality; and
  - (4) that the hardship is not the result of action taken by the applicant or a prior owner.
- c. Each petitioner for a variance shall submit to the Board statements in writing, which may be accompanied by diagrams or photographs, which shall become part of the record of such petition demonstrating the following:
  - (1) The nature of the hardship to the property under appeal; and the physical circumstances that allegedly would occasion such undue hardship.
  - (2) That such physical circumstances are peculiar to the property under appeal, and are not substantially duplicated on other property adjoining or nearly in the same neighborhood or the same zoning district.
  - (3) That the relief sought would not adversely affect property adjoining or nearby in the same neighborhood or the same zoning district and would not endanger the public health, safety or convenience and would not impair the integrity of this Ordinance or of the Falmouth Town Comprehensive Plan.

### **8.5 Set-back Variance For Single-Family Dwellings [Adopted, 5/27/93]**

Notwithstanding subsection 8.4, the Board may grant a set-back variance for a single-family dwelling when strict application of this Ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- a. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
- b. The granting of a variance will not alter the essential character of the locality;
- c. The hardship is not the result of action taken by the applicant or a prior owner;
- d. The granting of the variance will not substantially reduce or impair the use of abutting property; and
- e. The granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

## **SECTION 8. BOARD OF ZONING APPEALS (cont.)**

This subsection is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage.

### **8.6 Disability Variance**

The Board may grant a variance to a property owner for the purpose of making that dwelling accessible to a person with a disability who is living on the property. 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 on the property. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, section 4553 and the term "structures necessary for access to or egress from the dwelling " is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure. [Amended 5/26/09]

### **8.7 Conditions**

In hearing appeals under this Section 8, the Board shall determine whether the appellant's proposal will satisfy the following criteria, and in granting any appeal it may impose such conditions as it deems necessary to assure compliance with the applicable requirements set forth in subsection 8.3 and 8.4 and with the following criteria:

- a. The proposal must include any special screening, fencing, or other buffer necessary to set off the subject property from abutting uses or to assure the continued enjoyment of abutting uses;
- b. The 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;
- c. The proposal must not create or increase any fire hazard or any hazards to safe, convenient pedestrian or vehicular flow;
- d. The proposal must prevent or avoid the creation of any nuisance affecting adjacent properties;
- e. The proposal must include provision for adequate, lawful sewage disposal and healthful domestic water supplies;
- f. The proposal should not have a significantly adverse effect on adjacent or nearby property values.
- g. The appellant must be found to have adequate financial and technical capacity to satisfy the foregoing criteria and to develop and thereafter maintain the proposed project or use in accordance with all applicable requirements.

### **8.8 Appeal Procedures**

- a. In all cases, a person aggrieved by a decision of the Building Inspector shall file his appeal within thirty (30) days after receipt of a written decision from the Building

## **SECTION 8. BOARD OF ZONING APPEALS (cont.)**

Inspector. The appeal shall be filed with the Town Clerk on forms to be approved by the Board, and the aggrieved person shall specifically set forth on the forms the grounds for appeal. At the time of filing of the appeal, the appellant shall pay fees as established by the Town Council. [Amended 8/27/07]. The Town Clerk shall promptly forward the appeal to the Board. [Amended, 12/22/86]

- b. The Board shall initially review any appeal filed to determine whether to entertain the appeal. The Board may refuse to entertain an appeal if it is clearly frivolous or improperly filed, or for other sufficient reason fails to present an appealable issue. The Board shall cause the appellant, or his agent or attorney if so represented, to be notified of its rejection of the appeal and its reasons therefore. If the stated deficiencies of the appeal can be cured, the appellant may re-appeal at any time.
- c. The Board shall hold a public hearing on all appeals to be entertained. In appeals involving the use of buildings or lots, the Board shall notify by mail the owners of all property within five hundred (500) feet of the lots involved of the nature of the appeal and of the time and place of the public hearing thereon.
- d. In the case of appeals involving lot size, lot coverage, setback, height, or other space and bulk regulations or interpretation, the Board shall notify by mail the owners of property abutting the property for which an appeal is taken of the nature of the appeal and of the time and place of the public hearing thereon.
- e. For the purposes of this section, the owners of property shall be considered to be the parties listed by the Assessor of Taxes for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board.
- f. A copy of each variance request in 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 the action by the Board of Zoning Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals. [Amended 5/26/09]
- g. The appeal shall be in order for hearing at the next meeting of the Board following by at least ten (10) days the mailing of notices, including weekends and holidays, but in no event sooner than twenty-one (21) days after submission of a completed application, with all supporting documentation. A hearing shall not be continued to other times except for good cause. [Amended 12/22/86.]
- h. At any hearing a party may be represented by agent or attorney.
- i. The Building Inspector or his designated assistant shall attend all hearings and may present to the Board all plans, photographs, or other material he deems appropriate for an understanding of the appeal.
- j. 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.
- k. If the Board grants an appeal, the appellant's legal right, duties or privileges determined thereby shall expire if the construction or alteration involved is either not commenced within one (1) year or not substantially completed within two (2) years of the date on which the appeal was granted. The Board of Zoning Appeals may extend these time limits by not more than one (1) year upon a showing that additional time is needed due to required local, state, or federal permits or approvals.

## **SECTION 8. BOARD OF ZONING APPEALS (cont.)**

- l. If the Board denies an appeal, a second appeal of a similar nature shall not be brought before the Board within one (1) year from the date of the denial of the first appeal, unless a majority of the Board finds that substantial new evidence exists, or that it committed an error or mistake of law or misunderstood the facts.
- m. The Board shall keep a record of each appeal filed, noting the date of filing, the date when received from the Town Clerk, the date of hearing, and the person by whom such appeal was formally presented at the hearing. The Board shall record in writing the reasons for its actions and the final disposition of each appeal entertained, and may similarly record its rejection and reasons for rejection of any request for an appeal not entertained by the Board.

### **8.9 Meeting Procedures**

- a. The Chairman shall call meetings of the Board as required. The Chairman shall also call meetings of the Board when requested to do so by a majority of the members or by the municipal officers. A quorum of the Board necessary to conduct an official Board meeting shall consist of at least four (4) members. The Chairman shall preside at all meetings of the Board and be the official spokesman of the Board.
- b. The secretary shall maintain a permanent record of all Board meetings and all correspondence of the Board. The secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the secretary are deemed public, shall be filed in the municipal clerk's office, and may be inspected at reasonable times.
- c. The Board may provide by rule, which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the Chairman upon good cause shown.

### **8.10 Order of Applications**

Whenever a proposed structure or use requires both approval as a conditional use by the Board of Zoning Appeals, and subdivision or site plan review by the Planning Board, the application shall first be submitted to and approved by the Board of Zoning Appeals. Applications that are under review by the Board of Zoning Appeals under this provision shall be considered to be pending before the Planning Board.

