



## **Town Council Workshop Meeting**

**Wednesday, September 3, 2025 at 7:00 PM**

**Town Hall Council Chambers**  
**320 Ocean House Road**

**Live on CETV/Hybrid Meeting**

Hybrid Meeting - Members of the Public May Participate Remotely During Public Comment Opportunities.

To view the meeting livestream: <https://cetv.capeelizabeth.org/> and push watch in the upper right hand corner.

Live broadcast on CETV, live stream and remote participation are offered as a convenience when the technology is available and operational in the given meeting space. If the technology is not available or in the event there is a disruption in service and the communication can't be restored the expectation is the meeting will continue.

Remote Access Instructions: A member of the public wishing to speak via remote access must click on the Zoom link or call and use the Raise Hand function. When connecting by phone, dial \*9 to Raise Hand and the same to Lower Hand. Please mute the microphone and turn off the video until you are invited to speak. When recognized by the chair, the speaker shall give their name and address or local affiliation, if the affiliation is pertinent. After speaking, to view the remainder of the meeting exit Zoom and return to the CETV Livestream or CETV cable Channel 3.

Join Zoom Meeting

**Zoom Link:** <https://zoom.us/j/99834629707>

**ID:** 998 3462 9707

+1 646-931-3860

- A. Convening of the Meeting**
- B. Opportunity for Public Comment of Items Not on the Agenda**
- C. Workshop Items**

- 7:00- 1) Business Development - Comparative Communities - At the May 7th Council  
7:30 Workshop the results of the business outreach report were discussed. The Council agreed that staff should perform a comparison of Site Plan approval in Cape Elizabeth, Yarmouth, and Falmouth. The results of this exercise will be used to see if Cape Elizabeth can improve site plan ordinances and approval procedures to be more business friendly.
- 7:30- 2) Spurwink Marsh/Sawyer Road Project - The Towns of Cape Elizabeth and  
8:10 Scarborough have been engaged in a multi-year project to restore the Spurwink Marsh and remove Sawyer Road/ Street. This is an update of where the project stands, including the grant funding, scope of work, and upcoming action items required of both communities.
- 8:20- 3) Town Manager's Update on Projects -  
8:30
- 4) Motion to Enter Executive Session - The Council will enter an Executive Session to discuss the Town Manager Annual Performance Review Process and award recognition candidates.

#### **D. Executive Session**

- 1) Recognition Candidates -
- 2) Manager Annual Performance Review -

#### **E. Adjournment**

### **Public Participation at Town Council Meetings**

After an item has been introduced, any person wishing to address the council shall signify a desire to speak by raising their hand or by approaching the lectern. When recognized by the chair, the speaker shall give their name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments.

A member of the public wishing to speak via remote access must click on the Zoom link or call and follow the procedures stated at the top of the agenda. When recognized by the chair, the speaker shall give their name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. After speaking, to view the remainder of the meeting exit Zoom and return to the CETV Livestream or CETV cable Channel 3.

All remarks should be addressed to the Town Council. Comments shall be limited to three minutes per person; however, the time may be extended by majority vote of councilors present. For agenda items that are not formally advertised public hearings, the time for public comments is limited to 15 minutes per agenda item. This time may be extended by a majority of the Town Council.

The chair may decline to recognize any person who has already spoken on the same agenda

item and may call on speakers in a manner so as to balance debate. Once the Council has begun its deliberations on an item, no person shall be permitted to address the Council on such item.

### **Speaking at the meeting on topics not on the agenda at regular Council meetings**

Persons wishing to address the Council on an issue or concern local in nature not appearing on the agenda may do so at a regular Town Council meeting before the town manager's report and/or after the disposition of all items appearing on the agenda.

Any person wishing to address the Council shall signify a desire to speak by raising their hand or by approaching the lectern. When recognized by the chair, the speaker shall give their name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. A member of the public wishing to speak via remote access must click on the Zoom link or call and follow the procedures stated at the top of the agenda. When recognized by the chair, the speaker shall give their name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. After speaking, to view the remainder of the meeting exit Zoom and return to the CETV Livestream or CETV cable Channel 3.

Comments in each comment period shall be limited to three minutes per person and 15 minutes total; however, the time may be extended by majority vote of councilors present.

### **Decorum**

Persons present at Council meetings shall not applaud or otherwise express approval or disapproval of any statements made or actions taken at such meeting. Persons at Council meetings may only address the Town Council after being recognized by the chair.

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Contact: Angela Frawley ([angela.frawley@capeelizabeth.gov](mailto:angela.frawley@capeelizabeth.gov)) (207-799-7665) | Agenda published on 00/00/2025 at 0:00 PM



Town Council Meeting  
Wednesday, September 3, 2025

## AGENDA ITEM SUMMARY

### **Business Development - Comparative Communities**

**Council Resource:** Penny Jordan

**Staff Resource:** Maureen O'Meara, Town Planner

### **Background:**

At the May 7th Council Workshop the results of the business outreach report were discussed. The Council agreed that staff should perform a comparison of Site Plan approval in Cape Elizabeth, Yarmouth, and Falmouth. The results of this exercise will be used to see if Cape Elizabeth can improve site plan ordinances and approval procedures to be more business friendly.

**Exhibit:** Memo from Town Planner  
Comparable Community Process Spreadsheet  
Comparable Community site plan review ordinances

**Draft Motion:** Workshop Item for Discussion Only

## MEMORANDUM

TO: Cape Elizabeth Town Council  
FROM: Pat Fox, Town Manager  
DATE: July 3, 2025  
SUBJECT: Site Plan Ordinance Comparison

### Introduction

At the May 7, 2025 Workshop, the Town Council discussed the Town of Cape Elizabeth business climate. As part of its discussion of streamlining development review, the Town Council agreed to compare Cape Elizabeth regulations with the Towns of Falmouth and Yarmouth. Further, the Town Council agreed to look at three project types: a burger joint, an apartment building and a condominium project.

### Methodology

Planning staff have reviewed the Site Plan regulations for Cape Elizabeth, Falmouth and Yarmouth. A spreadsheet has been created, organized based on the Cape Elizabeth Site Plan regulations, comparing its provisions with Falmouth and Yarmouth. Interviews with Falmouth Community Development Director Ethan Croce and Yarmouth Director of Planning & Development Erin Zwirko have been conducted.

Staff have also reviewed the Cape Elizabeth Planning Board records from 2020 to the present to establish how long site plan review takes in Cape Elizabeth.

### Spreadsheet comparison

The attached spreadsheet is a summary comparing site plan regulations in the three communities. Copies of the site plan regulations are also provided for direct access to source materials.

The following Cape Elizabeth Site Plan Regulation sections have been used to organize the comparison:

Applicability – what requires or does not require site plan review

Procedure – steps in review and how long review takes

Submission – what information is required

Standards – the basis for obtaining approval

Amendments – the process for changing an approved plan

### Comparison Highlights

1. Minor Site Plan Review. Both communities offer a minor site plan review option which is conducted by planning staff rather than the Planning Board. The submission requirements and standards of review for minor and major site plan review are the same.
2. Design review. All three communities conduct design review in the commercial zones.
3. Workshop. Falmouth and Yarmouth rely more on town staff to advise applicants, while Cape Elizabeth requires a Workshop with the Planning Board, for which the public receives a notice and can attend.

4. Noise review. Of the 3 communities, only Cape Elizabeth has a noise review standard.
5. Other ordinances. All three communities rely on other ordinances to address items that may or may not be listed in site plan review. For example, the Falmouth Planning Board grants stream crossing permits. In Cape, that is a state permit only or compliance with performance standards supervised by Code Enforcement. All three communities have state mandated shoreland zoning, which may not need to be referenced in Cape's site plan regulations. All communities rely on Stormwater Ordinances, which are mandated for MS4 communities.
6. Amendments. All three communities require compliance with approved site plans and amendments to make changes. Cape has a de minimis change provision which turns around amendment approvals in 1-5 days.

#### 517 Ocean House Rd LLC v. Town of Cape Elizabeth (2015-2017)

The Town of Cape Elizabeth Planning Board approvals are rarely appealed in court, and almost never successfully. The exception is the site plan approval granted for 541 Ocean House Rd in 2015. The site plan review was for a change of use and property improvements on a developed site that had received site plan approval in the 1980's. No new building construction was proposed and the project included some pavement removal, added landscaping and improvements to an existing parking lot (shown on the original site plan). The Planning Board conducted a "lighter review," by requiring less information in the application and on the plan. After all, the proposal significantly improved an otherwise tired site. The Planning Board approval was challenged by an abutter who had received site plan approval for and built a new building. The town offered its best defense, the plan was referred by the court back to the Planning Board twice, and eventually staff amended the plan to address the items the court found lacking. The conclusions are:

- Any standard of review must include a submission of information upon which the Planning Board relies on when making its finding.
- If you don't want to require an applicant to submit that information, the standard must also be removed from the ordinance.
- Staff strongly urges applicants to address each submission requirement in some manner. For example, including information in a cover letter can be a cost effective way to submit information.

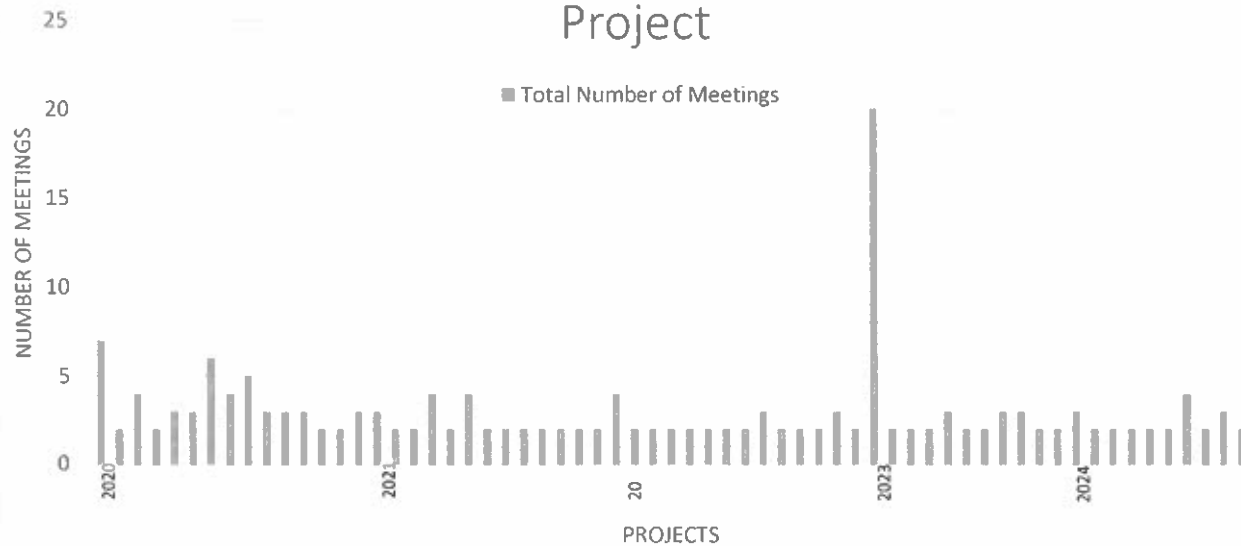
#### Planning Board Review in Cape Elizabeth

The Planning Board development approval record was reviewed from 2020 - 2024 to determine an average number of meetings per project review. Meetings include workshop and regular meeting(s).

One project in 2020 had a total of 7 meetings due to 3 workshops which were requested by the applicant. The Carr Woods project had a total of 20 meetings, however the applicant chose to change the project engineer one-half way through the review, resulting in a project redesign and additional workshops requested by the applicant. As an outlier, this project was not included in the total average calculation.

From 2020 through 2024, the average number of meetings per project is **2.5 meetings**.

## Number of Planning Board Meetings per Project



### De minimis site plan amendments (Sec. 19-9-6.A)

Beginning in 2016, the Town established a de minimis change option to approved site plans option. This provision allows small changes to approved site plans. The plan changes are submitted to the Town Planner, who presents them to the Planning Board Chair for review and approval. Changes tend to be architectural adjustments, exterior materials, location shifts, landscaping planting adjustments, and small sheds. Turnaround for these changes is 1-2 days. Seventeen de minimis change requests have been approved from 2020 to 2025.

### Attachments

Falmouth Community Development Director Ethan Croce interview  
 Yarmouth Planning Director Erin Zwirko interview  
 Development Review Process Checklist (draft)  
 Cape Elizabeth Site Plan Regulations, Sec. 19-9  
 Falmouth Site Plan Regulations, Div II, 19-9-1 (p. 163-182)  
 Yarmouth Site Plan Ordinance, Chapter 702  
 517 Ocean House Rd LLC v. Town of Cape Elizabeth, 2017

### Separate chart

Comparison spreadsheet



## Business Development Review Survey

Respondent: Town of Falmouth Community Development Director Ethan Croce

### **Burger Joint:**

#### **What type of review would be needed to open a burger joint in a commercial zone?**

In the case of new construction for a new restaurant, Planning Board site plan review would be required.

#### **How long would that review typically take?**

Assuming this is a new restaurant that involves the construction a new building, on average this type of review would typically take two to three Planning Board meetings (3 to 5 months) depending on any number of different variables including, but not limited to, the quality/completeness of the application submitted by the applicant, the scale and/or complexity of the site and the application, the need for third-party peer reviews of certain aspects of the project, the need for review by other regulatory authorities (e.g. Maine DEP, Maine DOT, etc.) the nature and number of waivers, if any, that the applicant might be requesting, etc.

#### **Do you typically require all the information listed in the ordinance? What is waived?**

The Town requires all applicable information to be submitted with a development application. In some circumstances, waivers from certain submittal requirements or ordinance standards may be requested by applicants. In order to have a waiver request considered, applicants must submit their waiver request in writing and describe in detail the supporting rationale and special circumstances that exist to justify the waiver request.

### **Apartment building project:**

#### **What type of review would be needed to build an apartment building?**

With the Legislature's recent relaxation of the State subdivision law to exempt an individual multi-family apartment building from subdivision review if the project is otherwise subject to municipal site plan review, the process to review a single apartment building now only requires Planning Board site plan review.

#### **How long would the review typically take?**

On average, this type of review would typically take two Planning Board meetings (1 to 3 months) depending on any number of different variables including, but not limited to, the quality/completeness of the application submitted by the applicant, the scale and/or complexity of the site and the application, the need for third-party peer reviews of certain aspects of the project, the need for review by other regulatory authorities (e.g. Maine DEP, Maine DOT, etc.) the nature and number of waivers, if any, that the applicant might be requesting, etc.

**Do you typically require all the information listed in the ordinance? Waivers?**

Same response as the response above related to waivers.

**Condo project:**

**What type of review would be needed to develop a condominium project?**

If the condo project consists of more than five dwelling units, major subdivision review by the Planning Board would be required.

**How long would the review typically take?**

Assuming that major subdivision review is required, Falmouth's ordinance requires a minimum of three Planning Board meetings comprising a pre-application sketch plan review, a preliminary subdivision review, and a final subdivision review. On average this type of review would typically take three to four Planning Board meetings (5 to 7 months) depending on any number of different variables including, but not limited to, the quality/completeness of the application submitted by the applicant, the scale and/or complexity of the site and the application, the need for third-party peer reviews of certain aspects of the project, the need for review by other regulatory authorities (e.g. Maine DEP, Maine DOT, etc.) the nature and number of waivers, if any, that the applicant might be requesting, etc.

**Do you typically require all the information listed in the ordinance? Waivers?**

Same response as the response above related to waivers.

**Lastly, what is the most common reason for delays in development review?**

The most common reason for delays in the approval of development applications is when applicants submit applications that are either incomplete or not sufficiently thorough in responding to the Town's various ordinance requirements and design standards. Stated another way, there is almost always a direct correlation between the completeness and thoroughness of an application and the amount of time it takes for an application to be approved.

The second most common reason for delays in the approval of development applications is the time it takes projects to receive approvals from outside permitting entities over which the Town has no control. For example, many projects require approvals from the Maine Department of Transportation and/or the Maine Department of Environmental Protection, etc. Delays in obtaining approvals from these outside permitting entities often lengthens the time it takes for development projects to be able to commence construction.

## **Business Development Review Survey: 6-17-2025**

Respondent: Erin Zwirko, Yarmouth Planning Director

### *Burger Joint example name:*

We had a new Mexican restaurant proposed in a pre-existing structure that was used as a restaurant. They just needed a building permit to renovate, sign permit to replace the sign, and advisory historic preservation review of the sign. Took 30 days.

What type of review would be needed to open a burger joint in a commercial zone?

If it was a new build, say for less than 100 seats, Site Plan review is required.

How long would that review typically take?

1 Planning Board meeting to approve, no workshop.

Do you typically require all the information listed in the ordinance? What is waived?

For a new build, all the site plan submission items would be required.

### *Apartment building project:*

What type of review would be needed to build an apartment building?

Site plan and subdivision review. If it was a reuse, such as commercial on the first floor and apartments above in a commercial zone, there may also be Historic Preservation Committee review.

How long would the review typically take?

For a recent project, 2 meetings because some information was missing. The second meeting was short, included the public hearing, and took 13 minutes.

Do you typically require all the information listed in the ordinance? Waivers?

We use the site plan submission list. Typical waivers include traffic study, photometrics, stormwater management plan by an engineer, soil analysis. Waivers tend to be for small projects on a previously developed site. We do ask for an LID.

### *Condo project:*

What type of review would be needed to develop a condominium project?

This is the same review as for an apartment building, both site plan and subdivision.

How long would the review typically take?

3 meetings: Concept, preliminary and final. Sometimes only 2 meetings if the applicant is prepared.

Do you typically require all the information listed in the ordinance? Waivers?

With housing, we are less likely to waive stormwater, traffic, but still waive soils, photometric, unless there are parking lots

Lastly, what is the most common reason for delays in development review?

We haven't had a big project in a while. We contract out our traffic review to Tom Errico, TY Lin



# Development Review Process Checklist



Please contact the ACP office  
with any questions: 207-799-1619

- ☐ Contact Code Enforcement to determine if your project complies with Zoning and any other requirements and if Planning Board review is required. If Planning Board review is needed, go to step 2. If not, obtain necessary permits from Code Enforcement.
  - ☐ Contact Town Planner to learn about the Planning Board process, including board schedule, submission requirements.
  - ☐ Submit a Planning Board Workshop application. (Due one week before the Workshop and must include an application form and sketch plan)
  - ☐ Attend Planning Board workshop (Review submission requirements for review prior to workshop so you can get feedback on project direction, potential submission waivers)
  - ☐ Submit Planning Board formal application after workshop and 15 days before regular, third Tuesday of the month meeting.
  - ☐ Attend Planning Board meeting, receive completeness. (If expedited review, a public hearing and approval motion may also be taken)
  - ☐ If application tabled to hold Public Hearing, submit supplemental materials and attend next month's meeting.
  - ☐ Following approval, revise plans to satisfy any conditions and submit to town staff.
  - ☐ Provide performance guarantee if required.
  - ☐ Obtain building permit from Code Enforcement.
- 



**ARTICLE IX. SITE PLAN REVIEW****SEC. 19-9-1. PURPOSE**

The site plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, preserve the environment, and minimize improvements that must be paid for by the Town's taxpayers by assuring that nonresidential, multiplex residential, eldercare, and similar facilities are designed and developed in a manner which assures that adequate provisions are made for: traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of the groundwater; protection of the environment; minimizing the adverse impact on adjacent properties; and fitting the project harmoniously into the fabric of the community.

**SEC. 19-9-2. APPLICABILITY****A. Activities Requiring Site Plan Review**

The owner of a parcel of land shall obtain site plan approval prior to undertaking any alteration or improvement of the site including grubbing or grading, obtaining a building or plumbing permit for the activities, or commencing any of the following activities on the parcel:

1. The construction of any nonresidential building or building addition.
2. Any nonresidential expansion or change in use except that changes of use within the Town Center District shall be governed by the provisions of Sec. 19-6-4.E, Site Plan Review and uses within the business A District shall be governed by the provisions of Sec. 19-6-5.F. Site Plan Review. (Effective June 10, 2010)
3. Multiplex housing and eldercare facilities.
4. Any other activity or use requiring Planning Board review in the Zoning Ordinance.
5. New construction involving more than ten thousand (10,000) square feet of impervious surface, paving, clearing, or vegetative alteration, or any combination thereof. (The Planning Board shall review the proposal for control of storm water runoff under the terms of Chapter 25 Storm Water Ordinance.) (Effective November 5, 2016)

**B. Activities Not Requiring Site Plan Review**

The following activities shall **not** require site plan approval (certain of these activities may, however, require the owner to obtain a building permit, plumbing permit, or other State and local approvals):

1. The construction, alteration or enlargement of a single family or two-family dwelling unit, including accessory buildings and structures, except as required in the Town Center Core Subdistrict. (Effective June 10, 2010)
2. The placement of manufactured housing or mobile home on individual lots.
3. Agricultural buildings as follows: (Effective June 10, 2010)
  - a. Any temporary agricultural building, where temporary shall mean that the structure remains in place no more than 3 months in any 12-month period.
  - b. If sales shall be conducted from the building, the structure must be a temporary structure and sales shall not be conducted from the building for more than 3 months in any 12-month period.
  - c. Any barn, greenhouse, or storage shed with a building footprint that does not exceed 3,000 sq. ft. in size. (Effective September 9, 2021)
  - d. Any structure that shall provide housing, other than a single family home, shall require Site Plan Review under Sec. 19-2-2.(A).(4), above.
  - e. Any structure which does not comply with subparagraphs a., b., and c. above shall require Site Plan Review.
4. Temporary structures such as construction trailers or equipment storage sheds.

### **SEC. 19-9-3. REVIEW AND APPROVAL AUTHORITY**

The Planning Board is authorized to review and act on all site plans for development requiring site plan review as defined above. In each instance where the Planning Board is required to review the site plan for a proposed use, it shall approve, deny, or conditionally approve the application based on its compliance with the standards in Sec. 19-9-5, Approval Standards, which action shall be binding upon the applicant. Where a proposed use is subject to approval of the Zoning Board of Appeals, such approval shall be obtained before the Planning Board considers the site plan for the proposed use.

### **SEC. 19-9-4. REVIEW PROCEDURES**

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

#### **A. Workshop**

Prior to submitting a formal application, the applicant shall schedule a pre-application workshop with the Planning Board. The pre-application workshop shall be informal and informational in nature. There shall be no fee for a pre-application review, and such review shall not cause the plan to be a pending application. No decision on the substance of the

plan shall be made at the pre-application workshop. The applicant is encouraged to meet informally with the Town Planner prior to the workshop.

### 1. Purpose

The purposes of the pre-application workshop are to:

- a. Allow the Planning Board to understand the nature of the proposed use and the issues involved in the proposal
- b. Allow the applicant to understand the development review process and required submissions; and
- c. Identify issues that need to be addressed in future submissions, which may include potential submission waiver requests, submission of reduced sized plans, and request for expedited review. (Effective May 8, 2024)

### 2. Information Required

In order to appear on a Planning Board workshop, the applicant must submit the following to the Town Planner at least seven (7) days before the scheduled workshop: (Effective May 8, 2024)

- a. A completed Planning Board workshop application, which is provided by the Town; and
- b. A sketch plan depicting the site proposal. The applicant is encouraged to provide a plan with enough information to enable the Planning Board to provide meaningful input but not firmed to the point where the plan cannot be revised to incorporate comments by the Planning Board. Any plan exceeding 11 inches x 17 inches in size shall also be submitted as a digital copy. (Effective May 8, 2024)

### 3. Planning Board Workshop

The Planning Board workshop shall be informational and shall not result in any formal action. The Planning Board shall identify and issues or constraints which need to be addressed in the formal site plan application.

