Draft (5-5-2023)
LD 2003 Zoning Ordinance Amendments

SEC. 19-1-3. DEFINITIONS

Accessory Building or Structure: A detached, subordinate structure, the use of which is clearly incidental and related to that of the principal structure or use of the land and which is located on the same lot as the principal structure or use. Any accessory building or structure that has plumbing shall not be used for overnight accommodation. 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 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

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

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Deleted: A single subordinate dwelling unit accessory to and wholly contained within a principal building or structure and/or attached garage in which a single-family dwelling unit is the principal use.

Deleted: Affordable Housing: Lots/units 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.

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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.

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

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.

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.

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.

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.*

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

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

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

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.

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

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

Dwelling Unit: A room or group of rooms designed and equipped for permanent, seasonal, or temporary human habitation for only one (1) household at a time. Recreational vehicles are not residential dwelling units.

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.

Home Workshop or Workroom: A workshop, located within a principal structure or within an accessory 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.

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.

Lot: A parcel of land with ascertainable boundaries described in a recorded deed or shown on an approved subdivision plan and meeting zoning requirements at the time it was created.

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 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 be less than the Minimum Lot Width.

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. (Revised effective June 8, 2022)

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. (Revised eff. 06-08-2022)

Multifamily dwelling: A building containing 2 or more dwelling units (excepting accessory dwelling units), or a mixed use building containing 1 or more dwelling units. Development that may be considered multifamily includes but is not limited to duplexes, triplexes, quadriplexes,

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multiplexes, townhouses, mansion apartments, garden apartments, and other dwelling units that share a common wall, floor or roof.

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.*

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

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

Setback requirements: The shortest distance from a 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 building, a single dwelling unit may be considered a multifamily dwelling unit.

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 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 structure (and any building addition or accessory buildings) may be erected upon a lot which is part of a subdivision approved by the Planning Board after December 22, 1976, proved that:

ARTICLE VI. DISTRICT REGULATIONS

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

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Deleted: Multiplex Housing: Multiplex housing is housing containing two (2) or more attached dwelling units. (Effective November 14, 2015) ¶

Deleted: Principal Building: Any building containing the primary or main use of the lot on which it is located.¶

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B. Permitted Uses

2. The following residential uses:

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

4. The following accessory uses:

   k. Accessory dwelling unit

C. Conditional Uses

3. The following accessory uses:

   a. Home business

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	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)	See Sec. 19-7-17

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(2) Multifamily dwelling (four (4) or more dwelling units)	1 unit per 66,000 sq. ft. of net residential area

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

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

B. Permitted Use

2. The following residential uses:

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

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4. The following accessory uses:

   k. Accessory dwelling unit

C. Conditional Uses

3. The following accessory uses:

   a. Home business

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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
(3) Multifamily dwelling (five (5) or more dwelling units)	See Sec. 19-7-2
(4) Other uses	1 unit per 80,000 sq. ft. of gross lot area

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

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

B. Permitted Uses

2. The following residential uses:

   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
   e. Eldercare facility, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards

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f. Rooming or boarding home

4. The following accessory uses:

j. Accessory dwelling unit

C. Conditional Uses

3. The following accessory uses:

a. Home business

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	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 (four (4) or fewer dwelling units)	See Sec. 19-7-17
(2) Multifamily dwelling (five (5) or more dwelling units)	1 unit per 15,000 sq. ft. of net residential area
(3) In single lot subdivisions	1 unit per 20,000 sq. ft. of net residential area
(4) 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
(5) 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

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(6)	**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)
(7)	**Rooming or boarding home**	1 bed per 5,000 sq. ft. of gross lot area
(8)	**Other housing**	1 unit per 20,000 sq. ft. of gross lot area

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

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

B. Permitted Uses

2. The following residential uses:

   a. Single family dwelling
   b. Bed and breakfast
   c. Multifamily dwelling, (Effective May 12, 2010)
   d. Congregate housing, subject to the provisions of Sec. 19-7-6, Eldercare Facility Standards
   e. Rooming or boarding home
   f. Accessory dwelling unit

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D. Standards

1. Performance Standards

   h. A multifamily dwelling unit shall be accessory to a nonresidential use and located in a building where more than fifty percent (50%) of the floor area of the structure is occupied by nonresidential uses. For multi-story 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 May 12, 2010)