## **SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.**

### **SECTION 9. PLANNING BOARD SITE PLAN REVIEW**

#### **9.1 Site Plan Approval Required [Amended 4/28/03]**

- 9.1.1** Planning Board site plan approval under the procedures, submission requirements, and performance standards of this Section 9 shall be required for the following activities:
- a. The construction or enlargement of any nonresidential or multi-family residential building (multiplex and institutional);
  - b. The construction or enlargement of any municipal building;
  - c. The establishment or substantial change of any area for parking, loading, or vehicular service associated with non-residential or multi-family residential uses;
  - d. The alteration, renovation, or change in use of more than ten thousand (10,000 sq. ft.) square feet of gross floor area of any non-residential building, including, without limitation, the alteration, renovation, or change in use of adjacent non-residential spaces that cumulatively consist of more than 10,000 sq. ft. of gross floor area.
  - e. Outdoor Sales and Storage of Equipment and Outdoor Retail Display when proposed as part of a new or redevelopment of a property otherwise requiring site review under this section or requiring an amendment to an existing site plan approval. [Adopted 5/13/13]
- 9.1.2** The following activities are specifically exempt from site plan review:
- a. Detached single-family dwellings and their accessory buildings and parking access areas; and
  - b. External change to nonresidential, municipal, and multi-family buildings for the purpose of closing an entrance or creating a new entrance thereto and for other extension(s) to a building which in total shall not exceed more than one hundred (100) square feet of gross floor area.
  - c. Any site alterations that occur in conjunction with the Town's implementation of the 2013 Route One South Infrastructure Plan are exempt from this section and further, shall be considered part of and in compliance with previously approved site plans. [Adopted 5/13/13]

#### **9.2 Site Plan Review Procedure [Amended 3/14/11]**

The following procedure shall govern the submission and review of building and site plans:

- a. The property owner shall submit to the Planning Board building and site plans in a number and format as determined by the Planning Department, and such submissions shall include: [Amended 8/27/07]
  - (1) Building plans showing, as a minimum, the first floor plan or other outside access plan and all elevations, with indication of proposed buildings and structures and all accessory buildings and structures.

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW **contd.**

- (2) A site plan, drawn to scale of not less than one (1) inch equals forty (40) feet, or a scale acceptable to the Town Planner, showing the dimensions and area of each lot or plot to be built upon or otherwise used; the size, shape and location of existing and proposed buildings; the location and layout of parking areas, all parking spaces and driveways, proposed grades and drainage, proposed sewer and water facilities and connections; a landscaping plan including locations of proposed plantings and screenings and buffer areas; proposed locations of fences, signs and advertising features; and a key map showing the entire project, and its relation to surrounding properties and the existing building thereof.
- (3) Information requested by the Town Planner or Planning Board for determining whether the proposed structure and uses of the site conform to the requirements and objectives of this section, including but not limited to sketch plans or renderings of proposed structures.
- (4) A signage plan, drawn to scale of one (1) inch equals one (1) foot, or a scale acceptable to the Town Planner, showing the elevations, dimensions, color, materials, lettering and other graphics, type of illumination, mounting details, and area of all free standing and wall mounted signs proposed for the site. [Adopted, 4/27/87]

(5) **Geographic Information System (GIS) Plan Submissions and Specifications:** [Adopted 3/14/11]

1. Purpose: This subsection sets forth the required procedures and GIS specifications for submittal of subdivision and site plan information required by other sections of this ordinance in an acceptable GIS format to the Town.
2. Applicability: This subsection applies to submissions required under this section where an electronically prepared boundary survey by a licensed land surveyor is submitted or required.
3. Procedure: The submission of this information shall be considered a condition of final approval and shall be submitted to the Assessing Department prior to any site work or the issuance of any town permits. The submission may occur by email or on compact disc (CD) or usb drive, using the following GIS format specifications:
  - (a) All files shall be submitted in AutoCAD .DWG or .DXF or shapefile formats.
  - (b) All files shall be geo-referenced to Maine State Plane Coordinates, NAD 83 feet with positional accuracies of three to five feet.
  - (c) All features of a common type, regardless of whether they are points, lines, polygons or annotation, should be distinguished by layering and not by color, line type or symbols. Layers should also be distinguished by whether they show proposed or existing features. These display attributes are added in the plotting process of the GIS.

## **SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.**

- b. The Town expects that most projects shall be designed and carefully inspected by a multidisciplinary team of professionals that includes surveyors, architects, engineers, and landscape architects, among other professionals, as needed and appropriate.
  - (1) The owner shall retain a landscape architect in order to ensure that the many elements of the site plan are designed and built according to a coordinated and efficient development concept.
  - (2) The owner's landscape architect, or other professionals as needed, shall consult with Town staff or with the Town's peer review consultant in order to ensure compliance with the Town's design standards. The consultation process shall begin at the time of sketch plan review and extend throughout the design, approval, and construction phases of the project.
  - (3) The Town may waive the requirement for a landscape architect or for the consultation process, if, in the opinion of the Planning Director, the project does not require these services due to its small size or lack of complexity. [Amended 7/23/01]
- c. At the time of the filing of the application, a fee shall be paid in accordance with the following schedule:
  - (1) Application fees as established by the Town Council. [Amended 8/27/07]
  - (2) Review Escrow [Adopted 9/24/90] - Escrow fees as established by the Town Council shall be submitted and deposited in an escrow account established by the Town, which monies may be used by the Board to pay for professional reviews and advice related to the developer's application as it deems necessary. The Board shall provide the applicant with notice of its intent to spend any portion of this account, which notice shall specify the purpose for the proposed expenditures. If the town expends the review escrow account prior to completing its review, the applicant shall replenish the review escrow to the original amount. Those monies deposited by the developer and not spent by the Planning Board in the course of its review shall be returned to the developer within thirty days after the Board renders its final decision on the application. [Amended 1/25/99, Amended 9/24/01][Amended 8/27/07]
  - (3) Negotiated Exactions Fees: In accordance with Section 9.9, exaction fees may be assessed against projects requiring site plan approval per the administrative procedures of Section 12 of the Falmouth Subdivision Ordinance. [Adopted, 1/22/90]
  - (4) If an application is subject to site plan review and subdivision review, the applicant shall pay the larger of the subdivision review fee or the site plan review fee.
  - (5) At least five (5) days prior to commencing construction, the owner shall pay an inspection fee as established by the Town Council. The amount deposited shall be based upon the total estimated cost of construction for all site improvements shown on the approved plans, including, but not limited to, roads, parking lots, storm water management facilities, utilities and lighting and landscaping. [Amended 8/27/07] [Amended 11/10/08; Effective 01/01/09]

## **SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.**

- d. Following the receipt of an application, the Board may hold a pre-hearing meeting with the applicant to discuss submission requirements and general concerns of the Board. The Planning Board may also request that the application include a report from the Chief of Police, the Fire Chief, and the Superintendent of the Sewer Department containing their recommendations regarding the proposed use. Within forty-five (45) days but not sooner than twenty-one (21) days of the submission of a completed application, with all supporting documentation, the Board shall hold a public hearing.

