PLANNING BOARD WORKSHOP

TO:	Cape Elizabeth Planning Board
FROM:	Maureen O'Meara, Town Planner
DATE:	December 31, 2024
SUBJECT:	January 7, 2025 Planning Board Workshop

The Cape Elizabeth Planning Board will hold a workshop on **Tuesday, January 7, 2025,** beginning at 7:00 p.m. in the Jordan Conference Room, Town Hall.

WORKSHOP AGENDA

7:00 1. **Purpoodock Club Seasonal bathroom site plan amendment.** The Purpoodock Club would like to discuss an amendment to the previously approved site plan to install a seasonal bathroom located at 300 Spurwink Ave (R4-3).

7:20 2. **Cape Community Arena/Gull Crest Site Plan Amendments.** The Cape Community Area Group would like to discuss amendments to the Gull Crest site plan related to the Cape Community Arena located on Gull Crest Drive (R5-2).

7:45 3. **Supplemental LD 2003 Amendments.** At the December 9, 2024 meeting, the Town Council has referred to the Planning Board Supplemental LD 2003 Amendments. Enclosed are Supplemental LD 2003 amendments, Town Council memo 11-25-2024, and comments from Code Enforcement Officer Ben McDougal. See also LD 2003 Amendments adopted by the Town Council November 13, 2023 and the LD 2003 Rule.

8:55 4. **Planning Board Caucus/FOAA.** The Planning Board will discuss nominations for Chair and Vice-Chair for calendar year 2025.

9:10 5. **Planning Board logistics.** The Planning Board will discuss meeting logistics, calendar year 2025 meeting calendar, the work of related committees, and training.

Public Comment: Members of the public are strongly encouraged to submit written comments addressing workshop items. All written comments shall be submitted to the Town Planner for distribution to the Planning Board and placed in the public file. An opportunity for members of the public to speak at workshops is not available.

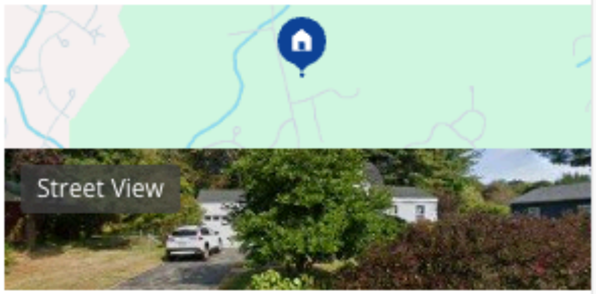
NOTE: The times on this agenda are approximate and are intended for the convenience of the applicants; however, your time could be called earlier or later than the indicated time.

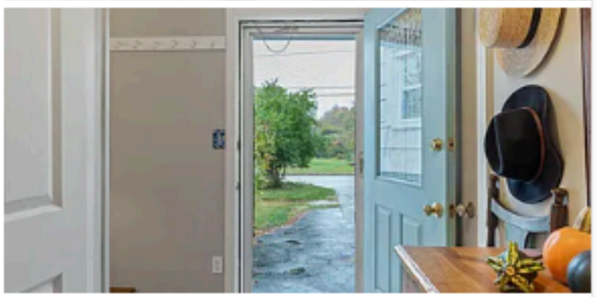
Cc: Town Manager

2025 Planning Board Schedule

All meetings begin at 7:00 p.m.
Regular meetings are held in the Town Council Chambers
Workshops are held in the Jordan Conference Room
Both are located in Town Hall

Date	Type of Meeting
January 7	Workshop
January 21	Meeting
February 4	Workshop
February 18*	Meeting
March 4	Workshop
March 18	Meeting
April 1	Workshop
April 15	Meeting
May 6	Workshop
May 20	Meeting
June 3	Workshop
June 17	Meeting
July 1	NO WORKSHOP
July 15	Meeting
August 5	Workshop
August 19	Meeting
September 2	Workshop
September 16	Meeting
October 7	Workshop
October 21	Meeting
November 4	Workshop
November 18	Meeting
December 2	Workshop
December 16	Meeting
*School vacation week	





Zillow

Save Sh

3 bd | 2 ba | 1,405 sqft

1174 Sawyer Road, Cape Elizabeth, ME 04107

Closed

: $590,000 | Sold on 11/22/24 | Zestimate®: $563,500

Est. refi payment: $3,719/mo* Refinance your loan

Home value Owner tools Home details Neighborhood details

Comparable homes

These are recently sold homes with similar features to this home, such as b bathrooms, location, and square footage.

This home	1 1128 Sawyer Road	2 305 Fowler Road
$563,500	**$610,000**	**$605,000**
Sold	**Sold** about 2 month...	**Sold** 30 days ago
3 beds	**3** beds	**3** beds
2 baths	**2** baths	**2** baths
1405 sqft	**1772** sqft	**1933** sqft
$401 / sqft	**$344** / sqft	**$313** / sqft

CAPE ELIZABETH COUNCIL TRAINING

Mary Costigan

December 16, 2024

BERNSTEIN SHUR

Declaration of Intent

- "…public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly…."

- The law "shall be liberally construed and applied to promote its underlying purposes and policies…." 1 M.R.S. §401

What does the law cover?

- Public meetings/proceedings
- Public records

Public Meetings/Proceedings

What are public proceedings? Who is covered by FOAA?

"Public Proceedings" are defined in §402(2) to mean the transactions of any functions affecting any or all citizens of the State by any of the following:

…

> C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision

Open Meeting Requirement

§403:

Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

When can a public proceeding be closed to the public?

- “Except as otherwise provided by statute or by section 405”
    - Statutory exemption: Example - Poverty Abatements
    - Executive Sessions under §405

Communications Outside a Public Meeting

- §401: FOAA "does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of" FOAA
- Telephone and electronic communications are subject to FOAA
- Including personal and official email accounts, Facebook, Twitter, etc…
- Phone, e-mail, electronic communications can be used for communications on non-substantive issues (set meeting date for example), but not to deliberate or discuss substantive matters among board members.
- Common violations: polling members by telephone to vote on or discuss an application; chance meeting at grocery store or private party where matter is discussed, making decisions in a closed door meeting when not authorized, and conducting discussions about official business by email.

Public Right to Attend and Record §404

- In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny,
    - all persons shall be entitled to attend public proceedings and
    - to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings.
    - The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.

What record must be made of a public proceeding? - §403

- **Record of public proceedings.** Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:
  A. The date, time and place of the public proceeding;
  B. The members of the body holding the public proceeding recorded as either present or absent; and
  C. All motions and votes taken, by individual member, if there is a roll call.
- **Audio or video recording.** An audio, video or other electronic recording of a public proceeding satisfies this requirement.

Executive Sessions - §405

Permitted Deliberations: Deliberations <u>on only the following matters</u> may be conducted during an executive session:

A.Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

1. An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;
2. Any person charged or investigated must be permitted to be present at an executive session if that person so desires;
3. Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and
4. Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal;

Executive Sessions - §405 cont'd

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school ….

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

Executive Sessions - §405 cont'd

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage;

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality ….

Restrictions on Executive Sessions

- An executive session may not be used to defeat the purposes of the FOAA.
- An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.
- An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.
- A motion to go into executive session must :
  - Indicate the precise nature of the business of the executive session and
  - include a citation of one or more sources of statutory or other authority that permits an executive session for that business.
- Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

Notice of Public Meetings - § 406

- Public notice shall be given for all public proceedings … if these proceedings are a meeting of a body or agency consisting of 3 or more persons.
- This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned.
- In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

Decisions - § 407

1.Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

2.Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

Remote Meeting Participation §403-B

A public body may allow members of the body and the public to participate in a public proceeding using remote methods only under the following conditions:

- The body has adopted a written policy governing remote participation
- If no policy is adopted, the chair can determine a meeting can be held remotely if an emergency exists.
- Members of the public must be able to attend by remote methods when members of the body participate by remote methods
- Reasonable accommodations may be provided when necessary to provide access to individuals with disabilities.
- If there is an opportunity for public input during the proceeding, an effective means of communication must be provided.
- Notice of remote meetings must include the means by which members of the public may access the proceeding using remote methods.
- The notice must also identify a location for members of the public to attend in person.
- Public attendance at a proceeding may be limited solely to remote methods if there is an emergency or urgent situation that requires the body to meet only by remote methods.

Remote Meeting Participation §403-B Cont'd

- A member of the body who participates in a public proceeding by remote methods is present for purposes of a quorum and voting.
- All votes taken during a public proceeding using remote methods must be taken by roll call.
- All documents and other materials considered by the public body must be made available, electronically or otherwise, to the public who attend by remote methods
- Members of the public are permitted to record the proceeding remotely.
- A remote participation policy adopted by the municipal officers applies to all public bodies that are within the jurisdiction of the municipality unless the municipal officers specifically authorize a public body under their jurisdiction to adopt its own remote participation policy.

Public Records

Definition:

- Written, printed, graphic, mechanical or electronic information;
- Possession or custody of agency, official or association; and
- Received, prepared or containing information related to transaction of public business

Public Records Exceptions

Common Exceptions

- Records designated confidential by statute
- Municipal statutory exceptions include personnel records, certain TIF submissions, forest management plans (tree growth and open space programs), poverty abatement records applications, and certain GA applications
- Information contained in a communication between a constituent and an elected official if the information: is of a personal nature including medical information, credit or financial info, personal history, social security number, or complaints, charges of misconduct or other materials pertaining to disciplinary action.
- Juvenile records
- Investigations
- Email addresses collected and used by a political subdivision to provide noninteractive notifications, updates and cancellations

Who May Make a FOAA Request?

- **Who?**

  "Any person" – regardless of residency or citizenship

  - Includes individuals, corporations, associations, media

- **The "why" behind the request**

  FOAA requesters generally do not have to justify or explain their reasons for making requests

- **The "how" of the request**

  Does not have to be in writing

  No required form

Responding to a FOAA Request

- Acknowledge request within 5 working days of receipt and provide an estimated time frame and cost in reasonable amount of time
- Denial in writing within 5 working days
- Locate responsive records and redact exempt information
- Respond to requester with the documents within a reasonable time
- Schedule inspection, conversion, or copying during reasonable office hours

Fees

- $25/hour after the first two hours of staff time for time spent searching, retrieving, compiling or redacting
- Reasonable fee for copying; actual costs for conversion and mailing
- If estimate of costs is greater than $50, must notify requester before proceeding; if costs exceed $100, payment in advance can be required
- Fee waivers can be granted if requester is indigent, <u>or</u> the agency or official considers release of the public record to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government, and is not primarily in the commercial interest of the requester

Violations

- Any person may appeal to Superior Court
- Burden on agency or public body
- If illegal meeting, action of board will null and void
    - If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and penalties may apply
- Officials subject to penalties and attorneys fees
- A willful violation of FOAA is subject to a civil penalty of not more than $500

Public Access Officers

Public Access Officers

- Each agency must designate a Public Access Officer from among its existing employees
- Serves as FOAA contact for the agency
- Serves as resource within the agency on FOAA issues and to ensure requests are properly acknowledged.
- Same training requirements as elected officials

Public Access Ombudsman

- Created earlier, but not previously funded.
- The Ombudsman is available to review complaints about compliance with the Freedom of Access Act and attempt to mediate their resolution, as well as answer calls from the public, media and government agencies about the requirements of the law.

Training

- Certain public officials must complete a FOAA training within 120 days after the official takes the oath of office

    - Public access officer
    - Municipal officers, municipal clerks, treasurers, managers or administrators, assessors and code enforcement officers and deputies for those positions, planning board members, and budget committee members

- Training must include the following topics:
    - General legal requirements of FOAA regarding public records and public proceedings
    - Procedures and requirements to comply with a public record request
    - Penalties and other consequences for failure to comply with the law

- Certificate and record of completed training is required

Conflicts of Interest

- Financial Conflicts of Interest
- Incompatibility of Office
- Prohibited Appointments or Employment
- Relationships
- Predisposition or Bias

Financial Conflicts of Interest

Common Law

- “whether the town official by reason of his [her] interest, is placed in a situation of temptation to serve his own personal pecuniary interest to the prejudice of the interests of those for whom the law authorized and required him to act...”
- Not a lot of guidance on the threshold for indirect pecuniary interests that triggers disqualification. The Maine Law Court has directed that the determination of whether a particular interest is sufficient to disqualify an individual must be made on a case-by-case basis.

Financial Conflicts of Interest

Statutory Law

- 30-A M.R.S.A. § 2605 sets out black letter standards when it will be presumed that the official or deciding party is “self-interested” in connection with the performance of governmental actions or decision making.

Statutory Test – 10% Rule

- when the official is an “officer, director, partner, associate or stockholder of a private corporation, business or other economic entity” which is the subject of the issue before the body; and
- the individual is “directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least 10% interest in the business or other economic entity.”

Avoid Appearance of a Conflict of Interest

Safeguard the integrity of the proceedings.

- Do you think that in light of the points raised, circumstances and situation that you can participate in these proceedings without any bias, predisposition or letting your relationship impact your participation or decision?

and

- Will you conduct yourself and base your decision in the proceedings based solely on the record of the proceedings and based on your best judgment on applying the applicable and relevant standards?

Handling Conflicts

- **Disclose, Discuss and Vote**
- **Consequence – Action Could be Voidable if Challenged**

Prohibited Appointments

- 30-A M.R.S.A. § 2606: No municipal officer, during the term for which that officer has been elected and for one year thereafter, may be appointed to any civil office of profit or employment position of the municipality, which was created or the compensation of which was increased by the action of the municipal officers during the officer's term.
- Charter/Ordinance/Policy: Callaghan v. South Portland

Incompatibility of Offices

Statutory Prohibitions :

- Town manager may not serve as town moderator, selectman, assessor or school committee member
- Tax collector or treasurer may not serve as selectman or assessor
- Municipal officer (or spouse) may not serve on board of appeals
- Etc.…

Common law

- - Municipal officers and code enforcement officers, road commission, school committee member, municipal clerk, election warden, etc…

Bias Based on Relationships

- Quasi-judicial Functions
- Consanguinity or Affinity Within the 6th Degree = Bias
  - 1 M.R.S. §71(6): when a municipal officer sits as a quasi-judicial officer (e.g., one who makes licensing decisions, hears, and decides personnel matters, hears appeals) to decide on a matter involving a relative by blood (consanguinity) or marriage (affinity) (and likely adoption) who is related to a party to the proceeding as a second cousin or closer, that municipal official is disqualified from participation in that proceeding.