## B. Application Review Procedures

1. **Completeness.** After an application has been submitted with the requisite fees, including establishment of a Review Escrow Account under the terms of Sec. 16-2-1(c.) of the Subdivision Ordinance, and after any required Zoning Board of Appeals approval has been obtained, the Town Planner shall accept and date an application for Planning Board review. In consultation with the Planning Board Chair or Vice Chair, the Town Planner shall review the site plan application and accompanying materials to determine whether the application is complete or incomplete. If, in consultation with the Planning Board Chair

or vice Chair, the application is preliminarily determined to be incomplete, the Town Planner shall notify the applicant in writing and shall list in the written determination the materials that must be submitted in order to make the application complete. If the applicant fails to submit a complete application within four (4) months of the written determination of incompleteness, the application shall be deemed withdrawn. When the Town Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board meeting. The Planning Board may require other information in addition to that required in Sec. 19-9-4.C, Submission Requirements. The Planning Board may also request an evaluation of specific aspects of the site plan from the Conservation Committee, the Town Engineer, or others. In the event that the Planning Board requires additional information or evaluation, it may deem the application incomplete.

No action taken by the Town Planner, either alone or in consultation with the Planning Board chair or vice Chair, with respect to reviewing a site plan application, shall result in an application being deemed pending for the purposes of 1 M.R.S.A. §302. The Town Planner, either alone or in consultation with the Planning Board Chair or Vice Chair, shall have no authority to review the substance of a site plan application to determine whether it complies with the site plan review criteria. (Effective November 5, 2016)

2. Public Hearing. Upon certification by the Planning Board that an application is complete, the Planning Board, at its discretion, may hold a public hearing. If the Planning Board determines to hold a public hearing, it shall hold the hearing within thirty-five (35) days of the date that the application is deemed complete and shall provide public notice in accordance with Sec. 16-2-1.(b). of the Subdivision Ordinance. (Effective November 5, 2016)

The Planning Board shall conduct the hearing to assure full, but not repetitive, public participation. The applicant shall be prepared to respond fully to questions from the Planning Board or issues raised by the public that the Planning Board deems significant. The Planning Board may, upon its own motion, extend the hearing once for a period not exceeding thirty (30) days and to a date that shall be announced. (Effective November 5, 2016)

3. Planning Board Decision. The Planning Board shall vote to approve, approve with conditions, or disapprove the Site Plan upon the conclusion of review of the development's compliance with Sec. 19-9-5, Approval Standards. The Planning Board decision shall include written findings of fact and shall be provided to the applicant within seven (7) days of the Planning Board vote. (Effective November 5, 2016)
4. Performance Guarantee/Post Approval. The Planning Board, at its discretion, may require that a performance guarantee be established with the Town for the cost of site improvements. Each performance guarantee shall comply with Sec. 16-2-6. (c). of the Subdivision Ordinance. An inspection fee shall be paid in accordance with Sec. 16-2-6.(d). When a project includes a performance

guarantee, the applicant shall manage project construction in accordance with Sec. 16-2-7. of the Subdivision Ordinance. Upon completion of construction, record drawings shall be submitted to the Town in accordance with Sec. 16-2-7. (g). if any infrastructure has been installed in the public right-of-way or easement conveyed to the Town. (Effective November 5, 2016) (Revised effective June 8, 2022)

5. Approval Expiration. Site plan approval shall be valid for a period of one (1) year from the date of the Planning Board vote. Prior to the expiration of the site plan approval, the applicant may request an extension of up to one year from the Planning Board for cause shown. Site plan approval shall remain valid if a building permit has been issued for the project prior to the expiration date. Expiration of the building permit prior to completion of the project shall render the site plan approval null and void. Failure to comply with conditions placed upon site plan approval, to post any necessary performance guarantees, to comply with any other permitting processes or to address any other issues of site development, except pending litigation challenging the site plan approval, shall render the approval null and void unless an extension is granted by the Planning Board for good cause. (Effective November 5, 2016)

### C. Submission Requirements

1. General Submission parameters.

The applicant shall submit eight (8) paper copies and one (1) digital copy of building and site plans and supporting information drawn to a scale of not less than one inch equals fifty feet (1"=50'). The size of plan sheets submitted to the Planning Board shall be no larger than twenty-four (24) by thirty-six (36) inches, but a smaller size may be used with the permission of the Planning Board. (Effective May 8, 2024)

2. List of Submission items.

The application for approval of a Site Plan shall include all the following information, unless waived by the Planning Board as described below. Information that must be shown on a plan is in bold type. Submission information shall be shown on the number of plans needed to depict the information in a readable format and each plan shall be individually labeled with a title generally based on the information depicted on the plan, with one plan titled "Site Plan" (Effective November 5, 2016)

- a. Right, Title or Interest. Evidence of right, title, and interest in the site of the proposed project. (Effective November 5, 2016)
- b. Written description. Written description of the proposed project including proposed uses quantified by square footage, number of seats, number of units or beds or number of students, and how development has been placed on the portions of the site most suited for development; application form; identification of the zoning district in which the property is located and the

location of any zoning district boundary that bisects or abuts the property. (Effective November 5, 2016)

- c. Name of Project/Applicant. Proposed name of the project; name and address of record owner and applicant, names of adjoining property owners; date of submission; north point; graphic map scale. (Effective November 5, 2016)
- d. Survey. A standard boundary survey of the site, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor in the State of Maine; a copy of the deed for the property to be developed, as well as copies of any easements, restrictions or covenants; location map, showing the relative location of the proposed project in relation to surrounding neighborhoods or areas of Town. (Effective November 5, 2016)
- e. Existing Conditions. All significant existing physical features on the site including streams, watercourses, watershed areas, existing woodlands and existing trees at least eight (8) inches in diameter as measured four and one-half (4 ½) feet above grade, and other significant vegetation; soil boundaries and names in wetland locations and where subsurface wastewater disposal systems are proposed; when applicable, any portion of the property located in the floodplain, within two hundred and fifty (250) feet of the Normal High Water Line, or in a Resource Protection 1, Resource Protection 1 Buffer or Resource Protection 2 District. (Effective November 5, 2016)
- f. Topography. Contour lines, existing and proposed, at intervals of two (2) feet or at such intervals as the Planning Board may require, based on United States Geological Survey datum, referenced to mean sea level. (Effective November 5, 2016)
- g. Buildings. Location of all existing and proposed buildings and structures with the distance from the nearest property lines labeled; size in square feet of existing and proposed building footprints and total size of building; elevations of each vertical side of a new building with dimensions, location of doors and windows, exterior materials and roof pitch labeled; elevations of each side of an existing building proposed to be altered with dimensions, location of doors and windows, exterior materials and roof pitch labeled; floor plans; building footprints located on adjacent properties within fifty (50) feet of the project property line. (Effective November 5, 2016)
- h. Traffic Access and Parking. Location and width of the nearest public road, and if the project will have access to a private road or driveway, the location and width of the private road or driveway; location of existing and proposed driveways, parking areas and other circulation improvements; site distances for all access points onto public roads; location of parking, loading and unloading areas, which shall include dimensions, traffic patterns, access aisles, parking space dimensions and curb radii; calculation of parking required in conformance with Sec. 19-7-8, Off Street Parking; existing and proposed pedestrian facilities including the location, dimension and surface

treatment of sidewalks and paths, and description of high-demand pedestrian destinations within  $\frac{1}{4}$  mile of the development; improvements shall include design details, cross sections and dimensions as needed.

Estimated number of trips to be generated based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers or equivalent quality information; For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, a traffic study shall be submitted measuring current traffic, estimating traffic generated by the new development and assessing impacts on adjacent roadways and nearby intersections. Where the development may have a substantial traffic impact, the traffic study shall also include recommended mitigation; information on proposed, funded road improvements and town evaluation of road improvements. (Effective November 5, 2016)

- i. Storm water. Calculation of existing and proposed impervious surface; total disturbed area including all phases of a phased project, (Effective June 8, 2023 a storm water management plan, with flow arrows, profiles, cross sections, and invert elevations prepared, showing existing and design of all facilities and conveyances, LID (Low Impact Development) methods, and identification and location of known existing deficiencies that result in storm water surcharge or flooding; location of proposed drainage easements; narrative description of how storm water will be managed; description of any Low Impact Development (LID) methods incorporated into the plan; note on plan for maintenance of private storm water infrastructure; storm water maintenance plan that lists infrastructure that needs to be maintained, inspection frequency and maintenance requirements. Where the property is located within the great Pond Watershed, a description of how the Great Pond Watershed Overlay District provisions will be met. (Effective November 5, 2016)

When the project increases impervious surface by an area of ten thousand (10,000) sq. ft. or more, the storm water management plan must be prepared, signed and stamped by a professional engineer licensed in the State of Maine, pre- and post-development calculations for the 2 and 25 year storm must be provided, and time of concentration path segments shown. (Effective November 5, 2016, updated November 14, 2022)

When a project increases impervious surface by one (1) acre or more, information shall be submitted as described in Sec. 25-1-4.(b). Stormwater Runoff System Design. (Effective June 8, 2023)

| <b>Summary Chart of Stormwater Submission Requirements and Review Standards</b><br>(supplements ordinance provisions)                                                                                                                                                                                                                                  |                                                                                                                                                        |                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| <b>Submission:</b> All projects must calculate area of existing and proposed impervious surface and submit a stormwater management plan, including LID elements, identification of existing deficiencies, location of easements, note requiring maintenance of private infrastructure, and items related to the Great Pond Watershed Overlay District. |                                                                                                                                                        |                                                                                       |
| <b>Review Standard:</b> All projects must manage stormwater on and off-site without damage to streets, adjacent properties, downstream properties, soils and vegetation and private stormwater infrastructure must be maintained.                                                                                                                      |                                                                                                                                                        |                                                                                       |
| <b>Pre/post Impervious Surface</b>                                                                                                                                                                                                                                                                                                                     | <b>Submission Information Highlights</b>                                                                                                               | <b>Review Standard Highlights</b>                                                     |
| Decrease to increase of less than 10,000 sq. ft.                                                                                                                                                                                                                                                                                                       | *Professional Engineer not required<br>*Pre/post calculations not required                                                                             | *LID method is used                                                                   |
| Increase of 10,000 sq.ft. to less than 43,560 sq. ft.                                                                                                                                                                                                                                                                                                  | *Stormwater plan must be prepared by a Professional Engineer<br>*Pre/post calculations required<br>* Time of concentration path segments must be shown | *LID method is used to treat first 1/2 inch of stormwater from new impervious surface |
| Increase of 43,560 sq. ft. or more                                                                                                                                                                                                                                                                                                                     | See Chapter 25-1 Stormwater Development Review                                                                                                         | See Chapter 25-1 Stormwater Development Review                                        |

(Effective June 8, 2023)

- j. Erosion Control. An erosion and sedimentation control plan including information in compliance with Chapter 25-4-5, Erosion and Sedimentation Control Submission requirements. (Effective June 8, 2023)
- k. Utilities.
  - i. Water. Ability to serve letter from the Portland Water District; location and size of any existing and proposed water mains on the property, as well as details showing proposed connections to water systems; where public water

is no to be provided, and alternative means of a clean and adequate water supply shall be shown, with supporting written documentation; nearest hydrant. (Effective November 5, 2016)

- ii. Sewage Disposal. When the project will be served by public sewage, and ability to serve letter from the Town of Cape Elizabeth Sewer Superintendent; all existing and proposed public or shared sewage facilities and connections to the public sewage system; when not served by public sewer, evidence to demonstrate suitability of soils for subsurface wastewater disposal; the location of the subsurface wastewater system; all designs, specifications and details for a clustered, private or public sewage system. (Effective November 5, 2016)
- iii. Other utilities. Ability to serve letter from Central Maine Power; location of existing and proposed above and below ground electrical lines, other utility conduits and location of gas storage tanks and fuel lines. (Effective November 5, 2016)
- iv. Solid/Other Waste Disposal. Description of how solid waste will be stored and removed from the site; location and details of solid waste and recycling storage containers and screening; identification of chemicals, chemical wastes, hazardous, special or radioactive materials to be handled and/or stored onsite. (Effective November 5, 2016)
- l. Landscaping. Location and description of existing vegetation to be preserved; methods of preserving vegetation to be used during construction/ landscaping and buffering plan showing what will be planted, indicating botanical and common names of plants and trees, fencing location, type, material and size. (Effective November 5, 2016)
- m. Lighting. Location and type of lighting to be installed; lighting fixture details indicating type of standards wattage and mounting height; a photometric study showing the footcandle lighting level at the property line when new lights shall be installed. (Effective November 5, 2016)
- n. Signs. Location, dimensions, materials, and details of signs. (Effective November 5, 2016)
- o. Noise. Statement of the typical activities, structures and equipment proposed on the site that will generate exterior noise, and then identify the unique activities, structures and equipment that are not generally occurring on abutting or neighborhood properties; for the unique noises, provide the decibel (dBA) level at the property line (decibel level source information may be provided from equipment specifications, standard noise tables or other sources); characterize the unique noise as recurring, intermittent, or constant; the time of day the unique noise will occur. (Effective November 5, 2016)
- p. Exterior storage. Location of outside storage areas and outdoor display areas; screening of storage areas. (Effective July 10, 2024)

- q. Financial and Technical Capability. Demonstration of technical and financial capability to complete the project. If the applicant concludes that public disclosure of confidential financial information may be detrimental to the success of the project, the applicant may disclose such financial information to the Town Manager, who shall explore with due diligence, the applicant's financial capability to complete the project as proposed in a timely fashion and make a recommendation to the Planning Board. (Effective November 5, 2016)

### 3. Waiver of Submission items.

Where the Planning Board finds that the submission of any information listed in Sec. 10-4.C. Submission Requirements, is not required in the interest of public health, safety, and general welfare, the Planning Board may waive such requirements. Without limitation, the following circumstances may support a waiver of certain submission requirements. (Effective November 5, 2016)

- a. Existing conditions. When no change to existing site conditions for that submission item is proposed, the Planning Board may designate a submission item as not applicable. (Effective November 5, 2016)
- b. Substitution. Alternative information has been submitted more suited to the scope of the project. (Effective November 5, 2016)
- c. Small project. The limited nature of the project allows the Planning Board to apply the Approval Standards and safeguard public health, safety and general welfare without submission of additional information. (Effective November 5, 2016)

## SEC. 19-9-5. APPROVAL STANDARDS

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

### 1. Utilization of the Site

The plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas such as wetlands, steep slopes, flood plains, and unique natural features will also be maintained and preserved to the maximum extent feasible. Natural drainage areas will also be preserved to the maximum extent feasible.

## 2. Traffic Access and Parking

### a. Adequacy of Road System

Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Transportation Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service C or better prior to the development will function at a minimum at Level of Service C after development. If any such intersection is functioning at a Level of Service D or lower prior to the development, the project will not reduce the current level of service. A development not meeting this requirement may be approved if the applicant demonstrates that:

- i. Public improvement. A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard.
- ii. Private improvement. The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will assure the completion of the improvements with a financial guarantee acceptable to the municipality, or
- iii. Status quo. Town policy does not support the construction improvements. (Effective November 5, 2016)

### b. Access into the Site

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

- i. Safety. All entrance and exit driveways are located to afford maximum safety to traffic, provide for safe and convenient ingress and egress to and from the site and to minimize conflict with the flow of traffic. (Effective November 5, 2016)
- ii. Sight distance. Any exit driveway or driveway lane is so designated in profile and grading and so located as to provide the maximum possible sight distance measured in each direction. The sight distance available shall be consistent with the standards of the Subdivision Ordinance. (Effective November 5, 2016)
- iii. Corner. Where a site occupies a corner of two (2) intersecting roads, no driveway entrance or exit is located within fifty (50) feet of the point of tangency of the existing or proposed curb radius of that site. (Effective November 5, 2016)
- iv. Side property line. 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 dividing the adjacent sites. (Effective November 5, 2016)

- v. Angle. Driveways intersect the road at an angle as near ninety degrees (90°) as site conditions will permit. (Effective November 5, 2016)
- vi. Construction. Road, driveway, and parking lot construction comply with the construction and design standards in Sec. 16-3-2 of the Subdivision Ordinance. (Effective November 5, 2016)

c. Internal Vehicular Circulation

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

- i. Deliveries. Nonresidential projects that will be served by delivery vehicles will provide a clear route for such vehicles with appropriate geometric design to allow turning and backing for a minimum of vehicles. (Effective November 5, 2016)
- ii. Emergency vehicles. Clear routes of access shall be provided and maintained for emergency vehicles to and around buildings and shall be posted with appropriate signage (fire lane – no parking). (Effective November 5, 2016)
- iii. Circulation. The layout and design of parking areas shall provide for safe and convenient circulation of vehicles throughout the lot. (Effective November 5, 2016)
- iv. Topography. All roadways shall be designed to harmonize with the topographic and natural features of the site. The road network shall provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services. (Effective November 5, 2016)

d. Parking Layout and Design

Off-street parking shall conform to Sec. 19-7-8, Off Street Parking and the following standards:

- i. Street. Parking areas with more than two (2) parking spaces shall be arranged so that vehicles do not need to back into the street. (Effective November 5, 2016)
- ii. Property lines. All parking spaces, access drives, and impervious surfaces shall be located at least five (5) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within five (5) feet of the front property line. Parking lots on adjoining lots may be connected by

accessways not exceeding twenty-four (24) feet in width. (Effective November 5, 2016)

- iii. Flow. In lots utilizing diagonal parking, the direction of proper traffic flow shall be indicated by signs, pavement markings or other permanent indication. (Effective November 5, 2016)
- iv. Stacked spaces. Parking areas for nonresidential uses shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles. "Stacked" parking may be permitted for resident parking in conjunction with residential uses if both spaces in the stack are assigned to the occupants of the same dwelling unit. (Effective November 5, 2016)
- v. Bumpers. The "overhang" of parked vehicles shall be restricted when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials. (Effective November 5, 2016)

### 3. Pedestrian Circulation

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

### 4. Stormwater Management

Storm water is managed on and off-site without damage to streets, adjacent properties, downstream properties, soils and vegetation. To the extent practical, the plan will retain storm water on the site using the natural features of the site, except that in the Town Center District, storm water management shall be consistent with the Town Center Storm Water Management Plan, updated September 2015 or most recent revision. A Low Impact Development (LID) method is incorporated into the storm water management plan. The plan includes a note requiring a post-construction maintenance plan for private storm water infrastructure and a maintenance plan has been submitted.

When the project increases impervious surface by ten thousand (10,000) sq. ft. in area but less than 1 acre (43,560), the storm water management plan has been prepared, signed and stamped by a professional engineer licensed in the State of Maine. Post-development peak flows do not substantially exceed pre-development flows for the 2 and 25-year storm. LID measures have been used to treat a calculated volume (referred to as Calculated Treatment Volume, (or CTV) such that it is not less than one-half (1/2) inches multiplied by the net proposed new impervious surface area.

The CTV may be achieved by treating one-half (1/2) inches multiplied by the new onsite impervious surface areas, or an equal existing on-site untreated impervious surface area, or of an equivalent combination thereof of previously or proposed untreated area. When the project increases impervious surface by one (1) acre or more, storm water shall be reviewed for compliance with Sec. 25-1 Stormwater Development Review. (Effective June 8, 2023)

## 5. Erosion Control

All building, site, and roadway designs and layouts will harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible. Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on sloped sites will be terraced to avoid undue cut and fill, and/or the need for retaining walls. Natural vegetation will be preserved and protected wherever possible.

During construction, soil erosion and sedimentation of watercourses and water bodies will be minimized by an active program meeting the requirements of Chapter 25-4, Erosion and Sedimentation Control. (Effective June 8, 2023)

## 6. Utilities

- a. Water Supply. The development will be provided with a system of water supply that is adequate in quantity and quality to the proposed use. An adequate supply of water for fire protection purposes is provided. Connection to a public water supply for drinking water and fire protection is encouraged. (Effective November 5, 2016)
- b. Sewage Disposal. The development will be provided with a method of disposing of sewage which is in compliance with Chapter 15, Sewer Ordinance. (Effective November 5, 2016)
  - i. Public Sewage System. All sanitary sewage from new or expanded uses shall be discharged into a public sewage collection and treatment system when such facilities are currently available or can reasonably be made available at the lot line and have adequate capacity to handle the projected waste generation. (Effective November 5, 2016)
  - ii. Private Sewage System. If the public system cannot serve or be extended to serve a new or expanded use, the sewage shall be disposed of by an on-site sewage disposal system meeting the requirements of the State Wastewater Disposal Rules and Chapter 15, Article II, Private Sewage Disposal Ordinance. (Effective November 5, 2016)
  - iii. Common ownership. When two or more lots or buildings in different ownership share the use of a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association and shall conform to the provision of Chapter 15, Article III, Management of Cluster Disposal Systems. Covenants in the deeds for each

lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system. (Effective November 5, 2016)

- c. Other utilities. The development will be provided with electrical service adequate to meet the anticipated use of the project. New utility lines and facilities shall be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service shall be placed underground. Except for propane tanks, no flammable or explosive liquids or solids shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. Propane tanks less than 500 gallons in size shall be set back a minimum of ten (10) feet from the property line and tanks of 500 gallons or more in size shall be set back twenty-five (25) feet from the property line. All materials shall be stored in a manner and location that is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations. (Effective November 5, 2016)
- d. Solid Waste. The proposed development will provide for adequate storage and disposal of solid wastes. (Effective November 5, 2016)
  - i. Screening. Any solid waste stored on the property prior to removal to an authorized facility shall be secured and screened from public view. (Effective November 5, 2016)
  - ii. Liquid/semi-solid wasted. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, shall meet the standards of the State Department of Environmental Protection and the State Fire Marshall's Office. (Effective November 5, 2016)
  - iii. Hazardous Materials. The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies. Any waste produced which is classified as a hazardous, special or radioactive waste by either federal or state standards shall be disposed of at a licensed disposal facility appropriate for the type of waste and done in accordance with applicable state and federal regulations. (Effective November 5, 2016)

## 7. Shoreland Relationship

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

The development will not adversely affect the water quality or shoreline of any adjacent water body. The development plan will provide for access to abutting

navigable water bodies for the use of the occupants of the development if appropriate. (Effective November 5, 2016)

## 8. Landscaping and Buffering

- a. Preservation. The landscape will be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling will be avoided as far as possible. Areas of vegetation to be retained shall be designated on a preservation plan. Within the drip line of trees to be preserved, activity and disturbance shall be prohibited and a physical barrier shall be provided to separate these areas from the construction area. (Effective November 5, 2016)
- b. Landscaping Plan. The development plan will provide for landscaping that defines street edges, mitigates the expanse of parking areas, enhances the appearance of the development and reduces the impact of the development on abutting properties. Landscaping materials shall be chosen for their ability to thrive at the planting site, provide screening, create visual interest and promote diversity of the community forest. (Effective November 5, 2016)
- c. Screening. The development shall provide for screening of service and storage areas. (Effective November 5, 2016)

## 9. Exterior Lighting

1. Safety. The proposed development shall provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours, if such use is contemplated, without excessive illumination. Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. (Effective November 5, 2016)
2. Maximum level. Direct or indirect illumination shall not exceed 0.5 foot-candles at the lot line. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky. All exterior lighting, except security lighting, shall be turned off between 11 p.m. and 6 a.m. unless located on the site of a commercial or industrial use which is open for business during that period. (Effective November 5, 2016)

## 10. Signs

Signs shall meet the standards of the Sign Ordinance. Sign materials and lighting shall be of high quality and compatible with the character of the development. (Effective November 5, 2016)

## 11. Noise

The maximum permissible A-weighted decibel level of a continuous, regular or frequent or intermittent source of sound produced by unique activities, structures or equipment on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall apply at least four (4) feet above ground at the property boundary of the source. Existing background sounds are excluded from the decibel measurement and noise generated by construction of the site is exempt. (Effective November 5, 2016)

### Sound Pressure Level Limits Using the A-weighted decibel level (dBA)

| <u>Abutting Use</u>                                         | <u>7 a.m. - 10 p.m. –</u> |               |
|-------------------------------------------------------------|---------------------------|---------------|
|                                                             | <u>10 p.m.</u>            | <u>7 a.m.</u> |
| Residential                                                 | 55                        | 45            |
| Residential located in a commercial-<br>Industrial district | 65                        | 55            |
| Public, semipublic and institutional                        | 60                        | 55            |
| Vacant or rural                                             | 60                        | 55            |
| Commercial                                                  | 65                        | 55            |
| Industrial                                                  | 70                        | 60            |

(Effective November 5, 2016)

## 12. Storage of Materials

- a. Outside Storage. Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to minimize their impact on abutting residential uses and users of public streets. (Effective November 5, 2016)
- b. Receptacles. All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. Dumpsters or receptacles shall be screened by fencing or landscaping. (Effective November 5, 2016)
- c. Secure from minors. All sites potentially hazardous to children shall require physical screening sufficient to deter small children from entering the premises. This screening shall be maintained in good conditions. (Effective November 5, 2016)

## 13. Technical and Financial Capacity

The applicant has demonstrated the financial and technical capacity to carry out the project in a timely fashion in accordance with this ordinance and the approved plan. (Effective November 5, 2016)

## SEC. 19-9-6. AMENDMENTS

Any alteration to a site which is inconsistent with the approved site plan shall require an amendment to the site plan. Planning Board approval must be obtained prior to the alteration.