At least ten (10) days prior to the hearing date, the Board shall notify by mail the owners of all property abutting the property for which application is made. For the purposes of this section, the owners of property shall be considered to be the parties listed by the tax assessor for the Town of Falmouth as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Board. [Amended 12/22/86]

- e. At any hearing, a party may be represented by agent or attorney. Hearings may be continued to other times for good cause as determined by the Planning Board.
- f. The Town Planner or his designated assistant may attend all hearings and may present to the Planning Board plans, photographs or other material he deems appropriate for an understanding of the application.
- g. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. All persons at the hearing shall abide by the order of the Chairman.
- h. Subsequent to the public hearing, the Planning Board shall reach a decision and inform, in writing, the applicant and the Town Planner of its decision and its reasons therefore.
- i. If the Board denies an application, a second application of a similar nature shall not be brought before the Board within one (1) year from the date of the denial of the first application, unless a majority of the Board finds that substantial new evidence exists, or that it committed an error or mistake of law or misunderstood the facts.
- j. The Board shall keep a record of each application filed, noting the date of filing, the date of hearing, and the person by whom such application was formally presented at the hearing. The Board shall record in writing the reasons for its actions and the final disposition of each application.

An appeal from a decision rendered by the Planning Board under this Ordinance shall be taken directly to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure and no appeal shall lie from a decision of the Planning Board to the Board of Zoning Appeals.

### **9.3 Planning Board Action**

The Planning Board shall ensure that the following requirements are met prior to site plan approval with or without conditions:

- a. The detailed drawings and specifications meet all applicable codes and ordinances.

## **SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.**

- b. Bonds, letters of credit or other security acceptable to the Town are posted to insure the installation of improvements or other requirements of the town. All bonds shall be drawn in accordance with town procedures. [Amended 11/10/08; Effective 01/01/09]
- c. The applicant agrees in writing to all conditions of final approval.
- d. Proof has been submitted that all taxes and assessments for local improvements on the property have been paid.
- e. The applicant has the financial capability to complete the project.

### **9.4 Effect of Final Approval**

Final approval shall be effective for the time periods established in Section 9.6, notwithstanding any revisions of or amendments to this or other Ordinances.

### **9.5 Transfer of Approval**

Approval is not transferable without Planning Board approval.

### **9.6 Duration of Final Approval**

If the Planning Board grants final approval, the applicant's legal rights, duties or privileges determined hereby, shall expire if the construction or alteration is either not commenced within one (1) year or not substantially completed within two (2) years of the date on which final approval was granted. The Planning Board may extend these time limits by not more than one (1) year, upon showing by the applicant that additional time is needed due to required local, state, or federal permits or approvals.

### **9.7 General Site Plan Review Standards**

The following standards shall be utilized by the Planning Board in reviewing proposed site plans including all accessory buildings, structures, signs, and other site features.

- a. Preservation of the Landscape: the landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.
- b. Relation of Proposed Buildings to Environment: Proposed structures shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed structures, so as to have a minimally adverse effect on the environmental and aesthetic qualities of the developed and neighboring areas.
- c. Drives, Parking and Circulation: With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location, number of access points and increased traffic to the public streets, width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, an arrangement of parking areas that are safe and convenient, and, insofar as practicable, do not detract from or have a minimally adverse effect on the design, appearance, and environmental and aesthetic qualities of proposed buildings and structures and the neighboring properties.
- d. Utility Service: The Planning Board may require electric, cable television, and telephone lines to be underground. Any utility installations remaining above ground shall be located so as to have a harmonious relation to neighboring properties and the site.

## **SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.**

Within the VC, BP, and CO districts, all individual electrical and telecommunication services shall be placed underground from the building(s) to the main utility lines unless the cost of doing so would exceed twenty (20 %) percent of the total estimated project construction cost. [Amended 10/25/99] [Amended 5/13/13]

- e. Advertising Features: The size, number, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from or adversely affect the design, appearance, and environmental and aesthetic qualities of proposed buildings and structures and the surrounding properties.
- f. Special Features: Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be subject to setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being adverse to or incongruous with the design, appearance, environment and the surrounding properties.
- g. All Site Plan Review applications within the VC Districts are subject to Section 3.6. Site Plans shall include those portions of the public right of way necessary to demonstrate how the standards have been incorporated into the site plan under review. [Amended 5/13/13]
- h. Village Center Overlay District Setback Reduction: To provide maximum flexibility in meeting the Design Guidelines, the Planning Board may reduce building setback requirements by no more than fifty (50%) percent. The modification of requirements under this section shall not require a variance and no finding of undue hardship shall be required. [Adopted, 8/31/98]
- i. Route 100: All Site Plan Review applications within the Corridor Overlay District shall meet the requirements of Section 3.10 of the Zoning and Site Plan Review Ordinance and, wherever possible, follow the recommendations contained in the Exit 10 Design Guidelines dated January 5, 1998. [Adopted 6/28/1999]
- j. Business Professional District: All site plan review applications within the Business Professional District shall meet the requirements of the Route One Design Guidelines dated October 27, 1997. [Adopted 12/13/1999]

### **9.8 Specific Performance Standards and Guidelines**

The guidelines and required minimum performance standards in subsections 9.10 through 9.30 shall apply to all site plans. If the Planning Board finds that, due to special circumstances of a particular plan, the application of certain required performance standards are not requisite in the interest of public health, safety, and general welfare, the Planning Board may waive the required standards, subject to appropriate conditions.

### **9.9 Subdivision Standards**

The design standards and administrative provisions of the Town of Falmouth's Subdivision Ordinance shall apply to site plans covered by this section.

### **9.10 Parking Area Design Standards**

- a. Access. There shall be adequate provisions for ingress and egress to all parking spaces. The width of access drives or driveways shall be determined as part of site plan review depending on use, topography and similar consideration.

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.

- b. Size of aisles. The width of all aisles providing direct access to individual parking stalls shall be in accordance with the requirements set forth below. Only one-way traffic shall be permitted in aisles serving single-row parking spaces placed at an angle other than ninety degrees (90).