Bias Based on Predisposition

- Quasi-Judicial Functions
- Can you make an impartial decision?
- Is there an appearance of bias?
- Burden of Proof is on the applicant
- Research Conducted by Board Members

CODE OF ETHICS

- Conflicts of Interest
  - Councilors must ensure their official actions are not intended to create actual or the potential for personal or financial gain, either directly or indirectly, for themselves, family members, personal friends, or other related parties.
  - If a Councilor has accepted money or other consideration from a citizen, group of citizens, business, or other entity that has interest in an issue before the Council and the money or consideration was received within 12 months of the Council's consideration of the issue, the Councilor shall not participate in the issue.
- Gifts and/or Gratuities
  - Councilors should refuse personal gifts, favors, donations, or special privileges where favor or special privilege would not have been extended but for the position of such Councilor, where the giver's interests are likely to be affected by actions of the Councilor, or where gift is designed to influence the actions of the Councilor.
- Appearance of a Conflict and Improper Influence
  - Councilors should conduct official and personal affairs in a manner as to avoid any appearance of conflict of interest and/or improper influence.
- Representing Third Parties Before Town Agencies
  - No Councilor shall appear on behalf of any third party before any Town body or represent any third party in any action in which the Town is a party, without explicitly stating that they are appearing as a citizen or representative of a citizen as opposed to as a member of the Council.
  - Councilors may appear before a Town body when acting on behalf of constituents, themselves, or the Town, in the course of their official duties.

CODE OF ETHICS CONT'D

- Bias
  - If a Councilor believes they are biased for or against an individual or entity that has a matter pending before the Council, and such bias will interfere with the Councilor's ability to make a fair and impartial decision, they shall recuse themselves from the decision-making.
- Standards of Conduct
  - Preserve written communications that are subject to FOAA.
  - Conduct public business in a transparent manner.
  - Annually provide a list of gifts received in the prior year having a value of $100 or greater, from any person or entity within the Town or having a pending matter before the Council, other than family or close friends.
- Enforcement
  - If any member of the Council believes that a violation has occurred or a conflict of interest exists, they shall report the matter to the Town Clerk, who shall distribute the report to the Council.
  - The Town Council shall be the judge of whether any violation of the Code of Ethics has occurred and shall determine the proper remedy or response.
  - See also – Article III, Section 6 of the Council Rules (If any member of the Town Council believes that another member has a statutory conflict of interest, they may raise a point of order at any time and the Town Council shall immediately suspend business to resolve the issue.)

THANK YOU

Mary Costigan

December 16, 2024

BERNSTEIN SHUR

TOWN OF CAPE ELIZABETH
Planning Board
Workshop Application

Applicant Name RICK LIBBY, AGENT PURPOODOCK CLUB

Email rickibby322@gmail.com Telephone 207-831-4298

Address 300 SPURWINK AVE., CAPE ELIZABETH, ME 04107

Do you own the property? Yes X No ____

If not, do you have written permission from the owner? Yes ___ (please provide) No ___

Project Contact Person (one only):

Name ROBERT METCALF Telephone 207-774-4427

Address MITCHELL & ASSOCIATES 70 CENTER STREET, PORTLAND, ME 04101

Email rmetcalf@mitchellassociates.biz

Location of Project 300 SPURWINK AVE. Map/Lot MAP R04, LOT 3

Project description: PURPOODOCK CLUB PROPOSES TO CONSTRUCT A 14'x 18' SEASONAL RESTROOM BUILDING BETWEEN THE 8TH AND 14TH TEE BOXES.

Signature of Owner

DEC. 20, 2024
Date

Please return to the town planner, ACP Office, Town Hall
maureen.omeara@capeelizabeth.org, 799-0115
Planning Board workshop requests must be submitted at least 7 days before the workshop.

CERTIFICATION OF COMPLETION OF
FREEDOM OF ACCESS TRAINING REQUIRED BY 1 M.R.S.A. § 412

I, ________________________________, hereby certify that I have met the training
(Name of elected official)

requirements set forth in 1 M.R.S.A. § 412 on ______________________ by
(date of training)

completing the following training:

☐ A thorough review of all of the information made available on the Frequently Asked Questions portion of the State Freedom of Access website, www.maine.gov/foaa/faq.

☐ Another training course that includes this information, identified as follows:

____
(Title of Course)

____
(Name of Course Provider)

Dated this ______ day of _________________, 200____.

____
Signature

____
Printed Name

____
Elected Office

Note: Training must be completed within 120 days after an elected official takes the oath of office or, for elected officials serving in office on July 1, 2008, by November 1, 2008.

Greenbelt Gazette

December, 2024

What's Happening?

•Stonegate Boardwalk completed by Eagle Scout Ian Connolly. The Stonegate Trail, just off Rockcrest Drive, has a new boardwalk completed by Eagle Scout candidate Ian Connolly and his troop. The boardwalk improvement is identified as Priority project 2-19 and includes extensions to an existing 54’ long boardwalk to replace muddy logs. Labor was donated by the Boy Scouts and material costs are less than $1,200, provided by the Conservation Committee from the Greenbelt maintenance account. Thanks to Ian and the Boy Scout Troop!

Before

After

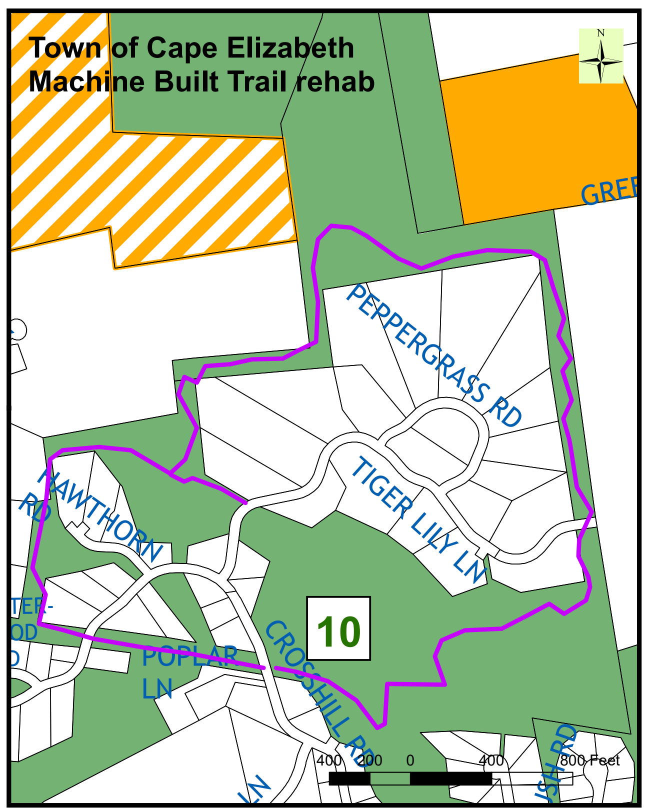
•Chapman Donation at Winnick Woods. Thank you to Janice Chapman for a generous donation to address invasive species management at Winnick Woods. The Conservation Committee will be evaluating options during the first quarter 2025 to address invasive plant control at Winnick Woods. Ms. Chapman's donation allows the committee to broaden the options it will be evaluating. Thank you!

•Fields Management Policy. During the dormant winter season, the Conservation Committee often uses the time to review policies and make plans for improvements to be accomplished in warmer weather. This year, the committee will take a look at management of the town's open space fields at the Town Farm and Winnick Woods. (This should not to be confused with athletic fields, which are separately managed). The Public Works Department performs seasonal mowing to maintain the fields, and the committee will be collaborating with the department on best practices, being mindful of the wide-ranging responsibilities for which the Public Works Department is currently tasked.

Multi-user Mantras

•If it snows, walk on the edge. If you are walking on snow covered trails that have been groomed for Cross-country Skiing, please make sure you and your pet walk on the edge of the trail to preserve grooming for Nordic skiing.

•Cross Hill Trail Rebuilding. Work will continue on the Cross Hill trail loop to rehabilitate the trail surface as long as weather permits. Work not completed this season will be finished in the spring. Please give our trail contractor the room he needs and consider using other trails during this major surface and drainage improvement.



Prepared by the Planning Office 12-20-2023

Maine Freedom of Access Act: Your Right to Know

Home → Frequently Asked Questions

Frequently Asked Questions (FAQ)

General Questions | Public Records | Public Proceedings

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act (FOAA) is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The FOAA does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the Freedom of Information Act (FOIA) applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

For more general information on the Freedom of Information Act go to:

FOIA.gov - Freedom of Information Act

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the FOAA. 1 M.R.S. § 409(1)

Relief can be in the form of an order issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S. § 410

What are the penalties for failure to comply with the Freedom of Access Act?

A state government agency or local government entity whose officer or employee commits a willful violation is subject to a fine of not more than $500 for the first violation; a fine of not more than $1,000 for a civil violation that was committed not more than 4 years after a previous adjudication of a violation by an officer or employee of the same state government agency or local government entity; or a fine of not more than $2,000 for a civil violation committed not more than 4 years after 2 or more previous adjudications of a civil violation by an officer or employee of the same state government agency or local government entity. 1 M.R.S. § 410 Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S. § 452

What is the Public Access Ombudsman?

The Legislature created a public access ombudsman position to review complaints about compliance with the FOAA and attempt to mediate their resolution, as well as answer calls from the public, media, public agencies and officials about the requirements of the law. The ombudsman is also responsible for providing educational materials about the law and preparing advisory opinions. The ombudsman works closely with the Right to Know Advisory Committee in monitoring new developments and considering improvements to the law.

How do I contact the Public Access Ombudsman?

Call the Office of the Attorney General at (207) 626-8577 or get more information online at:

Your Right to Know: Maine's Freedom of Access Act

Who is required to take training on the Freedom of Access Act?

Public access officers and certain officials subject to this section must complete a course of training on the requirements of the FOAA. 1 M.R.S. § 412

Which officials are required to take Freedom of Access training?

Officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators
- Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school administrative units
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts
- Public access officers.

As of October 18, 2021 the list of officials required to complete the training also includes:

- Municipal managers or administrators
- Municipal code enforcement officers

- Deputies for municipal clerks, treasurers, managers or administrators, assessors, and code enforcement officers
- Municipal planning board members
- Officials of school administrative units includes superintendents, assistant superintendents and school board members

What is a public access officer?

A public access officer must be designated to serve as the contact person for an agency, county, municipality, school administrative unit and regional or other political subdivision for public records requests. An existing employee is designated public access officer and is responsible for ensuring that public record requests are acknowledged within five working days of receiving the request and that a good faith estimate of when the response to the request will be complete is provided.

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Officials and public access officers can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all off this information but may include additional information.

Do training courses need to by certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

When must the training be completed?

The training requirement must be completed not later than the 120th day after the date the official assumes the person’s duties as an official or the person is designated as a public access officer.

How do officials and public access officers certify they have completed the training?

After completing the training, officials and public access officers are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the official or filed with the public entity to which the official was elected or appointed. A public access officer must file the record with the agency or official that designated the public access officer. A sample training completion form is available (PDF) (This file requires the free Adobe Reader).

PUBLIC RECORDS

What is a public record?

The FOAA defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below.) 1 M.R.S. § 402(3)

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The FOAA provides that "a person" has the right to inspect and copy public records. 1 M.R.S. § 408-A

How do I make a Freedom of Access Act request for a public record?

See the How to Make a Request page on this site.

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The FOAA does not require that requests for public records be in writing. However, most governmental bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the governmental body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely-preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within 5 working days of receipt of the request. 1 M.R.S. § 408-A(3)

How does an agency determine the date a request for public records was received?

The date a request for public records was received is the date a sufficient description of the record is received by the agency or official at the office responsible for maintaining the record. 1 M.R.S. § 408-A(3)

Does an agency have to forward my request if I sent it to an office within the agency that does not maintain the record?

A request for records that are maintained by the agency but not by the office of the agency that received the request must be forwarded to the appropriate office or official within the agency without willful delay. 1 M.R.S. § 408-A(3)

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S. § 408-A(3)

Does an agency have to estimate how long it will take to respond to my request?

Yes. An agency or official must provide a good faith, nonbinding estimate of how long it will take to comply with the request within a reasonable time of receiving the request. The agency or official shall make a good faith effort to fully respond within the estimated time. 1 M.R.S. § 408-A(3)

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S. § 408-A The agency or official can schedule the time for your inspection, conversion and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency of official. 1 M.R.S. § 408-A(5)

Can an agency or official delay responding if my request was not directed to the agency public access officer?

No. An agency that receives a request to inspect or copy a public record must acknowledge and respond regardless of whether the request was directed to the public access officer. The unavailability of a public access officer may not be reason for a delay. 1 M.R.S. § 413(3)

What if the agency or official does not have regular office hours?

If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists. 1 M.R.S. § 408-A(5)

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 M.R.S. § 408-A Agencies must acknowledge the request within 5 working days of receipt.

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

A person may inspect or copy any public record in the office of the agency or official during reasonable office hours. The agency or official shall mail the copy upon request. The agency may charge a reasonable fee to cover the cost of making the copies for you, as well as actual mailing costs. 1 M.R.S. § 408-A(1), (2), (8)(E)

When may a governmental body refuse to release the records I request?

The FOAA provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records.

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the FOAA.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the FOAA. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Must an agency have computer technology resources that allow for maximum accessibility to public records while protecting confidential information?

When purchasing and contracting for computer software and other information technology resources, an agency shall consider the extent to which it will maximize accessibility and exportability while protecting confidential information that may be contained in the public records. 1 M.R.S. §414

Does an agency have to explain why it denies access to a public record?

Yes. An agency has 5 working days after the receipt of a request to deny the request and state the reason for the denial or state that some or all of the responsive records may be denied once they are located and reviewed. 1 M.R.S. § 408-A(4)

What can I do if an agency fails to provide a written denial?

If an agency does not provide a written denial or a statement that the request may be denied in full or in part following a review within 5 working days of the receipt of the request, this is considered a failure to allow inspection or copying and is subject to appeal. 1 M.R.S. § 408-A(4)

What can I do if I believe an agency has unlawfully withheld a public record?

