

PLANNING BOARD WORKSHOP

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: November 27, 2024
SUBJECT: December 3, 2024 Planning Board Workshop

The Cape Elizabeth Planning Board will hold a workshop on **Tuesday, December 3, 2024**, beginning at 7:00 p.m. in the Jordan Conference Room, Town Hall.

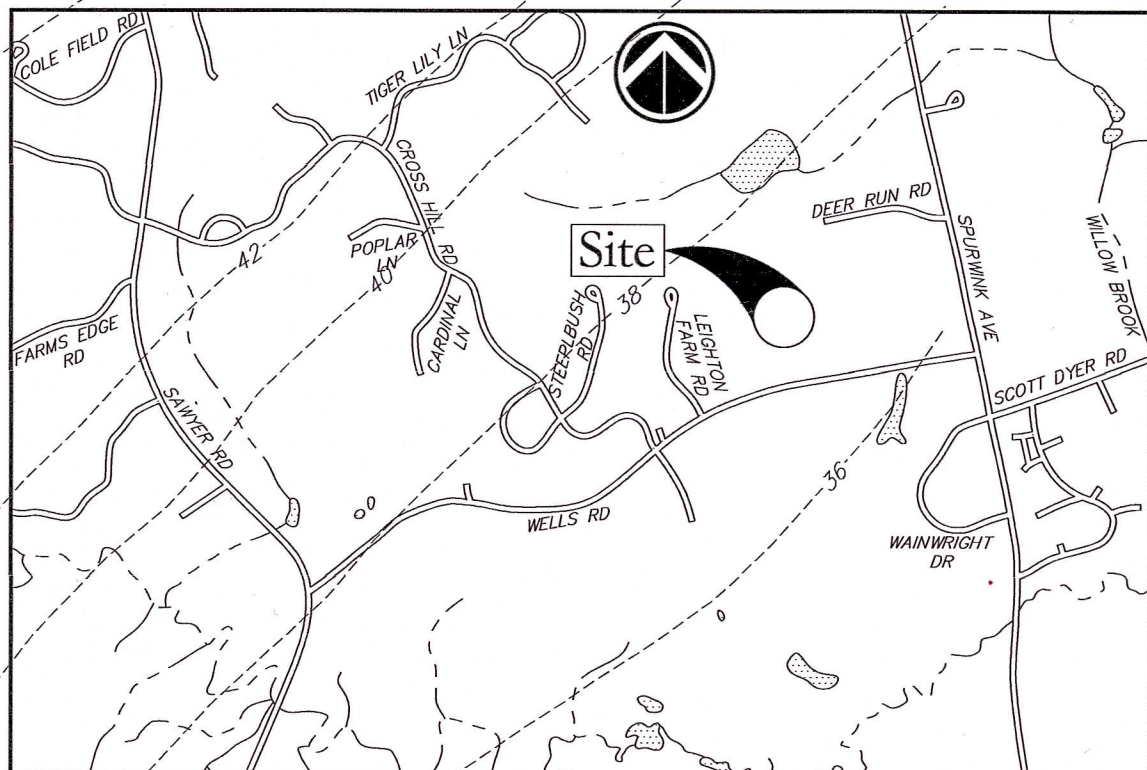
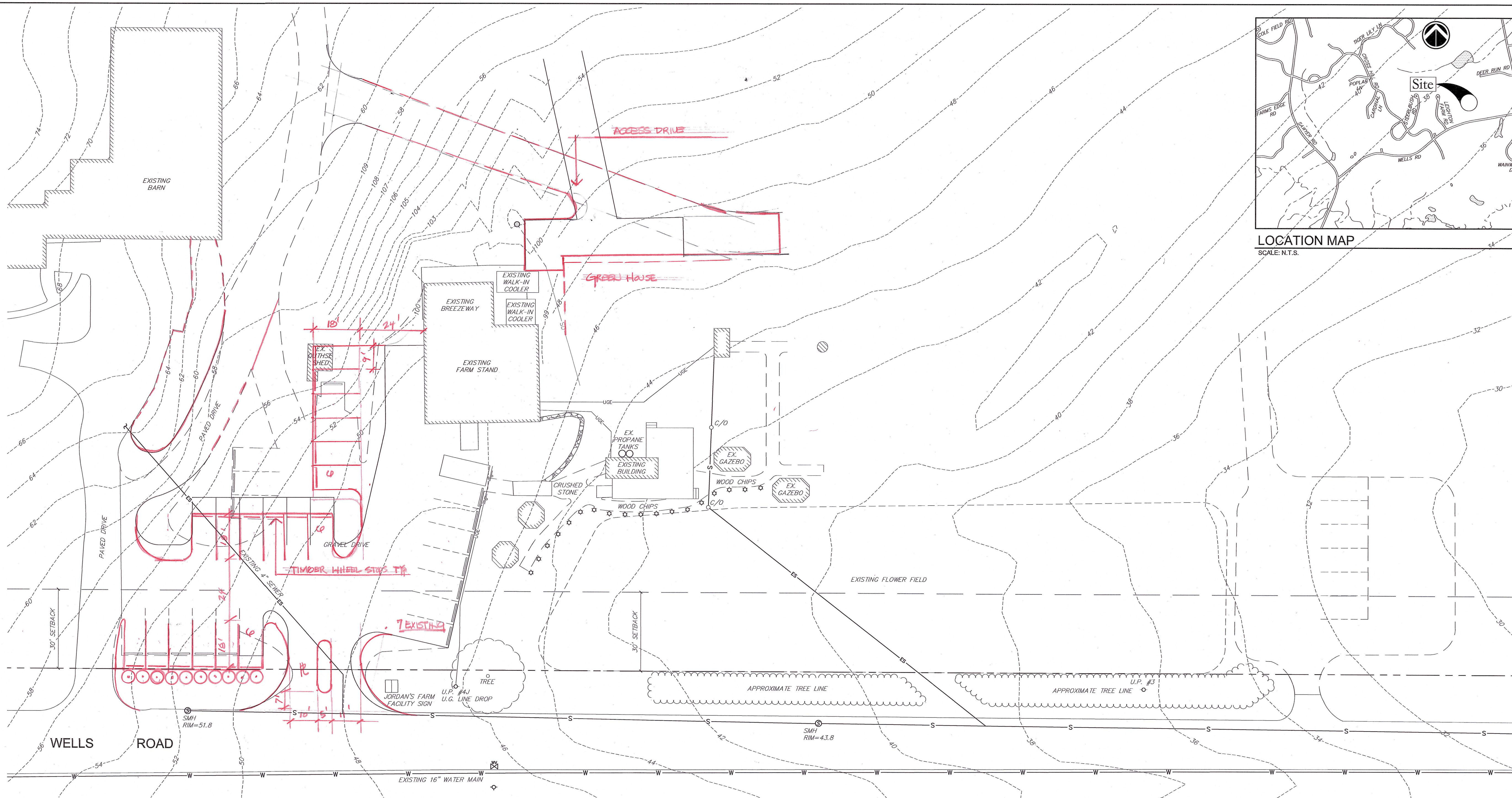
WORKSHOP AGENDA

- 7:00 1. **Jordan Farmstand site plan amendment.** The William Jordan farm would like to discuss a site plan amendment to redefine the parking for the farm stand located at 19 Wells Rd (R5-30).
- 7:20 2. **126 Spurwink Ave Site Plan Change of use.** Abdul Mayer would like to discuss a site plan amendment for a change of use for the property located at 126 Spurwink Ave (U29-65) from school to rooming house.
- 8:00 3. **Contract Zoning.** At the October 16, 2024 meeting, the Town Council referred to the Planning Board a Contract Zoning Amendment for review.
- 9:15 4. **Planning Board logistics.** The Planning Board will discuss meeting logistics, the work of related committees, Chair succession, 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



LOCATION MAP
SCALE: N.T.S.