<b>Parking Angle (degrees)</b>	<b>Minimum Aisle Width (feet)</b>
0 (parallel parking)	12
30	12
45	13
60	18
90 (perpendicular parking)	25

- c. General Location. No off-street parking or loading shall be located within the required front setback except as permitted in VC2 (refer to Section 3.6). [Adopted 4/27/87]  
[Amended 5/13/13]
- d. Sidewalk and curbing. Sidewalks between parking areas and principal structure along aisles and driveways and wherever pedestrian traffic shall occur, shall be provided with a minimum width of four (4) feet of passable area and shall be raised six (6) inches or more above the parking area except where the sidewalks cross streets or driveways. Guardrails or wheel stops permanently anchored to the ground shall be provided in appropriate locations. Parked vehicles shall not overhang or extend over sidewalk areas unless an additional sidewalk width of two and one-half (2 1/2) feet is provided to accommodate such overhang.
- e. Within each parking lot up to 50% of the spaces may be 8 feet in width and 15 feet in depth, with a 22 foot aisle width. Parking spaces utilizing this reduced standard shall be clearly labeled "For Compact Cars Only," and shall be distinctly separate from the standard sized parking spaces. In consideration of the maneuvering requirements of shopping carts, those parking lots serving grocery stores shall not have more than 25% of the spaces designated for compact car use. [Adopted 4/27/87.]
- f. Plans for parking areas shall show how snow removal shall be accommodated. If snow storage areas are required within the parking area consideration shall be given to automobile and pedestrian safety, runoff patterns from snowmelt, and maintaining visibility. [Adopted 4/27/87.]

### **9.11 Marking and Delineation of Parking Areas**

Parking stalls, driveway and aisles shall be clearly marked and delineated. The Planning Board may require that certain areas be maintained for fire-fighting or other emergency purposes, and such areas shall be appropriately designated.

### **9.12 General Circulation and Parking Design Guidelines**

The following guidelines shall apply to parking area designs, except where they differ from Section 3.6, in which case Section 3.6 shall govern circulation and parking design in the VC Districts.

- a. Parking space allocations should be oriented to specific buildings.

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW **contd.**

- b. Parking areas should be designed to focus on major walkways, which should be fenced or marked.
- c. Where pedestrians must cross service roads or access roads to reach parking areas, crosswalks should be clearly designed by pavement markings or signs and lighted. Crosswalk surfaces should be raised slightly to designate them to drivers, unless drainage problems would result. A one-way car movement (to the left or counterclockwise) should be developed around the parking areas, and parking bays should run perpendicular off the road.
- d. Driveways should approach from the right to permit passengers to alight to or from the sidewalk.
- e. Whenever possible, one-way traffic should be established at building entrances, except for buildings located on a street in the VC Districts where two –way traffic is permitted. [Amended 5/13/13].
- f. Where buses are a factor, bus shelters and bus indentation slots off the roadway should be provided.

### **9.13 Waiver of Parking or Loading Requirements**

In the instance where the Planning Board, under Section 5.5 waives parking, it shall have the power to approve a site plan showing less paved parking or unloading area than is required. If parking is waived a landscaped area of sufficient size to meet the deficiency shall be set aside and reserved for the purpose of meeting future off-street parking or unloading requirements in the event that a change of use of the premises shall make such additional off-street facilities necessary. The requirement for reservation of waived spaces shall not apply to required parking in the VC Districts. [Amended 5/13/13]

### **9.14 Entrances Location and Design**

- a. As used in this Section, driveway includes any private local or collector streets, as well as entrance roads to any use other than single-family dwelling units.
  - (1) All entrance and exit driveways shall be located to afford maximum safety for vehicular, pedestrian and cycling traffic, provide for safe and convenient ingress and egress to and from the site, and to minimize conflict with the flow of traffic. [Adopted 4/27/87] [Amended 5/13/13]
  - (2) Any exit driveway shall be so designed in profile and grading and so located as to provide the following minimum sight distance measured in each direction. The measurements shall be from a point at the driveway entrance at least fifteen (15) feet from the edge of the roadway pavement and measured from a height of eye of three and one-half (3.5) feet to the top of an object on the roadway four and one quarter (4.25) feet above the pavement. [Amended 9/24/90]

Allowable Speed (miles per hour)	Required Sight Distance (feet)
20	200
25	250
30	300
35	350
40	400

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.

45  
50

450  
500

- (3) Where a site occupies a corner of two (2) intersecting roads, no driveway entrance or exit shall be located within fifty (50) feet of the point of tangency of the existing or proposed curb radius of that site.
- (4) No part of any driveway shall be located within a minimum of ten (10) feet of a side property line. However, the Planning Board may permit a driveway serving two (2) or more adjacent sites to be located on or within ten (10) feet of a side property line between the adjacent sites. Driveways and internal streets in the VC Districts are exempt from this section. [Amended 5/13/13]
- (5) Where two (2) or more two-way driveways connect a single site to any one (1) road, a minimum clear distance of one hundred (100) feet measured along the right-of-way line shall separate the closest edges of any two (2) such driveways. If one driveway is two-way and one is a one-way driveway, the minimum distance shall be seventy-five (75) feet.
- b. Curb cuts within the BP and CO Districts: It is the policy of this Ordinance to reduce and consolidate, for safety purposes, the number of driveways and curb cuts on the portion of Route One located within the BP district and along the entire length of Route 100. Wherever possible, excess driveways and curb cut areas should be eliminated or consolidated in accordance with the driveway standards outlined in Section 9 of this Ordinance. [Effective 1/25/88] [Amended 5/13/13]

Only one curb cut per lot shall be allowed for lots with less than 200 running feet of frontage along Route 1 or Route 100. For lots with more than 200' of running frontage along Routes 1 or 100, a maximum of one curb cut per 200' shall be permitted. Curb cuts shall be located at least 200' from other curb cuts on the same lot or on adjoining premises. [Adopted 4/27/87; 1/25/88]

### 9.15 Driveway Angles

Driveways used for two-way operation shall intersect the road at an angle of as near ninety (90) degrees as site conditions will permit and in no case less than sixty (60) degrees. Driveways used by vehicles in one (1) direction of travel (right turn only) shall not form an angle smaller than forty-five degrees (45) with a road unless acceleration and deceleration lanes are provided.

### 9.16 Driveway Dimensions

The dimensions of driveways shall be designed to accommodate adequately the volume and character of vehicles anticipated to be attracted daily to the development for which a site plan is prepared. The required maximum and minimum dimensions for driveways are indicated below. Driveways serving large volumes of daily traffic or traffic of over fifteen percent (15%) truck traffic shall be required to utilize high-to-maximum dimensions.

One-Way Operation Driveways*	Two-Way Operation Driveways*
Width (feet)	Width (feet)

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.

3 to 10 dwelling units	10-15	15-25
10 dwelling units or over	15-25	20-35
Commercial and Industrial	15-30	25-35

\*All driveways shall be five (5) feet wider at the curbline, and this additional width shall be maintained for a distance of twenty (20) feet into the site.

### **9.17 Driveway Surfacing**

Any driveway shall be constructed with the surface approved by the Planning Board. Such surface shall extend to the paved portion of the road and shall extend throughout the area defined by the required driveway dimensions specified above.