If you are not satisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 30 calendar days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S. § 409(1)

Can an agency deny a request because it is unduly burdensome?

An agency may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action in the Superior Court for the county where the request was made within 30 days of receipt. The agency must document the terms of the request, the good faith estimate and efforts to clarify or modify the request. Notice must be provided to the requester at least 10 days before the agency files for an order of protection. Upon a showing of good cause, the court can establish the terms of production and limit or deny the request. 1 M.R.S. § 408-A(4-A) **As of October 18, 2021**, a reasonable fee to cover the cost of copying is no more than 10 cents per page for a standard 8 ½ by 11 inch black and white copy. A per page fee may not be charged for records provided electronically.

May a governmental body ask me why I want a certain record?

The FOAA does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S. § 408-A(3)

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request. 1 M.R.S. § 408-A(6)

If the public record is electronically stored, the agency or official subject to a request must provide the public record either as a printed document or in the medium in which the record is stored, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file. 1 M.R.S. § 408-A(7)

Must the agency or official provide me with access to a computer terminal to inspect electronically stored public records?

No. The agency or official is not required to provide access to a computer terminal. 1 M.R.S. § 408-A(7)(B)

I asked a public official a question about a record, but he/she didn't answer. Is the official required to answer my question?

No. A public officer or agency is not required to explain or answer questions about public records. The FOAA only requires officials and agencies to make public records available for inspection and copying.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the FOAA, it constitutes a "public record". 1 M.R.S. § 402(3)

An agency or official must provide access to electronically stored public records, including e-mails, as a printed document or in the medium it is stored at the discretion of the requestor. If an agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in an e-mail, the agency is not required to provide the records in an electronic format. 1 M.R.S. § 408-A(7)

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages.

Is information contained in a communication between a constituent and an elected official a public record?

Information of a personal nature consisting of an individual's medical information, credit or financial information, character, misconduct or disciplinary action, social security number, or that would be confidential if it were in the possession of another public agency or official is not a public record. However, other parts of the communication are public. 1 M.R.S. § 402(3)(C-1)

Can an agency charge for public records?

There is no initial fee for submitting a FOAA request and agencies cannot charge an individual to inspect records unless the public record cannot be inspected without being compiled or converted. 1 M.R.S. § 408-A(8)(D) However, agencies can and normally do charge for copying records. Although the FOAA does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S. § 408-A(8)(A)

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The FOAA authorizes agencies or officials to charge $15 per hour after the first hour of staff time per request. **As of October 18, 2021**, an agency or official may charge $25 per hour after the first two hours of staff time per request. 1 M.R.S. § 408-A(8)(B) Where conversion of a record is necessary, the agency or official may also charge a fee to cover the actual cost of conversion. 1 M.R.S. § 408-A(8)(C)

As of October 18, 2021, an agency may retain any fees or costs charged for responding to a FOAA request.

The agency or official must prepare an estimate of the time and cost required to complete a request within a reasonable amount of time of receipt of the request. If the estimate is greater than $30, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds $100 or if the requester has previously failed to pay a fee properly assessed under the FOAA. 1 M.R.S. § 408-A(9), (10)

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency or official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if the agency or official considers release of the public record to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S. § 408-A(11)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public agency or official is required to make available for inspection and copying, subject to any applicable exemptions, only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order.1 M.R.S. § 402 (2)

What does the law require with regard to public proceedings?

The FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S. § 403

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 M.R.S. § 406

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S. § 406

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same or faster means used to notify the members of the public body or agency conducting the public proceeding. 1 M.R.S. § 406 The requirements that the meeting be open to the public, that any person be permitted to attend and that a record of the meeting be made and open for public inspection still apply. 1 M.R.S. § 403

Can public bodies or agencies hold a closed-door discussion?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S. § 405(1)-(5)

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the FOAA, such as the following: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any governmental body or agency subject to the FOAA is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S. § 405(2), (6)

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S. § 409(2)

Can members of a body communicate with one another by e-mail outside of a public proceeding?

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the FOAA. 1 M.R.S. § 401

E-mail or other communication among the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 M.R.S. § 402 The underlying purpose of the FOAA is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 M.R.S. § 401 Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 M.R.S. § 403 In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 M.R.S. § 406

Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record. 1 M.R.S. § 402(3) As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under the FOAA.

Can I record a public proceeding?

Yes. The FOAA allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the FOAA. 1 M.R.S. § 404

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The FOAA does not require that an opportunity for public participation be provided at open meetings. However, public participation may be permitted or required in certain circumstances for constitutional reasons or under various statutes, local ordinances or policies. An individual should determine the type of public meeting and consult sources of authority outside the FOAA for information about participation rights.

Is a public body or agency required to make a record of a public proceeding?

Unless otherwise provided by law, a record of each public proceeding for which notice is required must be made within a reasonable period of time. At a minimum, the record must include the date, time and place of the meeting; the presence or absence of each member of the body holding the meeting; and all motions or votes taken, by individual member if there is a roll call.

The FOAA also requires that public bodies and agencies make a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S. § 407(1), (2)

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S. § 8002(1); 5 M.R.S. § 9059

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S. § 403 , 407; 5 M.R.S. § 9059 (3)

Can a public body or agency meet remotely?

Yes, but only under the conditions set forth in 1 M.R.S. § 403-B. The body must adopt a written policy on remote participation after notice and public hearing. The body may then allow members to participate by remote means if the body complies with the other requirements of the law, including allowing for remote attendance by members of the public. The body may limit public attendance at a proceeding solely to remote methods if there is an emergency or urgent issue that requires the body to meet only by remote methods.

Can a public body hold a remote hearing on a proposed written policy?

Yes. If the chair of a body determines that an emergency or urgent issue exists that prevents an in-person public meeting, the chair may call for a remote meeting to adopt a proposed remote meeting policy. If 2/3 of the members of the body vote in support of the chair's determination that an emergency or urgent issue exists, after an opportunity for hearing, the members may then vote on whether to adopt a remote meeting policy.

Does the remote meeting policy apply to boards or committees within the jurisdiction of the public body?

Yes, unless the board or committee adopts its own policy.

What is the procedure for adopting the written remote meeting policy?

The law requires public notice and a hearing prior to adopting the written policy. The body should give notice to the public in the same way it would give notice of any other public proceeding under 1 M.R.S. § 406. The notice should include information about how the public can participate in the meeting and the proposed policy or instructions on how to obtain a copy of the proposed policy in advance of the meeting.

What notice is required for a meeting being conducted remotely?

Notice must be given in ample time to allow the public to attend remotely and given in a manner reasonably calculated to notify the public of the time, date, location and method to be used to conduct the meeting. If any members of the body participate remotely, the notice must include the means by which members of the public may access the meeting. The notice must also provide the physical location where members of the public may participate in person, if applicable.

What methods of remote participation may be used?

Remote participation in a public proceeding is through either telephonic or video technology. Members of the public shall be provided with a meaningful opportunity to attend by remote means when any members of the body are participating remotely. Other means may be used when necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means of communication, such as email, text message or chat functions.

What if a member of the public wants to provide public comment?

The body must provide an effective means of communication between members of the body and members of the public when public comment is allowed.

Do members of a body who are participating remotely count toward a quorum?

Yes, a member who participates remotely pursuant to the adopted policy is considered present for purposes of determining a quorum.

Is a roll call vote required for action taken during remote meetings?

Yes, all votes must be taken by roll call in a manner that can be seen and heard if using video technology, and heard if using only audio technology, by all members of the body and the public.

Do members of the public who attend remotely have access to meeting documents and materials?

All documents and other materials must be made available to members of the public participating remotely to the same extent customarily available to the public attending in person, as long as additional costs are not incurred by the public body. A proposed policy regarding remote participation must be made available in advance of the meeting if meeting remotely.

Credits

CAPE ELIZABETH PLANNING BOARD
RULES AND REGULATIONS
(effective May 8, 2024)

Section 1 Organization of the Board

A. Board Membership

As stated in Article IV, Boards and Committees Ordinance, Sec. 4-1-7, the Planning Board shall consist of seven (7) members who shall be residents of the Town and who shall not be salaried officials of the Town. The members shall serve without pay and shall be appointed by the Town Council to serve for staggered three (3) year terms.

B. Board Officers

1. A Chair and a Vice-Chair shall be elected annually by the Board members at the regular January meeting and shall assume their duties at said meeting.

2. In the absence of the Chair, the Vice-Chair shall assume the duties of the Chair.

3. Should both the Chair and the Vice-Chair be absent from a Board meeting, a temporary Chair shall be appointed by the Chair prior to the meeting or elected by a majority of the Board present at the meeting.

Section 2 Meetings

A. Regular - The regular meeting of the Planning Board shall be held at 7:00 p.m. on the third Tuesday of each month in the Town Hall or such other time and place that the Board may designate. The date, time and place of any regular meeting may be changed by an order passed at the previous meeting of the Board. The Board shall not begin to hear new agenda items commencing after 10:00 p.m., unless the Board votes to suspend this rule. Items not heard will automatically be added to the agenda for the next regular meeting.

B. Special - Special meetings may be called by the Chair or when requested by a majority of the Board. Whenever possible, a special meeting shall be announced at a prior regular meeting of the Board. The announcement of a special meeting shall set forth the matters to be acted upon by the Board.

C. Workshop - Workshop meetings shall be held at the discretion of the Chair. Such workshops shall be held on the first Tuesday of each month whenever possible.

D. Site Walks - Site walks as deemed necessary by the Board may be scheduled.

E. Quorum - A quorum for a meeting shall consist of at least four (4) members of the Board.

Section 3 Conduct of Meetings

A. General

1. The Chair shall call the meeting to order at the appointed time. If a quorum is present, the Chair shall call for the approval of the minutes of the preceding meeting, and then proceed to business.

2. The Chair shall declare all votes. If any member doubts a vote, the Chair shall order a recount of the affirmative and negative votes without debate. The secretary shall record all votes.

3. In the conduct of its meetings, the Planning Board will be guided by the latest edition of Robert's Rules of Order, Newly Revised.

4. Prior to consideration of an agenda item before the Board, each Board member shall declare any potential conflict of interest to the Board with respect to that item. A Board member may voluntarily refrain from participation on an agenda item. If a question of a possible conflict of interest is raised and the Board member asserts that there is no conflict that will influence his or her conduct, the Board, after discussion, shall determine by a majority vote whether a conflict exists. A Planning Board member with a conflict of interest shall refrain from participating, influencing and voting on the agenda item that precipitated the conflict of interest.

5. A presentation by an applicant shall not exceed 15 minutes in length without the permission of the Chair.

B. Decorum and Order

The Chair shall preserve decorum and decide all questions of order and procedure. Persons may only address the Planning Board after being recognized by the Chair, and at regular meetings only at the lectern. Other than when recognized, persons present at Planning Board meetings shall not applaud or otherwise express approval or disapproval at any statements made or actions taken at such meeting.

C. Public Comment

1. Workshop - Members of the public are strongly encouraged to submit written comments addressing workshop items. All written comments shall be submitted to the Town Planner for distribution to the Planning Board and placement in the public file.

2. Regular/Special meeting – In addition to written comments, members of the public may speak at a regular or special meeting.

   a. The public hearing or public comment period will be opened after the applicant has made a presentation describing the project, or the Planning Board Chair has described the ordinance amendment or policy issue under consideration. When the Planning Board is considering the completeness of an application, public comments shall be limited to completeness and no comments on the merits of the application shall be made. If the Planning Board finds the application complete, the Planning Board may then open a second public comment period on the substance of the application and under the terms described below.

   b. Members of the public wishing to address the Board concerning an agenda item shall wait until the Chair asks for public comment. When recognized by the Chair, the speaker shall state the speaker's name and address in an audible tone for the record. The speaker is strongly encouraged to focus his/her comments on the development standards of review, or, in the case of an ordinance amendment or policy discussion, the issue under discussion. Each member of the public shall be allowed three (3) minutes, and such time may be extended at the discretion of the Chair. The Chair may decline to recognize any person who has already spoken on the same agenda item. Once the public hearing or public comment period is closed and the Planning Board has begun its deliberations on an item, no member of the public shall be permitted to address the Planning Board. The public hearing or public comment period may be reopened at the discretion of the Chair.

3. Persons wishing to address the Board on an item not appearing on the agenda may do so only after disposition of all items appearing on the agenda, and only at the discretion of the Chair.

D. Site Walk

1. Members of the public are welcome to attend a site walk.

2. The Planning Board Chair shall commence the site walk and preserve decorum.

3. At the beginning of the site walk, Planning Board members should identify any specific areas that they want to see as part of the site walk. The applicant is responsible for guiding participants on the site. Planning Board members shall stay together during site walks. Members of the public shall also remain with the Planning Board when site walks are conducted on private property.

4. Site walk attendees may only ask questions with the permission of the Planning Board Chair. Questions should be directly related to the physical characteristics of the site or the location of the proposed project. No substantive comments in support or opposition of the proposed project should be made at the site walk. Substantive comments should be saved for regular meetings of the Planning Board where a public record of comments will be prepared.

Section 4 Voting Procedures

A. The Board shall act only by order. Each order shall be confined to one subject which shall be clearly expressed in the title of the order.

B. All votes of command shall be expressed as orders. All orders shall take effect when passed unless otherwise provided.

C. The votes for and against the passage of an order shall be entered in the proceedings of the Board recorded by the secretary. The affirmative vote of a simple majority of the members present and voting shall be required to approve a motion.

D. The Planning Board may reconsider any order within thirty (30) days of the decision. A motion to reconsider may only be made by a member who voted in the majority on the previous vote.

Section 5 Adoption and Amendments

No rule shall be amended or repealed without a recommendation from the Planning Board and approval by the Town Council.

Section 6 Procedures

A. Agendas

1. The Town Planner shall prepare a meeting agenda of items which have been submitted by the meeting deadline. The agenda shall be submitted to the Planning Board Chair for review, revision and approval. Unless otherwise specified, eight (8) paper copies and one (1) digital copy of plans and materials shall be submitted by an applicant at least fifteen (15) calendar days before the Board meeting, or if the fifteenth day falls on a holiday, the day after the holiday. Late submissions shall not be placed on a Board agenda.

2. Prior to the meeting, the Town staff will make copies of the agenda available to the applicants. The first time that the item appears on a Planning Board agenda, notice shall be sent in accordance with Sec. 16-2-1 (b), Public Notice.