Prepared For:
Applicant:
William H. Jordan Farm, LLC
21 Wells Road
Cape Elizabeth, ME
04107

Prepared By:
Mitchell & Associates
LANDSCAPE ARCHITECTS
70 Center Street
Portland, Maine 04101
P: 207.774.4427
F: 207.874-2460

PARKING & CIRCULATION IMPROVEMENTS

21 Wells Road
Cape Elizabeth, Maine

Date:
November 20, 2024

Issued For:
REVIEW

Revisions:

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Title:
LAYOUT PLAN

Scale: 1" = 20'-0"



North:

Sheet No.:
L-2

GENERAL NOTES

1. APPLICANT: WILLIAM H. JORDAN FARM, LLC
21 WELLS ROAD
CAPE ELIZABETH, MAINE 04107
2. OWNERS: WILLIAM H. JORDAN, JR., PAMELA BUTTERFIELD,
CAROL ANNE JORDAN AND PENELOPE A. JORDAN
21 WELLS ROAD
CAPE ELIZABETH, MAINE 04107
3. TOTAL SITE AREA: 60+- ACRES
4. TAX MAP AND LOT NO.: MAP R05, LOT 30
5. ZONING DISTRICT: RESIDENTIAL B DISTRICT (RB)
6. DIMENSIONAL REQUIREMENTS:
MINIMUM LOT AREA 80,000 SQ. FT.
MINIMUM STREET FRONTAGE 125 FEET
MINIMUM FRONT SETBACK 30 FEET
MINIMUM SIDE SETBACK 30 FEET
MINIMUM REAR SETBACK 30 FEET
MAXIMUM BUILDING HEIGHT 35 FEET
7. EXISTING CONDITIONS INFORMATION TAKEN FROM PLAN ENTITLED SITE LAYOUT & UTILITIES PLAN, PREPARED BY BLAIS CIVIL ENGINEERS, DATED MARCH 2014.
8. ANY DISCREPANCIES BETWEEN DRAWINGS, DETAILS, NOTES AND SPECIFICATIONS SHALL BE IMMEDIATELY REPORTED TO THE LANDSCAPE ARCHITECT FOR FURTHER DIRECTION AND RESOLUTION BEFORE ADDITIONAL WORK PROCEEDS.
9. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND GRADES ON THE GROUND. ANY DISCREPANCIES SHALL BE REPORTED IMMEDIATELY TO THE LANDSCAPE ARCHITECT FOR DIRECTION AND RESOLUTION PRIOR TO ANY FURTHER WORK.
10. CONTRACTOR SHALL FIELD VERIFY LOCATION AND DEPTH OF ALL EXISTING UTILITIES WITH THE APPROPRIATE UTILITY COMPANIES PRIOR TO EXCAVATION OF OR INSTALLATION OF ANY PART OF THIS WORK.
11. CONTRACTOR SHALL BE HELD SOLELY RESPONSIBLE FOR UNDERTAKING THE WORK IN A SAFE AND EFFICIENT MANNER, IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL SAFETY REGULATIONS. ALL WORK AREAS SHALL BE DELINEATED CLEARLY AND FENCED AS APPROPRIATE TO PREVENT UNAUTHORIZED ACCESS. THE SITE SHALL BE LEFT IN A SAFE, ORDERLY AND TIDY MANNER AT THE END OF EACH WORK DAY.
12. ALL DISTURBED AREAS NOT COVERED BY STRUCTURES SHALL RECEIVE SIX (6) INCHES OF LOAM AND BE SEED TO GRASS.
13. SITE AND BUILDING CONTRACTOR SHALL OBTAIN ALL REQUIRED PERMITS PRIOR TO CONSTRUCTION.
14. CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING ALL FIELD LAYOUT OF THE STRUCTURE.
15. PRIOR TO CONSTRUCTION, THE SITE CONTRACTOR IS TO INFORM ALL AREA UTILITY COMPANIES AND GOVERNMENTAL AGENCIES OF PLANNED CONSTRUCTION. THE SITE CONTRACTOR IS REQUIRED TO CONTACT DIG-SAFE (1-800-225-4977) AT LEAST 3 BUSINESS DAYS PRIOR TO ANY EXCAVATION TO VERIFY ALL UNDERGROUND AND OVERHEAD UTILITY LOCATIONS.
16. THIS PLAN AMENDS THE PREVIOUSLY APPROVED SITE PLANS ENTITLED "THE WELL AT JORDAN FARMS, 21 WELLS ROAD, CAPE ELIZABETH, MAINE":
05/16/2000 NEW FARM STAND 40'x40' SITE PLAN APPROVED
07/20/2004 FARM STAND ROOF EXPANSION OVER PREP AREA
03/17/2009 FARM STAND EXPANSION TO 56'x38'
05/22/2014 THE WELL 44 SEAT RESTAURANT ADDED
04/22/2019 AMENDMENTS TO CONNECT THE WELL TO SEWER, WATER UPGRADE, PORCH

LEGEND

EXISTING	PROPOSED
—	PROPERTY LINE/R.O.W.
—	ABUTTER LINE/R.O.W.
—	SETBACK
□	MONUMENT
○	IRON PIPE/ROD
—	BUILDING
—	DECK/STEPS
—	EDGE PAVEMENT
—	PAVEMENT SAWCUT
—	EDGE CONCRETE
—	EDGE GRAVEL
—	TREELINE
○	TREE
—	CONTOURS
—	WATER
—	WATER GATE VALVE
—	HYDRANT
—	SANITARY SEWER
—	SANITARY MANHOLE
—	STORM DRAIN
—	UNDER DRAIN
—	UNDERGROUND ELECTRIC
—	SITE LIGHT
—	UTILITY POLE
—	FILTER BERM

CONCEPT LAYOUT FOR EXPANDED PARKING



TOWN OF CAPE ELIZABETH
Planning Board
Workshop Application

Applicant Name William H. Jordan Farm, LLC

Email _____ Telephone _____

Address 21 Wells Road 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 – Mitchell & Associates Telephone 207-774-4427

Address 70 Center Street Portland ME 04101

Email rmetcalf@mitchellassociates.biz

Location of Project 21 Wells Road Map/Lot R05 Lot 30

Project description: Redefine and expand existing gravel parking and relocate farm service drive to access rear of farm stand. There are 15 existing parking spaces and the reconfigured parking will provide 25 total spaces. Revision includes redesign of main entry drive to provide a divider island to better control circulation. Request to establish parking along the property line and provide planted buffer within the grassed area of the right of way.