### **9.18 Driveway Profile**

Any vertical curve on a driveway shall be flat enough to prevent the dragging of any vehicle undercarriage. Should the sidewalk be so close to the curb at a depressed curb driveway as to cause the ramp to be too steep and be likely to cause undercarriage drag, the sidewalk shall be appropriately lowered to provide a suitable ramp gradient.

### **9.19 Driveway Grades**

Driveway grades shall not have a grade in excess of fifteen percent (15%) over the entire length. On arterials and collectors the grade shall not be more than five percent (5%) for the first twenty-five (25) feet from the road unless otherwise approved by the Planning Board. Driveways shall not be located where visibility is limited because of curves or topography.

### **9.20 Acceleration Lanes**

Where a driveway serves right-turning traffic from a parking area providing two hundred (200) or more parking spaces and the road has an average daily traffic (A.D.T.) volume exceeding seven thousand five hundred (7,500) vehicles, an acceleration lane shall be provided which is at least two hundred (200) feet long and at least ten (10) feet wide measured from the road curb line. A minimum thirty-five (35) foot curb return radius shall be used from the driveway to the acceleration lane. Acceleration lanes are prohibited in the VC Districts. [Amended 5/13/13]

### **9.21 Deceleration Lanes**

Where the same conditions exist as in the previous paragraph 9.20 and a driveway serves as an entrance to a development, a deceleration lane shall be provided for traffic turning right into the driveway from the road. The deceleration lane shall be at least two hundred (200) feet long and at least ten (10) feet wide measured from the road curb line. A minimum thirty-five (35) foot curb return radius shall be used from the deceleration lane into the driveway. Deceleration lanes are prohibited in the VC Districts. [Amended 5/13/13]

### **9.22 Drive-Through Facilities**

All drive-through facilities other than gasoline service station shall conform to the following performance standards:

## **SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.**

- a. **Queuing and Circulation:** Each drive-through or queuing lane shall be separated from the general circulation lanes necessary either for entering or exiting the property or for providing interior circulation within the property. Preferably, this separation shall be done by means of an island. At a minimum, the drive-through and queuing lanes shall be distinctly marked by special striping, pavement markings, or signs. Additionally, special striping, pavement markings, or signs shall be provided at the point where traffic from the drive-through lanes enters the general circulation lanes.
- b. **Pedestrian Safety:** Pedestrian safety shall be an important consideration in the design of drive-through facilities. Drive-through facilities shall create minimum conflict with pedestrian access to the building from adjacent sites, parking lots, or from the road. Drive-through lanes shall not cross a business's principal pedestrian access route. Pavement markings, signage, speed bumps, and internal walkways should be used to help insure pedestrian safety.
- c. **Stacking and Queuing Requirements:** The following stacking standards shall apply for drive-through businesses:
  - Banks, automated teller machines (ATMs) or other commercial uses: Five cars per window.
  - A minimum distance of 65' shall be provided from drive-through window to the exit point of the business or facility.
- d. **Circulation:** Drive-through facilities shall be designed to provide a counter-clockwise circulation around the main building.
- e. **Separation Distances from Intersections:** No vehicular entrance or exit to a drive-through facility shall be located within 60' of a street intersection. Wherever possible, especially in the case of drive-through facilities located within shopping center parking lots, entrances to drive-through facilities should be located off of interior roadways, rather than off of a local street.

### **9.23 Lighting Design Standards**

In connection with every site plan, the applicant shall submit plans for all proposed exterior lighting. These plans shall include the location, type of light, radius of illumination, manufacturer's specification sheet and the intensity in footcandles. The following design standards shall be followed:

- a. The style of the light and light standard shall be consistent with the architectural style of the principal building.
- b. The maximum height of freestanding lights shall be the same as the principal building but not exceeding twenty-five (25) feet, except as restricted in Section 3.6 for lights in the VC Districts.
- c. All lights shall be shielded to restrict the maximum apex angle of the cone of illumination to one hundred fifty (150) degrees.
- d. Where lights along property lines will be visible to adjacent residents, the lights shall be appropriately shielded.
- e. Spotlight-type fixtures attached to buildings shall be avoided.
- f. Freestanding lights shall be located and protected to avoid being easily damaged by vehicles.

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW *contd.*

- g. Lighting shall be located along streets, parking areas, at intersections and crosswalks and where various types of circulation systems merge, intersect or split.
- h. Stairways and sloping or rising paths, building entrances and exits require illumination.
- i. Pathways, sidewalks and trails shall be lighted with pedestrian scaled lighting. The maximum height of pedestrian freestanding lights is 12 feet.
- j. Light posts shall be installed so that the pillar bases are flush with the ground except for lighting located without a landscaping island in parking lots, where pillar bases may be a maximum of one foot in height.
- k. Lighting shall be provided where buildings are set back or offset.
- l. Illumination levels shall meet the following intensity in footcandles:
  - (1) Parking lots: an average of one and one-half (1.5) footcandles throughout.
  - (2) Intersections: three (3) footcandles.
  - (3) Maximum at property lines: one (1.0) footcandle.
  - (4) In residential areas: average of six-tenths (0.6) footcandle.
- m. Display lighting shall be shielded and located and maintained so as not to create or constitute a hazard or nuisance to the traveling public or to neighbors. String lights shall not be permitted.
- n. Parking area lighting shall be shielded and located and maintained so as not to create or constitute a hazard or nuisance to the traveling public or to neighbors.
- o. Fuel Pumps and Canopies
  - (1) Lighting levels for canopies shall be adequate only to facilitate the activities taking place in such locations and shall not be used to attract attention to the business. Under canopy lighting shall be designed to provide an average level of illumination not to exceed 20 foot candles with a maximum foot-candle reading beneath the canopy not exceeding 30 foot-candles, with a uniformity ratio of 1.25 (average to minimum).
  - (2) Light fixtures mounted on canopies shall be recessed so that the lens cover is recessed or flush with the bottom surface (ceiling) of the canopy and are shielded by the fixture or the edge of the canopy so that light is restrained to no more than 85 degrees from vertical.
  - (3) Lights shall not be mounted on the sides (fascia) or top of the canopy and the sides (fascia) shall not be illuminated except as permitted in conjunction with permitted signs.

### **9.24 General Buffer Standards**

Buffers are fences, landscaping, berms and mounds used to minimize any adverse impacts or nuisances on the site or from adjacent areas. Development in the VC Districts is exempt from this section. The following guidelines apply:

- a. Evergreens can be used as buffers, provided they are planted properly. An evergreen buffer requires six to eight (6-8) foot evergreen trees planted in an alternate pattern, five (5) feet on center.
- b. Buffers shall be considered in or for the following areas and purposes:
  - (1) Along property lines, to shield various uses from each other.

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.