3. A request to be on a workshop agenda shall be made at least seven days before the meeting. Every time a development proposal appears on a Planning Board workshop agenda, appropriate notices shall be sent to all property owners within 500 feet of the property involved. Materials for Planning Board discussion of a development project shall be provided by the applicant at the workshop. No vote or decision shall be made by the Planning Board at a workshop, except for a procedural vote on the potential conflict of interest or bias of a member or to schedule a public hearing at the next regular meeting. Minutes of the workshop are not required, except when a procedural vote is taken.

B. Coordination with Others

In order to assure coordination between the Planning Board and other Town bodies regarding development review, as well as other matters before the Board, the Town Planner shall consult with other Town officials as necessary or desirable, including the Town Engineer, the Conservation Commission, the Code Enforcement Administrator, the Town Attorney, the Fire and Police Chiefs, the Director of Public Works, and the Town Manager, as well as those who may have a particular expertise or interest in a request for review.

C. Research

When independent research is conducted by staff or a member of the Planning Board on any item before the Planning Board, the research shall be made available to all members of the Planning Board, the public, and the applicant. Research conducted by individual board members shall be provided to the town planner in the form of digital or paper copy, internet address, or other appropriate method. The town planner shall collect all information submitted by Planning Board members and any other research that may be done and send it to all members of the Planning Board as part of the meeting package. A copy shall also be forwarded to the applicant and added to the public file maintained in the town planner's office. Research information obtained after the meeting package shall be forwarded to the Planning Board and the applicant, and added to the public file as soon as possible after it is received.

Cooper Drive

Transformer, meter and electrical panel.

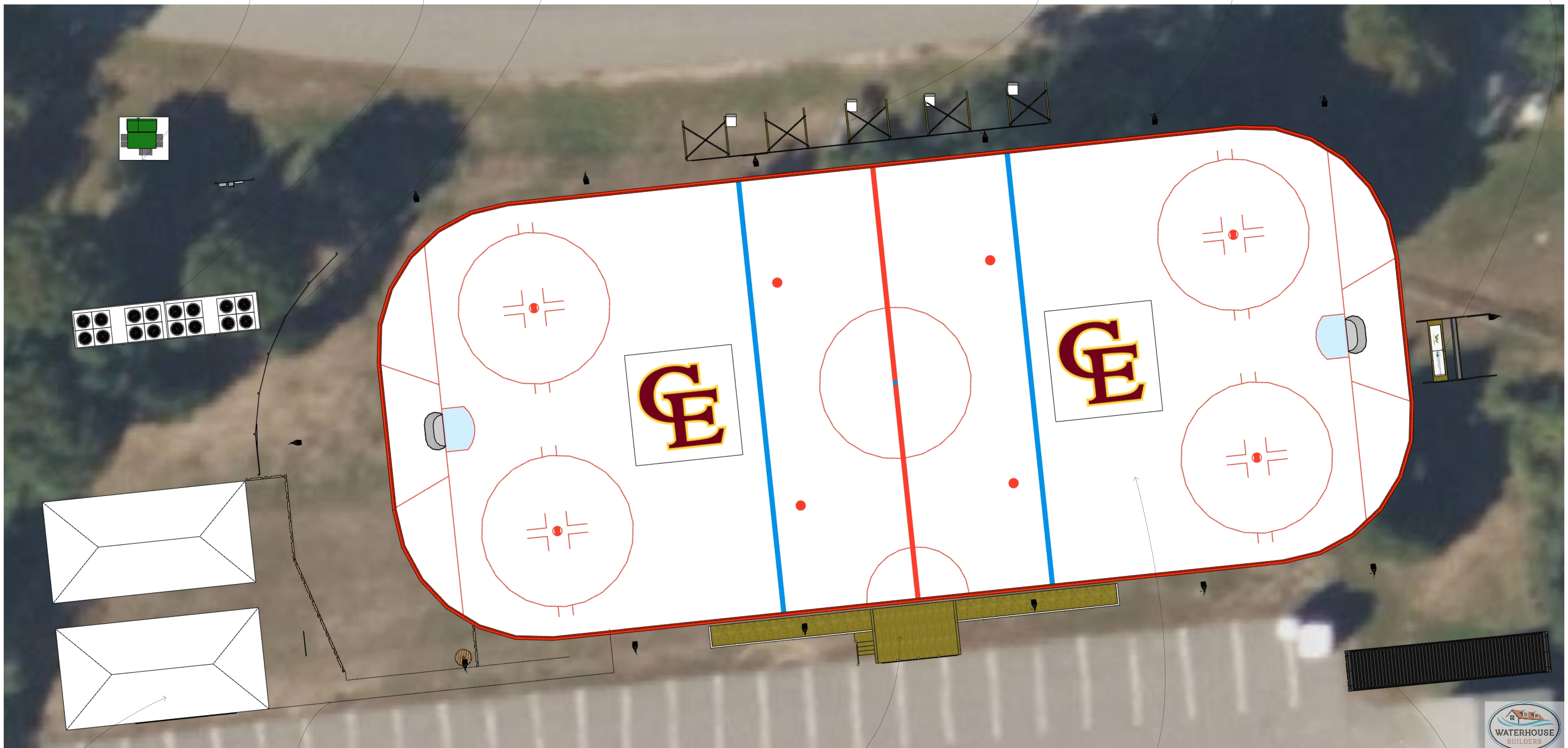
200 Ton Chiller

48’x 12’ Advertisement wall

78’x16’ Advertisement wall

LED Lights 20’ tall

Freestanding scoreboard



Two 2'x40' event tents

42” snow fence

Free standing bench and spectator area.

200’x 85’ Hockey Rink

Shipping container

Gullcrest

Waterhouse Builders
374 Cottage Rd
Cape Elizabeth, ME 04106
207 615 4971

CLIENT
Cape Community Arena

PROJECT
Rink setup 24/25

DRAWN BY
Mike Backman

ISSUE
12/23/24

DESCRIPTION
Site plan 24/25

1" = 10'

A1.0

Ice Rink TOWN OF CAPE ELIZABETH
Planning Board
Workshop Application

Applicant Name C.C.A.G____

Email mjbackman@gmail.com,
Telephone 207 615 4971_
Address_40 Cross Hill Road, Cape Elizabeth, ME 04107_______________

Do you own the property? Yes ____ No _X___

If not, do you have written permission from the owner? Yes _X__ (please provide) No ___

Project Contact Person (one only):

Name___Mike Backman______________________________Telephone_2076154971____

Address_19 Waterhouse Rd Cape Elizabeth______________________________

Email ____mjbackman@gmail.com______________________________________

Location of Project Gull Crest Drive ___________________________Map/Lot R-05 / 2_

Project description: Temporary Ice Rink

____

____

____

_______________________________________ _12/30/24______
Signature of Owner Date

Please return to the town planner, ACP Office, Town Hall
maureen.omeara@capeelizabeth.org, 799-0115

DRAFT

Supplemental LD 2003 Amendments

(based on the Zoning Ordinance effective 7-10-2024)

Description of basis for ordinance amendment. "Rule" is the Department of Economic and Community Development LD 2003 Rule

SEC. 19-1-3. DEFINITIONS

Accessory Building or Structure: A detached, subordinate structure ~~building~~, the use of which is clearly incidental and related to that of the principal building or use of the land and which is located on the same lot as the principal structure ~~building~~ or use. Any accessory ~~building or~~ structure that has plumbing shall not be used for overnight accommodation, unless it is an Accessory Dwelling Unit as defined herein. For residential uses, accessory ~~buildings and~~ structures shall include, but not be limited to, the following:

Accessory Dwelling Unit: A self-contained dwelling unit located within, attached to or detached from a single-~~-~~family unit located on the same parcel of land. An accessory dwelling unit must be a minimum of one hundred ninety (190) square feet.

~~**Affordable Housing:** Consists of either 1) single family dwelling unit lots which may be purchased for occupancy by buyers with low and moderate incomes as established by the State Planning Office or the Greater Portland Council of Governments or 2) an affordable housing development with dwelling units available for rental or ownership pursuant in accordance with 30-A M.R.S.A Sec. 4364.~~

The **Affordable Housing** definition has been deleted to avoid confusion with the new **Affordable housing development** definition. The Mandatory Affordable Housing Provisions, Sec. 19-7-4, which uses the term "Affordable Housing" have been revised to replace "**Affordable Housing"** with "Low and moderate income."

Affordable housing development: Affordable housing development means:

1. For rental housing, a development in which a household whose income does not exceed eighty percent (80%) of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units without spending more than thirty percent (30%) of the household's monthly income on housing costs; and

Affordable housing development is a new definition from the Rule that is needed for the Affordable Housing Density Bonus provisions. (see new Sec. 19-7-17)

2. For owned housing, a development in which a household whose income does not exceed one hundred twenty percent (120%) of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units without spending more than thirty percent (30%) of the household's monthly income on housing costs.

3. For purposes of this definition, "majority" means more than half of proposed and existing units on the same lot.

4. For purposes of this definition, "housing costs" include, but are not limited to:

a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and

b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

Area median income: Income that is at the midpoint of the Portland region's income distribution calculated on an annual basis by the U.S. Department of Housing & Urban Development.

Area Median Income is a definition from the Rule that is related to the **Affordable Housing development** definition above.

Attached: A structure connected by a shared wall or roof to the principal structure or having physically connected finished spaces.

Attached is a definition from the Rule that relates to the Accessory Dwelling unit provisions.

Base density: The maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in Article VI of the Zoning Ordinance.

Base density is a definition from the Rule that relates to the amount of affordable housing required to qualify for an Affordable housing density bonus.

Centrally managed water system: A water system that provides water for human consumption through pipes or other constructed conveyances to at least fifteen (15) service connections or serves an average of at least twenty-five (25) people for at least sixty (60) days a year as regulated by 10-144C.M.R. Ch 231, *Rules Relating to Drinking Water.* This water system may be privately owned.

Centrally managed water system is a definition from the Rule that relates to the areas for small multifamily buildings and the Affordable housing density bonus.

Certificate of occupancy: The municipal approval for occupancy granted pursuant to 25 M.R.S. § 2357-A or the Maine Uniform Building and Energy Code adopted pursuant to Title 10, chapter 1103. Certificate of occupancy may also be referred to as issuance of certificate of occupancy or other terms with a similar intent.

Certificate of occupancy is a definition from the Rule that relates to compliance with restrictions for an Affordable housing density bonus.

Comparable sewer system: Any subsurface wastewater disposal system that discharges over two thousand (2,000) gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules.*

Comparable sewer system is a definition from the Rule that relates to areas for small multifamily buildings and the Affordable housing density bonus.

Comprehensive plan: The most recently adopted Cape Elizabeth Comprehensive Plan.

Comprehensive plan is a definition from the Rule that explicitly references the Cape comp plan and relates to areas from small multifamily buildings and the Affordable housing density bonus.

Density requirements. The maximum number of dwelling units allowed on a lot, subject to dimensional requirements.

Density requirements is a definition from the Rule that relates to all additional units allowed.

Densely Developed Area: An area developed with at least six (6) principal structures ~~buildings~~ within two hundred fifty (250) feet of the center of the subject structure or structure ~~building~~.

The existing **Densely Developed Area** definition has been updated for consistency with the amendment to the **Principal structure** definition (p. 6)

Designated growth area: The area that is designated in the Town of Cape Elizabeth Comprehensive Plan as suitable for orderly residential, commercial, or industrial development, or any combination of those types of development, and into which most development projected over ten (10) years is directed.

Designated growth area is a definition from the Rule that relates to areas for small multifamily buildings and an Affordable Housing density bonus. The 2019 Comprehensive plan designates the RB, RC, TC and BA districts as growth areas (p. 237). The plan was adopted by the Town Council and deemed consistent by the State in 2019.

Dimensional requirements: The requirements which govern the size and placement of structures including, but not limited to, the following requirements: structure height, lot area, minimum frontage and lot depth.

Dimensional requirements is a definition from the Rule that relates to all additional units allowed.

Dwelling: A structure ~~building~~ containing one (1) or more dwelling units and used for human habitation.

Existing dwelling unit: A dwelling unit in existence on a lot at the time of submission of a permit application to build additional units on that lot.

Existing dwelling unit is a definition from the Rule that relates to small multifamily buildings.

Home Workshop or Workroom: A workshop, located within a principal structure ~~building~~ or within an accessory structure~~building~~, which is used primarily by the occupants of the dwelling unit for personal use and not a commercial use.

Housing: Any part of a structure which, through sale or lease, is intended for human habitation, including single family and multifamily housing, condominiums, time-share units, and apartments. For the purpose of applying Sec. 19-7-17, housing does not include dormitories, boarding houses, or other similar types of housing units, and also does not include transient housing or short term rentals.

Housing is a definition in the Rule that relates to all additional dwelling units allowed.

Human Habitation: The use of a structure as a dwelling and containing cooking, sleeping, and toilet facilities. An area configured for food preparation may be considered cooking facilities even if appliances are not present.

Human habitation is a new definition that moves town provisions formerly located in the **Dwelling unit** definition to retain them (with the recommendation of the Code Enforcement Officer) while aligning the **Dwelling unit** definition with the Rule.

Lot Width: The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line. Minimum lot width shall be measured through that part of the principal structure ~~building~~ where the lot is narrowest. In no case, however, shall the width of the lot in the area from the front property line to the principal structure ~~building~~ be less than the Minimum Lot Width.

Lot width is an existing definition where the word "building" has been replaced with "structure" to make it consistent with the update to the **Principal structure** definition in the Rule

Low Income: Family income which is between fifty percent (50%) and eighty percent (80%) of median family income for the Portland Metropolitan Statistical Area as established by the Maine State Housing Authority.

Moderate Income: Family income which is between eighty percent (80%) and one hundred twenty percent (120%) of median family income for the Portland Metropolitan Statistical Area as established by the Maine State Housing Authority.

Multifamily Dwelling: A structure ~~building~~ containing 2 or more dwelling units (excepting accessory dwelling units), or a mixed use structure ~~building~~ containing 1 or more dwelling units. Development that may be considered multifamily includes but is not limited to duplexes, triplexes, quadriplexes, multiplexes, townhouses, mansion apartments, garden apartments, and other dwelling units that share a common wall, floor or roof.