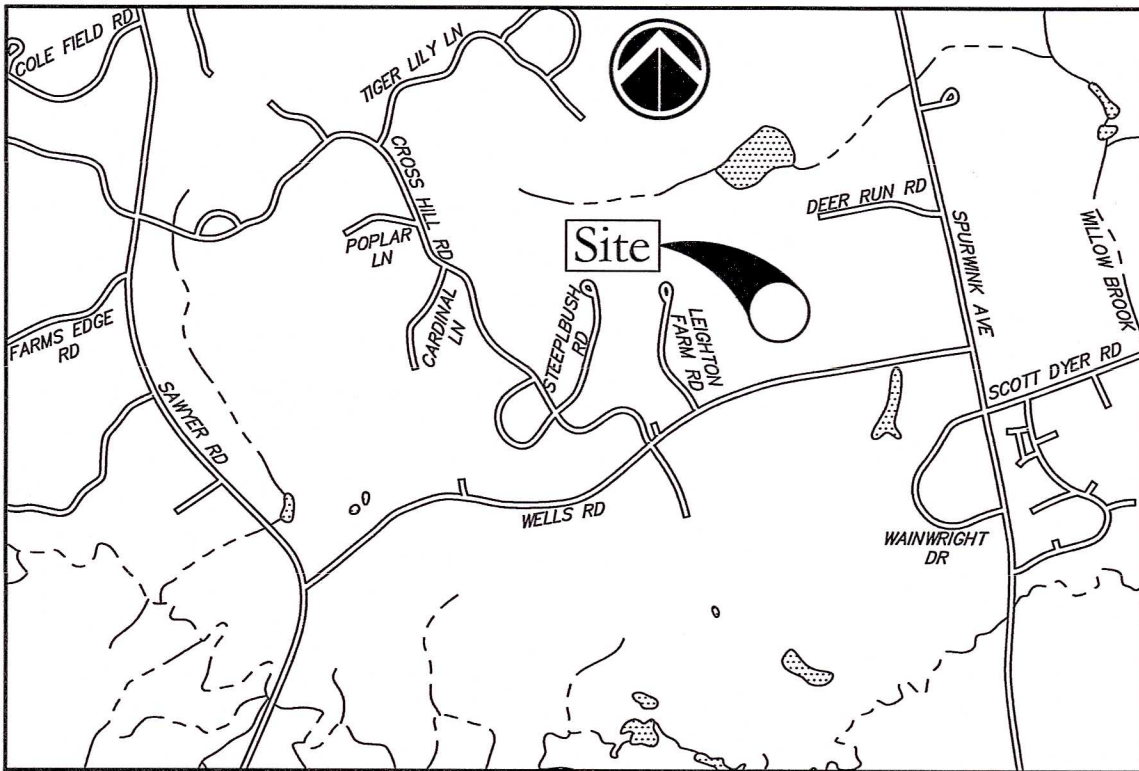
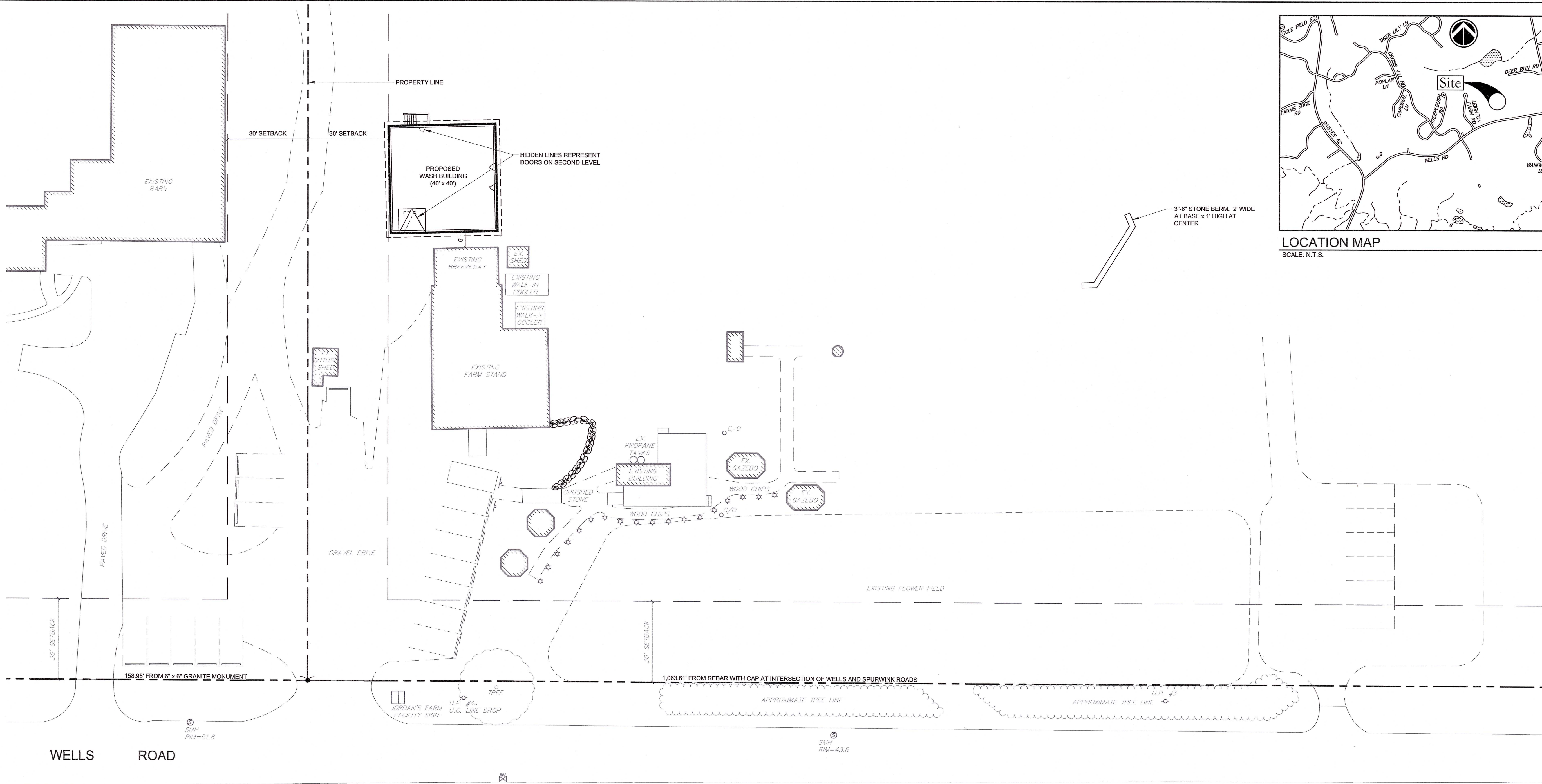


Signature of Owner

Agent November 26, 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.

D:\FreeAgent\Free Agent @ PROJECTS\02025-Jordan Farm Property (Mitchell)\Drawings\JAR Working Drawings\202505.dwg #1111111111 5/27/2025 8:21 AM



LOCATION MAP
SCALE: N.T.S.

Prepared For:
Applicant:
William H. Jordan Farm, LLC
21 Wells Road
Cape Elizabeth, ME
04107

Prepared By:
Mitchell & Associates
LANDSCAPE ARCHITECTS
70 Center Street
Portland, Maine 04101
P: 207.774.4427
F: 207.874-2460

FARM STAND AMENDMENT

21 Wells Road
Cape Elizabeth, Maine

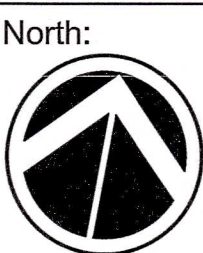
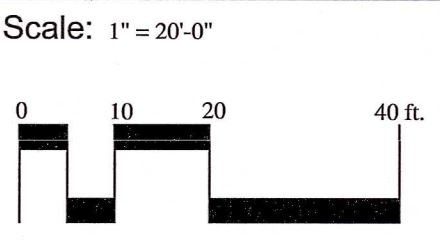
Date:
June 03, 2022

Issued For:
REVIEW

Revisions:

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Title:
LAYOUT PLAN



Sheet No.:
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CAPE ELIZABETH, MAINE 04107
- OWNERS: WILLIAM H. JORDAN, JR., PAMELA BUTTERFIELD,
CAROL ANNE JORDAN AND PENELOPE A. JORDAN
21 WELLS ROAD
CAPE ELIZABETH, MAINE 04107
- TOTAL SITE AREA: 73.88 ACRES
- TAX MAP AND LOT NO.: MAP R05, LOT 30
- ZONING DISTRICT: RESIDENTIAL B DISTRICT (RB)
- DIMENSIONAL REQUIREMENTS:
MINIMUM LOT AREA 80,000 SQ. FT.
MINIMUM STREET FRONTAGE 125 FEET
MINIMUM FRONT SETBACK 30 FEET
MINIMUM SIDE SETBACK 30 FEET
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21 WELLS ROAD, CAPE ELIZABETH, MAINE," DATED MARCH 2014.

LEGEND

EXISTING	PROPOSED
PROPERTY LINE/R.O.W.	PROPERTY LINE/R.O.W.
ABUTTER LINE/R.O.W.	ABUTTER LINE/R.O.W.
SETBACK	SETBACK
MONUMENT	MONUMENT
IRON PIPE/ROD	IRON PIPE/ROD
BUILDING	BUILDING
DECK/STEPS	DECK/STEPS
EDGE PAVEMENT	EDGE PAVEMENT
PAVEMENT SAWCUT	PAVEMENT SAWCUT
EDGE CONCRETE	EDGE CONCRETE
EDGE GRAVEL	EDGE GRAVEL
TREELINE	TREELINE
TREE	TREE
CONTOURS	CONTOURS
SIGN	SIGN
WATER	WATER
WATER GATE VALVE	WATER GATE VALVE
HYDRANT	HYDRANT
SANITARY SEWER	SANITARY SEWER
SANITARY MANHOLE	SANITARY MANHOLE
STORM DRAIN	STORM DRAIN
UNDER DRAIN	UNDER DRAIN
UNDERGROUND ELECTRIC	UNDERGROUND ELECTRIC
SITE LIGHT	SITE LIGHT
UTILITY POLE	UTILITY POLE
FILTER BERM	FILTER BERM

APPROVAL- TOWN OF CAPE ELIZABETH PLANNING BOARD

DATE _____
CHAIRPERSON _____

TOWN OF CAPE ELIZABETH
Planning Board
Workshop Application

Applicant Name Abdul Mayar

Email abdul.w.mayar@gmail.com Telephone 2072138380

Address PO Box 1540, Westbrook, ME 04098

Do you own the property? Yes ☒ No ☐

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

Project Contact Person (one only):

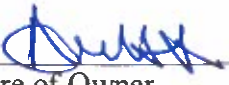
Name Same as above Telephone _____

Address _____

Email _____

Location of Project 126 Spurrwick Ave, Cape Elizabeth Map/Lot 29/65

Project description: Rebuilding / Multi family


Signature of Owner

Nov/26/2024
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.