#### **A. De minimus Change**

The intent of this section is to process minor deviations from the approved plan that typically arises as a project moves from conception to completion of construction. De minimus changes shall not include (1) a change to a public or private right-of-way or easement, (2) a decrease in proposed buffering or landscaping, (3) any issue involving a condition placed on the site plan approval, or (4) any change in a building footprint greater than five (5) feet in any direction. Side plan changes which do not receive de minimus approval shall be submitted to the Planning Board under Sec.19-9-6.B. (Effective November 5, 2016)

1. Review. The applicant shall meet with the Town Planner and provide a written description of the proposed amendments and all applicable plans impacted by the amendments. The Town Planner shall review the submission with the applicant and consult with appropriate town staff. The Town Planner will make a preliminary determination that the proposed changes do comply with the approval standards, do not comply with the approval standards, or that the nature of the amendments merit review by the Planning Board. (Effective November 5, 2016)
2. Decision. The Town Planner shall forward the De Minimus Change application and a recommendation to the Planning Board Chair. Notwithstanding Sec. 19-9-4.B.1., the Planning Board Chair shall make the final determination to approve a de minimus change or to forward the site plan amendment to the Planning Board for review. (Effective November 5, 2016)

#### **B. Amendment**

Any change to a plan approved by the Planning Board must be submitted to the Planning Board for review and approval; unless the amendment is a de Minimus Change. The Planning Board shall review the amendments in accordance with the Review Procedures, Sec. 19-9-4. Submission requirements may be limited to the information related to the proposed amendments. Any Planning Board Decision to approve amendments to a previously approved Site Plan shall incorporate the original Site Plan Approval, except as specifically amended. (Effective November 5, 2016)

### **SEC. 19-9-7. APEALS OF PLANNING BOARD ACTIONS**

Appeal of an action taken by the Planning Board regarding site plan review shall be to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

Falmouth

not more than one (1) year upon a showing that additional time is needed due to required local, state, or federal permits or approvals.

- 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.

Effective on: 5/14/2018

### **Sec. 19-125 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.

Effective on: 12/9/2013

### **Sec. 19-126 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.

Effective on: 12/9/2013

## **Div. II-19-1-9. PLANNING BOARD SITE PLAN REVIEW**

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### **Sec. 19-127 Site Plan Approval Required [Amended 4/28/03; 8/26/13]**

#### **Sec. 19-127.1 Exemptions [Amended 7/25/22]**

Any site alterations that occur in conjunction with the Town's implementation of the 2013 Route One South Infrastructure Plan are exempt from site plan review and further, shall be considered part of and in compliance with previously approved site plans. [Added 5/13/13]

Effective on: 5/13/2013

**Sec. 19-127.2 Minor Site Plan Approval-** The following expansions, additions, replacements, alterations and improvements to previously developed nonresidential or multi-family residential properties meeting the following thresholds may be approved under the Minor Site Plan Approval procedure in Section 19-128.e below. Projects submitted under this section shall require approval by the Community Development Director or designee.[Added 8/26/13][Amended 2/27/17; 7/25/22]

- a. Utility or support structures such as mechanical systems and coolers.
- b. Lighting stanchions and fixtures and changes of location of the same.
- c. Landscaping and screening.
- d. Minor alterations to grading, drainage and stormwater improvements provided they do not have any negative impact on water quality standards or downstream properties. Any improvements under this paragraph require approval by the Town Engineer.
- e. Increase in impervious surfaces of no greater than 4,000 square feet in a ten year period.
- f. Building additions limited to no more than a 50% expansion of the total gross square footage of the existing building or 1,000 gross square feet, whichever is less. Additions shall not exceed a total of 1,000 gross square feet in a ten year period.
- g. New accessory buildings or structures not to exceed 500 gross square feet in any ten year period.
- h. Directional signs on private property. [Adopted 7/24/17]

Effective on: 7/24/2017

**Sec. 19-127.3 Planning Board Site Plan Approval Required.**

Planning Board site plan approval under the procedures, submission requirements, and performance standards of this Div. II-19-1-9. shall be required for the following activities:

- a. The construction or enlargement of any nonresidential building or multi-family dwelling;
- 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. [Added 5/13/13]
- f. Establishment of an essential service that includes vehicular access or structures. [Adopted 7/25/14; Amended 4/25/22]

Effective on: 7/11/2016

**Sec. 19-128 Site Plan Review Procedure [Amended 3/14/11]**

The following procedure shall govern the submission and review of building and site plans. Projects approved under 19-127.2, Minor Site Plan Review above shall meet all requirements and procedures in this section unless otherwise noted.

- a. The property owner shall submit to the permitting authority building and site plans in a number and format as determined by the Community Development Department, and such submissions shall include: [Amended 8/27/07; 8/26/13]
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.
  2. A site plan, drawn to scale of not less than one (1) inch equals forty (40) feet, or a scale acceptable to the Community Development Director or designee, and prepared by a licensed land surveyor, 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. The preparation of the plan by a licensed land surveyor may be waived by the Community Development Director or designee if they determine that there is adequate dimensional information submitted. [Amended 8/26/13; 7/25/22]
  3. Information requested by the permitting authority 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. [Amended 8/26/13]
  4. A signage plan, drawn to scale of one (1) inch equals one (1) foot, or a scale acceptable to the Community Development Director or designee, 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; 8/26/13; 7/25/22]
  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.

- b. Projects shall be designed 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 occur throughout the design, approval, and construction phases of the project. [Amended 8/26/13]
  - 3. The permitting authority may waive the requirement for a landscape architect or for the consultation process, if, in the opinion of the permitting authority, the project does not require these services due to its small size or lack of complexity. [Amended 7/23/01; 8/26/13]
- 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 Town to pay for professional reviews and advice related to the developer's application as it deems necessary. The Community Development Department 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 Town 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; 9/24/01; 8/27/07; 8/26/13]
  - 3. Negotiated Exactions Fees: In accordance with Section 19-135, exaction fees may be assessed against projects requiring site plan approval per the administrative procedures of Sec. 7-12, Land Subdivision. [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]
- d. Planning Board Applications.[replaced 8/26/13]
  - 1. The applicant may request a Preapplication Sketch Plan Review under Sec. 7-7.A., Land Subdivision.
  - 2. 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.

3. At least ten (10) days prior to the hearing date, the Community Development Department shall notify by mail the owners of all property within 500 feet of 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; 8/26/13; 01/13/2020]
  4. 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.
  5. The Community Development Director or designee may attend all hearings and may present to the Planning Board plans, photographs or other material deemed appropriate for an understanding of the application. [Amended 7/25/22]
  6. 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.
  7. Subsequent to the public hearing, the Planning Board shall reach a decision and inform, in writing, the applicant and the Community Development Director of its decision and its reasons therefore. [Amended 7/25/22]
  8. 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.
  9. 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.
  10. 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
- e. Minor Site Review Applications [added 8/26/13]
1. Applicants may voluntarily file applications under this section for review by the Planning Board. If filed with the Planning Board, all submittal requirements, including fees associated with Planning Board applications, will be applied and abutter notice will be required.
  2. Any application also requiring Board of Zoning Appeals approval shall receive the BZA approval prior to being approved under this section.
  3. It shall be at the sole discretion of the staff to refer an application to the Planning Board due to the complexity or nature of the application. The staff shall notify the applicant within one week of receipt if the application will be referred. Examples of reasons why an application may be referred are:
    - a. Subjective criteria in Design Guidelines or Ordinance
    - b. Application of architectural standards
    - c. Request for waivers to ordinance requirements
    - d. Nature of a Conditional Use needed

- e. Potential impacts to abutting residential properties or districts.
  - f. Need for amendments to state or federal permits.
  - g. Cumulative impact of improvements requested.
4. The Community Development Department shall keep a record of all applications. If an application is denied, the staff shall prepare a written report detailing the reason for denial.
  5. An appeal of any decision made under this section shall be to the Planning Board. It shall be submitted in the same manner as a regular application.

Effective on: 1/13/2020

#### **Sec. 19-129 Action by the Permitting Authority [Amended 8/26/13]**

The permitting authority 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. Applications for Minor Site Plan Review shall meet all applicable requirements for only those alterations, additions and improvements being made.[Amended 8/26/13]
- 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.

Effective on: 12/9/2013

#### **Sec. 19-130 Effect of Final Approval**

Final approval shall be effective for the time periods established in Section 19-132, notwithstanding any revisions of or amendments to this or other Ordinances.

Effective on: 12/9/2013

#### **Sec. 19-131 Transfer of Approval**

Approval is not transferable without permitting authority approval. [Amended 8/26/13]

Effective on: 12/9/2013

#### **Sec. 19-132 Duration of Final Approval**

If the permitting authority 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 permitting authority 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. [Amended 8/26/13]

Effective on: 12/9/2013

#### **Sec. 19-133 General Site Plan Review Standards**

The following standards shall be utilized by the permitting authority in reviewing proposed site plans including all accessory buildings, structures, signs, and other site features.[Amended 8/26/13]

- 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.

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. This section shall not apply to projects submitted for Minor Site Plan Approval.[Amended 10/25/99; 5/13/13; 8/26/13]

- 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 19-11.** 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. [deleted 8/26/13]
- i. **Route 100:** All Site Plan Review applications within the Corridor Overlay District shall meet the requirements of Section 19-15 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]

Effective on: 12/9/2013

## Sec. 19-134 Specific Performance Standards and Guidelines

The guidelines and required minimum performance standards in subsections 19-136 through 19-156 shall apply to all site plans. If the permitting authority 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.[Amended 8/26/13]

Effective on: 12/9/2013

## Sec. 19-135 Subdivision Standards

The design standards and administrative provisions of Ch. II-7, Land Subdivision shall apply to site plans covered by this section.

Effective on: 12/9/2013

## Sec. 19-136 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.
- 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).

| Parking Angle (degrees)    | Minimum Aisle Width (feet) |
|----------------------------|----------------------------|
| 0 (parallel parking)       | 12                         |
| 30                         | 12                         |
| 45                         | 13                         |
| 60                         | 18                         |
| 90 (perpendicular parking) | 25                         |

- c. Location of Parking, general.[Adopted 4/27/87] [Amended 5/13/13; 11/10/14]
  1. VC Districts - No off-street parking or loading shall be located within the required front setback except as permitted in VC2 (refer to Section 19-11.5.10).
  2. All other Zoning Districts - No off-street parking or loading shall be located within the required front setback except along Route One where off-street parking may be permitted twenty (20) feet or further from the public right-of-way within the front setback. (Refer to Section 19-12 for additional restrictions in the BP District)
- 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.]

Effective on: 12/9/2013

### **Sec. 19-137 Marking and Delineation of Parking Areas**

Parking stalls, driveway and aisles shall be clearly marked and delineated. The permitting authority may require that certain areas be maintained for fire-fighting or other emergency purposes, and such areas shall be appropriately designated. [Amended 8/26/13]

Effective on: 12/9/2013

### **Sec. 19-138 General Circulation and Parking Design Guidelines**

The following guidelines shall apply to parking area designs, except where they differ from Section 19-11, in which case Section 19-11 shall govern circulation and parking design in the VC Districts.

- a. Parking space allocations should be oriented to specific buildings.
- 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.

Effective on: 12/9/2013

### **Sec. 19-139 Waiver of Parking or Loading Requirements**

In the instance where the Planning Board, under Section 19-38 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 or to projects submitted for Minor Site plan Review. [Amended 5/13/13; 8/26/13]

Effective on: 12/9/2013

## Sec. 19-140 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                            |
| 45                               | 450                            |
| 50                               | 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 permitting authority 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; 8/26/13]
  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 II-19-1-9 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]

Effective on: 12/9/2013

### **Sec. 19-141 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.

Effective on: 12/9/2013

### **Sec. 19-142 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<br>Driveways*Width (feet) | Two-Way Operation<br>Driveways*Width (feet) |
|---------------------------|---------------------------------------------|---------------------------------------------|
| 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.

Effective on: 12/9/2013

### **Sec. 19-143 Driveway Surfacing**

Any driveway shall be constructed with the surface approved by the permitting authority. 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. [Amended 8/26/13]

Effective on: 12/9/2013

### **Sec. 19-144 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.

Effective on: 12/9/2013

### **Sec. 19-145 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 permitting authority. Driveways shall not be located where visibility is limited because of curves or topography. [Amended 8/26/13]

Effective on: 12/9/2013

## **Sec. 19-146 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]

Effective on: 12/9/2013

## **Sec. 19-147 Deceleration Lanes**

Where the same conditions exist as in the previous paragraph Sec. 19-146 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]

Effective on: 12/9/2013

## **Sec. 19-148 Drive-Through Facilities**

All drive-through facilities other than gasoline service station shall conform to the following performance standards:

- 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.

## **Sec. 19-149 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 19-11 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.
- 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.

Effective on: 12/9/2013

### **Sec. 19-150 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.
  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.

**Sec. 19-151 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            | Buffer Area (per 100 Linear feet) |     |     |     |
|------------------------------------------------------------------------------------------------------------|-------|----------------------|-----------------------------------|-----|-----|-----|
|                                                                                                            |       |                      | 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  |
| 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**

Effective on: 12/9/2013

**Sec. 19-152 Special Landscaping and Buffer Requirements in the SB District**

[Amended 9/24/90][Repealed 5/13/13]

Effective on: 12/9/2013

**Sec. 19-153 Special Landscape and Buffer Requirements in the CO District [Amended 7/22/91; 4/25/22]**

- 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.

| <u>Buffer Area Location</u> | <u>S</u> | <u>CT</u> | <u>UT</u> | <u>ET</u> | <u>SH</u> |
|-----------------------------|----------|-----------|-----------|-----------|-----------|
|                             | 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:

| <u>Width of Border Strip</u> | <u>Building Setback</u> |
|------------------------------|-------------------------|
| No minimum width             | Less than 10 ft.        |
| 10 ft.                       | 10 to 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         |

Note: On lots where a principal building is setback less than 10 feet from the Route 100 right of way, the only plantings required under Sec.19-153.a are canopy trees.

Effective on: 12/9/2013

### **Sec. 19-154 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.
- b. Minimum Plant Sizes. Unless otherwise specifically indicated by the Planning Board, all plant materials shall meet the following minimum size standards:

#### **Minimum Size**

| <u>Plant Material Type</u> | <u>Planting in buffer area abutting vacant land</u> | <u>All other Plantings</u> |
|----------------------------|-----------------------------------------------------|----------------------------|
| 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 permitting authority. Invasive species of plants are prohibited. [Amended 5/13/13; 8/26/13]
- d. Plant Maintenance Requirements. The owner of any premises approved by the permitting authority 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][Amended 8/26/13]

Effective on: 12/9/2013

## **Sec. 19-155 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 19-60.
- 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 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.

Effective on: 12/9/2013

#### **Sec. 19-156 Minimum Five Acre Site Plan in the BP District.**

In addition to all other requirements of Div. II-19-1-9, 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.

Effective on: 12/9/2013

#### **Sec. 19-157 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 19-72. 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:
  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 7-7.](#), Land Subdivision.
  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.

Effective on: 12/9/2013

#### **Sec. 19-158 Site Conditions [Amended 8/26/13; 7/25/22]**

- 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, Community Development Director or designee, 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. 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, Community Development Director or designee, 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.

- c. Temporary improvements: Prior to or during construction, the Town Engineer, Community Development Director or designee, 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, Community Development Director or designee, or Building Inspector

Effective on: 12/9/2013

## **Div. II-19-1-10. ADMINISTRATION**

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### **Sec. 19-159 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]

Effective on: 12/9/2013

### **Sec. 19-160 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 19-123." [Amended, 5/27/93] [Amended, 7/24/00]

Effective on: 12/9/2013

### **Sec. 19-161 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.

Effective on: 12/9/2013

### **Sec. 19-162 Required Application Submissions**

CHAPTER 702

**SITE PLAN REVIEW ORDINANCE**

**Town of Yarmouth, Maine**

Re-codified: 01/15/98

Amended: 7/17/1998

Amended: 10/19/2000

Amended: 9/15/05

Amended: 7/25/2006

Amended: 10/18/07

Amended: 2/14/08

Amended: 8/25/08

Amended: 9/18/08

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Amended: 1/19/17

Amended: 6/15/17

Amended: 02/17/2022

Amended 2/16/2023

Amended: 10/19/2023

Amended: 4/17/2025

# **SITE PLAN REVIEW ORDINANCE**

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# **SITE PLAN REVIEW ORDINANCE**

## **ARTICLE I**

### **A. FINDINGS AND PURPOSE**

The Town Council finds that location and development of buildings, structures, and site improvements made by public and private land owners, affect the economic, social and environmental resources of the Town of Yarmouth and that many developments, because of their magnitude and character, may cause significant alterations to the natural and built environments of the Town; that authority is rightfully vested in our Municipal government to regulate the location, character and impact of developments which may substantially affect the quality of live in Yarmouth. Therefore, it is the intent of this Ordinance to adequately regulate development within the Town so that such developments will be designed and located in a manner that will have a minimal adverse impact on the natural environment and the Town Character and protect the health, safety and general welfare of the people.

### **B. DEFINITIONS**

For the purpose of this Section, all terms and words shall have their ordinary meaning except as provided herein and defined in Ch. 701 Article I section D of Chapter 701, including the following definitions which reference Chapter 601 Article 1.C: Common Plan of Development or Sale, Construction Activity, Discharge, Disturbed Area, and Erosion and Sedimentation Control Best Management Practices.

#### **1. Major Development:**

- a. The construction of any new structure(s) except as provided in Section 1.B.2 and Section I.C;
- b. The construction or alteration of any surface parking area(s) providing five or more parking spaces (equivalent of 855 square feet);
- c. The construction of building addition(s), cumulatively having either a total floor area of 1,000 square feet or more, or an additional floor area equal to or larger than the existing building within any three (3) year period; or,
- d. A change(s) in the use of all or any portion of a building cumulatively affecting a total floor area of 1,000 square feet or more in any existing building within a three (3) year period;
- e. Filling, grading or excavation projects which move an amount equal to or in excess of 1,000 cubic yards of materials;
- f. Manufactured Housing Community;
- g. Wireless communication facility, with a tower taller than eighty (80) feet;
- h. Affordable Housing Development.

2. Minor Development: (at the discretion of the Planning Director multiple items in combination may be referred to the Planning Board)
  - a. The construction or alteration of any parking area(s) providing four or less parking spaces (equivalent of 684 square feet);
  - b. The construction of any impervious surfaces in excess of 200 square feet (cumulatively) within a three(3) year period;
  - c. The construction of any building addition(s) having a total floor area in excess of 100 square feet but less than 1,000 square feet cumulatively within a three(3) year period;
  - d. The alteration of a water course, ditch or swale;
  - e. The changes of use of any portion of any existing building in excess of 100 square feet but less than 1,000 square feet within any three(3) year period;
  - f. The change in on-site vehicle circulation of any existing parking lot or driveway;
  - g. Filling, grading or excavation projects which move in excess of 100 cubic yards, but less than 1,000 cubic yards of materials;
  - h. Alteration to site layout, footprint, or number of units of any existing multiple family developments.
  - i. Wireless communication facility, with a maximum tower height of eighty (80) feet.
  - j. Wireless communication antenna array on an alternative tower structure.
  - k. New antenna array on a co-located wireless communication facility.
  - l. Modification of existing or approved antenna array.
  - m. Accessory Dwelling Units.
  - n. Disturbance of one or more acres of land including disturbance of less than one acre of land if the overall project will disturb one or more acres of land.
  - o. Any development utilizing the Dwelling Unit Allowances of Chapter 701, Article II.EE.
3. Change of Use:

For the purpose of this Section "change of use" shall mean any conversion, alteration or modification to an existing vacant or occupied space, which creates the need for additional parking pursuant to ARTICLE II.H (Off Street Parking) of the Zoning Ordinance.

### **C. EXEMPTIONS**

The following exemptions apply unless a project disturbs one or more acres of land:

1. Single or two family dwellings outside of the W.O.C. II zone, including their basement, excavations are exempt from the requirements of site plan review.
2. External changes made to existing building for the purpose of closing an entrance or creating a new entrance is also exempt from site plan review.

3. Municipal public works, water utility projects done within public right-of-way, and public easements.
4. Filling, grading or excavation projects which move not more than one hundred (100) cubic yards of material;

#### **D. APPROVALS**

No person shall commence any development subject to this ARTICLE without obtaining approval under this ARTICLE.