Multifamily dwelling is a definition in the Rule containing 3 or more units. The town has retained the existing definition of 2 or more units. The town defines multifamily as 2 or more because duplexes are not a permitted use, unlike many zoning ordinances. From Town attorney Mary Costigan 4-17-2023, "The affordable housing density bonuses in LD 2003 are provided in areas where multifamily dwellings are permitted. In the Cape Elizabeth Zoning Ordinance, the term "Multiplex" is used to mean 2 or more attached dwelling units. The Ordinance also uses the term "Multifamily" to mean a building containing 2 or more dwelling units, or a mixed use building containing 1 or more dwelling units. Whether the term multiplex or multifamily is used, both refer to multifamily housing. In order to remove any doubt, it is wise ordinance drafting to clean up the Ordinance to use one definition and one term for multifamily dwelling so it is clear where the affordable housing density bonuses would apply under LD 2003. The town augmented the definition with a list of examples about what is considered multifamily development in response to questions during public comment.

~~**Multiplex Housing:** Multiple unit housing consisting of two (2) or more attached or detached dwelling units and deemed to be a multifamily dwelling for purposes of 30-A M.R.S.A. Sec. 4364, as may be amended from time to time.~~

The **Multiplex Housing** definition has been deleted because all multifamily development will uniformly be referred to as a **Multifamily dwelling** (see above). The town attorney generally recommends using state definitions when it is a state mandate and also addressing confusing references.

Potable: Water safe for drinking as defined by the U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table and Maine's interim drinking water standards for six (6) different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82, *Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Level for Certain Substances and Contaminants.*

Potable is a definition in the Rule that relates to all additional dwelling units allowed.

~~**Principal Building:** Any building or structure containing the primary or main use of the lot on which it is located.~~

Principal Structure: A structure in which the main or primary use of the lot is conducted.

Principal Structure is a definition in the Rule that is proposed to replace the existing **Principal Building** definition.

Restrictive covenant: A provision in a deed, or other covenant conveying real property, restricting the use of the land.

Restrictive covenant is a definition in the Rule that relates to compliance with the Affordable housing density bonus.

Setback requirements: The shortest distance from a structure ~~building~~ (or other point of measurement) to the nearest lot line, side line of a street right-of-way, or normal high water line. Where unknown, the width of a privately owned right-of-way shall be presumed to be twenty-five (25) feet.

Single family dwelling unit: A structure containing one (1) dwelling unit, except that in a mixed use structure, a single dwelling unit may be considered a multifamily dwelling unit.

Single family dwelling unit is a definition in the Rule. An existing provision in town ordinance has been added to allow 1 multifamily unit in a mixed use building, allowed in the TC and BA districts.

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, stone walls, retaining walls, and roof over hangs not exceeding two (2) feet from the vertical face of the structure siding. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

Zoning ordinance: The Cape Elizabeth Zoning Ordinance that divides the Town of Cape Elizabeth into districts and that

Zoning ordinance is a definition in the Rule.

prescribes and reasonably applies different regulations in each district.

SEC. 19-4-5. NONCONFORMANCE WITHIN THE RESOURCE PROTECTION DISTRICTS

E. Exemption

Notwithstanding any provisions of this Ordinance to the contrary, a principal ~~building or~~ structure (and any structure ~~building~~ addition or accessory ~~-~~structures~~buildings~~) may be erected upon a lot which is part of a subdivision approved by the Planning Board after December 22, 1976, proved that:

The word "building" has been replaced with "structure" to make it consistent with the update to the **Principal structure** definition in the Rule (pg. 6)

ARTICLE VI. DISTRICT REGULATIONS

SEC. 19-6-1. RESIDENCE A DISTRICT (RA)

B. Permitted Uses

2. The following residential uses~~, subject to any restrictive covenants~~:

   a. Single family dwelling.
   b. Manufactured housing on an individual lot.
   c. Multifamily dwelling~~Multiplex housing.~~
   d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards.

From Town attorney Mary Costigan 4-17-2023, "The affordable housing density bonuses in LD 2003 are provided in areas where multifamily dwellings are permitted. In the Cape Elizabeth Zoning Ordinance, the term "Multiplex" is used to mean 2 or more attached dwelling units. The Ordinance also uses the term "Multifamily" to mean a building containing 2 or more dwelling units, or a mixed use building containing 1 or more dwelling units. Whether the term multiplex or multifamily is used, both refer to multifamily housing. In order to remove any doubt, it is wise ordinance drafting to clean up the Ordinance to use one definition and one term for multifamily dwelling so it is clear where the affordable housing density bonuses would apply under LD 2003.

4. The following accessory uses~~, subject to any restrictive covenants~~:

E. Standards

MINIMUM LOT AREA	
(1) Boat repair facility for commercial purposes	200,000 sq. ft. (4.6 acres)
(2) Multifamily dwelling development with four (4) or more units~~Multiplex housing~~	10 acres
(3) Eldercare facilities	10 acres
(4) Golf Course (Effective February 12, 2003)	150 acres (Effective February 12, 2003)
(5) Wind energy systems (Effective October 8, 2008)	20,000 sq. ft.
(6) Other uses	80,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multifamily dwelling (three (3) or fewer dwelling units)~~Multiplex housing~~ **(1.5) Multifamily dwelling (four (4) or more dwelling units)**	See Sec. 19-7-17 1 unit per 66,000 sq. ft. of net residential area
(2) In subdivisions	1 unit per 80,000 sq. ft. of net residential area
(3) In subdivisions that conform to Sec. 19-7-2, Open Space Zoning	1 unit per 66,000 sq. ft. of net residential area
(4) In eldercare facilities	1 unit per 6,000 sq. ft. or 1 bed per 3,500 sq. ft. of net residential area, whichever is less
(5) Other housing	1 unit per 80,000 sq. ft. of gross lot area

See **Rule, Section 3, Dwelling Unit allowance.** "This section requires municipalities to allow multiple dwelling units on lots where housing is allowed." The RA District is not in a designated growth area and therefore must allow up 2 dwelling units on a vacant lot or 2 additional units on a lot with an existing dwelling unit. The amendments therefore make a distinction between multifamily dwelling with 3 or fewer, which are subject to LD 2003 or 4 or more, which remain subject to existing town regulations. For multifamily development of less than 4, the new provisions in Sec. 19-7-17, which has been written in compliance with the LD 2003 provisions, must be met.

F. **Site Plan Review**

See **Rule, Section 3, Dwelling Unit allowance.** Site Plan Review will continue to apply to multifamily buildings that do not fall under LD 2003 requirements. Site Plan review will not apply to small multifamily buildings of up to 3 units because those small multifamily buildings are subject to review equivalent to a single family home and Sec. 19-7-17, which includes larger minimum lot sizes for small multifamily buildings.

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any structure ~~building~~ permit, plumbing permit, or other permit:

1. Multifamily dwellings ~~Multiplex housing~~ and eldercare facilities. As part of Site Plan Review for multifamily dwellings~~multiplex housing~~, Sec. 19-7-2 (E), Multifamily Dwelling ~~Multiplex Housing~~ Standards, shall also apply. Site Plan Review is not required for a structure containing three (3) or fewer multifamily dwelling units on a single lot that is otherwise in compliance with Sec. 19-7-17.

SEC. 19-6-2. RESIDENCE B DISTRICT (RB)

B. **Permitted Use**

2. The following residential uses~~, subject to any restrictive covenants~~:

   a. Single family dwelling
   b. Manufactured housing on an individual lot
   c. Multifamily dwelling~~Multiplex housing~~
   d. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards.

4. The following accessory uses~~, subject to any deed restrictions or covenants~~:

E. Standards

MINIMUM LOT AREA	
(1) Eldercare facilities	5 acres
(2) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
(3) Other uses	80,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) In eldercare facilities	1 unit per 3,500 sq. ft. or 1 bed per 2,500 sq. ft. of net residential area, whichever is less
(2) Multifamily dwelling (four (4) or fewer dwelling units)	See Sec. 19-7-17
(2.5) Multifamily dwelling (five (5) or more dwelling units)	See Sec. 19-7-2
((3) ~~2) Multiplex housing -~~ Other uses	1 unit per 80,000 sq. ft. of gross lot area

See **Rule, Section 3, Dwelling Unit allowance.** "This section requires municipalities to allow multiple dwelling units on lots where housing is allowed." The RB District is a designated growth area and therefore must allow up 4 dwelling units on a vacant lot or 3 additional units on a lot with an existing dwelling unit. The amendments therefore make a distinction between multifamily dwelling with 4 or fewer, which are subject to LD 2003 or 5 or more, which remain subject to existing town regulations. For multifamily development of less than 5, the new provisions in Sec. 19-7-17, which has been written in compliance with the LD 2003 provisions, must be met.

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other permit:

1. Multifamily dwellings ~~Multiplex housing~~ and eldercare facilities. As part of Site Plan Review for multifamily dwellings, ~~multiplex housing~~ Sec. 19-7-2 (E), Multifamily dwelling ~~Multiplex Housing~~ Standards, shall also apply. Site Plan Review is not required for a structure containing four (4) or fewer multifamily dwelling units on a single lot that is otherwise in compliance with Sec. 19-7-17.

See **Rule, Section 3, Dwelling Unit allowance.** Site Plan Review will continue to apply to multifamily buildings that do not fall under LD 2003 requirements. Site Plan review will not apply to small multifamily buildings of up to 4 units because those small multifamily buildings are subject to review equivalent to a single family home and Sec. 19-7-17, which includes larger minimum lot sizes for small multifamily buildings.

SEC. 19-6-3. RESIDENCE C DISTRICT (RC)

B. Permitted Uses

2. The following residential uses~~, subject to any deed restrictions or covenants~~:

   a. Single family dwelling
   b. Manufactured housing on an individual lot
   c. Manufactured housing park, subject to the provisions of Sec. 19-7-7, Manufactured Housing Parks
   d. Multifamily dwelling ~~Multiplex housing~~
   e. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
   f. Rooming or boarding home

E. Standards

MINIMUM LOT AREA	
(1) Boat repair facility for commercial purposes	200,000 sq. ft. (4.6 acres)
(2) Multifamily dwelling development with five (5) or more dwelling units~~Multiplex housing~~	5 acres
(3) Eldercare facilities	5 acres

(4) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
(5) Others	20,000 sq. ft.
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multifamily dwelling development with four (4) or fewer dwelling units)~~Multiplex housing~~ **(1.5) Multifamily dwelling (five (5) or more dwelling units)**	See Sec. 19-7-17 1 unit per 15,000 sq. ft. of net residential area
(2) In single lot subdivisions	1 unit per 20,000 sq. ft. of net residential area
(3) In single lot subdivisions that conform to Sec. 19-7-2. Open Space Zoning	1 unit per 15,000 sq. ft. of net residential area
(4) A single family home on a lot that is not part of a subdivision	1 unit per 20,000 sq. ft. of gross lot area
(5) In eldercare facilities	1 unit per 2,500 sq. ft. or 1 bed per 2,100 sq. ft. of net residential area (Effective May 9, 2007)
(6) Rooming or boarding home	1 bed per 5,000 sq. ft. of gross lot area
(7) Other housing	1 unit per 20,000 sq. ft. of gross lot area

See **Rule, Section 3, Dwelling Unit allowance.** "This section requires municipalities to allow multiple dwelling units on lots where housing is allowed." The RC District is a designated growth area and therefore must allow up 4 dwelling units on a vacant lot or 3 additional units on a lot with an existing dwelling unit. The amendments therefore make a distinction between multifamily dwelling with 4 or fewer, which are subject to LD 2003 or 5 or more, which remain subject to existing town regulations. For multifamily development of less than 5, the new provisions in Sec. 19-7-17, which has been written in compliance with the LD 2003 provisions, must be met.

F. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit or other permit:

1. Multifamily dwellings~~Multiplex housing~~, eldercare facilities, and boarding care facilities. As part of Site Plan Review for multifamily dwellings~~multiplex housing~~, Sec. 19-7-2 (E), Multifamily dwelling ~~Multiplex Housing~~ Standards shall also apply. Site Plan Review is not required for a structure containing four (4) or fewer multifamily dwelling units on a single lot that is otherwise in compliance with Sec. 19-7-17.

See **Rule, Section 3, Dwelling Unit allowance.** Site Plan Review will continue to apply to multifamily buildings that do not fall under LD 2003 requirements. Site Plan review will not apply to small multifamily buildings of up to 4 units because those small multifamily buildings are subject to review equivalent to a single family home and Sec. 19-7-17, which includes larger minimum lot sizes for small multifamily buildings.

SEC. 19-6-4. TOWN CENTER DISTRICT (TC)

B. Permitted Uses

2. The following residential uses~~, subject to any deed restrictions or covenants~~:

   a. Single family dwelling
   b. Bed and breakfast
   c. Multifamily dwelling ~~unit~~.
   d. Congregate housing, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
   e. Rooming or boarding home
   f. Accessory dwelling unit

From Town attorney Mary Costigan 4-17-2023, "The affordable housing density bonuses in LD 2003 are provided in areas where multifamily dwellings are permitted. In the Cape Elizabeth Zoning Ordinance, the term "Multiplex" is used to mean 2 or more attached dwelling units. The Ordinance also uses the term "Multifamily" to mean a building containing 2 or more dwelling units, or a mixed use building containing 1 or more dwelling units. Whether the term multiplex or multifamily is used, both refer to multifamily housing. In order to remove any doubt, it is wise ordinance drafting to clean up the Ordinance to use one definition and one term for multifamily dwelling so it is clear where the affordable housing density bonuses would apply under LD 2003.

D. Standards

1. Performance Standards

   h. A multifamily dwelling unit shall be accessory to a nonresidential use and located in a structure~~building~~ where more than fifty percent (50%) of the floor area of the structure is occupied by nonresidential uses. For multi-story structures ~~buildings~~, more than fifty percent (50%) of the structure may be allocated for multifamily dwelling units as long as the first floor is nonresidential.