- (2) Along interior roads running parallel to roads exterior to the site, to prevent confusion, particularly at night.
  - (3) To totally screen garbage collection areas, loading and unloading areas, electrical transformers, air conditioning units, utility service areas, outdoor storage areas, and similar functions from public area. [Adopted 4/27/87]
  - (4) To block prevailing wind patterns and to stop wind-borne debris from leaving the site.
  - (5) To screen parking areas, car lots, auto storage facilities, and other outdoor storage of motor vehicles from the public view with berms four (4) feet in height. A lower height, not less than three (3) feet, may be used as necessary to ensure that berms and/or plantings do not obstruct the visibility required for traffic safety. Additional screening shall be provided with plantings which shall be located so as not to obstruct the visibility required for traffic safety. [Adopted 4/27/87]
- c. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and non-compatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.
  - d. Buffers shall be sufficient to shield structures and uses from the view of non-compatible abutting properties and public roadways, and to otherwise prevent any nuisances including but not limited to all loading and unloading operations, storage areas, commercial vehicle parking, waste disposal and collection areas.
  - e. Fencing and screening shall be durable and properly maintained at all times by the owner.
  - f. Fencing and screening shall be so located within the property line to allow access for maintenance on both sides without intruding upon abutting properties.
  - g. All buffer areas shall be maintained in a neat and sanitary condition by the owner.

### 9.25 **Special Landscape and Buffer Requirements in the BP District**

- a. **Buffer area landscaping:** All areas located within the minimum setbacks required in the BP District shall be used as buffer areas. Within these buffer areas, the following minimum plantings and buffers shall be required:

Buffer Area Location	Width	Structure	<b><u>Buffer Area (per 100 Linear feet)</u></b>			
			CT*	UT*	SH*	ET*
Side/rear yard screening	10'	-	2	3	5	-
Screening along all roadways, whether on or off premises, with respect to one-story buildings	40'	-	5	8	15	-
Screening along all roadways, whether on or off premises, with respect to buildings of two stories or more	40'	-	8	8	15	10
Screening of Route One for all one-story buildings	60'	-	10	15	30	10
Screening of Route One for all buildings of two stories or more	60'	-	15	15	30	20

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.

Screening of all abutting residential district for all buildings of any height	75'	-	15	15	20	20
Screening of all parking areas which are visible from any roadways bounding or bordering the premises	-	Berm	-	-	-	-
Total screening, where required by board of Zoning Appeals or Planning Board	-	Fencing or Berm Wall	-	-	-	-

\* **CT: Canopy Trees UT: Understory Trees SH: Shrubs ET: Evergreen Trees**

### 9.26 **Special Landscaping and Buffer Requirements in the SB District** [Amended 9/24/90][Repealed 5/13/13]

### 9.27 **Special Landscape and Buffer Requirements in the CO District** [Amended 7/22/91]

- a. **Buffer Area landscaping.** All border strips required in the CO District shall be used as landscaped buffer areas, except those areas required for access. Within these buffer areas the following plantings and buffers are required. Numbers given are for one hundred (100) linear feet of buffer area.

Where berms are recommended, they shall be designed to fit the specific site conditions with regards to height, visibility, and form. Maximum height shall be four (4) feet. Maximum side slopes shall be 3:1.

Variations from these requirements may be allowed, provided that the applicant demonstrates that the landscaping is in compliance with the intent of these provisions.

<b><u>Buffer Area Location</u></b>	<b><u>S</u></b>	<b><u>CT</u></b>	<b><u>UT</u></b>	<b><u>ET</u></b>	<b><u>SH</u></b>
	Berm	2-4	1-3	1-2	5-10

Abbreviations: Canopy Trees (CT), Understory Tree (UT), Shrubs (SH), Evergreen Trees (ET), Structures (S).

- b. All uses shall be required to maintain a landscaped border strip along the street right-of-way of Route 100. The width of the border strip shall be related to the setback of the building as shown on the following table:

<b><u>Width of Border Strip</u></b>	<b><u>Building Setback</u></b>
10 ft.	less than 25 ft.
15 ft.	25 to 49 ft.
20 ft.	50 to 74 ft.
25 ft.	75 to 99 ft.
30 ft.	100 ft. or more

### 9.28 **Other Landscaping Requirements**

- a. **Parking Area Landscaping.** In addition to all other requirements, landscaping shall be required in all districts on any site where the aggregate required off-street parking or storage of motor vehicles exceeds ten (10) parking spaces. For each twenty-four (24) parking spaces there shall be required, adjacent to the parking spaces or within the parking lot, three (3) canopy trees, two (2) understory trees, and ten (10) shrubs.

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW contd.

- b. Minimum Plant Sizes. Unless otherwise specifically indicated by the Planning Board, all plant materials shall meet the following minimum size standards:

<b>Plant Material Type</b>	<b>Minimum Size Planting in buffer area <u>abutting vacant land</u></b>	<b>All other <u>Plantings</u></b>
Canopy Tree, Single Stem	1 1/2 inch caliper	2 1/2 inch caliper
Multi-Stem Clump	6 feet (height)	10 feet (height)
Understory Tree	4 feet (height)	1 1/2 inch caliper
Evergreen Tree	3 feet (height)	5-7 feet (height)
Shrub, Deciduous	15 inches (height)	24 inches (height)
Evergreen	12 inches (height)	18 inches (height)

- c. Required Plant Types. All plantings required under this Ordinance shall be of a type and species appropriate for the soil types and climatic conditions in Falmouth as determined by the Planning Board. Invasive species of plants are prohibited. [Amended 5/13/13]
- d. Plant Maintenance Requirements. The owner of any premises approved by the Planning Board under any section of this Ordinance shall have a continuing obligation to maintain required plantings in accordance with the terms of the site plan approval and in a good and healthy condition. [Amended 11/10/08; Effective 01/01/09]

### 9.29 Standards for Residential Planned Developments

The intent of the residential planned development provisions is to allow creativity and flexibility in the development of innovative housing projects. The following standards are set forth as a guide to developers in preparing proposals for residential planned developments. The Planning Board shall use these standards as the minimum acceptable unless the applicant demonstrates to the Board's satisfaction that alternate arrangements will meet or exceed the level of service and safety provided by the standard. [Effective 1/25/88]

- a. Road Layout - All streets, roads, access drives and parking areas shall be designed to harmonize with the topographic and natural features of the site. The road network shall provide for vehicular and pedestrian safety, all season emergency access, snow storage, and delivery and collection services.
- b. Road Construction Standards - Roads within a residential development may either be public streets or private ways. All public streets shall meet the street construction standards of the Town. Private ways shall be constructed to the standards set forth in subsection 5.27.