33



Debra Lane <debra.lane@capeelizabeth.org>

Requested Item for September 9, 2024 Town Council Meeting

1 message

Timothy Reiniger <timothy.reiniger@capeelizabeth.org>
To: Michael McGovern <michael.mcgovern@capeelizabeth.org>
Cc: Debra Lane <debra.lane@capeelizabeth.org>

Thu, Aug 29, 2024 at 3:10 PM

Dear Mike,

I would like to add the following item to the September 9, 2024 Town Council meeting for referral to the October 9, 2024 Town Council workshop. I note that communities throughout Maine currently have enacted express authorization for contract zoning. Examples of enacting communities include Kennebunk, Saco, Bangor, Gorham, Biddeford, Lyman, and Dayton. The intent is to facilitate use of properties in the Town Center District but in a manner that is consistent with the current Comprehensive Plan.

Thank you for your consideration of this request.

Regards,

Tim Reiniger



Contract Zoning Ordinance Proposal Sept 2024.docx
21K

SECTION _____ TOWN CENTER DISTRICT CONTRACT ZONING

A. Purpose

Occasionally, competing and incompatible land uses conflict; and traditional zoning methods and procedures such as variances, conditional use permits, and alterations to the zone boundaries, are inadequate to promote desirable growth. In these special situations, more flexible and adaptable zoning methods are needed to permit differing land uses in both developed and undeveloped areas, and at the same time recognize the effects of changes. In consideration of a change in zoning classification for a particular property or group of properties, it may be determined that public necessity, convenience, or the general welfare require that certain conditions, limitations or restrictions be made or imposed on the use of development of the property for which a change in zoning classification is otherwise appropriate. Such conditions are deemed necessary to protect the best interests of the property owner, the surrounding property owners and the neighborhood, all other property owners and citizens of the Town of Cape Elizabeth, and to secure appropriate development consistent with the Cape Elizabeth Comprehensive Plan.

B. Authorization

Pursuant to 30-A M.R.S.A. § 4352 (8), contract zoning is hereby authorized for rezoning of property in the Town Center District where, for reasons such as the unusual nature or the unique location of the property, the Town Council finds it necessary or appropriate to impose, by agreement with the property owner, certain conditions or restrictions in order to ensure that the rezoning is consistent with the Cape Elizabeth Comprehensive Plan. Contract zoning shall be limited to property for which a rezoning is requested by the owner or other person with sufficient right, title and interest. Nothing in this section shall be interpreted to permit an amendment that is not consistent with the Comprehensive Plan. Areas rezoned under this provision shall be consistent with, but not limited to, the existing and permitted (whether permitted or approved conditional) uses within the Town Center District. By “contract zoning” this section means both contract and conditional zoning as enable in 30-A M.R.S.A. § 4352 (8).

C. Application Contents

A request for contract rezoning shall include a written petition to the Planning Board requesting a rezoning, including the following:

1. Evidence of right, title, or interest in the property;

2. A plot plan showing the boundaries of the parcel and its dimensions, as well as the existing and proposed buildings and structures;
3. A plan showing the location of existing streets and driveways within two hundred (200) feet of the affected property;
4. A detailed statement of the proposed use of the property and the precise zoning change requested;
5. A statement explaining how it is consistent with the Comprehensive Plan, and permitted and existing uses within any zoning district;
6. A description of the property's unusual nature or unique location;
7. A statement setting forth the conditions or restrictions that the applicant proposes; and,
8. The Planning Board may propose additional conditions or restrictions.

D. Hearing and Notice

1. The Planning Board shall conduct a public hearing before forwarding its recommendation to the Town Council under this provision.
2. Notice of the hearing shall be posted at the Town Hall at fourteen (14) days before the public hearing.
3. Notice shall also be published twice in a newspaper of general circulation, the date of first publication to be at least seven (7) days before the hearing.
4. Public hearing notices shall be mailed to the owner of the property to be rezoned and all abutters to that property. Property owners within five hundred (500) feet of the applicant's property shall be notified by certified mail of the public hearing. This notice shall be sent out at least fourteen (14) days prior to the public hearing and must include a copy of the proposed conditions and restrictions with a map indicating the property to be rezoned.
5. Failure of any property owner to receive a notice shall not necessitate another hearing or invalidate any action by the Planning Board or Town Council.
6. The cost of publishing and mailing the notices shall be borne by the applicant(s).

E. Conditions and Restrictions

Condition and restrictions imposed under this section shall relate only to the physical development and operation of the property and may include, by way of example, but are not limited to:

1. Limitations on the number and types of uses permitted;
2. Conditions on the scale and density of development, including the height, lot coverage, and other space and bulk provisions;
3. Specifications for the design and layout of buildings and other improvements;

4. Schedule for commencement and completion of construction;
5. Performance guarantees securing completion and maintenance of improvement and guarantees against defects;
6. Preservation of open space and buffers, and protection of natural areas and historic sites;
7. Provision of municipal services required by the development;
8. Provisions for enforcement and remedies for breach of any condition or restriction, including the timing of the effective date of the change and its repeal should conditions not be met; and,
9. The dedication or conveyance of property for public purposes, including but not limited to streets, easements, parks, and utility systems.

F. Recommendation

Before forwarding a recommendation of a contract zoning amendment to the Town Council, the Planning Board shall make a finding on each of the four standards in this subsection. A favorable recommendation to the Town Council requires a positive finding on all four standards. If the Planning Board makes a negative finding on any of these standards, its recommendation shall be negative. The Planning Board shall base its recommendation on whether the rezoning:

1. Is for land with an unusual nature or location;
2. Is consistent with the Comprehensive Plan;
3. Is consistent with, but not limited to, the existing uses and permitted uses within any zoning district; and,
4. The conditions proposed are sufficient to meet the intent of this section.

G. Final Action

Before amending the zoning ordinance for contract zoning, the Town Council shall adopt the Planning Board's findings, or other findings indicating that the rezoning is consistent with all four standards of section F above.

H. Status of Amendments

Amendments to the zoning map and ordinance made under this section may be amended or repealed by the Town Council.

I. Other Permits

All applications for contract zoning are subject to site plan review. An applicant may see other permits at the same time as the contract zoning as if the contract zoning were already in effect or may seek them after the Town Council has approved the zoning

amendment. If the applicant seeks approval before final Town Council action on the amendment, the Planning Board shall make its approval of these other permits contingent on the Town Council's approval of the contract zoning amendment.

Town	Town wide	Purpose	Procedure	Public Hearing	Submission highlights	Site Plan	Public Benefit	Standards
Falmouth	Yes	In order to allow for flexibility for the development of the land, to assure public benefit, and to mitigate potential negative impacts on subject, abutting, and nearby properties, a contract zoning agreement is required.	<i>Conceptual review.</i> •Town Council Community Development Committee. <i>Formal review.</i> •Planning Board. •Town Council. •Planning Board public hearing. •Town Council public hearing.	Planning Board and Town Council	•Concept review plan. •Formal review: Existing conditions plan, proposed conceptual development plan, traffic impact study, draft contract zoning agreement	Submitted after contract zoning approved	Required	Implied
Kennebunk	Yes	due to the unusual nature or unique location of the development proposed, the Town finds it necessary or appropriate to allow both flexibility for the development of the land and to be able to impose, by agreement with the property owner or otherwise, conditions or restrictions that will assure consistency with the Comprehensive Plan and that are not generally applicable to other properties similarly zoned. All rezoning under this Section shall be consistent with and complementary to existing and permitted uses within the original zones. Use of the provisions of this section shall be limited to where a rezoning is requested by the owner of the property or by an applicant with a legal interest in the property. Nothing in this section shall authorize an agreement for rezoning that is inconsistent with the Comprehensive Plan.	•Planning Board minor site plan concept plan, public hearing. •Town meeting	Planning Board and Town Meeting	•minor site plan submission requirements for concept plan	Submitted after contract zoning approved at public hearing	Required	•Consistent with comp plan. •consistent with existing and permitted uses in zone
Scarborough	Yes	modify the zoning district regulations applicable to a parcel of land, subject to appropriate conditions and restrictions which relate to the physical development or operation of the property, and which will allow reasonable uses of the land which would not have been permitted by the existing zoning district regulations but which remain consistent with the Town of Scarborough Comprehensive Plan and compatible with the existing and permitted uses within the existing zoning district classification	•Preliminary joint Town Council/Planning Board meeting. •Planning Board review of site plan •Town Council Contract zoning agreement	Planning Board and Town Council	•Require review under Site Plan Ordinance, after preliminary TC directions	site plan as part of PB contract zoning review, then complete site plan review following contract zoning approval	Required	•consistent with comp plan. •consistent with existing and permitted uses. •in the public interest. •townwide benefits