2. The following Space and Bulk Standards shall apply:

MINIMUM LOT AREA	
(1a) Single family dwelling unit	80,000 sq. ft.
(1b) Single family dwelling unit in the Town Center Core Subdistrict	10,000 sq. ft.
(2) Multifamily dwelling unit	7,500 sq. ft.
(3) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
(4) Other uses	None
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multifamily dwelling (four (4) or fewer dwelling units) in a mixed use structure **(1.5)Multifamily dwelling (five (5) or more dwelling units) in a mixed use structure ~~building~~** (Effective January 10, 2024)	See Sec. 19-7-17 1 unit per 3,000 sq. ft. of gross lot area (Effective May 12, 2010)
(2) Rooming or boarding home	1 bed per 5,000 sq. ft. of gross lot area

3. Design Requirement

   g. Landscaping and Site Development

1. Front setback. The land in the front yard setback is a transitional space between the public domain of the road right-of-way and the private structure and is a determining factor in the character and ambiance of the Town Center. This area shall be designated and landscaped to be pedestrian-friendly in scale, access, lighting, and security. A sidewalk and other pedestrian pathways, such as to the structure ~~building~~ and to parking areas, shall be located between the road and the structure. The side of the structure facing the front yard setback shall be designed with a distinctive entrance for pedestrians. Multifamily dwellings with five (5) or more multifamily units in a structure on a single lot shall be designated with the main entrance facing the front yard. Design elements of single family homes such as front steps and a front porch shall be incorporated whenever practicable. The front setback shall be carefully landscaped with attention to details evident to pedestrians and shall include street trees. The development of front courtyard gardens is strongly encouraged. Multifamily dwellings with five (5) or more multifamily units in a structure on a single lot shall include at least one (1) street tree per unit in the front yard landscape plan.

E. Site Plan Review

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to the issuance of any building permit, plumbing permit, or other permit:

1. Construction involving any permitted use other than farming, ~~and~~ a single family dwelling, or a multifamily dwellings with four (4) or fewer multifamily dwelling units in one (1) structure on a single lot that is otherwise in compliance with Sec. 19-7-17, except that construction of or conversion to a single family dwelling or multifamily dwelling units in the Town Center Core Subdistrict shall be subject to site plan review by the Planning Board.

2. Conversion of an existing ~~building or~~ structure or portion thereof from a less intensive category of use to a more intensive category use according to the following scale of uses with Category 1 being the least intensive and Category 10 being the most intensive:

Use Category 1. Multifamily dwelling units, except that Site Plan Review is not

See **Rule, Section 3, Dwelling Unit allowance.** Site Plan Review will continue to apply to multifamily buildings that do not fall under LD 2003 requirements. Site Plan review will not apply to small multifamily buildings of up to 4 units because those small multifamily buildings are subject to review equivalent to a single family home and Sec. 19-7-17, which includes larger minimum lot sizes for small multifamily buildings.

required for a structure containing four (4) or fewer multifamily dwelling units on a single lot,~~dwellings~~ and bed and breakfasts

Use Category 2. Banking, professional, and business offices
Use Category 3. Personal services and village retail shops
Use Category 4. Veterinarian offices and medical clinics
Use Category 5. Restaurants, including a delicatessen, ice cream parlor, and a sit down restaurant
Use Category 6. Gas station and repair garages
Use Category 7. Institutional uses, including but not limited to churches, governmental, and school uses
Use Category 8. Day care facilities
Use Category 9. Congregate housing
Use Category 10. Cottage industry manufacturing

3. Conversion of an existing ~~building or~~ structure or portion thereof within the same category or to a less intensive category of use on the above scale of use categories unless:

   a. The current use category received site plan approval,
   b. There will be no exterior alterations other than signage, and
   c. No multifamily dwelling units, except that Site Plan Review is not required for a structure containing four (4) or fewer multifamily dwelling units on a single lot, rooming house, or bed and breakfast will be created.

SEC. 19-6-5. BUSINESS DISTRICT A (BA)

B. Permitted Use

2. The following residential uses~~, subject to any deed restrictions or covenants~~:

   a. Single family detached dwelling existing as of April 1, 2008 (Effective July 8, 2009)
   b. Multifamily dwelling~~ units~~ (Effective July 8, 2009)
   c. Congregate housing, subject to the provisions of Sec. 19-7-6. Eldercare Facility Standards (Effective July 8, 2009)
   d. Rooming or boarding home
   e. Accessory dwelling unit (Effective January 10, 2024)

D. Standards

1. Performance Standards

l. Multifamily dwelling units shall be accessory to a nonresidential use and located in a structure ~~building~~ more than fifty percent (50%) of the floor area of the structure is occupied by nonresidential uses. For multi-story structures~~buildings~~, more than fifty percent (50%) of the structure may be allocated for multifamily dwelling units as long as the first floor is nonresidential. (Effective July 8, 2009)

2. The following Space and bulk Standards shall apply:

MINIMUM LOT AREA	
(1) Single family dwelling unit	
i. A~~a~~djacent to the RA District	80,000 sq. ft.
ii. Adjacent to the RC District	20,000 sq. ft. (Effective July 8, 2009)
(2) Multifamily dwelling unit	15,000 sq. ft.
(3) Wind energy systems	20,000 sq. ft. (Effective October 8, 2008)
(4) Other uses	None
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multifamily dwelling (four (4) or fewer dwelling units) in a mixed use structure ~~building or multiplex housing~~ (Effective January 10, 2024) **(1.5) Multifamily dwelling (five (5) or more dwelling units) in a mixed use structure**	See Sec. 19-7-17 1 unit per 7,500 sq. ft. of net residential area (Effective July 8, 2009)
(3) Rooming or boarding home (Effective January 10, 2024)	1 bed per 5,000 sq. ft. of gross lot area

See **Rule, Section 3, Dwelling Unit allowance.** "This section requires municipalities to allow multiple dwelling units on lots where housing is allowed." The BA District is a designated growth area and therefore must allow up 4 dwelling units on a vacant lot or 3 additional units on a lot with an existing dwelling unit. The amendments therefore make a distinction between multifamily dwelling with 4 or fewer, which are subject to LD 2003 or 5 or more, which remain subject to existing town regulations. For multifamily development of less than 5, the new provisions in Sec. 19-7-17, which has been written in compliance with the LD 2003 provisions, must be met. These amendments will make no meaningful increase in housing because the minimum lot sizes required in Sec. 19-7-17 allow a lower density than current BA requirements.

E. Design Requirements (Effective July 8, 2009)

g. Landscaping and Site Development. Front setback. The land in the front yard setback is a transitional space between the public domain of the road right-of-way and the private structure and is a determining factor in the character and ambiance of a neighborhood business district. This area shall be designated and landscaped to be pedestrian-friendly in scale, access, lighting, and security. A sidewalk and other pedestrian pathways, such as to the structure ~~building~~ and to parking areas, shall be located between the road and the structure. The side of the structure facing the front yard setback shall be designed with a distinctive entrance for pedestrians. Multifamily dwellings with five (5) or more multifamily units in a structure on a single lot shall be designated with the main entrance facing the front yard. The front setback shall be carefully landscaped with attention to details evident to pedestrians and shall include street trees. The development of front courtyard gardens is strongly encouraged. Multifamily dwellings with five (5) or more multifamily units in a STRUCTURE on a single lot shall include at least one (1) street tree per unit in the landscape plan.

F. Site Plan Review (Effective July 8, 2009)

The following uses and activities shall be subject to site plan review by the Planning Board, according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit, plumbing permit, or other special permit.

1. Construction involving any permitted use other than farming, ~~and~~ a single family dwelling or multifamily dwelling with four (4) or fewer multifamily dwelling units in one structure on a single lot that is otherwise in compliance with Sec. 19-7-17.

2. Conversion of an existing ~~building or~~ structure or portion thereof from a less intensive category of use to a more intensive category of use according to the following scale of uses with Category 1 being the least intensive and Category 9 being the most intensive:

Use Category 1.	Multifamily dwellings, except that Site Plan Review is not required for a structure containing four (4) or fewer multifamily dwelling units on a single lot, ~~-~~and bed and breakfasts
Use Category 2.	Banking, professional, and business offices, and day care facilities
Use Category 3.	Personal services and village retail shops
Use Category 4.	Veterinarian offices and medical clinics

Use Category 5.	Restaurants, including a delicatessen, ice cream parlor, and a sit down restaurant
Use Category 6.	Gas station and repair garages
Use Category 7.	Institutional uses, including but not limited to churches, governmental, and school uses
Use Category 8.	Congregate housing
Use Category 9.	Cottage industry manufacturing

3. Conversion of an existing ~~building or~~ structure or portion thereof within the same category or to a less intensive category of use on the above scale of use categories unless:

   a. The current use category received site plan approval,
   b. There will be no exterior alterations other than signage, and
   c. No multifamily dwelling units, except that Site Plan Review is not required for a structure containing four (4) or fewer multifamily dwelling units on a single lot, rooming house or metal working area will be created.

> See **Rule, Section 3, Dwelling Unit allowance.** Site Plan Review will continue to apply to multifamily buildings that do not fall under LD 2003 requirements. Site Plan review will not apply to small multifamily buildings of up to 4 units because those small multifamily buildings are subject to review equivalent to a single family home and Sec. 19-7-17, which includes larger minimum lot sizes for small multifamily buildings.

SEC. 19-6-9. RESOURCE PROTECTION DISTRICTS (RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F)

A. Purpose

2. Resource Protection 1 – Critical Wetland Buffer Overlay District (RP1-CW Buffer Overlay)

   b. Notwithstanding any provision of this section to the contrary, a one hundred (100) foot buffer will be required if the wetland area meets one (1) of the following criteria and the critical wetland is not rated as having moderate or high value for wildlife by the Maine Department of Inland Fisheries and Wildlife:

      2. The Resource Protection 1 – Critical Wetland District is within two hundred fifty (250) feet of densely developed areas. For the purposes of this section, an area shall be considered densely developed if at least six (6) principal structures ~~buildings~~ are located within two hundred fifty (250) feet of the center of any proposed structure.

TABLE 19-6-9 USES PERMITTED, ALLOWED WITH A RESOURCE PROTECTION PERMIT, AND PROHIBITED IN THE RESOURCE PROTECTION DISTRICTS.

36. ~~Multiplex Housing or~~ Multifamily dwelling ~~unit~~

ARTICLE VII. GENERAL STANDARDS

SEC. 19-7-2. OPEN SPACE ZONING

[Replace all "multiplex" with "multifamily" and "multiplex housing" with "multifamily dwelling"]

E. Multifamily Dwelling ~~Multiplex Housing~~ Standards (Effective November 14, 2015)

Multifamily dwellings ~~Multiplex housing~~ in the RA, RB and RC Districts must comply with the following provisions. Multifamily dwellings consisting of a structure containing three (3) or fewer multifamily dwelling units on a single lot in the RA District are exempt. Multifamily dwellings consisting of a structure containing four (4) or fewer multifamily dwelling units on a single lot in the RB and RC District are exempt.

> See **Rule, Section 3, Dwelling Unit allowance.** Additional standards may not be applied to small multifamily buildings of up to 4 units because those small multifamily buildings are subject to review equivalent to a single family home.

6. Density Bonus for additional Public Benefit

   b. Density Bonus.

      iii. ~~Affordable Housing.~~ Low and Moderate income lots/units. When low or moderate income lots/units are ~~affordable housing is~~ provided in excess of the minimum required in compliance with the Sec. 19-7-4, Mandatory Affordable Housing Provisions, the density bonus shall be subject to the dimensional standards in subsection 6, Public Benefit Density Bonuses.

> The **Affordable Housing** definition has been deleted to avoid confusion with the new **Affordable housing development** definition. Where the term "**Affordable Housing"** has been used, it has been replaced with "Low and moderate income."

SEC. 19-7-4. MANDATORY AFFORDABLE HOUSING PROVISIONS

B. Applicability

The mandatory affordable housing provisions shall apply to all major subdivisions as defined in Sec. 16-1-4, located in the Residence A, Residence B, and Residence C Districts.

All major subdivisions, as defined in Sec. 16-1-4 of the Subdivision Ordinance, shall set aside at least ten percent (10%) of the lots/units in the project ~~as affordable housing~~ for purchase by moderate income buyers or five percent (5%) of the lots/units in the project ~~as affordable housing~~ for purchase by low income buyers. For projects where a number of lots/units in excess of the mandatory required lots/units are set aside for low or moderate income purchase~~as affordable housing~~, the applicant shall be eligible for a density bonus of one (1) additional lot/unit for each moderate income affordable lot/unit and two (2) additional lots/units for each low income affordable lot/unit in excess of the mandatory requirement. Non-bonus lots shall meet all requirements of the subdivision regulations. The following minimum lot sizes may be approved for the additional bonus lots/units which may be affordable or market rate:

The **Affordable Housing** definition has been deleted to avoid confusion with the new **Affordable housing development** definition. The Mandatory Affordable Housing Provisions, Sec. 19-7-4, which uses the term "Affordable Housing" have been revised to replace "**Affordable Housing"** with "Low and moderate income."

C. Standards

1. Low and moderate income ~~Affordable housing~~ lots/units shall be sold to qualified low and moderate income buyers as defined in Sec. 19-1-3, Definitions, and any additional criteria adopted by the Town Council. Preference shall be given first to Town residents and then to employees of the Town. A determination of preference shall only be needed where the number of qualified and interested buyers exceeds the number of available units. Buyers shall indicate interest in purchase by contacting the seller. When the number of units available exceeds the number of qualified and interested buyers, the owner shall advertise in the Cape Courier and in a newspaper of general circulation that affordable housing is available for sale. All affordable housing units shall be owner-occupied. (Effective December 10, 2003)

2. Low and moderate income ~~Affordable housing~~ lots/units shall be geographically dispersed throughout the development where feasible.

3. The dwellings on low and moderate income ~~affordable housing~~ lots/units shall be compatible with the design of the dwellings on the remainder of the development in

terms of appearance, materials, finished quality and level of finish, including finished second floors, and providing a reasonably comparable number of finished bedrooms and baths to the market rate dwellings in the development. Any dwelling sited on a lot shall be located to allow the construction of a garage on the lot without requiring a setback variance.