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW *contd.*

- c. Utilities - All utilities shall be placed underground. The Planning Board may waive this requirement if this is not possible due to unique topographic or geological features of the site. Transformer boxes, meters, pumping stations and other components of the utility system which must be located above ground shall be located so as not to be unsightly or hazardous to the public and shall be landscaped or otherwise buffered so as to screen the components from public view. Water distribution, sewerage and stormwater drainage systems shall meet the requirements of the Town.
- d. Utilization of the Parcel - The plan for the development shall reflect the natural capabilities of the site to support development. Buildings and support facilities shall be clustered in those portions of the site that have the most suitable conditions for development.
- e. Environmentally sensitive areas such as wetlands, steep slopes, flood plains and unique natural features should be included in open space areas. Natural drainage areas shall be preserved to the maximum extent.
- f. Relationship of Residences and Open Spaces - The dwelling units and other improvements shall be located so that each unit has access to the open space and/or recreational facilities. The open space should be located to enhance the living environment of each unit in the development.
- g. Buffering - The plan for development shall provide for the buffering of adjacent properties. To this end, no building, structure or other facility shall be located within any required setback area. Within this setback area, a combination of landscaping, natural vegetation, fencing and grading shall be used to minimize the impact on abutting property owners. No parking, roads or service facilities shall be located in this strip.
- h. Open Space - At least twenty-five (25%) percent of the total lot area shall be set aside as open space. Areas of the site with significant development constraints or outstanding natural features shall be included in the open space. If the site contains soils which are identified as prime farmland soils, consideration should be given to including these areas in the open space.
- i. Recreation Facilities - An area equal to five hundred (500) square feet per dwelling unit shall be set aside as recreation areas and shall be developed with recreational facilities suitable for the anticipated occupants of the development. Recreation areas shall not count as open space.
- j. Private Outdoor Space - The design of the development shall provide each dwelling unit with a private outdoor space immediately adjacent to the unit where the architectural style of the buildings makes this possible.
- k. Storage - Each dwelling unit shall have access to and use of a minimum of four hundred (400) cubic feet of private lockable storage space either within the individual dwelling unit or in common storage facilities.
- l. The development plan shall also make provisions for the safe storage of such items as recreational vehicles and boats for dwellings other than detached single-family homes. The storage area shall be screened and landscaped.
- m. Pedestrian Circulation - The development plan shall provide for a system of pedestrian circulation within the development. This system shall connect with the existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW *contd.*

recreation areas. The system shall be designed to link residential units with recreational facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood.

- n. Shoreline Relationship - The development plan shall provide for access to abutting navigable water bodies for the use of residents of the development.

### **9.30 Minimum Five Acre Site Plan in the BP District.**

In addition to all other requirements of Section 9, the following minimum five acre site plan requirement shall also apply in the BP District.

- a. In the BP District, a site plan encompassing at least five acres of land must be approved by the Planning Board under this Section before any building shall be erected or externally enlarged and before any area for parking, loading, or vehicular service shall be established or substantially changed. If the entire area owned by a landowner in the BP District on the effective date of this subsection is less than five (5) acres, that area may be developed under an approved site plan encompassing less than five (5) acres provided that the entire area owned by that landowner is included in the site plan.

Within the site plans required under this subsection, no lots of less than forty thousand (40,000) square feet in size shall be approved and there shall be no more than one entrance and one exit for motor vehicles located on Route 1. All site plans submitted and approved under this subsection shall include a landscape plan prepared and signed by a registered landscape architect showing the location, type and size of all plantings.

- b. A site plan shall be prepared and submitted to the Planning Board as a comprehensive plan for the entire site. In cases where the applicant only plans to develop a portion of the planned site immediately, the site plan shall nonetheless include the boundaries, dimensions and area of each proposed lot, the location of proposed buildings, the location and layout of proposed driveways, the location and layout of proposed sewer and water utilities and proposed grades and drainage for the entire site. In such cases, the Planning Board may defer final approval as to building plans, landscaping plans, exterior lighting, location of parking areas, fences, signs and advertising features for the portions of the site not to be developed immediately.
- c. A site plan approved by the Planning Board shall set forth the requirements for access, roadways, parking, setbacks, buffer areas, plantings, and other requirements. In cases where the Planning Board has deferred final approval as to portions of the site not to be immediately developed, the site plan shall define the portions of the site which have not received final site plan approval. Within such portions of the site, no building shall be erected or externally enlarged and no unapproved areas for parking, loading or vehicular access shall be established until final site plan approval has been obtained.

### **9.31 Environmental Considerations [Amended 9/22/03]**

- a. The site plan shall be designed in accordance with applicable Town regulations designed to protect the environment.
- b. All activities which involve filling, grading, excavation or other similar activities which result in un-stabilized soil conditions and which require a permit shall implement soil erosion and sedimentation control measures as required by Section 5.39. The following measures relating to conservation, erosion and sediment control shall also be included where applicable as part of any site plan review and approval:

## SECTION 9. PLANNING BOARD SITE PLAN REVIEW *contd.*

- (1) Development shall preserve salient natural features, keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water runoff;
- (2) The development shall not unreasonably increase the rate or volume of surface water run-off from the proposed site and shall meet the requirements of Appendix 6 of the *Subdivision Ordinance*.
- (3) Whenever feasible, natural vegetation shall be retained, protected and supplemented;
- (4) The disturbed area and the duration of exposure shall be kept to a practical minimum;
- (5) It is the responsibility of any person doing any act on or across a communal stream, watercourse, or swale, or upon the floodway or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodway, or right-of-way during the duration of such activity and to return it to its original or equal condition after such activity is completed;
- (6) Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.

### 9.32 Site Conditions

- a. During construction, the site shall be maintained and left each day in a safe and sanitary manner and any condition which could lead to personal injury or property damage shall be immediately corrected by the developer upon an order by the Town Engineer, Building Inspector, Town Planner, or other authorized personnel. The developer shall make provision for disposal of oil and grease from equipment and the site area should be regularly sprayed to control dust from construction activity.
- b. Developed areas shall be cleared of all stumps, litter, rubbish, brush, weeds, dead and dying trees, roots and debris, and excess or scrap building materials shall be removed or destroyed immediately upon the request of and to the satisfaction of the Town Engineer, or Building Inspector prior to issuing an occupancy permit.
- c. No change shall be made in the elevation or contour of any lot or site by the removal of earth to another lot or site other than as shown on an approved site plan. Minimal changes in elevations or contours necessitated by field conditions may be made only after approval by the Town Engineer, Town Planner, or Building Inspector. All the changes necessitated by field conditions shall be shown on the final plan and indicated as a change from the preliminary, or if final approval has been granted, the changes shall be shown on the as-built plans.
- d. Temporary improvements: Prior to or during construction, the Town Engineer, Town Planner, or Building Inspector may require the installation or construction of improvements to prevent or correct temporary conditions on the site which could cause personal injury, damage to property or erosion and landslide, flooding, heavy construction traffic, creation of steep grades and pollution. Improvements may include berms, mulching, sediment traps, detention and retention basins, grading, plantings, retaining walls, culverts, pipes, guardrails, temporary roads and others appropriate to the specific condition. All temporary improvements shall remain in place and in operation until otherwise directed by the Town Engineer, Town Planner or Building Inspector.