1. Major Development: All projects defined as a major development shall require the approval of the Planning Board as provided by this ARTICLE.
2. Minor Development: Projects defined as a minor development shall require the approval of the Director of Planning and Development or his/her duly authorized agent as provided by this ARTICLE.
3. The Director of Planning and Development may refer to approval of a minor site plan to Planning Board when the nature of the application warrants a public hearing or poses the potential for significant impacts of Municipal facilities or natural resources.
4. Appeals: The Director of Planning and Development's decisions regarding minor site plans are appealable by an aggrieved party to the Planning Board within 30 days of the date of the issuance of the decision. Site plan decisions of the Planning Board are appealed to the Cumberland County Superior Court.

#### **E. NOTIFICATION**

1. For all site plan applications, the Department of Planning and Development shall mail a notice to property owners in the vicinity of the development, as detailed below, including a description of the nature of the applicant's proposal and the time and place of the Planning Board meeting if the project requires Planning Board review, or the public comment time period required if the project is a minor development.
  - a. For major site plan applications and for any minor site plan that is referred by the Planning and Development Director to the Planning Board, the Department shall mail the notice by first class postage to all owners of property as of the latest Assessor's address record on file within a minimum of 500 feet of the property under consideration, and, if the proposed development is located within 1,000 feet of any public or private school, to the superintendent or head of such school. If it is determined by the Director of Planning and Development that the impact of the site plan has the potential of significant impacts to properties beyond 500 feet, the Department may send notices to a distance of up to 1,000 feet of the

proposed development. The notice will be mailed at least 10 days before the meeting (workshop or public hearing) at which the application first appears on the Planning Board agenda.

- b. For minor site plan applications, the Department will mail such notice as detailed above within 7 days of determination of completeness of a complete application, as determined by the Director. The Director of Planning and Development shall not make a decision on the proposal for a period of ten (10) days after the mailing of abutter notification to provide an opportunity for public comment.
2. The agendas of Planning Board meetings shall be published by the Planning Department in a local newspaper at least seven (7) days before the date of the meeting. The agenda notice shall include a brief description of the proposal and the ordinance(s) by which the proposal is to be reviewed. All publishing and mailing of notices shall conform with applicable State requirements.

#### **F. APPLICATION AND REVIEW PROCESS**

The following application process shall be followed to facilitate site plan review of proposed major and minor developments, respectively.

1. Review of Site Plans for Major Development
  - a. Upon Receipt of an application for site plan review of a major development, the Director of Planning and Development shall schedule the development for conceptual or final site plan review at the next available Planning Board workshop. The director of Planning and Development may advise the applicant whether conceptual review is appropriate prior to submission of a final site plan; however, the applicant shall determine whether to seek conceptual or final site plan review prior to submitting an application for final site plan review. Neither conceptual nor final site plan review shall occur unless there is evidence that the required public notice has been given and the material required by Section I.G.2 (concept plans) or Section I.G.3 (final plans) is filed with the Director of Planning and Development while determinations as to the completeness of applications for final site plan review shall be made by the Planning Board at a regular or special Planning Board meeting, in conformity with Section I.F1.c.
  - b. Conceptual Review. Conceptual review is intended to provide the applicant with an opportunity to discuss the proposed development and obtain the Board's comments prior to expending significant resources in furtherance of specific development plans. The Planning Board may identify issues that are not to be addressed in the final site plan application. No decision is made during conceptual review.
  - c. Final Site Plan Review. Within 60 days after determining that an application is a complete, final application, the Planning Board shall conduct a public

- hearing on the proposed major development, unless either the applicant or the board determines that additional workshops are necessary. The Planning Board shall issue a written decision approving, approving with conditions, denying or tabling the final site plan, pursuant to Section I.J. If the Planning Board tables the item, an additional public hearing must be held.
- d. **Statement of Findings.** All findings and decisions by the Planning Board or by the Director of Planning and Development denying or conditionally approving any site plan shall be made in writing or reduced to writing within 30 days of the decision and shall state the reason(s) therefore sufficient to appraise the applicant and any interested member of the public of the basis for the decision.
2. **Minor Developments:** Site Plan applications for minor developments are reviewed by the Town staff for conformance with this ARTICLE. The process begins with the submission of eight (8) copies of the complete application and evidence of notification to the Director of Planning and Development. The application is distributed to the Town Engineer, Director of Planning and Development, Code Enforcement Officer, Fire Chief, Police Chief and the Yarmouth Water District. After a ten (10) day public comment period the Director of Planning and Development shall review all submitted comments and in writing approve, approve conditionally, or deny the application in accordance with Section I.J. The decision of the Director of Planning and Development as well as findings of fact, shall be provided in writing to the applicant, Chairman of the Planning Board, Town Manager, and other Town staff within fourteen (14) days subsequent to the end of the public comment period. The finding of fact shall consist of the rational basis of the Director of Planning and Development's decision. Prior to distributing an application to Town Officials, the Town Planner must deem the application complete pursuant to Section I.G.3.
  3. Appeals of the final action of minor site plans, submitted by an aggrieved party, shall be heard by the Planning Board. For the purposes of appeals of minor site plans only, any immediate abutter or any resident or property owner who received notification of the minor site plan per Article I.E.1.b will automatically be deemed to have standing or a basis to assert a grievance.
  4. **Applications requiring General Board of Appeals Review:** Before deeming an application a complete final application, the Planning Board or Director of Planning and Development shall require from the applicant, evidence of the General Board of Appeals' approval, for applications requiring review by the General Board of Appeals.
  5. **Applications requiring other Public Agency Review:**
    - a. The Planning Board or Director of Planning and Development may approve complete final applications subject to the condition that all necessary permits

be received from agencies such as, but not limited to, the Army Corps of Engineers, Maine State Department of Environmental Protection, or Maine State Department of Health and Human Services. However, the Planning Board or Director Planning and Development may require that approvals required by state or federal law be submitted to the Town prior to final approval upon finding that the permits from the state or federal agencies may have a significant effect on the site plan application, such as, but not limited to, the potential re-citing of buildings or parking areas, the relocation of driveways or the change of storm water management features.

- b. **Review by Municipal Committees:** The Planning Board may request copies of the application to be forwarded by the applicant to the Yarmouth Lands Management Committee and Sports and Recreation Committee, Harbor and Waterfront Committee or other Municipal committee. The comments of the committees are advisory to the Planning Board and shall pertain to the application's conformance with Section I.H (Review Criteria) of this ARTICLE. The Planning Board may postpone final decisions regarding the application until such time as the comment from the Municipal committee(s) has been submitted.

- 6. Applications shall not be considered as having pending status and shall be subject to changes in local, state or federal laws until the time they have been deemed to be complete final applications by the Planning Board or the Director of Planning and Development.

## **G. APPLICATION REQUIREMENTS**

- 1. **Required Number of Copies:** Applications for major site plans are to consist of eighteen (18) copies of required information. The applications are to be submitted no later than twenty-one (21) days prior to the meeting at which the item is to be heard. Application for minor site plans are to consist of eight (8) copies. All applications are to be submitted to the Yarmouth Planning Department.
- 2. **Concept Plans:** The Planning Board may review applications, as conceptual applications, that do not meet the final site plan requirements listed in Section I.G.3. At a minimum, conceptual applications shall include the following information:
  - a. **Conceptual Site Plan Requirements**
    - i. Name and address of the landowner and developer (if different)
    - ii. Graphic scale and north arrow;
    - iii. Property boundaries, land area and zoning designations of the site;

- iv. The size, shape and location of existing and proposed buildings on the site including dimensions of the buildings and setbacks from property lines.
    - v. Context Map illustrating the area surrounding the site
  - b. Project Description: The project description is to describe the proposal, its scheme of development and proposed land uses.
3. Final Site Plan: The final site plan application shall include all information required in Section I.G.2, Concept Plans, and in addition shall require the following information:
- a. Boundary Survey: Prepared by a licensed surveyor indicating the boundaries, encumbrances and topography of the site.
  - b. Storm Water Management Plan: Prepared by a professional engineer licensed in the State of Maine analyzing the proposal's impact on existing storm water facilities and watersheds. The storm water management plan shall include a map of watersheds significantly impacted by the proposal and identify all areas of existing or anticipated flooding, location of existing and proposed culverts, pipes, detention ponds and flow restrictions to be affected by the proposal. The storm water management plan shall comply with the performance standards found in ARTICLE I.J.9.
  - c. Finish Grading Plan: Prepared by a professional engineer or landscape architect licensed in the State of Maine indicating the final grading of the site, the amount of fill to be imported to or exported from the site and graphic arrows indicating the direction of storm water run off.
  - d. Site improvement Details: Including sufficient information to enable to creation of an itemized cost estimate for all required on or off site improvements including but not limited to landscaping, exterior light fixtures, walkways, drainage management facilities, roadways, utilities, traffic improvements and sewer improvements.
  - e. Building Elevations: Scale plans of exterior building surfaces including materials, doorways and advertising features.
  - f. Additional Information: Additional information as deemed necessary to review the proposal's conformance with the site plan review criteria and technical standards. Additional information may address items such as, but not limited to, traffic, wetlands, high intensity soils, or environmental analyses or the interpretation of the data by Municipal consultants. Additional information shall be financed pursuant to CHAPTER 401, (Consulting Fees).
  - g. General topography of the site.
  - h. High intensity soils classifications of the soils located on the site.
  - i. The size, shape and location of existing and proposed buildings on the site including dimensions of the buildings and setbacks from property lines.
  - j. The location and layout design of vehicular parking and circulation areas including curb cuts, driveways, parking space and vehicle turn around area dimensions.

- k. Proposed finish grades and graphic arrows indicating the direction of storm water runoff
  - l. Conceptual treatment of on and off site storm water management facilities
  - m. Existing and proposed sewer and water services including connections.
  - n. Landscaping buffers, screens and plantings.
  - o. Location of outdoor storage areas, fences, signs, advertising features and solid waste receptacles.
  - p. Streets, sidewalks, intersections, storm water drainage ways, sanitary sewer lines and pump stations, nearby properties and buildings, zone districts and geographic features such as, but not limited to, wetlands, natural features, historic sites, flood plains, significant scenic areas and significant wildlife habitats as provided in the Comprehensive Plan.
  - q. Plans for all proposed exterior lighting including the location, type of light, radius of light, manufacturer's specifications sheet and the ground level intensity in foot-candles.
4. Waiver of Required Information: The Planning Board or Director of Planning and Development may waive the submittal of required application material for major or minor developments respectively upon finding that the specific information is unnecessary in order to review the application's conformance with this ARTICLE.

#### **H. REVIEW CRITERIA**

The Planning Board shall approve a site plan application whenever it finds that:

- 1. Conformance with Comprehensive Plan: The proposed development is located and designed in such a way as to be in conformance with the Town's Comprehensive Plan.
- 2. Traffic: The proposed development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways, public road or pedestrian walkways existing or proposed. The Planning Board may require mitigation when the proposed development is anticipated to result in a decline in service, below level of service "c", of nearby roadways of intersections. Levels of service are defined by the 1985 Highway Capacity manual published by the Highway Research Board.
- 3. Parking and Vehicle Circulation: The proposed plan provides for adequate parking and vehicle circulation. The amount of dedicated parking provided on-site or within a reasonable walking distance from the site meets the requirements of ARTICLE II.H of the Zoning Ordinance (Off Street Parking and Loading), the size of the parking spaces, vehicle aisle dimensions and access points are in conformance with the Technical Standards of Section J of this document.
- 4. Sanitary Sewerage: The proposed development will not cause an unreasonable adverse effect to the Municipal sewerage treatment facilities and will not aggravate and existing unhealthy situation such as the bypassing of untreated

sewerage into Casco Bay, the Royal River, or its tributaries. If a subsurface wastewater disposal system is to be used, the system conforms to the requirements of the State Plumbing Code.

5. **Water:** The proposed development will not cause the depletion of local water resources or be inconsistent with the service plan of the Yarmouth Water District.
6. **Fire Safety:** The proposed development is located and designed in such a way as to provide adequate access and response time for emergency vehicles or mitigates inadequate access or response time by providing adequate fire safety features such as but not limited to fire lanes, smoke and fire alarms and sprinkler systems, as part of the proposed development.
7. **Buffering:** The proposal provides for adequate on-site buffering in the vicinity of property boundaries, when required by this subsection. On-site buffering is required wherever commercial, industrial or mixed use developments are proposed adjacent to or across a street from residential districts or agricultural uses, where multi-family buildings are to be located adjacent to single family uses or districts. Buffer areas shall consist of an area ranging from a minimum of five feet to a maximum of twenty-five feet in width, adjacent to the property boundary, in which no paving, parking or structures may be located. The Planning Board may allow a buffer area of less width when site conditions, such as a natural features, vegetation, topography, or site improvements, such as additional landscaping, berming, fencing or low walls, make a lesser area adequate to achieve the purposes of this Section. Landscaping and screening, such as plantings, fences or hedges, are to be located in buffer areas to minimize the adverse impacts on neighboring properties from parking and vehicle circulation areas, outdoor storage areas, exterior lighting and buildings.
8. **Natural Areas:** The proposal does not cause significant adverse impacts to natural resources or areas such as wetlands, significant geographic features, significant wildlife and marine habitats and natural fisheries. The proposal is consistent with the recommendations of the Maine Department of Inland Fisheries and Wildlife as found in the document titled "The Identification and Management of Significant Fish and Wildlife Resources in Southern Coastal Maine," February 1988.
9. **Lighting:** The proposal shall provide exterior lighting sufficient for the safety and welfare of the general public while not creating an unsafe situation or nuisance to neighboring properties or motorists traveling nearby roadways.
10. **Storm Water Management:** The plan provides for adequate storm water management facilities so that the post development runoff rate will be no greater than the predevelopment rate or that there is no adverse downstream impact. Proposed storm water detention facilities shall provide for the control of two year and twenty-five year storm frequency rates. The design, construction and

maintenance of private facilities are in conformance with Chapter 330 Post Construction Stormwater Management.

11. **Erosion and Sedimentation Control:** The proposed development includes adequate measures to control erosion and sedimentation and will not contribute to the degradation of nearby streams, watercourses or coastal lowlands by virtue of soil erosion or sedimentation. The erosion control measures are to be in conformance with Appendix D of Chapter 601 of the Town's Code.
12. **Buildings:** The bulk, location and height of proposed buildings or structures will not cause health or safety problems to existing uses in the neighborhood, including without limitation those resulting from any substantial reduction to light and air or any significant wind impact. To preserve the scale, character, and economy of the Town in accordance with the Comprehensive Plan no Individual Retail use with a Footprint greater than 55,000 square feet shall be permitted. Structures defined as Shopping Centers shall be limited to a Footprint of 75,000 square feet. When necessary to accommodate larger projects, several Individual Retail Structures with Footprints of not more than 55,000 square feet each may be placed on the same lot, provided that all other standards are met. No less than 40 feet shall be allowed as separation distance between buildings. Efforts to save and plant native trees between and among structures shall be encouraged.
13. **Existing Landscaping:** The site plan minimizes to the extent feasible any disturbance or destruction of significant existing vegetation, including mature trees over four (4) inches in diameter and significant vegetation buffers.
14. **Infrastructure:** The proposed development is designed so as to be consistent with off premises infrastructure, such as but not limited to sanitary and storm sewers, waste water treatment facilities, roadways, sidewalks, trail systems and street lights, existing or planned by the Town.
15. **Advertising Features:** The size, location, design, color, texture, material and lighting of all permanent signs and outdoor lighting fixtures are provided with a common design theme and will not detract from the design of proposed buildings or neighboring properties.
16. **Design Relationship to Site and Surrounding Properties:** The proposed development provides a reasonably unified response to the design constraints of the site and is sensitive to nearby developments by virtue of the location, size, design, and landscaping of buildings, driveways, parking areas, storm water management facilities, utilities storage areas and advertising features.
17. **Scenic Vistas and Areas:** The proposed development will not result in the loss of scenic vistas or visual connection to scenic areas as identified in the Town's Comprehensive Plan.

18. Utilities: Utilities such as electric, telephone and cable TV services to proposed buildings are located underground except when extraordinary circumstances warrant overhead service. Propane or natural gas tanks are located in safe and accessible areas, which are properly screened.
19. Technical Standards: The proposed development meets the requirements of ARTICLE I.J (Technical Standards) of this Ordinance, except as waived by the Planning Board.
20. Route One Corridor Design Guidelines: Notwithstanding the technical standards of this ordinance and the requirements of Article II, General provisions of the Zoning Ordinance, development and redevelopment within the "C", Commercial and "C-III", Commercial II districts shall be consistent with the Route One Corridor Design Guidelines, as approved August 19, 1999.
21. The applicant has sufficient right, title or interest in the site of the proposed use to be able to carry out the proposed use.
22. The applicant has the technical and financial ability to meet the standards of this Section and to comply with any conditions imposed by the Board pursuant to ARTICLE I.I
23. Special exception standards
  - a. The proposed use will not create unsanitary or unhealthful conditions by reason of emissions to the air, or other aspects of its design or operation.
  - b. The proposed use will not create public safety problems which would be substantially different from those created by existing uses in the neighborhood or require a substantially greater degree of municipal police protection than existing uses in the neighborhood.
  - c. The proposed use will be compatible with existing uses in the neighborhood, with respect to visual impact, intensity of use, proximity to other structures and density of development.
  - d. If located in a Resource Protection District or Shoreland Overlay Zone, the proposed use (1) will conserve visual points or access to water as viewed from public facilities; (2) will conserve natural beauty; and (3) will comply with performance standards of Article II of Chapter 701, Zoning Ordinance.

#### **I. CONDITIONAL APPROVALS**

The Director of Planning and Development or Planning Board may impose any condition upon approval of any site plan for the following reasons:

1. to minimize or abate, to the extent feasible, any adverse impact of the proposed development on the value or utility of other private property, or on public property or facilities; or

2. to bring the development into compliance with the requirements of Section I.H (Review Criteria) and Section I.J (Technical Standards); or
3. to mitigate any other adverse effects of the proposed development.
4. Such conditions may include, but are not limited to the employment of specific engineering, construction or design technologies, modes of operation, or traffic patterns and may also include the construction of on or off site improvements including, without limitation, street, intersection improvements, sidewalks, sewers, and drainage courses. All such conditions shall be consistent with the purposes set forth in ARTICLE I, Section A, H, J, and K of this ordinance.
5. Additional conditions for special exception uses may include, but are not limited to: increase setbacks and yards, specified sewage disposal and water supply facilities, landscaping, and planting screens, type of vegetation, hours of operation, operational controls, professional inspection and maintenance, sureties, types of construction, and location of piers, docks, parking and signs.

#### **J. TECHNICAL STANDARDS**

The Following performance standards shall apply to all site plans, provided, however, where the Planning Board finds that, due to special circumstances of a particular plan, the provision of certain required performance standards which are not requisite in the interest of public health, safety, and general welfare, the Planning Board may waive such requirements, subject to appropriate conditions.

1. **Parking Spaces:** All parking spaces are to be 9x18 feet.
2. **Aisle Width:** 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.

| <u>Parking Angle (degrees)</u> | <u>Aisle Width (feet)</u> |
|--------------------------------|---------------------------|
| 0 (parallel parking)           | 12'                       |
| 30                             | 12'                       |
| 45                             | 13'                       |
| 60                             | 18'                       |
| 90 (perpendicular parking)     | 25'                       |

3. **Driveway Standards:**
  - a. **Sight Distance:** Any exit driveway or access road 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 the driver's seat of a vehicle standing on that portion of the existing driveway with

the front of the vehicle a minimum of ten (10) feet behind the curb line or edge or shoulder with the height of the eye three and seventy five hundredths (3.75) feet to the top of an object four and five-tenths (4.5) feet above the pavement.

| <u>Allowable Speed<br/>(Miles per hour)</u> | <u>Minimum Required Sight<br/>(distance)</u> |
|---------------------------------------------|----------------------------------------------|
| 25                                          | 160                                          |
| 40                                          | 275                                          |
| 45                                          | 325                                          |
| 50                                          | 350                                          |
| 55                                          | 425                                          |

- b. Distance from Intersections: Where a site occupies a corner of two (2) or more 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.
- c. Shared Driveways: 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 (1) feet of a side property line between the adjacent sites.
- d. Distance between Driveways: 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 (1) driveway is two way and one (1) is a one-way driveway, the minimum distance shall be seventy-five (75) feet.
- e. Driveway Angles:
  - i. Two-way operation – 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.
  - ii. One-way operation – Driveways used by vehicles in one (1) direction of travel (right turn only) shall not form an angle smaller than forty five (45) degrees with a road unless acceleration and deceleration lanes are provided.
- f. Driveway Dimensions: The dimensions of driveways shall be designed to accommodate adequately the volume and character of vehicles anticipated to be attracted daily onto the land 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 (15) percent, truck traffic shall be required to utilize high-to-maximum dimensions.

|                           | <u>One-way Operation<br/>Driveway Width (feet)</u> | <u>Two-Way Operation<br/>Driveway Width (feet)</u> |
|---------------------------|----------------------------------------------------|----------------------------------------------------|
| 3 to 10 dwelling units    | 10-15                                              | 15-25                                              |
| 10 or over dwelling units | 15-25                                              | 20-35                                              |
| Commercial & industrial   | 15-30                                              | 25-35                                              |

- g. **Driveway Surfacing:** Any driveway shall be constructed with the surface approved by the Planning Board in accordance with the specifications of the Municipal Engineer. 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.
  - h. **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.
  - i. **Driveway Grades:** Driveways shall not have a grade in excess of ten (10) percent over the entire length. On arterials, the grade shall not be more than five (5) percent for the first twenty-five (25) feet from the road unless otherwise approved by the Planning Board.
  - j. **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 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) feet curb return radius shall be used from the driveway to the acceleration lane.
  - k. **Deceleration Lanes:** Where the same conditions exist as in the previous paragraph and a driveway serves as an entrance to a land 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.
4. **Exterior Lighting:**
- a. **Style:** The style of the light and light standard shall be consistent with the architectural style of the principal building.
  - b. **Maximum Height:** The maximum height of freestanding lights shall be the same as the principal building but not exceeding twenty-five (25) feet.
  - c. **Lights at Property Boundaries:** Where lights along property lines will be visible to adjacent residents, the lights shall be appropriately shielded.