4. The applicant shall submit for Town Council review and acceptance an agreement which preserves the long-term affordability of the lots/units to low and moderate income households. The agreement shall be either a second mortgage, deed restriction or a combination of the two. The applicant may use an agreement provided by the Town or may present a comparable instrument for review. Agreements must include but not be limited to:

    a. a proven method to preserve long-term (99 years) affordability to low and moderate income buyers;

    b. a formula for accruing limited equity to the buyer which includes any physical improvements to the property;

    c. the option to return housing to market rates only if there are no qualified buyers within one hundred eighty (180) days of the property being on the market; (Effective December 10, 2003)

    d. an option to the Town to purchase the low or moderate income ~~affordable~~ lots/units if no qualified buyers apply at the "affordable" price;

    e. the enforceability of the mechanism;

    f. the amount of administrative costs to the Town; and

    g. the supervision of the agreement.

5. The mandatory affordable housing provisions shall run with the land.

6. Low or moderate income ~~Affordable housing~~ lots/units shall be constructed and completed at least concurrently with the remainder of the project. In developments where the applicant or its agents, or its successors or assigns shall construct at least fifty percent (50%) of the units, the approved low or moderate income ~~affordable housing~~ units shall be constructed in proportion to the market rate units. Proportionality shall be determined by dividing the total number of units in the development by the total number of affordable units. No building permit shall be issued for a market rate unit in excess of the proportion of low or moderate income ~~affordable housing~~ units for which a certificate of occupancy has been issued.

For example, in a development of 50 units (total) with 5 low or moderate income ~~affordable~~ units, the proportional number of total units to low or moderate income ~~affordable~~ units is 10 total units to 1 low or moderate income ~~affordable~~ unit. If one building permit is issued for an low or moderate income ~~affordable~~ unit, then up to 9 building permits for market rate units can be issued. No additional market rate unit building permit can be issued until the first low or moderate income ~~affordable~~ unit is built and a certificate of occupancy for that unit is issued. An additional 9 market rate unit building permits can then be issued before the second low or moderate income ~~affordable~~ unit has been issued a certificate of occupancy.

When calculating proportionality, any fractional sum shall be rounded down to the nearest whole structure ~~building~~ unit. For example, in a development of 50 units with 3 low or moderate income ~~affordable~~ units, the proportional number of units to low or moderate income ~~affordable~~ units would be 16 units to 1 low or moderate income ~~affordable~~ unit. (Effective December 10, 2003)

D. Modifications and Fees

1. For projects with less than ten (10) lots/units, the applicant may propose to pay a fee in lieu of creating low or moderate income lots/units~~affordable housing~~. In-lieu fees shall be equal to the difference between the average fair market value of the housing developed, as determined by the Planning Board based upon the submission by the applicant of an appraisal or equivalent information, and the maximum cost of moderate income lots/units ~~affordable housing~~ as defined in Sec. 19-1-3, Definitions. The fee shall be proportional to the number of lots/units in the development.

The **Affordable Housing** definition has been deleted to avoid confusion with the new **Affordable housing development** definition. The Mandatory Affordable Housing Provisions, Sec. 19-7-4, which uses the term "Affordable Housing" have been revised to replace "**Affordable Housing"** with "Low and moderate income."

2. Where the Planning Board finds that undue hardship or environmental conditions do not make the inclusion of low or moderate income lots/units ~~affordable housing~~ feasible, the Planning Board may modify the Mandatory Af~~a~~ffordable H~~h~~ousing provisions in favor of a proposed alternative upon a showing that it will not have the effect of nullifying the intent and objectives of the Comprehensive Plan or the provisions of this section; provided, however, that in granting a modification the Planning Board may impose such conditions as it deems necessary to secure the foregoing objectives, including but not limited to the imposition of in-lieu fees as calculated in Sec. 19-7-4.D.1, Modifications and Fees, and the creation of low and moderate income lots/units ~~affordable housing~~ elsewhere in the Town.

The reduced lot sizes for low and moderate income lots/units ~~affordable housing~~ are only applicable in a new subdivision. This provision does not allow otherwise unbuildable lots to be developed to meet Sec. 19-7-4, Mandatory Affordable Housing Provisions.

3. In-lieu fees shall be deposited in a municipal account dedicated to providing affordable housing development.

   For projects in which the developer will only be selling un-built lots, the in-lieu of fee shall be based upon the difference between the proposed selling price of the lots and forty percent (40%) of the cost of a housing unit affordable for a low income buyer as defined in Sec. 19-1-3, Definitions.

~~**E. Affordable Housing Development Density Bonus** (Effective January 10, 2024)~~

~~1. An affordable housing development shall be eligible for an automatic affordable housing development density bonus upon demonstration to the Town that the development is in conformance with 12 M.R.S.A Ch. 423-A and 30-A M.R.S.A. Sec. 4364, as may be amended from time to time.~~

~~2. The automatic affordable housing development density bonus shall be two and one-half (2.5) times the base density allowed for multifamily dwellings in the applicable Zoning District or area served by a centrally managed water system and a public sewer system pursuant to 30-A M.R.S.A. Sec. 4364, as may be amended from time to time.~~

SEC. 19-7-5. CREATION OF ACCESSORY DWELLING UNIT

A. Purpose

The purpose of this provision shall be to permit the creation of one subordinate dwelling unit incidental to a single family dwelling. The creation of accessory dwelling units is intended to expand the diversity and availability of housing stock and opportunities for property owners in the Town.

B. Requirements (Effective January 10, 2024)

The following requirements shall apply to the creation of an accessory dwelling unit ~~and be in addition to the other requirements of the Zoning Ordinance and subject to any applicable deed restrictions or covenants~~.

1. Single-family Parity. An accessory dwelling unit shall be allowed on any lot where a single-

See **Rule, Sec. 4.A.** "A municipality must allow, effective July 1, 2023, one accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is allowed, " family dwelling is the principal structure, including nonconforming lots where a single family dwelling may be constructed. Private and state standards such as homeowners' association regulation, deed restrictions, and subdivision law may also apply to lots.

2. Attached/Detached. An accessory dwelling unit may be constructed only:

   a. Within an existing dwelling unit on the lot;

   b. Attached to ~~or sharing a wall with~~ a single~~-~~ family dwelling unit; or

   c. As a new structure on the lot or conversion of an existing accessory structure for the primary purpose of creating an accessory dwelling unit. ~~or conversion of an existing accessory structure for the primary purpose of creating an accessory dwelling unit.~~ An accessory dwelling unit may be constructed or established within an accessory structure subject to accessory structure setbacks. (Effective July 10, 2024)

3. Density. An accessory dwelling unit shall be exempt from density or lot size requirements that are in addition to the requirements for the single~~-~~ family dwelling on the lot.

See **Rule, Sec. 4.B.3.a** "A municipality must exempt an accessory dwelling unit from any density requirements or lot area requirements related to area in which the accessory dwelling unit is constructed."

4. Setbacks. For an accessory dwelling unit located within the same structure as a single~~-~~ family dwelling unit or attached to ~~or sharing a wall with~~ a single ~~-~~family dwelling unit, the setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit. For an accessory dwelling unit permitted in an existing accessory structure ~~building~~ or secondary structure~~building~~ or garage as of July 1, 2023, the ~~originally~~ required setback requirements for an accessory structure shall apply. ~~in the Zoning Ordinance for that building apply.~~ Any new structure shall comply

See **Rule, Sec. 4.B.3.b** "For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to a single-family dwelling unit, the dimensional requirements and setback requirements must be the same as the dimensional requirements and setback requirements of the single-family dwelling unit; For an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, the required setback requirements in local ordinance of the existing accessory or secondary building apply."

with the setback and dimensional requirements for a single family dwelling unit.

5. Parking. An accessory dwelling unit shall not be subject to any additional motor vehicle parking requirements beyond the parking requirements of the single ~~-~~family dwelling unit on the lot where the accessory dwelling unit is located.

See **Rule, Sec. 4.B.3.d** "An accessory dwelling unit may not be subject to any additional motor vehicle parking requirements beyond the parking requirements of the single-family dwelling unit on the lot where the accessory dwelling unit is located."

6. Size. An accessory dwelling unit must meet a minimum size of 190 square feet, unless the Technical Building Codes and Standards Board, pursuant to 10 M.R.S.A 9722, adopts a different minimum standard; if so, that standard applies. The accessory dwelling unit size shall not exceed 1,600 ~~800~~ (one thousand six hundred) ~~sq. ft.~~ square feet and must be a smaller size than the primary dwelling unit. A conversion of an accessory structure that exists as of January 1, 2023 to an accessory dwelling unit shall be exempt from the maximum size. Size shall be measured in compliance with the Floor area of a Structure definition.

See **Rule, Sec. 4.B.4.a** "An Accessory dwelling unit must be at least 190 square feet in size, unless the Technical Building Code and Standards Board, pursuant to 10 M.R.S. Sec. 9722, adopts a different minimum standard; if so, that standard applies.
Sec. 4.B.4.b "Municipalities may set a maximum size for accessory dwelling units in local ordinances, as long as accessory dwelling units are not less than 190 square feet."

7. Short Term Rental Prohibition. No accessory dwelling unit shall be operated as a Short Term Rental, Sec. 19-8-14, Short Term Rental Standards.

8. Ownership. The primary dwelling unit and the accessory dwelling unit shall be held in the same ownership or owned in compliance with the requirements of the Maine Condominium Ace, 33 MRS 31.

See **Rule, Sec. 1.A.2** "The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community and the minimum requirements of this legislation." The common ownership requirement is consistent with how single family dwellings are owned and reinforces a restriction on subdivision of property without obtaining necessary approvals.

END OF SECTION REVIEWED 12-17-2024

SEC. 19-7-8. OFF-STREET PARKING

B. Minimum Requirements for Off-Street Parking

4. The following minimum number of spaces, rounded up to the nearest whole number, shall be provided and maintained for each use on a lot, including each use within all structures~~buildings~~. The Planning Board may reduce by up to thirty percent (30%) the required parking for the reuse of a structure~~building~~ existing as of June 4, 1997. In granting such a reduction, the Planning Board must find that:

   a. Residential

3.	~~Multiplex housing or~~ M~~m~~ultifamily dwellings	1.5 spaces per dwelling unit with one bedroom, 1.75 spaces for unit with two bedrooms, and 2 spaces per unit with three or more bedrooms
3.5	Affordable housing Development in compliance with Sec. 19-7-17	No more than 2 spaces for every 3 dwelling units. If fractional results occur, the number of units is rounded

down to the nearest whole number. The number of motor vehicle parking spaces may be rounded up to the nearest whole number.

> See **Rule, Sec. 2.C.2.** "Require no more than two (2) off-street parking motor vehicle spaces for every three (3) dwelling units of an affordable housing development." If fractional results occur when calculating the density bonus in this subsection, the number of units is rounded down to the nearest whole number." This resulting formula looks like: (#units/3) x 2 = parking required

C. Off-Street Parking Design Standards

The following design standards shall apply to all new and expanded off-street parking areas:

1. Parking areas for uses other than single and two-family dwellings, multifamily development consisting of a structure containing four (4) or more multifamily units on a single lot in the RA District, and multifamily development consisting of a structure containing five (5) or more multifamily units on a single lot in the RB and RC Districts, shall be designed so that vehicles will not back out into a street.

> See **Rule, Section 3, Dwelling Unit allowance.** Additional standards may be applied to multifamily buildings that do not fall under LD 2003 requirements. Additional standards may not be applied to small multifamily buildings of up to 4 units because those small multifamily buildings are subject to review equivalent to a single family home.

SEC. 19-7-11. MULTIPLE PRINCIPAL STRUCTURES ~~BUILDINGS~~ ON A LOT

If more than one (1) principal ~~building~~ structure is located on a lot, the lot size and location of each structure ~~building~~ shall be such that a separate lot conforming to the provisions of this Ordinance could be created for each structure~~building~~. The potential creation of a separate lot shall be demonstrated by submitting a plan to the Code Enforcement Officer showing how the land could be divided to create conforming lots. This provision shall not apply to Accessory Dwelling Units. (Effective January 10, 2024)

> The word "building" has been replaced with "structure" to make it consistent with the update to the **Principal structure** definition in the Rule.

SEC. 19-7-17. SMALL MULTIFAMILY DEVELOPMENT AND AFFORDABLE HOUSING BONUS

A. Purpose

The Town adopts this section in compliance with L.D. 2003, "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions." The Town finds that increasing the amount of multifamily development is consistent with the 2019 Comprehensive Plan goals to diversify the housing stock and to increase the amount of affordable housing available within the Town.

LD 2003 requires that small multifamily buildings, titled "Dwelling Unit Allowance" in the **Rule, Sec. 3**, and an Affordable Housing density bonus, **Rule, Sec. 2** be allowed where housing is allowed by local zoning. This new section, Sec. 19-7-17, has been created to house the LD 2003 requirements in the Cape Elizabeth Zoning Ordinance. The purpose statement is an expression of town policy.

B. Small Multifamily Development.

Small multifamily development, as specified in each district below, shall be allowed where housing is a permitted use. Private or state standards such as homeowners' association regulation, deed restrictions, and subdivision law may also apply to lots.

Small Multifamily Development is the user-friendly title in the Cape Elizabeth Zoning Ordinance for the "Dwelling Unit Allowance" requirements in the **Rule, Sec. 3,** "This section *requires* municipalities to allow multiple dwelling units on lots where housing is allowed"

1. Multifamily development density. When a lot exceeds the single family minimum lot size for the district it is located in, the land area exceeding the minimum may be used to meet the land area required for additional dwelling units. For purposes of subsections "a" through "e" below, a "vacant lot" means a lot that does not contain an existing dwelling unit at the time of submission of a permit application to build dwelling units on that lot, whether or not a dwelling unit existed on the lot on January 1, 2024.

See **Rule, Sec. 3.B.** In the RA District, which is not a designated growth area, up to 2 multifamily dwelling units are allowed. See **Rule, Sec. 3.B.4,** "A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit." The proposed minimum lot sizes are based on the current minimum lot area required for each multifamily unit. Text recommended by the Town Attorney has been added to clarify how vacant lots are defined in this section.

a. Residence A (RA) District: On a vacant lot where housing is allowed, up to two (2) dwelling units per lot shall be allowed, subject to the following requirements. The minimum lot area required for two (2) dwelling units is one hundred forty-six thousand (146,000) square feet. The two (2) dwelling units may be (i) within one structure; or (ii) two separate structures.

On a lot containing one (1) existing dwelling unit, up to two (2) additional dwelling units shall be allowed, subject to the following requirements. An additional sixty-six thousand (66,000) square feet shall be required for each additional dwelling unit. The additional dwelling unit(s) may be (i) one within the existing structure or attached to the existing structure; (ii) one detached from the existing structure; or (iii) one of each.