## **SECTION 10. ADMINISTRATION**

### **10.1 Permit Required**

Unless otherwise provided, no building shall be erected, altered, enlarged, moved or demolished in Falmouth without a written permit issued by the Building Inspector. Such a permit shall be issued only if the building plans and intended use fulfilled the requirements of this Ordinance. The Building Inspector shall be notified of any change in use of building or premises and a permit shall be secured for such change. No building permit shall be required for a free-standing ancillary residential structure not more than one hundred (100) square feet in area and not exceeding ten (10) feet in height, at its highest point. [Amended, 2/28/05]

### **10.2 Issuance and Time Limits of Permits**

Each permit by the Building Inspector shall be issued in writing in duplicate with one copy to applicant and one copy, including any conditions or exceptions attached thereto, kept on file in the office of the Building Inspector. Failure of the Building Inspector to issue written notice of his decision on any application for a building permit within thirty (30) days from the date of filing of such application shall constitute denial of such application.

If no start is made on the construction for which a building permit was issued within one year of the date of the permit, the permit shall lapse and become void. A building permit shall expire if the construction for which the building permit was issued is not substantially completed within two (2) years of the date of issuance of the permit. The Building Inspector may issue a temporary certificate of occupancy or a permit extension for one additional year if, in his judgment, reasonable progress is being made and nuisance conditions do not exist. Permit extensions beyond one (1) year require approval from the Zoning Board of Appeals using the review criteria in Section 8.7.” [Amended, 5/27/93] [Amended, 7/24/00]

### **10.3 Access to Properties for Inspections**

The Building Inspector shall have the right of access to buildings and structures for inspection purposes as provided under 30 M.R.S.A. §2151(4)(C)(3) and other applicable provisions of state law.

### **10.4 Required Application Submissions**

Each application for permit to build, alter, enlarge, demolish or move a building shall be filed in duplicate and shall be accompanied by a plot plan in duplicate drawn to scale showing and stating the dimensions in feet of the lot to contain such building, and the locations and ground coverage dimensions thereon of the building proposed to be erected, altered, enlarged, moved or demolished on such lot. The applications shall state the use intended to be made of such building and of its lot, even after a demolition. Such plot plan shall also show each street, alley or right of way on or adjacent to the lot in question. One copy of each such application and plot plan shall be kept on file in the office of the Building Inspector.

## **SECTION 10 ADMINISTRATION Contd.**

### **10.5 Investigation of Complaints**

The Building Inspector, upon being informed in writing of a possible violation of this Ordinance, or on his own initiative, shall make or cause to be made an investigation of facts and an inspection of the premises where such violation may exist. After investigation, on evidence of any violation, the Building Inspector shall give written notice of the violation to the owner and the occupant of the premises. The Building Inspector shall demand in the notice that the violation be abated within some designated reasonable time.

### **10.6 Revocation of Permits**

- a. A permit may be suspended or revoked, if:
  - (1) The permit was issued on incomplete or false information, and/or continuation of the work authorized would result in a violation of Federal or State statutes or local ordinances.
  - (2) A violation has been created during the completion of work initially authorized by the permit.
  - (3) The continuation of the work authorized is endangering or may endanger the safety or general welfare of the community during the construction or work for which the permit was issued.
  - (4) The applicant or his agent is exceeding the scope of the work for which the permit was issued.
  - (5) The Code Enforcement Officer determines that he is unable to rule on the continued validity of a permit, in which case he shall suspend the permit, without penalty, and require the holder to file an appeal.
- b. A notice of suspension shall be in writing, stating:
  - (1) The reason for the suspension.
  - (2) The corrective measures to be taken.
  - (3) The period of time given to the applicant to correct the violation.
- c. The suspension of a permit shall apply only to that segment of the work authorized which is, or will create, a violation. Such suspension shall cease when the Code Enforcement Officer certifies that the violation or potential violation ceases to exist. When a cause for suspension has been removed or corrected, the Code Enforcement Officer shall so certify, in writing, and state:
  - (1) The reason for the suspension.
  - (2) The corrective measures taken.
  - (3) The period of time which the applicant had to correct the violation.
- d. If, within the time specified for correction, the violation has not been corrected or removed, the suspension may be continued, or the Code Enforcement Officer may then revoke the permit.
- e. When a permit is revoked, the Code Enforcement Officer shall prepare a statement stating the reasons for revocation, and the corrective measures, if any, that may be taken to correct the violation. Such revocation shall include a time period given to correct the violation and shall remain in force until:

## **SECTION 10 ADMINISTRATION Contd.**

- (1) The Code Enforcement Officer determines that the applicant can and will pursue the work (for which the permit was issued) without extending or creating a violation.
  - (2) The permit application has been corrected to provide complete or corrected information, as required, and continuance of work will not result in violation.
  - (3) The violation has been removed or otherwise discontinued.
  - (4) A new permit has been issued.
- f. During the period of revocation, no work shall continue on a project for which a permit was issued except in the interests of public safety and protection of the property in place at the time of revocation, such work having the written approval of the Code Enforcement Officer.

### **10.7 Legal Prosecution of Violations**

If, after notice and demand, the violation has not been abated within the time specified, the Building Inspector shall refer the matter to the Town Manager for appropriate legal action in the name of the Town of Falmouth to prevent, correct, restrain or abate any violation of this Ordinance.

### **10.8 Certificates of Occupancy**

After a building, structure, or part thereof has been erected, altered, enlarged, or moved, pursuant to a building permit, a certificate of occupancy shall be obtained from the Building Inspector for the proposed use before the same may be occupied or used. A certificate of occupancy also is required for the following:

- a. Any increase in the number of dwelling units in a building.
- b. Establishment of any home occupation.
- c. Change in the use of a nonconforming structure or lot.
- d. Occupancy and use, or change of use, of vacant land, except for the raising of crops.

### **10.9 Violations and Penalties**

Any violation of this Ordinance shall be deemed to be a nuisance subject to all available legal and equitable remedies. In addition, any violation of any provisions of this Ordinance shall be punishable by a fine of not more than one hundred (\$100) dollars. Any person who violates any provisions of this Ordinance shall be subject to a fine of not more than \$100.00 for each violation or such greater penalty as may be provided by state law. Each violation shall constitute a separate offense. [Adopted 4/27/87]

### **10.10 Amendments to the Zoning & Site Plan Review Ordinance**

The Town Council may amend this Ordinance, or any provision thereof, including changes of district boundaries and classifications in accordance with the provisions of the Charter of the Town of Falmouth.