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 building		See Sec. 19-7-17
(2) Multifamily dwelling (five (5) or more dwelling units) in a mixed use building		1 unit per 3,000 sq. ft. of gross lot area (Effective May 12, 2010)
(3)	**Rooming or boarding home**	1 bed per 5,000 sq. ft. of gross lot area

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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 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 building 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 building 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, a single family dwelling, or multifamily dwellings with four (4) or fewer multifamily dwelling units in one (1) building 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 required for a building containing four (4) or fewer multifamily dwelling units on a single lot, 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:

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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 building containing four (4) or fewer multifamily dwelling units on a single lot, rooming house, or bed and breakfast will be created.

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

B. Permitted Use

2. The following residential uses:

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

D. Standards

1. Performance Standards

l. Multifamily dwelling units shall be accessory to a nonresidential use and located in a building more than fifty percent (50%) of the floor area of the structure is occupied by nonresidential uses. For multi-story 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)

MINIMUM LOT AREA		
(1)	**Single family dwelling unit**	
	i. adjacent 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**	15,000 sq. ft.
(3)	**Wind energy systems**	20,000 sq. ft. (Effective October 8, 2008)

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(4) Other uses	None
MAXIMUM NUMBER OF DWELLING UNITS PER AREA	
(1) Multifamily dwelling (four (4) or fewer dwelling units) in a mixed use building **(2)Multifamily dwelling (five (5) or more dwelling units) in a mixed use building**	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	1 bed per 5,000 sq. ft. of gross lot area

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E. Design Requirements

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 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 building 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 building 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, a single family dwelling or multifamily dwelling with four (4) or fewer multifamily dwelling units in one building on a single lot that is otherwise in compliance with Sec. 19-7-17.

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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 building 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 building containing four (4) or fewer multifamily dwelling units on a single lot, rooming house or metal working area will be created.

4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review. (Effective July 8, 2009)

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 are located within two hundred fifty (250) feet of the center of any proposed structure.

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

36. Multifamily dwelling unit (Effective November 14, 2015)

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ARTICLE VII. GENERAL STANDARDS

SEC. 19-7-1. PURPOSE

The purpose of this Article is to incorporate into the Zoning Ordinance tools that will better enable the Town to implement its policies, as expressed in the Comprehensive Plan, to preserve open space and rural character and to provide opportunities for affordable housing. These tools are designed to achieve these goals while respecting the rights of property owners.

SEC. 19-7-2. OPEN SPACE ZONING

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

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

Deleted: Multiplex Housing

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

Deleted: Multiplex housing

6. Density Bonus for additional Public Benefit

b. Density Bonus.

iii. Low and Moderate income lots/units. When low or moderate income lots/units are 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.

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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 for purchase by moderate income buyers or five percent (5%) of the lots/units in the project 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, 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:

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Zoning District	Minimum Lot Size
Residence A	30,000 sq. ft./lot
Residence B	20,000 sq. ft./lot connected to public sewerage 50,000 sq. ft./lot with on-site sewage disposal
Residence C	8,000 sq. ft./lot Must be served by public sewer

C. Standards

1. Low and moderate income 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

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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 lots/units shall be geographically dispersed throughout the development where feasible.

3. The dwellings on low and moderate income 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 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.

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6. Low or moderate income 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 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 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 units, the proportional number of total units to low or moderate income units is 10 total units to 1 low or moderate income unit. If one building permit is issued for a low or moderate income 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 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 lor or moderate income unit has been issued a certificate of occupancy.

When calculating proportionality, any fractional sum shall be rounded down to the nearest whole building unit. For example, in a development of 50 units with 3 low or moderate income units, the proportional number of units to low or moderate income units would be 16 units to 1 low or moderate income 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. 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 as defined in Sec. 19-1-3, Definitions. The fee shall be proportional to the number of lots/units in the development.

2. Where the Planning Board finds that undue hardship or environmental conditions do not make the inclusion of low or moderate income lots/units feasible, the Planning Board may modify the Mandatory Affordable Housing 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

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in Sec. 19-7-4.D.1, Modifications and Fees, and the creation of low and moderate income lots/units elsewhere in the Town.

The reduced lot sizes for low and moderate income lots 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.

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**

The following requirements shall apply to the creation of an accessory dwelling unit.