Section 2. Contract or Conditional Zoning

A. Authority and Purpose

Pursuant to 30-A M.R.S.A., Section 4352, contract or conditional zoning is hereby authorized where, due to the unusual nature or unique location of the development proposed, the Town finds it necessary or appropriate to allow both flexibility for the development of the land and to be able to impose, by agreement with the property owner or otherwise, conditions or restrictions that will assure consistency with the Comprehensive Plan and that are not generally applicable to other properties similarly zoned. All rezoning under this Section shall be consistent with and complementary to existing and permitted uses within the original zones. Use of the provisions of this section shall be limited to where a rezoning is requested by the owner of the property or by an applicant with a legal interest in the property. Nothing in this section shall authorize an agreement for rezoning that is inconsistent with the Comprehensive Plan.

B. Conditions and Restrictions

1. Conditions and restrictions imposed under the authority of this section shall relate only to the physical development and operation of the property and may include, by way of example:
 - (a) Limitations on the number and types of uses permitted;
 - (b) Restrictions on space and bulk standards and on the scale and density of the development;
 - (c) Specifications for the design and layout of buildings and other improvements;
 - (d) Schedules for commencement and completion of construction;
 - (e) Preservation of open space and buffers, provisions for public access to shorelines, and protection of natural areas and historic sites;
 - (f) Contributions toward the provision of municipal services required by the development;
 - (g) Performance guarantees securing completion and maintenance of improvements;
 - (h) Provision for enforcement and remedies for breach of any condition or restriction.
2. Any rezoning pursuant to this Section that affects a shoreland area, as identified by this Ordinance, shall demonstrate that it will provide substantially the same level of protection as in the original zone.

C. Approval and Process

1. All applications for rezoning under this section shall be subject to approval by a vote of Town Meeting.

2. An application for rezoning under this Section shall be accompanied by, in addition to the information required by this Article 13, 14 copies of a drawing at a scale of not more than 50 feet to the inch that shows all information required of a minor site plan, pursuant to Article 11, Site Plan Review, Section 6A. The Planning Board may modify or waive any of these required pieces of information when it determines that, because of the type or size of the project or circumstances of the site, such requirements would not be applicable or would be unnecessary for a complete understanding of the request for rezoning. An application for re-zoning under this section which consists of a "Telecommunications Facility" shall submit plans to the Planning board which meet the requirements of Article 7, Section 4.F. of this Ordinance.

3. The format of the rezoning language itself shall be as follows:

- a. Statement of purpose
- b. List of permitted uses in the proposed contract or conditional zone
- c. Space and bulk standards that will apply in the rezoning
- d. A description of other conditions and restrictions that will apply

Upon adoption by a vote of Town Meeting, the language of the contract or conditional zone shall be incorporated into Article 8, District Regulations, of this Ordinance. In addition, the rezoning may consist of covenants and agreements, the details of which are not incorporated into the Ordinance itself but that are nevertheless conditions of the rezoning. Any such covenants and agreements shall be in a form that is recordable in the Registry of Deeds.

4. When the Planning Board and the applicant have reached tentative agreement on the wording and conditions attached to the contract or conditional rezoning, the public hearing procedure described in paragraph 5 below shall commence. Lacking agreement between the Planning Board and the applicant, the Planning Board shall schedule a public hearing on the applicant's proposal within 120 days of the date of submission of a complete rezoning application. This time period may be extended by mutual agreement of the Planning Board and applicant. If any material changes are made to the proposal as a result of or following the public hearing, another public hearing shall be held consistent with the deadlines described in paragraph C(5) below.

5. Notice and Hearing

The planning board shall conduct a public hearing prior to any property being rezoned under this section. Notice of this hearing shall be posted in the town clerk's office at least 13 days prior to the public hearing and shall be published in a newspaper of general circulation within the Town at least two times. The date of first publication shall be at least seven days prior to the hearing. The applicant also shall mail, by certified mail, at least 13 days prior to the public hearing notice to the owners of the property to be rezoned and to the owners of all property within 500 feet of the affected lot(s) or parcel(s). This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned. Evidence of the mailing shall be presented to the Town.

6. The rezoning application and review process shall otherwise proceed according to the terms of this Article 13.
7. If the applicant fails to begin construction in a substantial manner and in accordance with an approved plan within 5 years of the effective date of the rezoning, the Planning Board may initiate rezoning to the original zoning classification.

Section 3. Lots

A. Lot Divided by Town Boundary

When a lot is situated in part in the Town and in part in an adjacent municipality, the provisions of this Ordinance shall be applied to the portion of the lot that lies in the Town in the same manner as if the entire lot were situated in Kennebunk.

B. Land Within Street Lines

Land within the lines of a street on which a lot abuts shall not be counted as part of the lot for the purposes of meeting the space and bulk requirements of this Ordinance, even though the fee simple title to such land may be held by the owner of the lot.

C. Land Taken by Eminent Domain

Any land taken by eminent domain, or conveyed for a public purpose for which the land could have been taken by eminent domain, shall not be deemed to be transferred in violation of the area, width and yard space provisions of this Ordinance.

D. Access to Lots

Every lot must either have direct access to a public way or access to a public way by a deeded right of way not less than ten feet in width. No existing lot shall be divided into two or more lots unless there is a contiguous right of way serving all lots created or unless the lot is in a subdivision recorded in the York County Registry of Deeds prior to June 17, 1963.

Section 4. Conflict with other Ordinances

This Ordinance is complementary to other Town ordinances and regulations affecting the use, height, area, and location of buildings and land. Where this Ordinance is in conflict with any other ordinance, the provisions of the ordinance which imposes the greater restriction shall prevail.

Section 5. Validity and Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance. Should any zoning district be declared invalid, the area so invalidated shall automatically become part of the zone from which it was originally extracted.

Section 6. Effective Date

The effective date of this Ordinance shall be immediately upon passage by Town meeting.

SECTION XXIII. CONTRACT ZONING DISTRICTS. Adopted July 3, 1996.

SECTION XXIII. CONTRACT ZONING DISTRICTS. Adopted July 3, 1996.

1. CONTRACT ZONING DISTRICT NUMBER 1

Contract Zoning District Number 1 is created as shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 1 is subject to the regulations applicable in the General Business District, B-2, as modified by the Contract Zoning Agreement between the Town of Scarborough and Frank R. Goodwin, Edward T. Flynn and Raymond C. Field dated July 15, 1996 and attached to this ordinance as Exhibit 1, and by the First Amendment to Contract Zoning Agreement Between the Town of Scarborough and Frank R. Goodwin, E&F Limited Liability Company and Raymond C. Field, dated September 20, 2000 and attached to this ordinance as Exhibit 1-A. (7/03/96) (10/04/2000)

2. CONTRACT ZONING DISTRICT NUMBER 2

Contracting Zoning District Number 2 is created and shown on the Zoning Map of the Town of Scarborough, Maine. Contract Zoning District Number 2 is subject to the regulations applicable in the Rural Residence and Farming District, R-F, as modified by the Contract Zoning Agreement between the Town of Scarborough and Robert Tgettis and Lucinda P. Malbon dated January 6, 1997 and attached to this ordinance as Exhibit 2. (01/06/97) (12/03/97)

3. CONTRACT ZONING DISTRICT NUMBER 3

Contracting Zoning District Number 3 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District Number 3 is an “overlay” zone governed by the Contract Zoning Agreement between the Town of Scarborough and Maine Life Care Retirement Community, Inc., dated November 17, 1997 as Exhibit 3. (duly authorized by Council vote on November 5, 1997)[Amended 05/20/15]

4. CONTRACT ZONING DISTRICT NUMBER 4 [REPEALED BY COUNCIL VOTE ON MARCH 5, 2014]

5. CONTRACT ZONING DISTRICT NUMBER 5

Contract Zoning District Number 5 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 5 is subject to the regulations applicable in the General Business District Zone, B-2, as modified by the Contract Zoning Agreement between the Town of Scarborough and First Scarborough Realty of Maine, LLC, dated August 21, 2002 and attached to this ordinance as Exhibit 5. (August 21, 2002)

6. CONTRACT ZONING DISTRICT NUMBER 6 [REPEALED BY REFERENDUM VOTE ON JULY 29, 2003]

7. CONTRACT ZONING DISTRICT NUMBER 7

Contract Zoning District Number 7 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 7 is subject to the Hillcrest Retirement Community Expansion Contract Zoning Agreement Among The Town Of Scarborough, Theresa Desfosses, Agnes Desfosses And State Manufactured Homes, Inc. (November 3, 2004)

SECTION XXIII. CONTRACT ZONING DISTRICTS. Adopted July 3, 1996.