- d. **Lighting of Parking Areas:** The Planning Board shall determine the necessity for lighting depending upon the nature of the intended use. All parking areas to be lighted shall provide a minimum of three (3) foot-candles at intersections and a total average illumination of one and one-half (1-1/2) foot-candles throughout the parking areas as required. Such lighting shall be shielded in such a manner as not to create a hazard or nuisance to the adjoining properties or the traveling public.
  - e. **Required Light Levels:**
    - (1) **Parking lots:** an average of one and five-tenths (1.5) foot-candles throughout.
    - (2) **Intersections:** three (3) foot-candles.
    - (3) **Maximum at property lines:** One (1.0) foot-candle.
    - (4) **In residential areas:** average of six-tenths (0.6) foot-candle.
  - f. **String Lights:** Display lighting shall be shielded and shall be located and maintained as not to constitute a hazard or nuisance to the traveling public or to neighbors. String lights are allowed in rear yards, and are allowed in café seating patios or sidewalk café applications in predominantly horizontal plane configuration comprising repeated standard base hanging luminaires with design of such café lighting to be limited to soft character lighting with minimal glare and no use of colored lights, subject to approval by the Planning Board.
- 5. **Buffers:** Buffers are used in conjunction with dedicated spaces to minimize the visual impact of adverse characteristic such as, but not limited to, storage areas, parking spaces, driveways, and loading area of the site from neighboring properties. Buffers shall include up to fifty (50) feet of existing vegetation or the installation of fences, new landscape materials, berms and mounds to achieve filtered or impenetrable views from abutting properties.
  - 6. **Sanitary Sewage:** All site plan applications, which propose to utilize the Municipal sewer system, shall include sufficient design details to ensure conformance of the proposal with CHAPTER 304 (Sewerage Ordinance) of the Municipal Code.
  - 7. **Water System:** All site plan applications, which propose to be served by the Yarmouth Water District or its designee, shall receive the approval for conformance with the technical standards of the district.
  - 8. **Fire Safety:** All site plan applications shall meet the requirements of CHAPTER 317 (Sprinkler Ordinance) of the Yarmouth Municipal Code.
  - 9. **Storm Water Management Facilities:** Proposed storm water management facilities are to be reviewed by the Town Engineer or their designee for conformance with accepted engineering design and Chapter 601 Technical Appendix D Erosion and Sedimentation Control.

10. 100-999 cubic yards. Excavation and removal of lands and filling of lands in excess of 100 cubic yards and less than 1000 cubic yards shall be reviewed in accordance with the following criteria:
  - a. Filling, grading, lagooning, dredging, earth- moving activities, and other site alterations shall be conducted as to prevent to the maximum extent possible, soil erosion and sedimentation of surface waters. The Erosion and Sedimentation Control portion of the Stormwater Facilities Standard in ARTICLE I.J.9 shall apply even if only filling is conducted.
  - b. This Section shall not prohibit normal excavation for construction of a building for which a building permit has been issued or construction normally related to road projects.
11. More than 1000 cubic yards. Excavation and removal of lands and filling of lands equaling 1000 cubic yards or more shall be reviewed in accordance with the following criteria:
  - a. Specific plans are established to avoid hazards from excessive slopes or standing water. Where an embankment must be left upon the completion of operations, it shall not be at a slope steeper than one (1) foot vertical to two (2) feet horizontal.
  - b. The operation is shielded from surrounding property with adequate screening and creates no disturbance of a water source.
  - c. No excavation shall be extended below the grade of adjacent streets unless 100 feet from the street line or unless provision has been made for reconstruction of the street at a different level.
  - d. Sufficient top soil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions.
  - e. A surety bond, one payable to the Town of Yarmouth and issued by a commercial surety company authorized to do business within the State of Maine, is posted by the owner with the Treasurer of Yarmouth by the applicant in an amount recommended by the Town Manager or his/her agent and approved by the Planning board as sufficient to guarantee conformity with the provisions of the grant of approval.
  - f. The erosion and Sedimentation Control portion of the Stormwater Facilities Standard in ARTICLE I.J.9 shall apply even if only filling is conducted.
12. Any Site Plan review shall include the following criteria to insure the protection of public health, safety and general welfare:
  - a) fencing, landscaped buffer strips;
  - b) advertising signs, lighting;
  - c) parking spaces, loading and unloading areas;
  - d) entrances and exits;
  - e) time period for operation;

- f) hours of operation;
- g) methods of operation;
- h) weight and loading limit of trucks;
- i) potential sand and gravel spillage upon public streets;
- j) rehabilitation proposals,
- k) street trees of 2 ½ (two and one half) to 3 (three) inch caliper every 50' of street frontage,
- l) sidewalks on at least one side of the street
- m) bike racks

13. Accessory Dwelling Unit: any request shall include a plot/site plan showing the following:

- a. Lot boundaries and dimensions at scale.
- b. Zoning district.
- c. Date of plan.
- d. Property owner with deed reference.
- e. Lot area.
- f. Location and setback of all buildings.
- g. Date of construction of single-family dwelling.
- h. Separate floor layout of all finished levels.
- i. All plumbing facilities, kind and location.
- j. Use of all rooms.
- k. All entrances/exits.
- l. All partitions, temporary or permanent.
- m. Location and type of all appliances.
- n. Rights of way, public and private
- o. All easements
- p. Street names
- q. Sewerage facilities
- r. Off-street parking spaces

Purpose:

The purpose of this section is to promote the public health, safety and general welfare of the community by providing diverse housing choices and to help increase the supply of housing without new land acquisition costs.

In permitting an ADU, the Planning Director and/or CEO shall find that:

- a. Exterior design of the ADU is compatible with the existing residence on the lot through architectural use of building forms, height, construction materials, colors, landscaping, and other methods that conform to acceptable construction practices.
- b. The exterior design is in harmony with, and maintains the scale of the neighborhood.
- c. The accessory unit does not result in excessive noise, traffic or parking congestion.

- d. The primary residence and the ADU shall connect to public water and public sewer in compliance with all applicable Town of Yarmouth and Yarmouth Water District requirements and ordinances as well as the Maine Subsurface Wastewater Disposal rules. If the primary residence and the ADU cannot connect to public water and/or public sewer, the applicant shall demonstrate by competent third-party evidence that the supply of potable water and/or septic capacity is sufficient for the primary residence and ADU. Approval of an ADU shall be conditional on any required improvements.
- e. Major access stairs, deck entry doors, and major windows will generally be limited to the walls facing the primary residence. Windows that impact the privacy of the neighboring side or rear yard shall be minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.
- f. The orientation and location of the buildings, structures, open spaces and other features of the site plan are such that they maintain natural resources including heritage or significant trees and shrubs to the extent feasible and minimize alteration of natural land forms.
- g. Building profiles, location and orientation relate to natural land forms.
- h. A single-family dwelling exists on the lot or will be constructed in conjunction with the ADU. Only one ADU is permitted per lot.
- i. ADUs are not eligible for variances to setbacks.
- j. Before obtaining a building permit for an ADU the property owner shall file with the registry of deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:
  - a. The accessory unit shall not be sold separately.
  - b. The unit is restricted to the approved size.
  - c. The above declarations are binding upon any successor in ownership of the property;
  - d. The deed restrictions shall lapse upon removal of the accessory unit.
- k. ADUs shall be at least the minimum size adopted by the Technical Building Code and Standards Board pursuant to 10 M.R.S. §9722 and shall not exceed 900 square feet. If an ADU occupies a portion of an existing Structure either on a single floor or on multiple floors, or an existing detached Structure will be converted to an ADU, the Planning Department may allow for an increase in the allowed size of the ADU up to 1,215 square feet in order to efficiently use all of the floor area, so long as all other standards of this section are met.
- l. Approval of an ADU shall be conditional on obtaining applicable building, plumbing, electrical and any other necessary municipal permits.
- m. The Fire Chief must review and sign off on the application.
- n. Unless part of the design of an existing single family dwelling the dwelling(s) shall have only one (1) front entrance and all other entrances shall be on the side or in the rear of the dwelling. A front entrance leading to a foyer with entrances leading from the foyer to the two (2) dwelling units is permitted.

Outside stairways (either open or enclosed), that service an ADU on upper stories are not permitted.

- o. For an ADU 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 of new structures or unless the new structure is designed in a traditional New England form such as a barn.
- p. 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 ADU subject to the requirements of Chapter 701 of the Yarmouth Code Article III for the expansion of other non-conforming single family dwellings.
- q. ADUs may be permitted on back lots.
- r. ADUs are not permitted on a lot with a non-conforming use, unless that non-conforming use is a single-family dwelling, in which case the ADU shall be allowed.
- s. ADUs are not permitted on a lot with mixed uses.
- t. When an owner wishes to eliminate the ADU, proof of the removal of the second kitchen and the restoration of the apartment to its status before the conversion shall be submitted to the satisfaction of the Planning Department. The owner shall record a Release of the Declaration of Restrictions on the Land after inspection and confirmation by the Code Enforcement Officer.
- u. ADUs are not permitted on lots where the number of dwelling units allowed on a lot has been increased under Chapter 701, Article II.EE, after January 1, 2024.
- v. ADUs must comply with all of the standards of Chapter 701, Article IV.R.

#### **K. REVISIONS TO APPROVED SITE PLANS**

The site shall be developed and maintained as depicted in the site plan and the written submissions of the applicant. Modification of any approved site plan shall require the prior approval of a revised site plan by the Planning Board or the Director of Planning and Development pursuant to the terms of this ARTICLE. Any such parcel lawfully altered prior to June 7, 1990 shall not be further altered without approval as provided herein. Modification or alteration shall mean and include any deviations from the approved site plan including but not limited to topography, vegetation and impervious surfaces shown on the site plan. No action, other than an amendment approved by the Director of Planning and Development for minor site plan or Planning Board for major site plan, and field changes approved by the Town Engineer as provided herein, by any authority or department shall authorize any such modification or alteration. Field changes by the Town Engineer are limited to minor variations necessary to deal with unforeseen difficulties that arise during the course of construction involving such technical detail as utility location and substitution of equivalent plantings and shall not include any substantial alteration of

the approved plan or change any condition imposed by the Director of Planning and Development or Planning Board.

#### **L. EXPIRATIONS**

1. Applications: A site plan application must be diligently pursued from the date of submission. The Director of Planning and Development or Planning board shall notify the applicant in writing whether the application is complete. If an application is not complete, the written notice shall set forth those items, which have not yet been submitted, and that the applicant will have one hundred twenty (120) days to complete its application. If the applicant fails to submit any item specified within one hundred twenty (120) days of the date of said notice from the Director of Planning and Development or Planning Board, the application shall be deemed null and void. Nothing in this Section shall prevent the Planning Board or Director of Planning and Development from requiring additional information as otherwise permitted or required by the terms of this ARTICLE.
2. Approvals: Site Plan approvals are valid for one year and may be extended for one additional year by the Director of Planning and Development for minor site plans or by the Planning Board for major site plans. Building permits must be received and performance guarantees must be approved prior to the expiration date of the approval.

#### **M. POST-APPROVAL SUBMISSIONS**

Following site plan approval and prior to issuance of any building permit, developer shall submit copies of the contract plans and specifications, in reproducible form, showing the design of all infrastructure improvements, including without limitation all streets, sewers, drainage structures, and landscaping, for the review and approval of the Town Engineer for compliance with the Town's construction standards. Thereafter, all departures from such plans shall be approved by the Town Engineer as field changes pursuant to subsection I.J. above. Nothing herein shall diminish the obligation of the developer to supply plans or specifications as provided in this ARTICLE.

#### **N. ENFORCEMENT**

1. All construction or alterations to the site performed under the authorization of building permits or certificates of occupancy issued for development within the scope of this ordinance shall be in conformance with the approved final site plan or an amendment thereto under Section I.K.
2. When the Director of Planning and Development or his/her duly authorized agent finds a violation of this Ordinance, the Director of Planning and Development or his/her duly authorized agent shall notify the Town manager in writing who shall have the authority to initiate any and all actions, legal or equitable, to be brought in

the name of the Town. Any construction or site work not in conformity with an approved site plan shall constitute a violation of this ordinance.

3. The Director of Planning and Development or his/her duly authorized agent or the Town Engineer shall have the authority to issue a stop work order upon a finding by either of them that work has been commenced or completed prior to receipt of all approvals required by this Ordinance or contrary to the terms of an approved site plan. Work shall recommence only after such order has been lifted.
4. Any person, firm or corporation being the owner of or responsible for the control or use of any building or premises who violates any provision of this Ordinance, commits a civil violation and shall be fined no less than \$100 and not more the \$2500, provided that the maximum penalty shall exceed \$2500 but not \$25,000 if there has been a previous determination, by a court of competent jurisdiction, that the same party violated this Ordinance within the previous two years. Each day such a violation continues to exist after notification thereof shall constitute a separate offense. All fines collected hereunder shall inure to the Town of Yarmouth.

#### **O. SITE PLAN PERFORMANCE GUARANTEE AND INSPECTION FEE**

The developer shall pay a site plan inspection fee, which fee shall consist of the actual costs, including administrative cost, for inspection by the Town Engineer or his/her designee all required site plan improvements, which improvements include but are not limited to building setbacks, sanitary sewers, storm drains, drainage and erosion control, catch basins, manholes, other improvements constructed chiefly below grade, curbing, paving, sidewalks, lighting, and landscaping. Following site plan approval and prior to the issuance of a building permit, the developer shall post with the Town a performance guarantee in the form and amount approved by the Town Manager specifying the completion of the improvements within two (2) years from the date of such guarantee. The developer shall provide a one year defect bond upon completion of all public improvements. The amount of the defect bond shall be ten percent (10%) of the amount of those public improvements approved as part of the site plan. At the same time that the developer posts a performance guarantee, the developer also shall pay to the Town Engineer the site plan inspection fee equal to two percent (2%) of the estimated cost of required site plan improvements, not including principal structures.



STATE OF MAINE  
CUMBERLAND, ss.

RECEIVED MAY 10 2016

SUPERIOR COURT  
CIVIL ACTION  
Docket No. AP-15-22

517 OCEAN HOUSE LLC,

Plaintiff

STATE OF MAINE  
Cumberland, ss Clerk's Office

v.

MAY 11 2016

ORDER

TOWN OF CAPE ELIZABETH, et al,

RECEIVED

Defendants

Before the court is a Rule 80B appeal by 517 Ocean House LLC from a May 19, 2015 decision of the Cape Elizabeth Planning Board approving a site plan application by parties in interest 541 Ocean House Road LLC, Nick Tammaro, Jennifer Feeney, and Sheldon Goldman (collectively, 541 Ocean House).

541 Ocean House sought site plan approval for a pizza restaurant, retail space, and a landscaping business on Ocean House Road in Cape Elizabeth near the intersection of Ocean House Road and Two Lights Road. Plaintiff 517 Ocean House LLC is the owner and operator of a restaurant (Rudy's on the Cape) located a short distance north on Ocean House Road. For the sake of clarity, plaintiff 517 Ocean House will be referred to as Rudy's in this order.

#### Standard of Review

Review of a municipal decision under Rule 80B is for the purpose of determining whether there was an abuse of discretion, an error of law, or findings not supported by substantial evidence. *E.g., Camp v. Town of Shapleigh*, 2008 ME 53 ¶ 9, 943 A.2d 595.<sup>1</sup>

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<sup>1</sup> In contrast, where an appeal from a municipal decision turns on the meaning of statutes, regulations, or municipal ordinances, the interpretation by municipal officials is subject to *de novo* judicial review. *Coker v. City of Lewiston*, 1998 ME 93 ¶ 6, 710 A.2d 909; *Isis Development LLC v. Town of Wells*, 2003 ME 149 ¶ 3 n.4, 836 A.2d 1285.

Substantial evidence is evidence that a reasonable mind would accept as sufficient to form a conclusion even if the evidence would also support a contrary conclusion. *Sproul v. Town of Boothbay Harbor*, 2000 ME 30 ¶ 8, 746 A.2d 368.

This case largely turns on the issue of whether the Planning Board made sufficient findings to conclude that site plan approval should be granted. The Law Court has ruled on a number of occasions that municipal planning boards are required to make the necessary findings and that meaningful judicial review is not possible without findings of fact sufficient to apprise the court of the basis of a planning board decision. *E.g., Comeau v. Town of Kittery*, 2007 ME 76 ¶ 12, 926 A.2d 129; *Chapel Road Associates v. Town of Wells*, 2001 ME 178 ¶ 10, 787 A.2d 137. The Law Court has also stated as recently as 2012, however, that in an appropriate case a court may conclude that, if there is sufficient evidence in the record, a planning board's decision may be deemed to be supported by "implicit findings." *Town of Minot v. Starbird*, 2012 ME 25 ¶11 n. 4, 39 A.3d 897; *York v. Town of Ogunquit*, 2001 ME 53 ¶ 14, 769 A.2d 172.

In this case the Cape Elizabeth Planning Board made a general finding that subject to certain express conditions, the site plan application submitted by 542 Ocean House substantially complied with the site plan provisions in the Cape Elizabeth Zoning Ordinance. See R. Tab 12 Finding 3. It did not, however, make findings with respect to each of the individual approval standards in the Ordinance.

In some cases the Law Court has remanded for express findings with respect to specific standards set forth in the zoning ordinance. *See Sawyer v. Town of Cape Elizabeth*, 2004 ME 71 ¶ 25, 852 A.2d 58. In other cases the Law Court has concluded that a remand is not necessary where a general finding has been made and the subsidiary findings are obvious or easily inferred from the record. *Wells v. Portland Yacht Club*, 2001 ME 20 ¶¶ 10-11, 771 A.2d 371. In the absence of express findings, whether a case should be remanded for further findings depends on

whether the determinations made by the Planning Board and the basis for those determinations are sufficiently clear so that there can be meaningful judicial review. See *Chapel Road Associates v. Town of Wells*, 2001 ME 178 ¶ 12.

### Discussion

The site at issue in this case contains four buildings and three greenhouses. Tammaro Landscaping currently uses three of the buildings and the greenhouses. At the time of the application the front building (closest to Ocean House Road) contained three retail businesses, and 541 Ocean House proposes to replace one of the retail uses in the front building with a 30 seat restaurant, leaving the other two retail uses essentially unchanged. R. Tab 1 at 1-2. 541 Ocean House also proposes to modify the existing parking by removing approximately 7000 sq. ft. of pavement and creating a patio and landscaped area in front of the restaurant. R. Tab. 1 at 1.

Tammaro Landscaping will continue to use the remaining three buildings on the site but two of the greenhouses will be removed. The 541 Ocean House application does not propose the expansion of any of the existing buildings. R. Tab 1 at 2.

Motivated by what Rudy's perceives as a major difference in the treatment that 541 Ocean House received compared to the treatment that Rudy's received when it applied for site plan approval in 2012-14,<sup>2</sup> Rudy's takes issue with the approval of the 541 Ocean House application in 11 respects.

The challenges made by Rudy's involve certain of the submission requirements for site plan applications in section 19-9-4(C) of the Cape Elizabeth Zoning Ordinance, certain of the standards for the approval of site plan applications in section 19-9-5 of the ordinance, and certain of the design requirements in section 19-6-5 of the ordinance.

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<sup>2</sup> See Rule 80B Brief of Appellant 517 Ocean House LLC dated November 19, 2015 at 32-35.

1. Right, Title and Interest

Rudy's argues that 541 Ocean House failed to meet the submission requirement that the applicant must show evidence of right, title, and interest in the site of the proposed project. Ordinance § 19-9-4(C)(1). However, 541 Ocean House submitted a copy of its deed to the property. R. Tab 1 at 11-13. Moreover, although a portion of the property (the area in the front building where 541 Ocean House proposed to place a restaurant) was subject to a lease to the retail store "Something's Fishy" at the time the application was filed, the undisputed evidence in the record demonstrates that the lease was to expire in March 2016. R. Tab. 16 at 5.

Rudy's challenge on this issue is without merit.

2. Financial Capability

Rudy's argues that 541 Ocean House failed to meet the submission requirement of showing financial capability. Ordinance § 19-9-4(C)(16). The record showed that Nick Tammaro is the sole owner of 541 Ocean House Road LLC, R. Tab. 11 at 2. The record also contains a letter from the Town Manager stating that he had reviewed the finances of Mr. Tammaro and had determined that he had the financial capability to undertake the project. R. Tab 7. Finally, the ordinance expressly contemplates that the Town Manager will make a recommendation to the Planning Board on the issue of financial capability. Ordinance § 19-9-4(C)(16).

Rudy's challenge on this issue is without merit.

3. Water Supply

One of the standards for approval of a site plan application is a finding that there is an adequate supply of drinking water. Ordinance § 19-9-5(F). Specifically, this standard requires that if the project is served by a public water supply, the applicant submit a letter from the supplier that "the proposed water supply system conforms with its design and construction

standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.”

Rudy’s argues that 541 Ocean House failed to meet this standard because the original letter submitted referred to a take out restaurant rather than to the eat-in restaurant actually proposed and did not evaluate the water needs of the other uses proposed in the site plan application. However, the Planning Board did not make a finding that 541 Ocean House had met this standard. Recognizing that the requisite letter was missing, the Board expressly made its approval subject to the condition that “the applicant provide a letter from the Portland Water District confirming that adequate water will be available for all proposed uses on the site and that any necessary upgrade to water lines be installed.” R. Tab. 12 at 2 (Condition 3).

Rudy’s contends that it appears this letter was to be submitted to the Town Planner and that this constitutes an improper delegation of the Board’s authority. Under the Cape Elizabeth Ordinance, the Planning Board has authority to “conditionally approve” a site plan application. Ordinance § 19-9-3. In the case of the water supply standard, the Planning Board did not delegate any discretion or decision-making authority to the Town Planner. The ordinance expressly makes the public water supplier (here the Portland Water District) the sole decision-maker as to the adequacy of the water supply and distribution system. The Planning Board’s conditional approval only requires the Town Planner to perform the ministerial function of confirming that the necessary letter from the Portland Water District has been submitted.

Rudy’s challenge on this issue is without merit.

#### 4. Lighting

In its application 541 Ocean House requested a waiver of site plan approval standard with respect to lighting, Ordinance § 19-9-5(M), stating that it believed the existing lighting scheme is adequate and that no new lighting is proposed. R. Tab. 1 at 3. Accordingly, it did not submit the lighting information that would ordinarily have been a submission requirement. *See* Ordinance § 19-9-4(C)(14).

The Cape Elizabeth Ordinance gives the Planning Board discretion to waive a site plan submission requirement if it finds that “due to special circumstances of a particular plan, [such submission] is not required in the interest of public health, safety, and general welfare or is inappropriate because of the nature of the proposed development.” Ordinance § 19-9-4(C)(17). Rudy’s points out that the Planning Board never made such a finding with respect to the submission of lighting information.

Counsel for the Town points out that there was a colloquy about lighting at the Planning Board hearing, and the Planning Board minutes state, “As for the lighting, no new lighting is being proposed so no photometric study will be required”. R.Tab. 11 at 3. Rudy’s was represented at the hearing, and given the statement in the minutes the court concludes that the Planning Board made the requisite finding that a more detailed lighting submission was not necessary.

Just because the existing lighting will not be changed, however, does not necessarily mean that the existing lighting is in compliance with § 19-9-5(M) (requiring, inter alia, exterior lighting adequate for safety without excessive illumination, shielding of light fixtures, and not more than 0.5 footcandles of illumination at the lot line or upon abutting properties). The record as submitted by 541 Ocean House is sufficient to demonstrate that the Board found that there would be no illumination on adjacent properties. *See* R. Tab 16 at 13.<sup>3</sup> However, there is no finding on whether the other requirements of § 19-9-5(M) are met.<sup>4</sup>

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<sup>3</sup> On various issues, the transcript submitted by Rudy’s summarizes the discussion rather than purporting to be complete. Specifically on the issue of lighting, the summary states, “Discussion re height of lighting; is one story building; maybe 10 feet; there’s nothing shining on the neighbors; satisfied; agree with Maureen [Town Planner Maureen O’Meara].” R. Tab 16 at 13 (emphasis added).