1. Single Family parity. An accessory dwelling unit shall be allowed on any lot where a single 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 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. An accessory dwelling unit may be constructed or established within an accessory structure, subject to accessory structure setbacks.

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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.

4. Setbacks. 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 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 building or secondary building or garage existing as of July 1, 2023, the required setback requirements for an accessory structure shall apply.

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.

6. Size. An accessory dwelling unit must meet a minimum size of one hundred ninety (190) square feet, unless the Technical Building Codes and Standards Board, pursuant to 10 M.R.S Sec. 9722, adopts a different minimum standard; if so, that standard applies. The accessory dwelling unit size shall not exceed one thousand eight hundred (1,800) 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.

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 single family dwelling and the accessory dwelling unit shall be held in the same ownership or owned in compliance with the requirements of the Maine Condominium Act, 33 M.R.S. §1601-101 et seq.

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Deleted: 1.→ A lot must have a minimum of twelve thousand (12,000) square feet to be eligible for the addition of an accessory dwelling unit to an existing single → family home. The applicant shall have the burden to establish the lot area by a → survey signed and sealed by a registered Maine surveyor. The applicant shall also demonstrate compliance with the Town Sewage Ordinance.

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Deleted: 2.→ An accessory dwelling unit may only be created in a single family, detached dwelling which has a total existing floor area of the structure, excluding garages, of one thousand five hundred (1,500) square feet or more prior to the addition of the accessory dwelling unit.

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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 buildings. The Planning Board may reduce by up to thirty percent (30%) the required parking for the reuse of a building existing as of June 4, 1997. In granting such a reduction, the Planning Board must find that:

a. Residential

3.	Multifamily 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.

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 building containing four (4) or more multifamily units on a single lot in the RA District, and multifamily development consisting of a building 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.

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

If more than one (1) principal structure is located on a lot, the lot size and location of each structure shall be such that a separate lot conforming to the provisions of this Ordinance could be created for each structure. The potential creation of a separate lot shall be demonstrated by

Deleted: 7. No accessory dwelling unit shall be approved for any structure that includes a home occupation or home business, nor shall a home occupation or home business be permitted in a structure that includes an accessory dwelling unit.

Deleted: 8. The single family dwelling and the accessory dwelling unit installed therein shall be held in the same ownership. No rights shall accrue to the recipient of the conditional use permit under this section unless the recipient records an attested copy of the conditional use permit in the Cumberland County Registry of Deeds within ninety (90) days of final approval of the conditional use permit. A conditional use permit shall become null and void if not recorded within ninety (90) days of final approval.

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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 dwellings created under Sec. 19-7-5, Accessory Dwelling Units and Sec. 19-7-17, Small Multifamily Development and Affordable Housing Bonus.

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.

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.

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.

   a. Residence A (RA) District: On a vacant lot where housing is allowed, up to two (2) dwelling units per lot shall be allowed. 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. 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.

   b. Residence B (RB) District: On a vacant lot where housing is allowed, up to four (4) dwelling units per lot shall be allowed. When the housing will be

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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. 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. 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.

On a lot containing one (1) existing dwelling unit, up to two (2) additional dwelling units shall be allowed. 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. 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. 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 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. 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.

On a lot containing one (1) existing dwelling unit, up to two (2) additional dwelling units shall be allowed. 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]

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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.

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.

   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.

   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.

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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.

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.

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.

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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	

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

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 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;

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

C. Short Term Rental Requirements

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5. Multi-family development, No Short Term Rental may be operated on a lot containing a multifamily development 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. (Effective May 12, 2021)

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ARTICLE IX. SITE PLAN REVIEW

SEC. 19-9-2. APPLICABILITY

A. Activities Requiring Site Plan Review

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

1. The construction of any nonresidential building or building addition.

2. Any nonresidential expansion or change in use except that changes of use within the Town Center District shall be governed by the provisions of Sec. 19-6-4. E, Site Plan Review and uses within the business A District shall be governed by the provisions of Sec. 19-6-5.F. Site Plan Review. (Effective June 10, 2010)

3. Multifamily dwellings and eldercare facilities, except that Site Plan Review is not required for a building containing three (3) or fewer multifamily units on a single lot in the RA District and a building containing four (4) or fewer multifamily units on a single lot in the RB, RC, TC and BA Districts.

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