8. CONTRACT ZONING DISTRICT NUMBER 8

Contract Zoning District Number 8 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 8 is between the Town Of Scarborough, and Grondin Aggregates LLC. (August 16, 2006)

9. CONTRACT ZONING DISTRICT NUMBER 9

Contract Zoning District Number 9 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 9 is between the Town Of Scarborough, and The New England Expedition – Scarborough LLC. (Approved December 20, 2006)

10. CONTRACT ZONING DISTRICT NUMBER 10

Contract Zoning District Number 10 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 10 is between the Town Of Scarborough, The Scarborough Land Conservation Trust, John Bliss, and Stacy Brenner. (Approved May 21, 2008)

11. CONTRACT ZONING DISTRICT NUMBER 11

Contact Zoning District Number 11 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 11 is between the Town of Scarborough and Avesta Housing Development Corporation. (Approved August 19, 2015)

12. CONTRACT ZONING DISTRICT NUMBER 12

Contact Zoning District Number 12 is created and shown on the Official Zoning Map of the Town of Scarborough, Maine. Contract Zoning District 12 is between the Town of Scarborough and Patriot Acura Dealership. (Approved May 20, 2019)

Town of Falmouth, Maine

Sec. 19-26.5.6 Contract Zoning Agreement Required.

In order to allow for flexibility for the development of the land, to assure public benefit, and to mitigate potential negative impacts on subject, abutting, and nearby properties, a contract zoning agreement is required. Conditions and restrictions may include, by way of example:

1. All variations from standards of Chapter II-19 of the Code of Ordinances
2. Open space, historic or natural resources and natural buffer zones to be protected
3. Limitations on the number and types of uses
4. Design and layout of buildings, site and any site improvements
5. Scale and density of development
6. Days and hours of operation
7. Provisions for reservation or dedication of land for public purposes
8. Provisions for affordable housing
9. Contributions toward the provision of municipal services required by the development, such as, infrastructure improvements and specialized maintenance needs arising from the rezoning
10. Schedules for commencement and completion of construction including any phasing plan.
11. Performance guarantees securing temporary erosion and sediment control measures, all improvements associated with the project and maintenance of improvements
12. Provisions for enforcement and remedies for breach of any conditions or restrictions
13. Procedures for modifications or amendments.

Sec. 19-26.5.7 Procedures, Conceptual Review.

The Community Development Committee (CDC) of the Town Council shall review and comment on the conceptual proposal as indicated below. The purpose of concept review is to allow the applicant an opportunity to discuss the project and be advised on compliance with the general findings required by the Town Council for approval. This provides the foundation to build a formal application that meets the basic requirements for approval and allows for informal dialogue and feedback on the conceptual proposal.

1. Application Submittal. The applicant shall submit their conceptual request for a contract zoning agreement on an application form provided by the Community Development Department and shall be accompanied by a fee as approved by the Town Council. The application shall contain the items as indicated in Sec. 19-26.5.9 1. below.
2. Concept review. Once the application is considered complete by the Community Development Director or their designee, the CDC shall meet to review the proposal, determine if the general findings under Sec. 19-26.5.5 above have been met and may offer recommendations or comments regarding the design or operational elements of the conceptual proposal.
3. Abutter Notice. Immediate abutters to the property on which the conceptual proposal is located shall be notified by first class mail at least seven (7) days prior to the date of the conceptual review. The term abutter shall mean an owner of property located adjacent to the subject property as identified in the town's GIS records at the time of the notice.
4. Failure to meet findings. Should a final determination of the CDC indicate that the applicant has failed to meet the findings under Sec. 19-26.5.8 above, the applicant may proceed to formal review under paragraph H. below within 60 days of the final determination.

Sec. 19-26.5.8 Procedures, Formal Review

The following procedure shall be used to submit any request for a a contract zoning agreement under this section.

1. Application Submittal. The applicant shall submit their formal request for a contract zoning agreement on an application form provided by the Community Development Department and shall be accompanied by a fee as approved by the Town Council. The application shall contain the items as indicated in Sec. 19-26.5.9 2. below. At such time the Community Development Director or their designee determines the application is complete, it shall be forwarded to the Planning Board and the Town Council.
2. Planning Board Review. The Planning Board shall review the proposal and forward any observations, recommendations and comments to the Town Council. This review will also serve as the pre-application sketch review required for subdivisions where applicable.
3. Town Council Review. Following the Planning Board review in Sec. 19-26.5.8 2. above, the Town Council shall review the proposal. Following its review, the Town Council may refer the proposal to the Planning Board for a hearing as prescribed in Sec. 19-26.5.8 4. below.
4. Planning Board Hearing. Should the Town Council refer the proposal to the Planning Board, the Planning Board, as the municipal reviewing authority, shall hold a hearing which meets the requirements of 30-A MRS Sec. 4352(8).
5. Town Council Hearing. The Town Council shall hold a hearing, which hearing requirements shall be no less stringent than the public hearing requirements of Section 213 of the Town Charter. The Town Council may elect to hold a joint hearing with the Planning Board.
6. Final consideration by Town Council. Prior to adopting a contract zoning agreement, the Town Council shall determine that the proposed contract zoning agreement meets the requirements of each determination in Sec. 19-26.5.5 above. The Town Council shall state its reasons for its findings and conclusions for each of those determinations.

Sec. 19-26.5.9 Submission Requirements

The following plans and documentation shall be submitted in compliance with the submittal requirements as established by the Community Development Department, in adequate number and format to facilitate the review of the proposal.

1. Concept review. The following items shall be submitted as part of a concept review application.
 1. Address of property and Map-Lot
 2. Evidence of right, title, or interest in the property
 3. Names and contact information of the record owner and the applicant
 4. Written description of the proposal including use, scale and general physical development scheme.
 5. Map showing property to be rezoned with current zoning, as well as current zoning and uses within 500 feet of the property.
 6. Sketch plan showing conceptual site improvements.
 7. Comprehensive Plan compliance statement with explanation
 8. Statement of public benefit that would not result under current zoning
9. Compliance with existing and permitted uses of the district(s)
10. List of variations from existing zoning requested
11. Need for utility extensions

2. Formal review. The following items shall be submitted as part of a formal application. Any application for a project that requires a pre-application sketch review under Chapter II-7 of the Code of Ordinances shall also meet the submittal requirements of [Appendix 7-2](#) of that Chapter.