<sup>4</sup> Noting that the transcript of the Planning Board meeting submitted by Rudy’s in R. Tab 16 omits the full lighting colloquy, counsel for the Town provides a link to a website where that colloquy supposedly can be found. Town of Cape Elizabeth’s Rule 80B Brief, dated January 9, 2016 at 14 n.3. Either because of the court’s lack of internet expertise or because the link did not work as advertised, the court was unable to access the website. To the extent that the Town is requesting to supplement the record, supplementation of the record must be made in writing rather than by referring the court to a website.

On this issue, therefore, the case will be remanded to the Planning Board for a finding on whether the lighting is adequate for safety without excessive illumination and whether the light fixtures are shielded.

5. Screening

One of the design requirements in the zoning ordinance provides that a landscaped area shall be provided in the front yard set back between the road and the parking lot and "shall include plantings of a size sufficient to obscure the view of parked cars and parking lots from the sidewalk and transitioning to a lesser height." Ordinance § 19-6-5(E)(g)(2). Rudy's argues that there is no finding or showing that this standard has been met.

541 Ocean House submitted a landscape plan that shows the addition of street trees between the road and the parking area. R. Tab. 16 (Landscape Plan), showing 1.5" caliper red maples. In addition, the Planning Board expressly conditioned approval on the requirement that the proposed maple trees be a minimum of 2" to 2.5" in caliper at the time of planting. R. Tab. 12 at 2 (Condition 5). If this were the only issue, the court might be inclined to conclude that the Planning Board made an implicit finding that the planting of 2" to 2.5" caliper trees would meet the requirement of Ordinance § 19-6-5(E)(g)(2). However, since a remand is already being ordered, the Board upon remand shall make a finding, based on the existing record or on any other information that is necessary to make that determination, whether the plantings between the road and the parking area will obscure the view of parked cars and parking areas.

6. Buffering

The site plan approval standards and performance standards in the Cape Elizabeth ordinance require buffering between non-residential uses and residential uses. Thus, Ordinance § 19-8-1(2) provides that side and rear yards of nonresidential uses abutting residential districts shall be maintained in natural vegetative state as much as possible, and imposes specific requirements where natural buffering "is not sufficient to maintain an effective visual screen".

The third paragraph of Ordinance §19-9-5(N) provides that required parking spaces shall be effectively screened from view by a visual barrier no less than 6 feet high of shrubs, trees, fences, or a combination thereof along exterior lot lines adjoining residential properties. Ordinance §19-9-5(N) expressly states that the latter requirement can be waived "when it is determined that such buffering is not necessary or desirable."

In this case the record reflects that there are residential uses to the west (Chapman) and north (Golden Ridge Subdivision) of the 541 Ocean House site. Rudy's argues that the landscaping plan submitted by 541 Ocean House does not show the required visual screen and that the Planning Board did not make a finding under §19-9-5(N) that buffering was not necessary or desirable.

The landscape plan submitted by 541 Ocean House showed a number of trees and some 6 ft. stockade fencing in places along the Chapman boundary. R. Tab 18 (Landscape Plan). On this issue the record also reflects discussion by the Planning Board that the Board had previously required the Golden Ridge subdivision to include buffering along the lot line adjoining the 541 Ocean House property and that it was excessive to require 541 Ocean House to "buffer the [existing] buffer." R. Tab 16 at 14. There were evergreens along the Chapman boundary shown on the Landscape Plan as "existing white pine trees (planted per previously approved site plan)". R. Tab 18 (Landscape Plan). One member of the Board noted the evergreens along the Chapman boundary and the board chair noted that, based on the site walk, the whole back area is densely wooded. R. Tab 16 at 14-15. Notably, one of the Board members, declaring herself satisfied with the buffering between the 541 Ocean House and Chapman properties, asked whether any other Board members wanted more buffering. R. Tab 16 at 14. No one responded.

The court concludes that the record reflects that the Board has made the necessary implicit findings that existing natural buffering and/or the buffering already in place is sufficient and that further buffering would not be necessary or desirable.

7. Sidewalk Paving

Relying on a sketch in the Cape Elizabeth Design Requirements, R. Tab 15 at 112, Ordinance § 19-6-5(E)(g), sketch at page 112, Rudy's argues that 541 Ocean House's site plan application is deficient because it proposed a stone dust sidewalk rather than an asphalt or concrete sidewalk. The problem with this argument is that the sketch is expressly listed as an example. There is no requirement that sidewalks be asphalt or concrete. In addition, on the sketch itself the entry walkway is listed as asphalt or concrete but the sidewalk is shown with a series of dots along the surface, indicating that other surfaces can be used. 541 Ocean House's Landscape Plan (part of R. Tab 18) also shows a series of dots on the surface.

Rudy's challenge on this issue is without merit.

8. Stormwater

In its site plan application 541 Ocean House requested a waiver of the obligation to submit a pre and post development stormwater study. R. Tab 1 at 4. Accompanying that request was an analysis noting that the result of the proposed development was a decrease in impervious surface area caused by the reduction in the area that was previously paved and corresponding reduction in stormwater runoff. R. Tab 1 at 40.

Rudy's complains that the Planning Board never expressly granted the waiver that was requested. However, the file contains a letter from the Town Engineer agreeing that because there would be a reduction in the impervious surface and because relatively minor alterations were proposed for the stormwater system, the Town Engineer supported a waiver and encouraged the Board to grant it. R. Tab 5 ¶ 3. Given the Town Engineer's letter, the court concludes that on this issue the record reflects an implicit finding by the Planning Board pursuant to Ordinance § 19-9-4(C)(17) that a stormwater study was not necessary.

The Town Engineer's letter also endorsed 541 Ocean House's proposal to replace an existing drainage ditch with a catch basin system but recommended that the catch basins have the 24 inch grates that are standard in Cape Elizabeth and also recommended that in one location an

area drain be used to connect to the Route 77 drainage to avoid impacting the stone dust sidewalk. R. Tab 5 ¶ 4. The Planning Board conditioned its approval on revision of the site plan as described in paragraph 4 of the Town Engineer's letter. R. Tab 11 Condition 1.

Rudy's argues that this constituted an improper delegation by the Planning Board to the Town Engineer. Once again, however, the Planning Board was not delegating its decision-making authority to the Town Engineer. It exercised its decision-making authority to approve the application with the condition that the plan be revised as stated in the Town Engineer's letter.

This does not fully resolve the stormwater issue, however, because there is no finding in the record that the existing stormwater system on the site, with the modifications proposed by 541 Ocean House in its application and the revision of the plan as described in paragraph 4 of the Town Engineer's letter, will meet the approval standard set forth in Ordinance § 19-9-5(D). Accordingly, on remand, the Planning Board shall consider this issue and make any necessary findings.

#### 9. Siding

Rudy's argues that 541 Ocean House's site plan fails to meet the design requirement that exterior materials shall be compatible with nearby buildings, primarily because the standard provides that metal siding "shall be discouraged." Ordinance § 19-6-5(E)(f). 541 Ocean House is not proposing the change the existing siding, which matches the material and color of the siding of Tammaro's Greenhouse. R. Tab. 1 at 4, 15, 20-22. Although metal siding is "discouraged," it is not forbidden. In fact, one Board member noted that she had argued against metal siding during the site plan review for Rudy's on the Cape, but the rest of the Board had disagreed and found metal siding to be compatible. She added, "At least yours is going to be painted." R. Tab 16 at 15.

Rudy's challenge on this issue is without merit.

10. Procedural Due Process

Rudy's argues that the Planning Board violated its own procedures and due process by holding a hearing on whether the 541 Ocean House application was complete and then, having made that finding, by proceeding immediately to a hearing on the merits of the application. The pertinent provision of the Cape Elizabeth Ordinance is § 19-9-4(B)(2), which provides that upon certification by the Planning Board that an application is complete,

the Planning Board, in its discretion, may hold a public hearing. If the Planning Board determines to hold a public hearing, it shall hold the hearing within thirty-five (35) days of the date that the application is deemed complete and shall provide public notice in accordance with [the applicable provisions of the Ordinance].

In this case the Planning Board specifically gave public notice that on May 19, 2015 it would hold a completeness review on 541 Ocean House's application and, if the application was found to be complete, would then hold a public hearing on the same date.

The Town of Cape Elizabeth Planning Board will begin to review and, if the application is deemed complete, hold a public hearing on TUESDAY, May 19, 2015 . . . to hear public comment on the following item:

Nick Tammaro and Jennifer Feeney are requesting Site Plan Review of a mixed use site including a 30-seat restaurant, retail space, and landscaping business located at 541 Ocean House Rd, (U18-8) Site Plan Completeness and Public Hearing.

R. Tab 3 (Public Hearing Notice) (emphasis added). *See also* R. Tab 4 (legal advertisement of "Site Plan Completeness and Public Hearing"); R. Tab 8 (Planning Board agenda listing "Site Plan Completeness and Public Hearing").

Nothing § 19-9-4(B)(2) precludes the Planning Board from holding a public hearing – if it exercises its discretion to do so – on the same date that it finds a site plan application to be complete so long as it gives the required notice of the public hearing, which it did in this case. Counsel for Rudy's was aware of the public hearing, submitted a comment letter that was discussed by the Planning Board, attended the public hearing, and participated during the public

comment period. Rudy's had adequate notice that if the 541 Ocean House application was deemed complete, the public hearing would be held immediately thereafter. The Planning Board did not violate the procedural requirements of Ordinance § 19-9-4(B)(2) in this case.

Moreover, although Rudy's now contends that new information was provided at the May 19 hearing that it did not have time to review, the record does not reflect that Rudy's or its counsel ever objected to the Board's determination that the 541 Ocean House application was complete or to the Board's decision to proceed directly to public hearing upon finding the application to be complete.<sup>5</sup> The Law Court has consistently ruled that objections that have not been raised before a municipal board or administrative agency are not preserved for appeal. *E.g.*, *Tarason v. Town of South Berwick*, 2005 ME 30 ¶ 8, 868 A.2d 230; *New England Whitewater Center Inc. v. Department of Inland Fisheries and Wildlife*, 550 A.2d 56, 58 (Me. 1988). This is true even with respect to constitutional claims. *New England Whitewater Center*, 550 A.2d at 58. Since Rudy's did not raise its procedural objections below, it has not preserved that issue for appeal.<sup>6</sup>

Finally, even if Rudy's procedural due process claim had been preserved, the short answer is that Rudy's has not demonstrated that it had any liberty or property interest at stake. Under the circumstances, Rudy's received all that due process requires – notice and an opportunity to be heard as provided by the ordinance.

#### 11. Equal Protection

At the heart of Rudy's objections in this case is its contention that it was subjected to very stringent site plan review in 2012 -14 and that the Planning Board violated equal protection by not subjecting the 541 Ocean House application to equally stringent review. Rudy's raised the

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<sup>5</sup> If anything, the transcript suggests that counsel for Rudy's declined to comment on the completeness issue and saved her comments for the merits of the application. See R. Tab 16 at 5-6.

<sup>6</sup> Rudy's complaint includes a separate cause of action for a declaratory judgment on its constitutional claims but Rudy's failed to file a motion to specify the future course of proceedings pursuant to Rule 80B(i). Whether or not that failure would be fatal to Rudy's claim for declaratory relief need not be reached in view of Rudy's failure to preserve its due process objection below.

issue of equal treatment before the Board and on appeal sought to assert an equal protection claim by contending that the record on its site plan application should also be made part of the record in this case. The court declined that request for the reasons stated in its order dated October 22, 2015.

Rudy's continues to pursue that argument in its Rule 80B brief. A party asserting a violation of equal protection must allege that, compared with others similarly situated, it was treated differently "based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure." *Marshall v. Town of Dexter*, 2015 ME 135 ¶ 30, 125 A.3d 1141, quoting *Tapalian v. Tusino*, 377 F.3d 1, 5 (1<sup>st</sup> Cir. 2004). Rudy's does not contend that it was subjected to differential treatment because if any impermissible consideration such as race or religion or the exercise of constitutional rights. Rudy's does, however, contend that it was subjected to overly stringent review because the Planning Board, for unspecified reasons, acted vindictively and maliciously in its case. See Rule 80B Brief of Appellant 517 Ocean House LLC dated November 19, 2015 at 34, asserting that the record on Rudy's site plan application would demonstrate that Planning Board members engaged in opposition research outside the record in order to obstruct its application, that Board members "used ad hominem hostile language against both [Rudy's] and its counsel," that the Board chair "made a site visit, without notice, and nearly ran down [Rudy's] owner with her car in making a fast departure," that the Board imposed various submission requirements that went beyond the scope of its review standards, and that Rudy's application was subjected to an extended process in a hostile environment.

It is possible that Rudy's application presented more issues than the application in this case, which proposed only to replace an existing retail use with a restaurant, retain two other retail uses and a landscaping business, and modify parking facilities and landscaping, without expanding any of the existing buildings. It is also possible that the Rudy's project raised many of the same issues as the application in this case and that, motivated by ill will or some other

reason, the Planning Board essentially put Rudy's through the wringer but raised none of the same obstacles with respect to the 541 Ocean House application.

Assuming that Rudy's is correct and the latter scenario is applicable, Rudy's nevertheless cannot assert an equal protection claim in this action. This is true because the relief available to a party who is being denied equal protection is an end to the illegal treatment directed at the party subjected to the discrimination. Assuming its allegations are correct, Rudy's should perhaps have brought suit to prevent the Board from maliciously subjecting its application to unwarranted and hostile treatment. However, Rudy's is not entitled to require the Cape Elizabeth Planning Board to subject all other similarly situated parties to the same allegedly unjustified and illegal treatment that Rudy's claims it was subjected to.

In sum, Rudy's is entitled to require the Planning Board to follow the rules in evaluating a potential competitor's site plan. It is not entitled to require the Planning Board to impose a level of scrutiny that goes beyond the rules.

The entry shall be:

1. For the reasons stated above, the case is remanded to the Cape Elizabeth Planning Board for further findings as to (1) whether the lighting is adequate for safety without excessive illumination and whether the light fixtures are shielded; (2) whether the plantings between the road and the parking area will obscure the view of parked cars and parking areas and (3) whether the existing stormwater management system, with the modifications proposed by 541 Ocean House Road LLC and revision of the plan in conformity with paragraph 4 of the Town Engineer's letter, meets the approval standard in Ordinance § 19-9-5(D).

2. In all other respects the May 19, 2015 decision of the Cape Elizabeth Planning Board is affirmed.

3. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: May 10, 2016

  
Thomas D. Warren  
Justice, Superior Court



STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CIVIL ACTION  
Docket No. AP-16-34

517 OCEAN HOUSE LLC,

Plaintiff

RECEIVED MAY 01 2017

v.

ORDER

TOWN OF CAPE ELIZABETH, et al,

Defendants

STATE OF MAINE  
Cumberland ss. Clerk's Office

APR 27 2017

RECEIVED

Before the court is a second Rule 80B appeal by 517 Ocean House LLC from a decision of the Cape Elizabeth Planning Board approving a site plan application by party in interest 541 Ocean House Road LLC.

541 Ocean House originally sought site plan approval for a pizza restaurant, retail space, and a landscaping business on Ocean House Road in Cape Elizabeth in April 2015. The retail space and landscaping business are pre-existing, but in addition to adding the restaurant, the application involved alterations to the site by modifying the existing parking area and creating a patio n and landscaped area in front of the proposed restaurant.

The 541 Ocean House application was approved by the Cape Elizabeth Planning Board on May 19, 2015. 517 Ocean House LLC, the owner and operator of a restaurant (Rudy's on the Cape) located a short distance north on Ocean House Road,<sup>1</sup> filed a Rule 80B appeal from that decision. AP-15-22.

In an order dated May 10, 2016 and filed May 11, 2016 in AP-15-22 the court rejected a number of the arguments raised by Rudy's but remanded the case to the Planning Board for further findings on three issues:

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<sup>1</sup> For the sake of clarity, plaintiff 517 Ocean House will be referred to as Rudy's in this order.

(1) whether the lighting is adequate for safety without excessive illumination and whether the light fixtures are shielded;

(2) whether the plantings between the road and the parking area will obscure the view of parked cars and parking areas; and

(3) whether the existing stormwater management system, with the modifications proposed by 541 Ocean House Road LLC and revision of the plan in conformity with paragraph 4 of the Town Engineer's letter, meets the approval standard in Ordinance § 19-9-5(D).

The Planning Board considered the issues in the court's remand order at a meeting on June 21, 2016. At a subsequent meeting on July 19, 2016 the Board reviewed and acted on 16 motions setting forth findings on the remanded issues. R-2 Tab 30.<sup>2</sup>

Rudy's filed this second Rule 80B appeal on August 17, 2016. Because of difficulty in serving several of the parties in interest, the briefing schedule was twice extended, and Rudy's filed its initial brief on November 17, 2016. The Town then obtained a short extension and filed its responding brief on January 3, 2017. A reply brief was filed on January 17, 2017, but the court did not receive the file from the clerk's office and take the case under advisement until February 15, 2017.

#### Standard of Review

As stated in the May 10, 2016 order in AP-15-22, a municipal decision may be overturned under Rule 80B for an abuse of discretion, an error of law, or findings not supported by substantial evidence. *E.g., Camp v. Town of Shapleigh*, 2008 ME 53 ¶ 9, 943 A.2d 595. Substantial evidence is evidence that a reasonable mind would accept as sufficient to form a conclusion even if the evidence would also support a contrary conclusion. *Sproul v. Town of Boothbay Harbor*, 2000 ME 30 ¶ 8, 746 A.2d 368. In contrast, where an appeal from a municipal

<sup>2</sup> The record in AP-15-22 forms a portion of the record in this case. References to R-1 refer to the record on the previous appeal. References to R-2 refer to the record of proceedings on remand.

decision turns on the meaning of statutes, regulations, or municipal ordinances, the interpretation by municipal officials is subject to *de novo* judicial review. *Coker v. City of Lewiston*, 1998 ME 93 ¶ 6, 710 A.2d 909; *Isis Development LLC v. Town of Wells*, 2003 ME 149 ¶ 3 n.4, 836 A.2d 1285.<sup>3</sup>

A discussion of the overall site plan application filed by 541 Ocean House Road is contained in the court's May 10, 2016 order and is incorporated by reference.

#### 1. Lighting

There are three issues in dispute with respect to the Planning Board's remand decision on lighting. The first is whether there is evidence to support the Board's finding that there was adequate lighting for safety purposes behind Building # 3. Section 19-9-5(M) of the Cape Elizabeth Zoning Ordinance provides in pertinent part that the proposed development "shall provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours, if such use is contemplated." R-1 Tab 15 p. 238.

The Planning Board found that there was no exterior lighting in the parking lot behind Building # 3 but noted that the lot will be gated, will not be used by the public, and will be used only by employees of the landscaping business. R-2 Tab 30 p. 3. However, the ordinance does not limit the requirement that lighting be adequate for safety purposes only to areas open to the public. The adequate lighting requirement applies equally to areas used by the public and to parking areas used only by employees. There is no finding – and no evidence in the record – that employees of the landscaping business will only park behind Building # 3 during daylight hours. There is also no finding that despite Building #3's absence of exterior lighting, there is sufficient

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<sup>3</sup> Rudy's has also included a declaratory judgment claim in its complaint but did not file a motion to specify the future course of proceedings as required by Rule 80B(i). For that reason and because the declaratory judgment claim is duplicative of the Rule 80B appeal, the declaratory judgment claim is dismissed. See *Kane v. Commissioner of Health and Human Services*, 2008 ME 185 ¶¶ 31-32, 960 A.2d 1196.

light from other sources to safely illuminate the parking area behind Building # 3.<sup>4</sup> Accordingly, substantial evidence is lacking to support the Board's finding on remand on this issue.

The second disputed issue with respect to lighting is the contention by Rudy's that the Planning Board did not make a finding that direct or indirect illumination "shall not exceed 0.5 footcandles at the lot line or upon abutting residential properties." Ordinance Section 19-9-5(M). However, this was not an issue on which the court ordered a remand. In its May 10, 2016 order the court in fact found that the record was sufficient to demonstrate that the Board had made sufficient findings that there would be no illumination on adjacent properties and that a more detailed lighting submission was not necessary. R-2 Tab 19 p. 6. Moreover, a Planning Board's factual findings as to whether an ordinance standard has been met are entitled to substantial deference. *Rudolph v. Golick*, 2010 ME 106 ¶ 8, 8 A.3d 684.

The third disputed issue is whether there is sufficient evidence to support the Board's finding that the 541 Ocean House Road application complied with the ordinance requirement that "lighting fixtures shall be shielded or hooded so that the lighting fixtures are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky." Ordinance Section 19-9-5(M). On this issue the Board found that lighting shall be adequately shielded by existing buildings, existing and proposed fencing and existing and proposed plantings. R-2 Tab 30 at 3-4.

Rudy's argues that it is not permissible to find that lighting is adequately shielded by existing buildings because the ordinance requires shielding "from adjacent dwellings." The court does not accept the interpretation proffered by Rudy's because there is a difference between a "building" and a "dwelling." Accordingly, the Board was entitled to find that the existing

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<sup>4</sup> To the extent that the Planning Board also relied on the fact that the Town Engineer had not raised any issues regarding lighting (R-2 Tab 30 p. 3), the absence of any mention of lighting in the comments submitted by the Town Engineer does not constitute affirmative evidence that lighting behind Building # 3 will be adequate.

buildings on the site, along with existing and proposed fencing and plantings, adequately shielded the lighting from motorists, pedestrians, and adjacent dwellings.<sup>5</sup>

However, the Board did not make the necessary finding that the lighting fixtures are sufficiently shielded so that they “do not unnecessarily light the night sky.”

## 2. Screening

The second issue on which the court remanded for further findings involved the issue of screening. The zoning ordinance contains a design requirement that a landscaped area shall be provided in the front set back between the road and the parking lot and “shall include plantings of a size sufficient to obscure the view of parked cars and parking lots from the sidewalk and transitioning to a lesser height.” Ordinance § 19-6-5(E)(g)(2).

Rudy’s argument here is two-fold. First, it notes that the Board’s findings focus on screening between the street and the parking lot, not the area between the sidewalk and the parking lot, although the ordinance requires that there be plantings to obscure the view of the parking lots “from the sidewalk.” Second, it argues that the Board’s finding that there is adequate screening between the street and the sidewalk cannot stand because the record demonstrates that parked cars will be visible from the street.

On the first issue Rudy’s is correct. The Board’s findings on remand focused on screening between the street and the parking lot, probably because the court’s remand referred to “whether the plantings between the road and the parking area will obscure the view of parked cars and parking areas.” R-2 Tab 19 p. 14. However, the area between the road and the parking areas in this case also includes the proposed sidewalk. See R-1 Tab 18 Sheet 8 of 8 (“Landscape Plan”). The ordinance requires plantings obscuring the view of the parking area from the sidewalk, and the existing plan does not show any plantings other than some mulch and perennials between the sidewalk and the parking area. Id. On this issue the Board did not make

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<sup>5</sup> The location of the dwellings adjacent to the site – and the proposed or existing buffers between the development and those dwellings – is discussed in the May 10, 2016 order. R-2 Tab 19 p. 8.

the necessary finding, and there is no evidence from which the court can infer that the view of the parking area from the sidewalk will be obscured.