On a lot containing two (2) or more existing dwelling units, no additional dwellings are required under this section, but may otherwise be allowed under the provisions of Article VI.

Approximately 88% of lots in the RA District do not have the minimum lot size to add a multifamily unit.

See **Rule, Sec. 3.B.** In the RB District, which is a designated growth area, up to 4 multifamily dwelling units are allowed. See **Rule, Sec. 3.B.4,** "A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit." The proposed minimum lot sizes are based on the current minimum lot area required for each multifamily unit. Approximately 77% of lots in the RB District do not have the minimum lot size to add a multifamily unit.

b. Residence B (RB) District: On a vacant lot where housing is allowed, up to four (4) dwelling units per lot shall be allowed, subject to the following requirements. When the housing will be served by on-site sewage disposal, the minimum lot area required is eighty thousand (80,000) square feet, plus sixty thousand (60,000) square feet each for units two (2), three (3) and four (4). When the housing will be served by public sewer, the minimum lot area required is eighty thousand (80,000) square feet, plus twenty thousand (20,000) square feet each for units two (2), three (3) and four (4). The dwelling units may be (i) within one structure; or (ii) separate structures.

On a lot containing one (1) existing dwelling unit, up to two (2) additional dwelling units shall be allowed, subject to the following requirements. When the housing will be served by on-site sewage disposal, an additional sixty thousand (60,000) square feet shall be required for each additional dwelling unit. When the housing will be served by public sewer, an additional twenty thousand (20,000) square feet each for units two (2), three (3) and four (4). The additional dwelling unit(s) may be (i) within the existing structure or attached to the existing structure; (ii) detached from the existing structure; or (iii) one of each.

c. Residence C (RC) District: On a vacant lot where housing is allowed, up to four (4) dwelling units per lot shall be allowed, subject to the following requirements. The minimum lot area required is twenty thousand (20,000) square feet, plus fifteen thousand (15,000) square feet each for units two (2), three (3) and four

See **Rule, Sec. 3.B.** In the RC District, which is a designated growth area, up to 4 multifamily dwelling units are allowed. See **Rule, Sec. 3.B.4,** "A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit." The proposed minimum lot sizes are based on the current minimum lot area required for each multifamily unit. Approximately 89% of lots in the RC District do not have the minimum lot size to add a multifamily unit.

(4). The dwelling units may be (i) within one structure; or (ii) separate structures.

On a lot containing one (1) existing dwelling unit, up to two (2) additional dwelling units shall be allowed, subject to the following requirements. An additional fifteen thousand (15,000) square feet shall be required for each additional dwelling unit. The additional dwelling unit(s) may be (i) within the existing structure or attached to the existing structure; (ii) detached from the existing structure; or (iii) one of each.

On a lot containing two (2) or more existing dwelling units, no additional dwelling is required under this section, but may otherwise be allowed under the provisions of Article VI.

d. Town Center (TC) District: On a vacant lot where housing is allowed, up to four (4) dwelling units per lot shall be allowed, subject to the following requirements. The minimum lot area required is eighty thousand (80,000) square feet plus seven thousand five hundred (7,500) square feet each for units two (2), three (3) and four (4). The dwelling units may be (i) within one structure; or (ii) separate structures.

On a lot containing one (1) existing dwelling unit, up to two (2) additional dwelling units shall be allowed, subject to the following requirements. An additional seven thousand five hundred (7,500) square feet shall be required for each additional dwelling unit. The additional dwelling unit(s) may be (i) within the existing structure or attached to the existing structure; (ii) detached

See **Rule, Sec. 3.B.** In the TC District, which is a designated growth area, up to 4 multifamily dwelling units are allowed. See **Rule, Sec. 3.B.4,** "A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit." The proposed minimum lot sizes are based on the current minimum lot area required for each multifamily unit. The existing densities allowed in the Town Center District are greater than allowed in Sec. 19-7-17, so this section will have no impact on the creation of multifamily housing.

from the existing structure; or (iii) one of each.

On a lot containing two (2) or more existing dwelling units, no additional dwelling is required under this section, but may otherwise be allowed under the provisions of Article VI.

e. Business A (BA) District: On a vacant lot where housing is allowed, up to four (4) dwelling units per lot shall be allowed, subject to the following requirements. When the lot is located in a portion of the Business A District adjacent to the Residence A District, the minimum lot area required is eighty thousand (80,000) square feet plus fifteen thousand (15,000) square feet each for units two (2), three (3) and four (4). When the lot is located in a portion of the Business A District adjacent to the Residence C District, the minimum lot area required is twenty thousand (20,000) square feet plus fifteen thousand (15,000) square feet each for units two (2), three (3) and four (4). The dwelling units may be (i) within one structure; or (ii) separate structures.

See **Rule, Sec. 3.B.** In the BA District, which is a designated growth area, up to 4 multifamily dwelling units are allowed. See **Rule, Sec. 3.B.4,** "A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit." The proposed minimum lot sizes are based on the current minimum lot area required for each multifamily unit. The existing densities allowed in the Business A District are greater than allowed in Sec. 19-7-17, so this section will have no impact on the creation of multifamily housing.

On a lot containing one (1) existing dwelling unit, up to two (2) additional dwelling units shall be allowed, subject to the following requirements. An additional fifteen thousand (15,000) square feet shall be required for each additional dwelling unit. The additional dwelling unit(s) may be (i) within the existing structure or attached to the existing structure; (ii) detached from the existing structure; or (iii) one of each.

On a lot containing two (2) or more existing dwelling units, no additional dwelling is required under this section, but may otherwise be allowed under the provisions of Article VI.

[Note: The table below is included for discussion and not to be incorporated into the ordinance. All numbers are incorporated into the ordinance in the section above]

Small Multifamily development Density Requirements					
District	**Minimum lot size***	**Additional land for added unit**	**2 unit lot area total**	**3 unit total**	**4 unit total**
RA	80,000 sq. ft.	66,000 sq. ft.	146,000 sq. ft. (3.4 acres)	212,000 sq. ft. (**4.9 acres**)	N/A
RB (on-site sewage disposal)	80,000 sq. ft.	60,000 sq. ft.	140,000 sq. ft. (3.2 acres)	200,000 sq. ft. (4.6 acres)	260,000 sq. ft (6 acres)
RB (public sewer	80,000 sq. ft.	20,000 sq. ft.	100,000 sq. ft (2.3 acres)	120,000 sq. ft. (2.8 acres)	140,000 sq. ft. (**3.2 acres**)
RC	20,000 sq. ft.	15,000 sq. ft.	35,000 sq. ft. (0.8 acres)	50,000 sq. ft. (1.15 acres)	65,000 sq. ft (**1.5 acres**)
TC	80,000 sq. ft.	7,500 sq. ft.	87,500 sq. ft. (2 acres)	95,000 sq. ft. (2.2 acres)	102,500 sq. ft. (**2.4** acres)
BA (RC adjacent)	20,000 sq. ft.	15,000 sq. ft.	35,000 sq. ft. (0.8 acres)	50,000 sq. ft. (1.15 acres)	65,000 sq. ft. (1.5 acres)
BA (RA adjacent)	80,000 sq. ft.	15,000 sq. ft.	95,000 sq. ft. (2.2 acres)	110,000 sq.ft. (2.5 acres)	125,000 sq. ft. (2.9 acres)
*The smallest buildable legal nonconforming lot is 10,000 if served by public sewer, 20,000 sq. ft if served by subsurface sanitary wastewater disposal.					

2. Dimensional requirements. Multifamily development constructed under Sec. 19-7-17 shall be subject to the setback and height requirements applicable to a single family dwelling.

See **Rule, Sec. 3.B.3,** "A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed pursuant to the Section that are more restrictive than the dimensional requirements or setback requirements for single-family housing units.

C. Affordable Housing Density Bonus

1. Eligibility. A development shall be eligible for an automatic affordable housing density bonus upon demonstration to the Town that the following requirements shall be met.

See **Rule, Sec. 2,** "This section requires municipalities to allow an automatic density bonus for certain affordable housing developments approved on or after July 1, 2023"

a. Affordable housing development. The development meets the definition of affordable housing development, which includes the requirement that a majority of the total units on the lot are affordable.

See **Rule, Sec. 2.B.1.a,** "Is an affordable housing development as defined in this chapter, which includes a requirement that a majority of the total units on the lot are affordable"

b. Location. The development location complies with Section i or ii below:

i. Growth area. The development is located in the RB, RC, TC or BA Zoning Districts, which have been designated growth areas in the 2019 Comprehensive Plan, and where multifamily development is a permitted use.

ii. Sewer Service Area. The development is located in the RA Zoning District and is also designated a Sewer Service Area, in accordance with Chapter 15, Sewer Ordinance.

See **Rule, Sec. 2.B.1.b** "Is in a designated growth area pursuant to 30-A M.R.S. Sec. 4349-A(1)(A) or (B) or served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system;" Using local planning documents, the rule language has been modified to reference designated growth areas and the areas includes on the Sewer Service area map located in the RA District.

c. Long-Term Affordability. Prior to granting a certificate of occupancy or other final approval of an affordable housing development, the Town shall require that the owner of the affordable housing development (1) execute a restrictive covenant that is enforceable by a party acceptable to the Town; and (2) record the restrictive covenant in the appropriate registry of deeds to ensure that for at least thirty (30) years after completion of construction:

i. For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below eighty percent (80%) of the local area median income at the time of initial occupancy; and

ii. For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below one hundred twenty percent (120%) of the local area median income at the time of initial occupancy.

See **Rule, Sec. 2.B.2,** "Prior to granting a certificate of occupancy or other final approval of an affordable housing development, a municipality must require that the owner of the affordable housing development (1) execute a restrictive covenant that is enforceable by a party acceptable to the municipality; and (2) record the restrictive covenant in the appropriate registry of deeds to ensure that for at least thirty (30) years after completion of construction: a) For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and (b) For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

2. Density Bonus. An Affordable Housing development shall be allowed in the RB, RC, TC and BA Zoning Districts, and in the portions of the RA District also designated a Sewer Service Area at a multifamily unit density of two and one-half (2.5) times the base density allowed for multifamily development, as depicted below.

See **Rule, Sec. 2.C** "Allow an affordable housing development to have a dwelling unit density of at least 2.5 times the base density that is otherwise allowed in that location;"

Designated Growth area Zoning District	Base Density		Affordable Housing Multifamily development density	
	Sewer	Subsurface Wastewater disposal	Sewer	Subsurface wastewater disposal
Residence A (RA)	1 unit per 66,000 sq. ft. sq. ft. net residential area		1 unit per 26,400 sq. ft. net residential area	
Residence B (RB)	1 unit per 20,000 sq. ft. net residential area	1 unit per 60,000 sq. ft. of net residential area	1 unit per 8,000 sq. ft. of net residential area	1 unit per 24,000 sq. ft. net residential area
Residence C (RC)	1 unit per 15,000 sq. ft. net residential area		1 unit per 6,000 sq. ft. net residential area	
Town Center (TC)	1 unit per 3,000 sq. ft. of gross lot area		1 unit per 1,200 sq. ft.of gross lot area	
Business A (BA)	1 unit per 7,500 sq. ft. of net residential area		1 unit per 3,000 sq. ft. of net residential area	

SEC. 19-8-3. RESOURCE PROTECTION PERFORMANCE STANDARDS

All activities in the Resource Protection Districts shall comply with the following performance standards as applicable:

A. Resource Protection Permit Procedures

2. Submission Requirements

    c. Unless the Planning Board waives one or more of the following requirements, applications for a Resource Protection Permit shall include the information listed below. For Resource Protection Permit applications in the Resource Protection 3 Floodplain District, the submission requirements in Sec. 6-6-3 of the Floodplain Management Ordinance shall be substituted for the list below, except that item 4. below shall also be submitted. The application shall include:

        6. a written description of the site's underlying soils and a high intensity soils map with all mapping units being no greater than one quarter (1/4) acre, indicating the boundaries of soil types, the location of hydric soils as defined herein and the Wetland Upland Edge as defined by hydric soils. This requirement shall

apply notwithstanding that fill material has been placed on the site, and shall apply regardless of the depth to the underlying soils. Where fill has been placed (prior to 5/9/90) on hydric soils and then developed by construction of a principal structure on the filled land, the area of filled wetland to a maximum distance of fifty (50) feet from the principal structure ~~building~~ footprint shall be identified as filled land. This map and accompanying materials shall be prepared by a soil scientist certified by the State of Maine;

SEC. 19-8-14. SHORT TERM RENTAL STANDARDS

C. Short Term Rental Requirements

5. Multi-family development~~and multiplex units~~. No Short Term Rental may be operated on a lot containing a multifamily development ~~dwelling unit~~ unless all of the dwelling units are held in common ownership. No Short Term Rental shall be operated on a property containing five (5) or more dwelling units.

From Town attorney Mary Costigan 4-17-2023, "The affordable housing density bonuses in LD 2003 are provided in areas where multifamily dwellings are permitted. In the Cape Elizabeth Zoning Ordinance, the term "Multiplex" is used to mean 2 or more attached dwelling units. The Ordinance also uses the term "Multifamily" to mean a building containing 2 or more dwelling units, or a mixed use building containing 1 or more dwelling units. Whether the term multiplex or multifamily is used, both refer to multifamily housing. In order to remove any doubt, it is wise ordinance drafting to clean up the Ordinance to use one definition and one term for multifamily dwelling so it is clear where the affordable housing density bonuses would apply under LD 2003.

ARTICLE IX. SITE PLAN REVIEW

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:

3. ~~Multiplex housing~~ Multifamily dwellings and eldercare facilities, except that Site Plan Review is not required for a structure containing three (3) or fewer multifamily units on a single lot in

the RA District and a structure containing four (4) or fewer multifamily units on a single lot in the RB, RC, TC and BA Districts~~.~~.

See **Rule, Section 3, Dwelling Unit allowance.** Site Plan Review will continue to apply to multifamily buildings that do not fall under LD 2003 requirements. Site Plan review will not apply to small multifamily buildings of up to 4 units because those small multifamily buildings are subject to review equivalent to a single family home and Sec. 19-7-17, which includes larger minimum lot sizes for small multifamily buildings.