1. Names and contact information of the record owner and the applicant
2. Names and contact information of all consultants working on the project
3. Evidence of right, title, or interest in the property
4. Parcel map showing parcel in relationship to abutting parcels and street network.
5. Existing conditions plan of the development site or parcel at a scale necessary to adequately represent the site and improvements but no more than one hundred (100) feet to the inch
 - i. Name of the property owner, north arrow, date, and scale;
 - ii. Map-block-lot and street address
 - iii. Metes and bounds of the parcel
 - iv. Relationship of the site to the surrounding area (including distance to closest street intersection)
 - v. Topography of the site at an appropriate contour interval depending on the nature of the use and character of the site
 - vi. Location and size of existing utilities and stormwater improvements
 - vii. Existing buildings, structures, or other improvements
 - viii. Existing restrictions, rights of way and easements
 - ix. The location and delineation of water features whether natural or manmade, including ponds, streams, rivers, wetlands, vernal pools and their upland habitats, ditches, drains, and natural drainage swales, as well as the 100-year floodplain
 - x. Watershed boundaries
 - xi. Indication if the parcel or portions thereof are located within the urbanized area as defined by federal census bureau. [NOTE: in the urbanized area, may be subject to increased stormwater permitting requirements]
 - xii. A viewshed analysis showing the location and extent of views into the property from public roads
 - xiii. Locations of all historically significant sites or structures on the tract, including but not limited to cellar holes, stone walls, earthworks, and graves.
 - xiv. Locations of trails that have been in public use (pedestrian, equestrian, bicycle, etc.)
 - xv. Total acreage of the tract
 - xvi. Net Residential Area calculated for residential development
6. Proposed Conceptual Development Plan - A plan at the same scale as the existing conditions plan, highlighting the opportunities and constraints of the site and including the following:
 - i. Prime portions of the site that are suitable for development or use
 - ii. Portions of the site that are suitable for on-site sewage disposal if public sewerage is not available
 - iii. Areas of the site that have development limitations (steep slope, flat, soil constraints, wetlands, flood plains, drainage, etc.)
 - iv. Suitable access points and routes for roads and utilities

- v. Areas where there may be off-site conflicts or concerns (i.e., noise, lighting, traffic, etc.)
 - vi. Structures within 100 feet of all subject property boundaries and the use of those structures.
 - vii. Proposed location and type of development, including buildings, signage, driveways, parking, and buffering
 - viii. Conceptual building elevations for commercial structures showing height, placement on lot, orientation to the street, and public entrances.
 - ix. Sidewalks, public parking, bus stops, and bicycle accommodation within 100 feet of the development site.
7. Proposals that will trigger a MDOT Traffic Movement Permit must submit a traffic impact study.
 8. Draft contract zoning agreement including all applicable items listed in Sec. 19-26.5.6 above and at a minimum the following:
 - i. Statement of proposed use of the property
 - ii. List of specific zoning changes requested
 - iii. List of conditions and restrictions proposed
 - iv. Site analysis describing major features of the property
 - v. Statement of consistency with the Comprehensive Plan
 - vi. Statement of consistency with the district(s) uses
 - vii. Statement of public benefit that would not result under current zoning

Sec. 19-26.5.10 Consulting and review fees.

The Town Council may require any and all consulting and review fees to be paid by the applicant and may require funds to be placed in escrow at the time of the Town Council review. Effective on: 9/26/2016

Town of Scarborough, Maine

I. CONTRACT ZONING [September 19, 2001][Amended 10/03/01][Amended 11/20/02]
[Amended 07/21/2004][Amended May 15, 2019]

1. Contract Zoning

Authorized Contract zoning is authorized for zoning map and/or text changes when the Town Council, exercising its sole and exclusive judgment as the legislative body of the Town of Scarborough, determines that it is appropriate to modify the zoning district regulations applicable to a parcel of land, subject to appropriate conditions and restrictions which relate to the physical development or operation of the property, and which will allow reasonable uses of the land which would not have been permitted by the existing zoning district regulations but which remain consistent with the Town of Scarborough Comprehensive Plan and compatible with the existing and permitted uses within the existing zoning district classification. For purposes of this section the term “contract zoning agreement” shall mean either an original agreement or any subsequent amendments.

2. Relationship to Shoreland Zoning

A parcel rezoned under this Section II(I) may include land areas subject to the Shoreland Zoning Ordinance for the Town of Scarborough, but any provision of a contract zoning agreement adopted by the Town Council which removes or modifies any restrictions or limitations imposed by the Shoreland Zoning Ordinance shall not take effect until approved by the Commissioner of Environmental Protection as required by 38 M.R.S.A. Section 438- A(3).

3. Public Benefit Required

Contract zoning shall promote the general welfare of the residents of the Town of Scarborough. The Town Council shall approve a contract zoning request only if it determines, exercising its sole and exclusive judgment as the legislative body of the Town, that the proposed contract zoning is in the public interest and will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification. Guidelines for the Council to apply in making those determinations are set forth in Appendix A to this Ordinance.

4. Procedures

Requests for a contract zoning agreement or an amendment to an existing contract zoning agreement shall not be subject to Section II(G), but shall be processed exclusively as provided in this Section II(I). A summary of the procedural steps is contained in Appendix B to this Ordinance.

- a. Preliminary Joint Review of Application for Contract Zoning by Planning Board and Town Council.
 - i. The person proposing a contract zoning agreement or an amendment to an existing contract zoning agreement shall submit an application for contract zoning to the Town Planner, which shall include, at a minimum, the following elements:
 - A map showing existing and proposed zoning district lines.
 - The address or exact location of the request, including the Scarborough Assessor's map references for the property to be rezoned.
 - The name, address and telephone number of the property owner and of the applicant, if the applicant is not the owner.
 - Evidence of the applicant's right, title or interest in the property.
 - A site analysis that describes the major features of the property, allowing the Planning Board and Town Council to make informed judgments about how it will be used. Guidelines for preparation of the site analysis are contained in Appendix C to this Ordinance. This requirement may be waived by the Town Planner for amendments that do not propose to utilize lands that were not previously considered as part of the contract zone process.
 - A conceptual development plan showing the approximate layout of all buildings, structures, streets, driveways, parking areas and other significant improvements to be constructed on or above the surface of the ground plus any proposed open spaces, conservation areas, buffer areas or other features of the development, but is not required to show subsurface infrastructure installations, building plans, engineering plans or other details which would be required for a subdivision plan or site plan. This requirement may be waived by the Town Planner for amendments that do not propose to utilize lands that were not previously considered as part of the contract zone process.
 - A statement describing the existing use of the property and the proposed new use and development and describing how the proposed contract zone will be consistent with the Town of Scarborough Comprehensive Plan, will be consistent with existing and permitted uses within the existing zoning district classification of the property, will be in the public interest, and will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification .

- A proposed contract zoning agreement which complies with the requirements of Section II(I)(5) below.
 - Any other information requested by the Town Planner and/or the Town Engineer.
 - A non-refundable application fee as specified in the Schedule of License, Permit and Application Fees established by order of the Town Council.
- ii. The Town Planner will review the application and, upon being satisfied that the application is sufficiently complete for review by the Planning Board and the Town Council, will schedule a joint meeting of the Planning Board and Town Council to commence review of the request for contract zoning. The Town Planner shall cause notice of the joint Planning Board/ Town Council meeting to be given in accordance with the requirements of 30-A M.R.S.A. § 4352(8), at the applicant's expense. Such notice shall be sent to the owners of all properties within five hundred (500) feet of the property to be rezoned. Such notice shall indicate that the joint meeting will include a public hearing conducted by the Planning Board at which the public will be given an opportunity to speak on the proposed contract zoning agreement.
- iii. The joint Planning Board/Town Council meeting shall be conducted as follows:
- Presentation by the applicant.
 - Comments from Town staff.
 - Comments from members of the public. (This shall constitute the public hearing by the municipal reviewing authority required by 30-A M.R.S.A. § 4352(8).)
 - Response or rebuttal from applicant.
 - Discussion among members of the Planning Board and the Town Council, which may include questions posed to the applicant, staff and the public.
 - Comments from members of the Planning Board concerning the land use implications of the proposed contract zoning agreement.
 - Preliminary Town Council discussion of contract zoning agreement. The Joint Planning Board/Town Council meeting may be continued from time-to-time by vote of the Town Council until the Council has concluded its discussion and is prepared to give the applicant preliminary direction concerning the further processing of the contract zoning request. At the conclusion of the discussion, the Council shall, by vote, advise the applicant:

- (1) to withdraw the request for contract zoning;
- (2) to continue to process the request for contract zoning, with or without modifications suggested by the Council; or
- (3) to revise and resubmit the application for contract zoning, under Section II(I)(4)(a)(i) above.

The vote of the Town Council shall constitute direction from the Council to the applicant as to how to proceed, but shall not be binding on either the applicant or the Council, which reserves its sole and exclusive judgment as the elected legislative body of the Town of Scarborough until its final vote on the proposed contract zoning agreement.

b. Planning Board Plan Review.