The court does not agree with Rudy's argument, however, that the ordinance requirement that the view of parked cars and parking lots be "obscured" requires that parking area be hidden from the street or the sidewalk. In this context "to obscure" means "to make indistinct." Plantings that are sufficient to prevent pedestrians from viewing "an expanse of gravel or asphalt parking [that] can appear barren and hostile", in the words of the ordinance,<sup>6</sup> will be sufficient.

### 3. Stormwater

The third issue on which the court remanded for findings was whether the existing stormwater management system, with the modifications proposed by 541 Ocean House Road LLC and revision of the plan in conformity with paragraph 4 of the Town Engineer's letter, meets the approval standard in Ordinance § 19-9-5(D). On remand the Board made a number of findings on this issue that may be found at R-2 Tab 30 pp. 5-9.

The primary challenge made by Rudy's is based on the ordinance's requirement that "for major developments, stormwater runoff systems will detain or retain water such that the rate of flow from the site does not exceed the predevelopment rate." Ordinance § 19-9-5(D)(2) (emphasis added). Rudy's argues that the "predevelopment rate" means the rate of runoff prior to the approval of the existing landscaping and retail businesses on the site (which Rudy's contends occurred in 1988) and not the flow from the site as it existed in 2015 – immediately before the pending site plan application was filed.

The Town notes that Rudy's never raised this argument before the Planning Board. Assuming this issue has not been waived, the court agrees with the Town that the purpose of the stormwater standards is to prevent new development from worsening any existing runoff problems and that it would be impractical to require retroactive consideration of the site as it may have existed in its natural state before any prior structures or infrastructure were placed. The first

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<sup>6</sup> Ordinance § 19-6-5(E)(g)(2).

sentence of the Cape Elizabeth Ordinance Site Plan Approval Standards states that “the plan for the development will reflect the natural capabilities of the site to support development,” Ordinance § 19-9-5(A) (emphasis added), and numerous succeeding sections also refer to the “development” as the project under consideration. E.g., Ordinance §§ 19-9-5(B)(1) & (2), 19-9-5(F), 19-9-5(G), 19-9-5(H), 19-9-5(K), 19-9-5(M), 19-9-5(N). Finally, the sentence in § 19-9-5(D)(2) on which Rudy’s relies applies to “major developments.” Under these circumstances the reference in the stormwater standard to the “predevelopment” runoff rate means the rate as it existed before the proposed project for which a site plan application is pending.

The court concludes that the Board on remand made the necessary findings that the stormwater management system meets the approval standard in the ordinance. The record unequivocally demonstrates that the impervious surface of the site will be reduced by the proposed development. The court concludes that Rudy’s challenge to the Board’s stormwater findings on remand is without merit.

### Conclusion

For the reasons set forth above, the court concludes that on several issues the Planning Board on remand has made the necessary findings but on several issues a further remand for required findings is necessary as set forth below. In its discretion the Planning Board may, if necessary, add further conditions to its approval or take further evidence on the issues that have been remanded.. *See Hutchinson v. Cary Plantation*, 2000 ME 129 ¶ 15, 755 A.2d 595. If additional evidence is submitted, the Board may if necessary hold a further hearing limited to the issues on remand.

The court understands that Rudy’s appeals may appear to the Planning Board to be an attempt by an existing business to delay or stifle a future competitor. Rudy’s appeals also appear to stem from a perception that its own site plan application was subjected to unequal treatment. The court addressed that argument in its May 10, 2016 order and incorporates that discussion by reference. As set forth above and in the May 10, 2016 order, many of Rudy’s challenges are

without merit. Nevertheless, Rudy's is entitled to have all the necessary findings made and supported by substantial evidence before 541 Ocean House Road's site plan application is approved.

The entry shall be:

1. For the reasons stated above, the case is remanded to the Cape Elizabeth Planning Board for further findings and if necessary, the addition of further conditions or the taking of additional evidence as to

(1) whether the lighting is adequate for safety in the parking area behind Building # 3 in nighttime hours, if such use is contemplated;

(2) whether the light fixtures are sufficiently shielded so that they do not unnecessarily light the night sky; and

(3) whether the plantings between the sidewalk and the parking area will obscure the view of parked cars and parking areas from the sidewalk.

2. In all other respects the May 19, 2015 decision of the Cape Elizabeth Planning Board – with the additional findings made on July 19, 2016 – is affirmed.

3. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: April 27, 2017

  
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Thomas D. Warren  
Justice, Superior Court

| Site Plan Review Comparison (7-3-2025) |                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                        | Cape Elizabeth                                                                                                                                                                                                                                                                                            | Falmouth                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                     | Yarmouth                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                         |
| Type                                   | Site Plan Review                                                                                                                                                                                                                                                                                          | Minor Site Plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Major Site Plan                                                                                                                                                                                                                                                                                                                                                                                     | Minor Site Plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Major Site Plan                                                                                                                                                                                                                                                                                                                                                         |
| Reviewer                               | Planning Board                                                                                                                                                                                                                                                                                            | Planning Director                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Planning Board                                                                                                                                                                                                                                                                                                                                                                                      | Planning Director                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Planning Board                                                                                                                                                                                                                                                                                                                                                          |
| What requires site plan review?        | <div>•Construct any nonres building/addition.</div> <div>•nonres expansion/change of use.</div> <div>•Multiplex housing, eldercare.</div> <div>•new construction &lt;10,000 sq. ft.impervious surface</div> <div>Notes: *Signs allowed under Sign Ordinance by CEO. *Earth permit by Planning Board</div> | <div>•utility supports/mechanical/coolers.</div> <div>•Lighting stanchions</div> <div>•landscaping/screen</div> <div>•minor grading alt</div> <div>•impervious to 4,000 sq. ft. in 10 yrs</div> <div>•bldg add to 50% or 1,000 sq. ft.</div> <div>•new acc bldgs&lt;500 sq. ft.</div> <div>•signs</div> <div>•Referral from Dir</div>                                                                                                                                                                                                                      | <div>•Construct nonres building/addition.</div> <div>•multifamily dwelling.</div> <div>•Establish or substantial change to parking/loading.</div> <div>•alteration, renovation,change of use to &gt;10,000 sq. ft. nonres bldg.</div> <div>•Outdoor sales and storage that is part of dev requiring site plan review.</div> <div>•essential service that includes vehicular access/structures</div> | <div>•parking up to 4.</div> <div>•construction of impervious &gt;200 sq. ft.</div> <div>•building addition 100-&lt;1,000 sq. ft.</div> <div>•alteration of water course.</div> <div>•change of use 100 sq. ft. &lt;1,000.</div> <div>•change of circulation of parking/driveway.</div> <div>•filling 100&lt;1,000 yds</div> <div>•alteration to multifamily development</div> <div>•Wireless up to 80'</div> <div>•wireless antenna or alt tower structure</div> <div>•new/mod antenna</div> <div>•ADUs</div> <div>•Disturbance of 1+acres</div> <div>•dwelling unit allowance</div> | <div>•Construction of new structure except minor SP and exempted</div> <div>•5+parking lot.</div> <div>•building addition 1,000+.</div> <div>•Change of use 1,000+.</div> <div>•Filling 1,000+ yds.</div> <div>•manufactured housing community.</div> <div>•wireless facility 80'+ tall</div> <div>•Affordable housing development.</div> <div>•Referral from Dir</div> |
| Exempted from site plan review         | <div>•construct single or two-family.</div> <div>•manufactured housing on a single lot.</div> <div>•Ag bldgs: temporary or &lt;3,000 sq. ft.</div> <div>•Temp structures such as construction trailers and equipment storage sheds</div>                                                                  | Site alterations in conjunction with 2013 Route One South infrastructure Plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                     | <div>•Single and two family dwellings</div> <div>•External bldg change to close/create entrance</div> <div>•Public ROW projects</div> <div>•filling &lt;100 c yds</div>                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                         |
| Other                                  |                                                                                                                                                                                                                                                                                                           | Examples of minor site review referred to PB: <div>•subjective criteria in Design Guidelines or Ord.</div> <div>•Application of architectural standards.</div> <div>•Request for waivers to ordinance requirements.</div> <div>•Nature of a Conditional Use needed.</div> <div>•Potential impacts to abutting residential properties or districts</div> <div>•Need for amendments to state or federal pts.</div> <div>•Cumulative impact of improvement requested</div> <div>Referral to PB rarely done. See also Sec. 19-11-5 Village Ctr Perf Stds</div> |                                                                                                                                                                                                                                                                                                                                                                                                     | <div>Referral to PB rarely done; 2 in 4 years</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                         |
| Procedure:                             |                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                         |
| Concept Plan                           | Yes                                                                                                                                                                                                                                                                                                       | No. Dir may refer to PB                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Most projects get concept review by PB; required to meet with Town staff                                                                                                                                                                                                                                                                                                                            | No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Optional                                                                                                                                                                                                                                                                                                                                                                |
| Submission deadline                    | 15 days                                                                                                                                                                                                                                                                                                   | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 21 days                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 21 days                                                                                                                                                                                                                                                                                                                                                                 |
| Completeness                           | PB                                                                                                                                                                                                                                                                                                        | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                     | Town Planner                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | PB                                                                                                                                                                                                                                                                                                                                                                      |
| Average time for approval              | 3 PB meetings over 3 months                                                                                                                                                                                                                                                                               | 2 days to 1 month+                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 2-3 PB meetings held over 3-5 months                                                                                                                                                                                                                                                                                                                                                                | 6 weeks - 2 months                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 1-3 meetings                                                                                                                                                                                                                                                                                                                                                            |
| Submission:                            |                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                         |
| Right, Title Interest                  | Yes                                                                                                                                                                                                                                                                                                       | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                     | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                         |
| Written Description                    | Yes                                                                                                                                                                                                                                                                                                       | Not required                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                     | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                         |
| Name project/applicant                 | Yes                                                                                                                                                                                                                                                                                                       | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                     | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                         |
| Survey                                 | standard boundary survey, deed                                                                                                                                                                                                                                                                            | Plan by licensed land surveyor(rarely waived)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                     | Standard boundary survey                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                         |

| Site Plan Review Comparison (7-3-2025) |                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                 |                                                                                                                                                                                                                                                                                                                        |                 |
|----------------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
|                                        | Cape Elizabeth                                                                                    | Falmouth                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                 | Yarmouth                                                                                                                                                                                                                                                                                                               |                 |
| Type                                   | Site Plan Review                                                                                  | Minor Site Plan                                                                                                                                                                                                                                                                                                                                                                                                                                            | Major Site Plan | Minor Site Plan                                                                                                                                                                                                                                                                                                        | Major Site Plan |
| Reviewer                               | Planning Board                                                                                    | Planning Director                                                                                                                                                                                                                                                                                                                                                                                                                                          | Planning Board  | Planning Director                                                                                                                                                                                                                                                                                                      | Planning Board  |
| Existing conditions                    | Significant physical features on site, sig trees, wetlands,floodplain                             | Yes                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                 | soils, wetlands, natural features                                                                                                                                                                                                                                                                                      |                 |
| Topo-graphy                            | 2' contours                                                                                       | proposed grades and drainage                                                                                                                                                                                                                                                                                                                                                                                                                               |                 | yes                                                                                                                                                                                                                                                                                                                    |                 |
| Buildings                              | existing and proposed; footprints sq. ft., elevations, doors and windows, roof pitch, floor plans | Size, shape, and location of existing and proposed buildings, first floor plan, all elevations, egress, all accessory buildings and structures                                                                                                                                                                                                                                                                                                             |                 | scale plans including materials, doorways, advertising; existing and proposed building location, setbacks                                                                                                                                                                                                              |                 |
| Traffic, access, parking               | location of driveways, parking, dimensions, radii, ped facilities, details                        | Parking layout, driveways, spaces                                                                                                                                                                                                                                                                                                                                                                                                                          |                 | parking layout, circulation, driveways, turnaround; streets, sidewalks, intersections,                                                                                                                                                                                                                                 |                 |
| Storm-water                            | <10,000 sq. ft. no prof engineer study; 10,000-43,560 sq. ft prof eng; 43,560+ Storm Ord          | Ch. II-20 Stormwater and Non-stormwater Discharge Ordinance.                                                                                                                                                                                                                                                                                                                                                                                               |                 | Prepared by prof engineer, watersheds, flooding, culverts etc, finish grading plan; finished grades, flow arrows; conceptual treatment of stormwater management facilities;                                                                                                                                            |                 |
| Erosion Control                        | Erosion control plan based on best management practices                                           | Sec. 19-72 Erosion Control requirements                                                                                                                                                                                                                                                                                                                                                                                                                    |                 | Yes, embedded in Subdivision Ord                                                                                                                                                                                                                                                                                       |                 |
| Utilities                              | Water, sanitary wastewater, other, capacity                                                       | proposed sewer and water facilities and connections                                                                                                                                                                                                                                                                                                                                                                                                        |                 | existing and proposed sewer and water; solid waste receptacles; sanitary sewer lines and                                                                                                                                                                                                                               |                 |
| Landscap-ing                           | location of existing, preservation, buffering, plant list                                         | location of proposed plantings, screenings and buffers, fences                                                                                                                                                                                                                                                                                                                                                                                             |                 | landscaping buffers, screens, plantings, fences                                                                                                                                                                                                                                                                        |                 |
| Lighting                               | Location, type, photometrics, detail of fixture                                                   | Sec. 19-11.5.8; pedestrian scale, high quality materials, max height, 100 watt limit; photometrics sometimes waived                                                                                                                                                                                                                                                                                                                                        |                 | Plans for all exterior lighting, location, type, radius, footcandle level                                                                                                                                                                                                                                              |                 |
| Signs                                  | Location, dimensions, materials                                                                   | Location of signs and advertising                                                                                                                                                                                                                                                                                                                                                                                                                          |                 | signs, advertising                                                                                                                                                                                                                                                                                                     |                 |
| Noise                                  | dBA level                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                 |                                                                                                                                                                                                                                                                                                                        |                 |
| Exterior Storage                       | Location of outside storage, outdoor display, screening                                           | Sec. 19-11.5.2 Outdoor display: <ul style="list-style-type: none"><li>•in dedicated area shown on plan, size limits</li><li>•not interfere w parking, landscaping, stormwater, circulation</li><li>•only open during bus hours</li><li>•max height 6'</li><li>•fencing required</li></ul>                                                                                                                                                                  |                 | location of outdoor storage areas                                                                                                                                                                                                                                                                                      |                 |
| Financial/ Technical capability        | both, town manager financial capacity allowed; Performance guarantee by staff                     | Bonds, letters of credit or security acceptable to town prior to site plan approval                                                                                                                                                                                                                                                                                                                                                                        |                 | site improvement list and cost estimate; yes                                                                                                                                                                                                                                                                           |                 |
| Other                                  |                                                                                                   | key map, GIS submissions; <i>"Information requested by the permitting authority 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."</i>                                                                                                                                                       |                 |                                                                                                                                                                                                                                                                                                                        |                 |
| Waivers                                | Allowed                                                                                           | Not commonly waived.                                                                                                                                                                                                                                                                                                                                                                                                                                       |                 | allowed by PB or Dir                                                                                                                                                                                                                                                                                                   |                 |
| Standards                              |                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                 |                                                                                                                                                                                                                                                                                                                        |                 |
| Profession-al team                     |                                                                                                   | "Projects must be designed by a multidisciplinary team of professionals that includes surveyors, architects, engineers, and landscape architects, among other professionals, as needed and appropriate." LA can be waived.                                                                                                                                                                                                                                 |                 |                                                                                                                                                                                                                                                                                                                        |                 |
| Use of site                            | Natural features/cluster developed portion of site (Note: RP regs are                             | Landscape preserved in natural state in so far as is practical; buildings harmonious to terrain                                                                                                                                                                                                                                                                                                                                                            |                 | Not cause significant adverse impacts to natural resources.                                                                                                                                                                                                                                                            |                 |
| Traffic/ Parking                       | road system, access into site, internal circulation, parking per Off-Street Parking, Sec. 19-7-8  | Access points, interior circulation, ped/vehicle separation, Sec. 19-136 Parking stds, 19-137, 19-139 PB can waive parking; 19-140, 19-141; 19-142; 19-143 "Any driveway shall be constructed with the surface approved by the permitting authority. 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." 19-144; 19-145; 19-146; 19-147; 19-148; |                 | No unreasonable congestion/unsafe condition; parking per Off Street Parking; tech stds; Adequate fire safety access or mitigate with sprinkler system; Tech stds; "Any driveway shall be constructed with the surface approved by the Planning Board in accordance with the specifications of the Municipal Engineer." |                 |

| Site Plan Review Comparison (7-3-2025) |                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                     |                 |                                                                                                                                                                                                                                                                                             |                 |
|----------------------------------------|--------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
|                                        | Cape Elizabeth                                                                                   | Falmouth                                                                                                                                                                                                                                                                                                                                                                            |                 | Yarmouth                                                                                                                                                                                                                                                                                    |                 |
| Type                                   | Site Plan Review                                                                                 | Minor Site Plan                                                                                                                                                                                                                                                                                                                                                                     | Major Site Plan | Minor Site Plan                                                                                                                                                                                                                                                                             | Major Site Plan |
| Reviewer                               | Planning Board                                                                                   | Planning Director                                                                                                                                                                                                                                                                                                                                                                   | Planning Board  | Planning Director                                                                                                                                                                                                                                                                           | Planning Board  |
| Pedestrian                             | system of pedestrian ways                                                                        | Sec. 19-138 marked crosswalks; 19-149 maximum safety for pedestrian and cycling traffic                                                                                                                                                                                                                                                                                             |                 | embedded in general traffic regulations                                                                                                                                                                                                                                                     |                 |
| Storm-water                            | <10,000 sq. ft. impervious -LID; 10,000-43,560 sq. ft. Prof engineer required; 43,560+ Storm Ord | Sec. 19-158 no change to elevation, contour except as shown on site plan; minimal field changes by Town Engineer, Dir; may require temporary site improvements                                                                                                                                                                                                                      |                 | post development rate does not exceed pre-development, Post construction stormwater management ordinance                                                                                                                                                                                    |                 |
| Erosion Control                        | Erosion control mgmt plan based on best practices                                                | Sec. 19-157 soil erosion and sedimentation control measures                                                                                                                                                                                                                                                                                                                         |                 | Appendix D, Chapter 601 erosion plan                                                                                                                                                                                                                                                        |                 |
| Utilities                              | Water, sanitary wastewater, other, solid waste                                                   | PB may require underground utilities                                                                                                                                                                                                                                                                                                                                                |                 | sanitary sewer impact on municipal system; State Plumbing Code; Yarmouth Water Dist supply;                                                                                                                                                                                                 |                 |
| Shoreland Zoning                       | shoreline, water quality                                                                         | Separate in Shoreland Zoning regulations                                                                                                                                                                                                                                                                                                                                            |                 | Separate in Shoreland Zoning regulations; concurrent review                                                                                                                                                                                                                                 |                 |
| Landscap-ing and buffering             | Preservation plan; landscaping to enhance development; screening; Appendix C for planting list   | Sec. 19-150 VC district exempt; buffering areas, preserve natural features, durable fencing; Sec. 19-151 special buffering for BP District; Sec. 19-153, special buffering for CO District; 19-154 parking area landscaping, plant list                                                                                                                                             |                 | Buffering when non-res adjacent to res, multifamily bldgs, min width 5' -25'; preserve natural features for buffering, fences, buffer vehicle circulation, outdoor storage, lighting, and buildings; preserve existing veg                                                                  |                 |
| Lighting                               | safety; 0.5 footcandles                                                                          | Sec. 19-149 light style consistent with bldg, max height, max apex, shielding, pedestrian lighting; 4 illumination levels; fuel pump lighting                                                                                                                                                                                                                                       |                 | sufficient for safety and not a nuisance. Tech stnds, style, height, shielding, 4 light levels; string lights,                                                                                                                                                                              |                 |
| Signs                                  | Sign Ordinance                                                                                   | Size, number, location, design, colo,r texture, lighting and materials not adverse to development design                                                                                                                                                                                                                                                                            |                 | location, size, design, color, texture, materials and lighting not detract from design of building or neighboring properties.                                                                                                                                                               |                 |
| Noise                                  | graduated decibel levels                                                                         |                                                                                                                                                                                                                                                                                                                                                                                     |                 |                                                                                                                                                                                                                                                                                             |                 |
| Storage of materials                   | outside storage; receptacles screened                                                            | "Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures and similar... shall be subject to setbacks, screen plantings or other screening methods as shall be reasonably be rquired to prevent their being adverse to or incongruous with the design, appearance, environment and the surrounding properties." |                 | Mostly focus on trash and recycling; some standards in Character based development code                                                                                                                                                                                                     |                 |
| Technical and Financial Capability     | Required                                                                                         | Financial guarantee required as part of approval                                                                                                                                                                                                                                                                                                                                    |                 | Prefer bank letter; don't retain submitted info                                                                                                                                                                                                                                             |                 |
| Other                                  | Town Center, BA District Design Requirements                                                     | Multiple design requirements by location                                                                                                                                                                                                                                                                                                                                            |                 | •In compliance with comp plan. "The bulk, location and height of proposed buildings ...will not cause health or safety problems to existing uses in the neighborhood. 55,000/75,000 sq. ft. cap;<br>•Design relationship to site and surrounding properties is sensitive<br>•Scenic Vistas. |                 |



**Town Council Meeting  
Wednesday, September 3, 2025**

## **AGENDA ITEM SUMMARY**

### **Spurwink Marsh/Sawyer Road Project**

**Council Resource:** Penny Jordan

**Staff Resource:** Maureen O'Meara, Town Planner

#### **Background:**

The Towns of Cape Elizabeth and Scarborough have been engaged in a multi-year project to restore the Spurwink Marsh and remove Sawyer Road/ Street. This is an update of where the project stands, including the grant funding, scope of work, and upcoming action items required of both communities.

**Exhibit:** Memo from Town Planner

**Draft Motion:** Workshop Item for Discussion Only

## MEMORANDUM

TO: Pat Fox, Town Manager  
FROM: Maureen O'Meara, Town Planner  
DATE: August 27, 2025  
SUBJECT: Spurwink Marsh Restoration: Sawyer St/Rd removal Update

### Introduction

The Towns of Cape Elizabeth and Scarborough have been engaged in a multi-year project, funded by the Maine Natural Resource Conservation Program (MNRCP) with a 1.9 million dollar grant, to restore the Spurwink Marsh and remove Sawyer St/Rd. This is an update in preparation for the next action needed by both Town Councils, which is discontinuance of the portion of the road located in the marsh.

### What's coming up?

•**Street Discontinuance.** The next step for the Town Councils is the legal process required by state statute to discontinue the portion of Sawyer St/Rd located in the marsh. This portion of the process has been timed to be eligible for the grant to cover legal costs. Town Attorney Mary Costigan will be providing guidance on the steps required. We expect both towns will need to hold a public hearing and take a vote for the portion of Sawyer St/Rd located in its community. (A standard boundary survey of the Right-of-way of Sawyer St/ Rd will be completed by October 1<sup>st</sup> by Sebago Technics as part of the engineering work for the project.)

•**Stakeholder meetings.** The Town of Cape Elizabeth will hold a stakeholder meeting on Monday, September 22<sup>nd</sup>, beginning at 7:00 p.m. in the Town Hall. The meeting will be an opportunity for the public to engage with the project components/schedule/etc. Both communities will be constructing dead end turnarounds, and in Cape Elizabeth there is an opportunity to combine that with an overlook at the edge of the marsh. What should that look like? A main focus of the Cape Elizabeth meeting will be to receive feedback on the town's interface at the marsh edge.

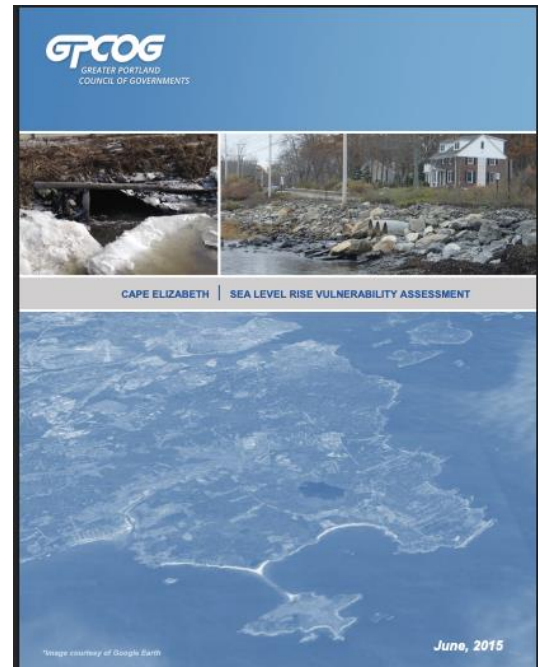
•**RFQ Selection.** Staff from the Town of Cape Elizabeth, Town of Scarborough, the US Fish and Wildlife Service (USFWS) and the Wells National Estuarine Research Reserve (WNERR) will be reviewing submissions from environmental companies, due September 11<sup>th</sup>, to select a consultant to design and implement the first phase of marsh restoration.

•**Permitting and environmental restoration.** The project engineering consultant, Sebago Technics Inc, will be submitting permitting applications in conjunction with our environmental consultant for several project components. We hope to obtain permitting in sufficient time to allow our environmental consultant to implement the first phase of environmental restoration before April 1, 2026.

## How did we get here?

June, 2015

Sea Level Rise Vulnerability Assessment Report: The Town of Cape Elizabeth Report (prepared by the Greater Portland Council of Governments) assesses municipal infrastructure vulnerable to sea level rise. Sawyer Road is vulnerable under all sea level rise scenarios.

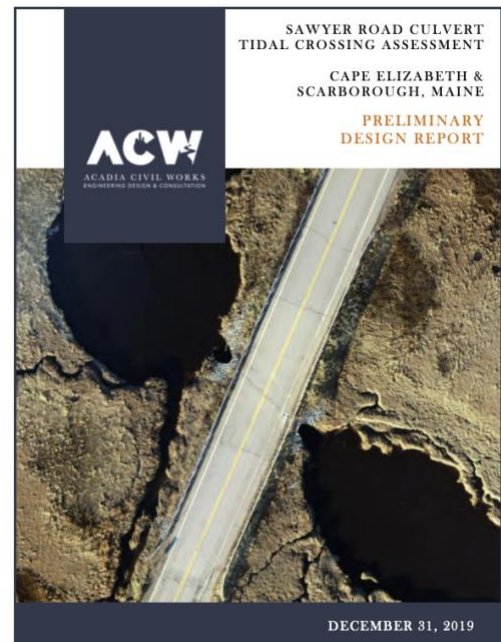


December 10, 2018

Sawyer Road Culvert assessment study: The Cape Elizabeth Town Council votes 7-0 to accept a grant to study the Sawyer Rd culvert in collaboration with the Town of Scarborough.

April 8, 2019

Habitat and Culvert Assessment Study: The Town Council receives a presentation on a study, funded with a Coastal Communities Grant, assessing the condition of 16 culverts for physical condition and habitat impact.



March 16, 2022

[Joint Cape Elizabeth/Scarborough Town Councils workshop](#): Joint workshop to discuss seeking grant funding to study removal of Sawyer Street/Road. Notices are mailed to Wells Rd area residents and several residents spoke at the workshop and expressed support.

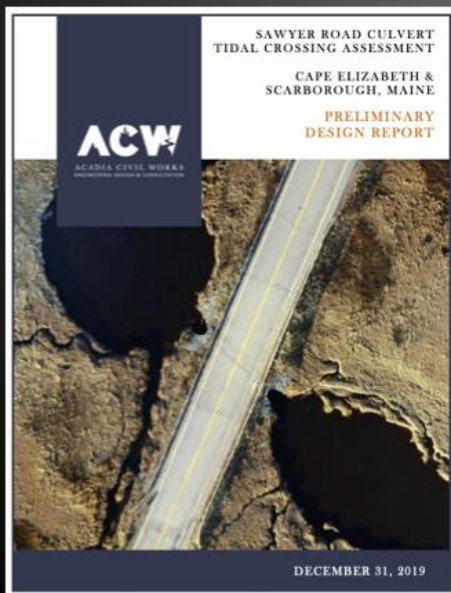
May 9, 2022

Cape Elizabeth Town Council meeting: The Town Council votes 6-0-1(abstain) to authorize submission of NFWF (National Fish and Wildlife Foundation) grant proposal relating to Assessment/Preliminary Design of the Removal of a Portion of Sawyer Road and Replacement of the Spurwink Avenue Culvert. Grant application is ultimately not selected for funding. Feedback includes concern with the town asking for funding to pay for traffic study.

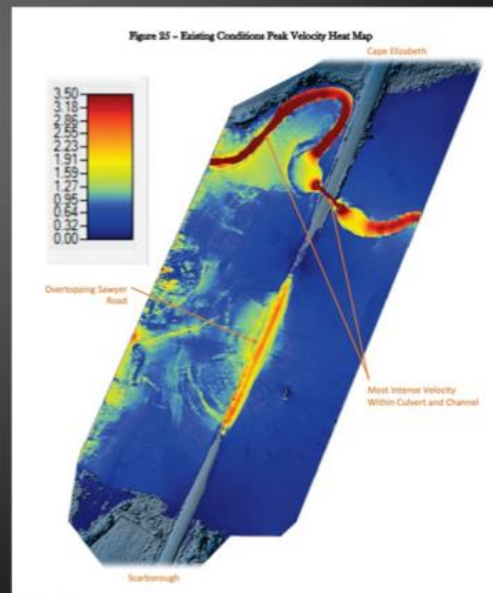
February 13, 2023

Cape Elizabeth Town Council meeting: The Town Council votes 7-0 to again authorize match funding for a Sawyer/Spurwink Marsh NFWF Grant application.

- June 12, 2023 Cape Elizabeth Town Council meeting: The Town Council votes 6-0 to authorize grant match funding to Sawyer Rd (MNRCP grant). This grant would fund both design *and construction* to remove Sawyer St/Rd.
- December 11, 2023 Cape Elizabeth Town Council meeting: The Town Council votes 7-0 to accept of a grant award for the Sawyer Road/Street Culvert from the Maine Natural Resource Conservation Program (MNRCP) that funds both design *and construction* to remove Sawyer St/Rd.
- February 7, 2024 [Joint Scarborough/Cape Elizabeth Town Councils workshop](#): Joint, in person workshop hosted by the Scarborough Town Council with a [presentation](#) to remove Sawyer St/Rd. Meeting agenda posted to town website and several residents spoke at workshop and expressed support.



CULVERT REPLACEMENT: \$2M – 5.5M



ROAD WILL STILL FLOOD

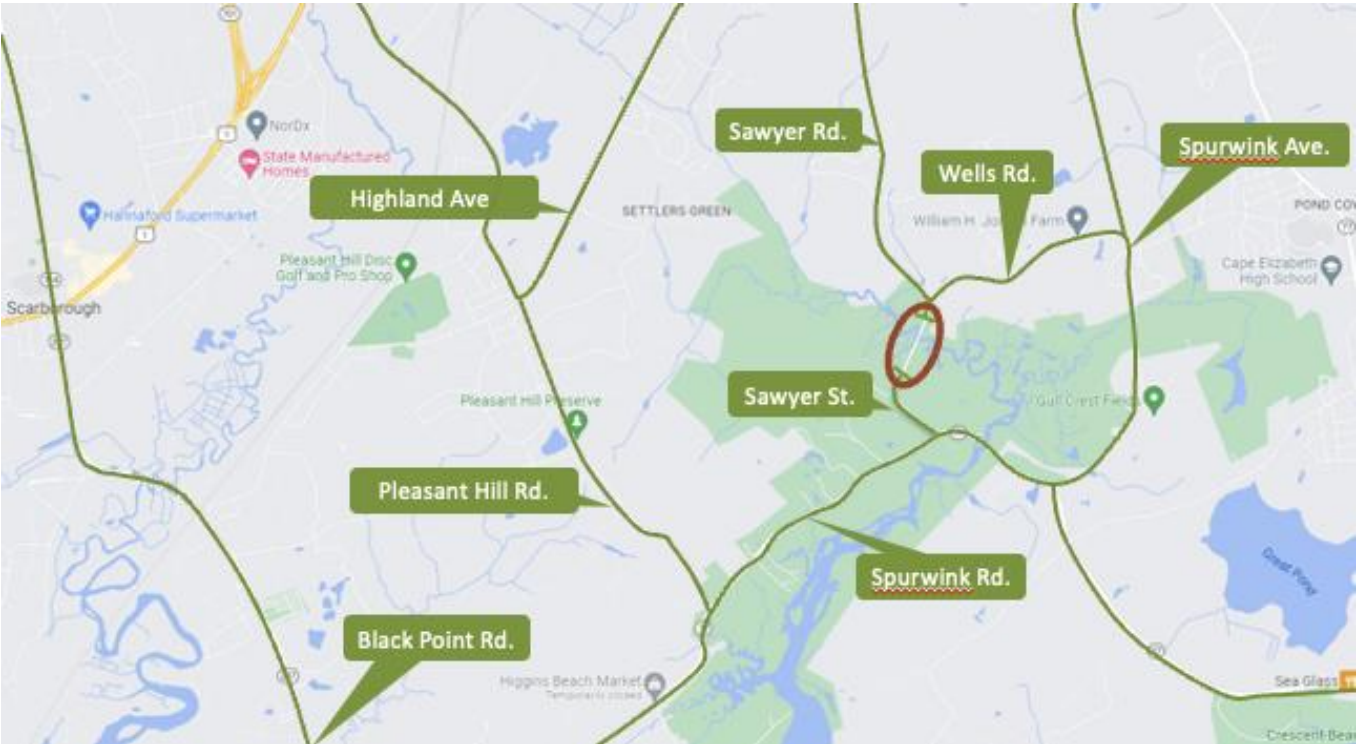
- April 8, 2024 Cape Elizabeth Town Council meeting: Town Council votes 6-0 to authorize signing of a Memorandum of Understanding (MOU) with the Town of Scarborough. *“Parties agree to work together cooperatively as part of a project team to ensure that the Spurwink Marsh Road Removal Project adheres to the MNRCP requirements, including performance standards for salt marsh enhancement and long-term monitoring obligations (five years of post-construction monitoring conducted over a period of seven years).”*
- April, 2025 The Towns of Cape Elizabeth and Scarborough, the USFWS, the Nature Conservancy and the Maine Department of Environmental Protection sign contract with the Maine Natural Resource Conservation Program for a \$1.954 million dollar project (MNRCP contribution \$1.59 million) to restore the Spurwink Marsh and remove Sawyer St/Rd.
- July, 2025 Project workplan accepted by MNRCP as draft and “interim status report.”

Frequently asked questions

•Traffic

The original grant application scope submitted to the National Fish and Wildlife Foundation (NFWF) was for planning and design funding and included a traffic study, for which the town would fund as part of the grant match. The Maine Natural Resource Conservation Program (MNRCP) grant will only fund projects that mitigate wetland impacts, not just design. The MNRCP grant includes both design *and construction* and for this reason, the traffic study is not included.

The project has included an Alternative Routes assessment.



There are routes that available that can handle traffic from Sawyer Street/Road, including during storm events. These roads have significant capacity to safely handle additional traffic and add approximately 3 minutes to a trip. Sawyer St/Rd has been closed several times due to flooding and there has been no negative traffic impact to adjacent roads noted during those periods.

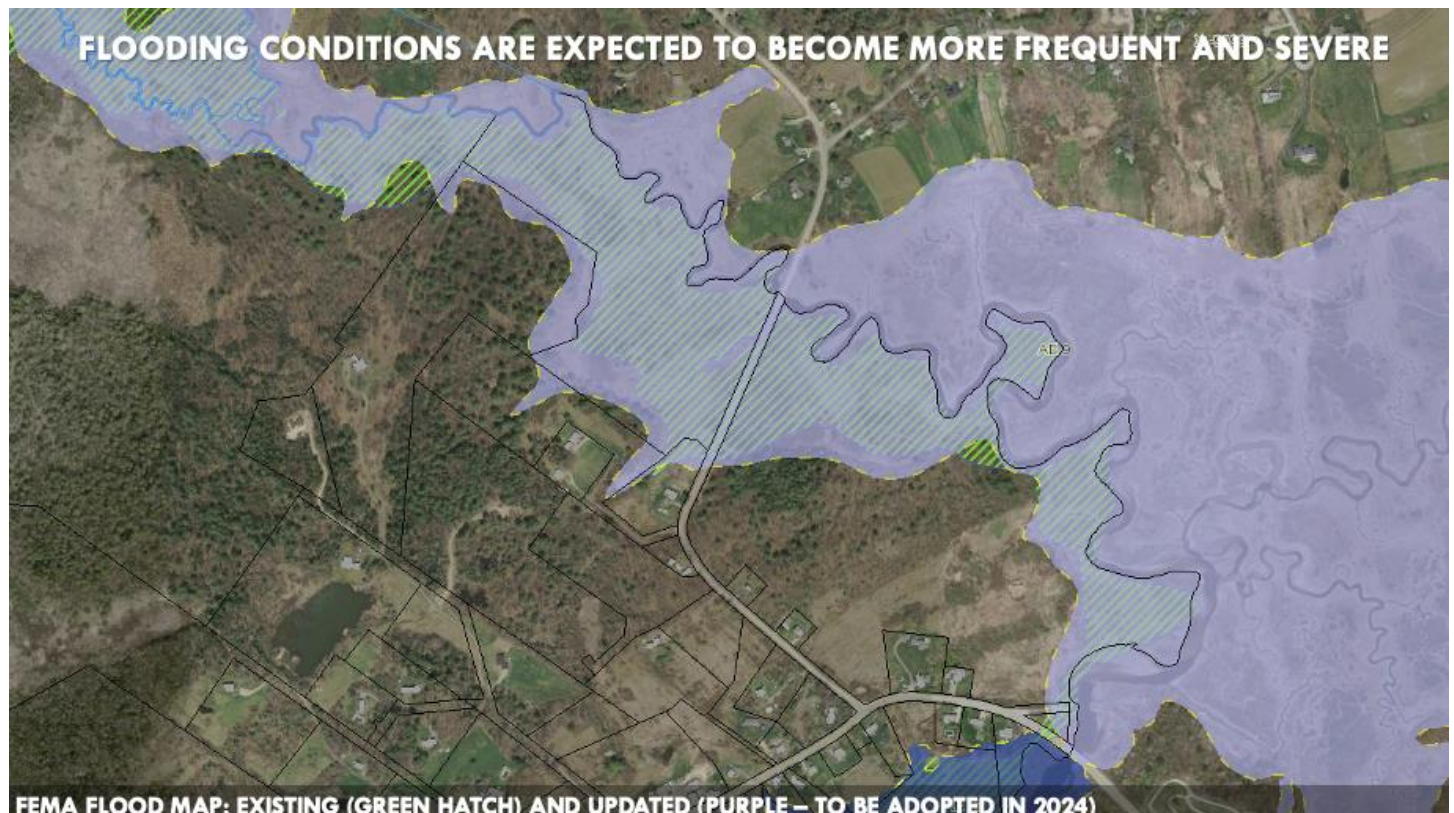
Traffic Counts

|                 |      |       |
|-----------------|------|-------|
| Sawyer St:      | 2022 | 1,110 |
|                 | 2019 | 820   |
|                 | 2016 | 1,080 |
| Wells Rd (west) | 2022 | 960   |

|                             |      |       |
|-----------------------------|------|-------|
| Wells Rd (middle)           | 2022 | 1,490 |
| Spurwink Ave (n Scott Dyer) | 2022 | 2,920 |
|                             | 2019 | 2,520 |
|                             | 2016 | 2,300 |
| Spurwink Ave (s Scott Dyer) | 2019 | 2,380 |
|                             | 2016 | 2,060 |
| Bowery Beach Rd (Spurwink)  | 2022 | 4,800 |
|                             | 2019 | 4,150 |
|                             | 2016 | 4,200 |

### •Flooding

The map below depicts the recently replaced floodplain maps in green stripe and the new floodplain maps in purple. Sea level rise/climate change are expanding the areas vulnerable to flooding, which is exemplified by more frequent flooding of Sawyer St/Rd. The Town of Cape Elizabeth has adopted Resource Protection zoning regulations that establish a 250' wide upland wetland buffer and it appears that expanded floodplain areas are located within these buffers.



The Spurwink Marsh restoration work and removal of Sawyer St/Rd will restore 1.8 acres of existing roadbed to tidal salt marsh and enhance 31 acres of salt marsh habitat. This restoration work will increase the marsh's capacity to absorb flood waters by strengthening traditional marsh functions. The Sebago Technics design work will include subcontracting hydrologic and hydraulic modeling that will inform project design.

- Legal

Town Attorney Mary Costigan, Bernstein Shur, will be providing legal guidance on state statute requirements for road discontinuance prior to the September 3, 2025 Town Council workshop.

- More information

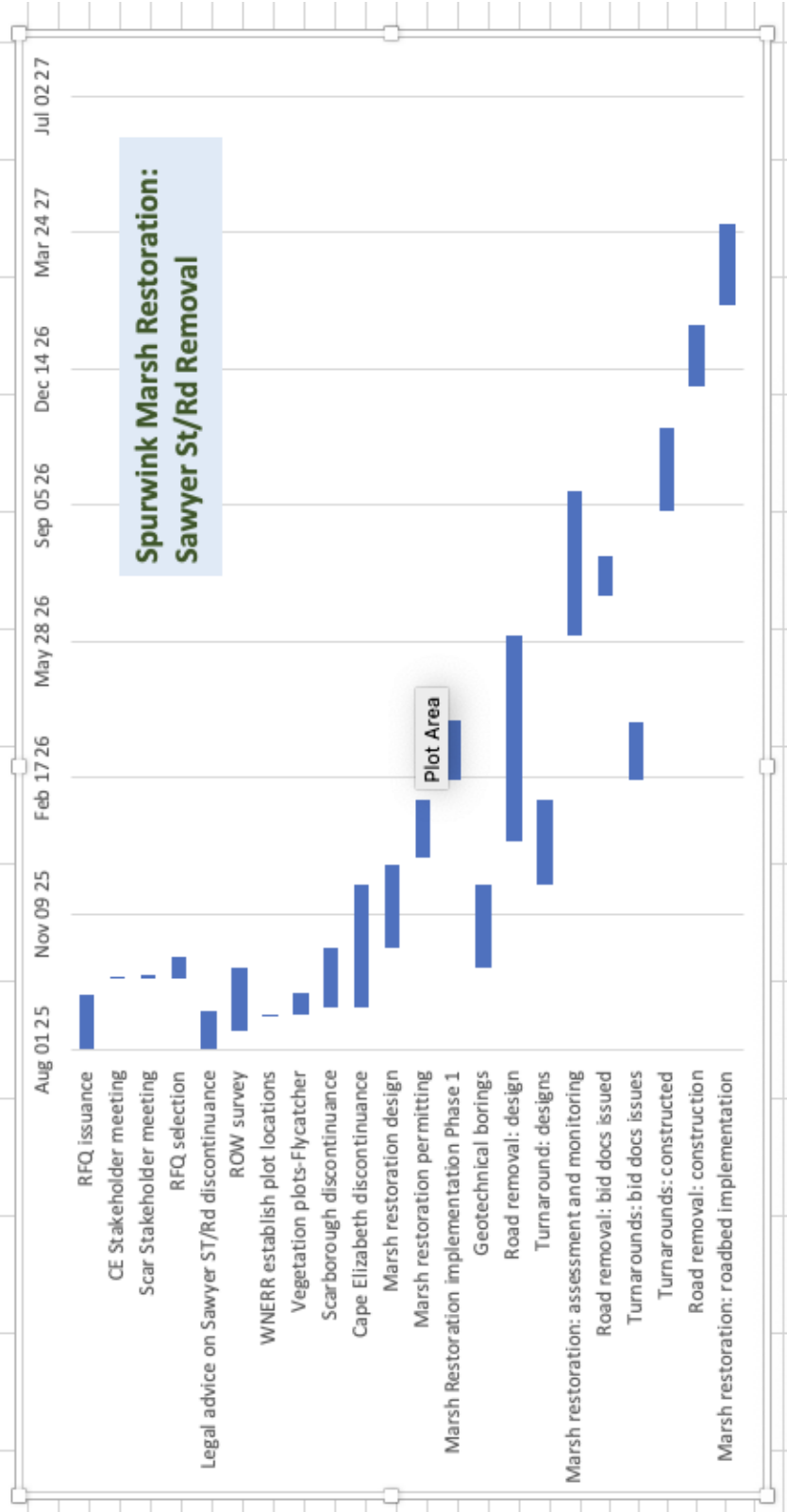
The Town of Cape Elizabeth has established a significant presence for the project on the [town website](http://www.capeelizabeth.gov), [www.capeelizabeth.gov](http://www.capeelizabeth.gov).



The Town of Cape Elizabeth will hold a stakeholder meeting on **Monday, September 22<sup>nd</sup> beginning at 7:00 p.m.** in the Cape Elizabeth Town Hall. The meeting will include an overview of the project, including environmental presentation by Wells National Estuarine Research Reserve (WNERR) Stewardship Manager Jake Aman. The focus of the meeting will be design of an overlook on the Cape Elizabeth side of the marsh.

The Town of Scarborough will hold a stakeholder meeting on **Wednesday, September 24<sup>th</sup> beginning at 6:00 p.m.** in the Scarborough Town Hall. The meeting focus will be climate resilience planning in Scarborough.

•Schedule (subject to revision)



### Next Steps

- Review legal guidance and schedule street discontinuance process



Town Council Meeting  
Wednesday, September 3, 2025

## AGENDA ITEM SUMMARY

### **Motion to Enter Executive Session**

**Council Resource:** Penny Jordan

**Staff Resource:** Patrick Fox, Town Manager

### **Background:**

The Council will enter an Executive Session to discuss the Town Manager Annual Performance Review Process and award recognition candidates.

### **Exhibit:**

**Draft Motion:** ORDERED, the Cape Elizabeth Town Council enters into executive session pursuant to 1 M.R.S. § 405 6. A & D. to discuss the Town Manager's Annual Performance Review.