- i. Every development proposed in an application for contract zoning shall require review and approval under the Town of Scarborough Site Plan Review Ordinance. In addition, if the development proposed is a subdivision, it shall require review under the ordinance entitled "Subdivision Regulations of the Town of Scarborough, Maine" (the "Subdivision Ordinance"). The application(s) for plan review shall be submitted only after the Town Council has given its preliminary directions to the applicant pursuant to Section II(I)(4)(a)(iii) above.
- ii. The Planning Board shall hold a public hearing to consider the site plan review application and the subdivision application, if required, whether or not a public hearing is required by the Site Plan Review Ordinance or the Subdivision Ordinance. The Planning Board shall review the site plan review application under the Scarborough Site Plan Review Ordinance and the subdivision application, if required, under the Subdivision Ordinance, applying the applicable standards of each ordinance and the zoning standards of the proposed contract zoning agreement. If the Planning Board determines that the proposed development meets such standards, the Board shall grant preliminary, provisional approval to the plan[s], subject to enactment of the contract zoning agreement by the Town Council.
 - a. The Planning Board shall also provide an advisory opinion to the Council and to the applicant of any changes or revisions to the proposed contract zoning agreement necessary to conform the agreement to the Planning Board's preliminary approval of the plan.
- iii. In the case of a subdivision, the Planning Board shall not make findings as to whether the proposed subdivision is in conformity with the Town of Scarborough Comprehensive Plan, but shall condition preliminary subdivision approval upon a

determination by the Town Council under Section II(I)(4)(c)(ii), below that the proposed contract zoning agreement is consistent with the Comprehensive Plan.

c. Town Council Action on the Contract Zoning Agreement. [Amended 08/20/08]

- i. Except as provided in Section II(I)(6)(b) below, the Town Council shall not take final action on the contract zoning agreement until after the Planning Board has given preliminary site plan approval and preliminary subdivision approval, if required. The Council shall process the proposed contract zoning agreement under the procedures of Section 213 of the Town of Scarborough Charter and the Rules and Procedures of the Scarborough Town Council. In addition to the public hearing required by section 213 of the Charter, the Council may also conduct as many additional hearings and meetings as the Council deems necessary for consideration of the contract zoning application.

- ii. Before taking its final vote on the contract zoning agreement, the Town Council shall determine whether the proposed contract zoning agreement:

(1) is consistent with the Town of Scarborough Comprehensive Plan;

(2) is consistent with the existing and permitted uses within the existing zoning district classification of the property;

(3) is in the public interest; and,

(4) will have beneficial effects on the town as a whole which would not result if the property were developed under the existing zoning district classification.

The Council shall state its reasons for its findings and conclusions on each of those determinations, which shall constitute the legislative findings of the Town Council. The Town Council shall then vote on the contract zoning agreement, which shall include any necessary map change and a contract zoning agreement complying with the requirements of Section II(I)(5) below. Final passage of the contract zoning agreement shall require the affirmative vote of at least two thirds of the Council members present and voting, but in no event less than four. [Amended 05/21/03 – retroactive to 11/20/02]

- iii. The contract zoning agreement approved by the Town Council shall be executed by the Town Manager or by such other Town officer as the Council may designate and recorded by the applicant in the Cumberland County Registry of Deeds. The agreement shall not take effect until it is recorded. If the agreement is not recorded within 90 days after the Town Council approves the request for rezoning, the Council, after giving the applicant notice and an opportunity to be heard, may rescind its approval of the agreement if the Council determines that changed circumstances warrant rescission. All contract zoning

agreements approved and recorded prior to August 20, 2008 are hereby ratified, notwithstanding any different recording requirements in effect at the time of their approval.

d. Final Planning Board Action.

After the contract zoning agreement is recorded in the Registry of Deeds, the Planning Board shall complete its final site plan review of the development proposal and final subdivision review, if required. In the case of a subdivision, the Planning Board shall adopt as its findings under 30-A M.R.S.A. § 4404(9) and Sections 3(I) and 6:1 of the Subdivision

Ordinance the findings made by the Council under Section II(I)(4)(c)(ii) above concerning consistency with the Town of Scarborough Comprehensive Plan.

5. The Contract Zoning Agreement

a. Contents of the Agreement.

The contract zoning agreement shall include a provision granting the Town of Scarborough the power to enforce all conditions and restrictions, both through enforcement action pursuant to this Ordinance and through legal action for specific performance. Conditions and restrictions imposed by the Town Council may include, but shall not be limited to, the following:

1. Limitations on the number and types of uses permitted.
2. Restrictions on the scale and density of development.
3. Specifications for the design and layout of buildings and other improvements, including landscaping.
4. Schedules for commencement and completion of construction.
5. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects.
6. Preservation of open space and buffers, and protection of natural areas and historic sites.
7. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewer, and special maintenance needs arising from the rezoning.

8. Provisions for enforcement and remedies for breach of any conditions or restrictions.
9. Provisions for reservation or dedication of land for public purposes. The Town Council may impose conditions under this Section II(I) which are more restrictive than the otherwise applicable requirements of this Ordinance.

b. Effects of the Agreement.

The conditions and restrictions set forth in the agreement shall run with the land and bind all future owners of the land and any other person who claims an interest in the property, and may be removed only by subsequent action of the Town Council expressly removing, relieving or discharging one or more of the specific conditions or restrictions. If the conditions and restrictions are not fulfilled or complied with within the specified time limits, the Town Council may extend the time limits or may initiate a rezoning to the original zoning district classification or to another zoning district classification.

c. Modifications and Amendments. [Amended 07/21/2004][Amended 08/20/08][Amended 05/15/19]

The contract zoning agreement may allow for changes or modifications to the development, but shall specify the procedure for approval of any such changes or modifications, setting forth categories of changes or modifications which would require Planning Board approval only, those which would require Town Council approval only, and those which would require both Planning Board and Town Council approval. Unless otherwise specified in the contract zoning agreement, a request to amend a contract zoning agreement shall be processed as stated in Section II(I)(4) above.

- d. Performance Guarantees. As part of the contract zoning agreement, the Town Council may, but is not obligated to, require a bond, escrow agreement, irrevocable letter of credit, or other surety in such amount as is approved by the Town Manager as being reasonably necessary to ensure compliance with the conditions or restrictions required by the rezoning and, where necessary to ensure continued compliance, may require such surety to remain in effect after occupancy of the rezoned property. Such surety shall be posted before the agreement is recorded in the Registry of Deeds.

6. General Provisions

a. Use of Consultants.

Both the Planning Board and the Town Council may obtain the services of independent technical consultants if either body considers such services necessary for adequate

review of the application for contract zoning, such consultants to be retained at the applicant's expense. By submitting an application for contract zoning under this Section II(I), the applicant agrees to reimburse the Town for the reasonable and necessary costs of such consultations, and the Town will not execute the contract zoning agreement until such amounts have been paid in full.

b. Waiver of Procedures for Phased Developments.

Notwithstanding any other provision of this Section II(I), where the development proposed in a request for contract zoning is designed to be constructed in phases and the Council concludes that it would be impracticable to require preliminary subdivision and/or site plan review and approval of all phases before approval of the contract zoning agreement, the Town Council, in its discretion, may waive the provisions of Section II(I) (4)(c)(i) requiring the Planning Board to approve a preliminary plan before the Council takes final action on the contract zoning agreement, but only with respect to phases subsequent to the first phase of the development to be constructed. If it grants such a waiver, the Council shall include a phasing schedule in the contract zoning agreement, specifying the dates for completion of the subdivision and/or site plan review, and may reserve in the contract zoning agreement the right of the Town Council to review the plans for subsequent phases prior to their construction.

c. No Rights Created Before Final Council Vote.

The submission of a request for contract zoning under this Section II(I), the payment of application fees, or the expenditure of funds by the applicant in presenting such a request shall not create any vested rights in the application. The conduct of meetings and hearings, the review of the application, comments by Town officials or staff, preliminary votes, findings or determinations, preliminary subdivision or site plan approval, and the availability of contract zoning under this Section II(I) shall not be construed as creating any entitlement to approval of a request for contract zoning. The decision whether or not to rezone remains committed to the Town Council exercising its sole and exclusive judgment as the elected legislative body of the Town of Scarborough and will not be made until the Council takes its final vote on the contract zoning agreement.