

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: December 7, 2021
SUBJECT: Technical Amendments

Introduction

Following a request from the Planning Board, the Town Council voted at the October 13, 2021 meeting to authorize the Planning Board to prepare a package of Technical Amendments. A technical amendments package is usually a miscellaneous collection of amendments that are *not* major policy changes, although the Town Council can direct that more substantial changes be included in the amendment package. The need for a technical amendment is often identified when ordinance provisions are applied to real world situations. Imprecise language, unusual circumstances, and emerging chronic problems are common catalysts of technical amendments. Changes have been recommended by the Public Works Director, Town Engineer, Code Enforcement Officer, Town Planner, and citizens. Changes to proposed amendments since the Planning Board November 2nd workshop are highlighted in yellow.

Summary of proposed amendments

Below is a summary of proposed amendments.

Page/Line	Summary of amendment
1/7	Sec. 16-2-1 in the Subdivision Ordinance hosts administrative procedures for development review. The procedures are mostly generic and this section is "borrowed" by other types of development review, such as Site Plan Review. For this reason, specific references to "subdivision" have been replaced with more generic terms like "development."
1/10	This amendment addresses a situation where an applicant received site plan approval and then applied for site plan amendments without paying outstanding costs from the original site plan approval. The amendment would require that outstanding review escrow account costs must be paid before initiating another review.
1/29	Terms have been made more generic to reflect the all-purpose function of this section of the Subdivision Ordinance.
2/31	This is another change to a more generic term.

3/16	Generic term change.
3/21	Term change to be consistent with Developer supervision of Required Improvements in subsection d below.
3/30	This section is updated to reflect current practice where preconstruction meetings are handled by the Town Engineer, not the Town Manager. More generic terms have also been substituted.
3/40	Development approvals often include protection of naturally vegetated areas, however, a lack of adequate site controls during construction has contributed to encroachment into buffers and preserved areas. This amendment requires that site controls be established on sites prior to clearing.
4/6	At the November 6 th workshop, the Planning Board indicated that fines should be established when approved buffers are removed. Assessment of fines require a process, so this section allows the Planning Board to recommend to the Town Council that a fine be imposed.
4/12	A more generic term is recommended.
4/18	In the 1990's, the town established the "construction monitor" requirement to address lack of site management on development sites. Over the last decade, the construction monitor has rarely been on-site because the folks with the necessary skill set are not available in the labor market. The requirement has been revised to require a designated site manager, which is has been the practice. Developers have complained about paying for a construction monitor as well as an inspection fee, so this amendment responds to that concern as well.
4/40	This aligns with the construction monitor revisions (4/18 above).
4/46	This aligns with more generic development terminology (1/7 above).
5/2	This aligns with more generic development terminology (1/7 above).
5/8	This aligns with more generic development terminology (1/7 above).
5/17	This aligns with more generic development terminology (1/7 above).
5/20	This aligns with the construction monitor revisions (4/18 above).
5/27	This paragraph's changes align with more generic development terminology (1/7 above).

- 5/38 Traditionally, subdivision construction standards were all about road building. Over time, other standards have been added. This amendment broadens the subdivision construction provisions title and types of pavement construction.
- 6/1 This aligns with more generic development terminology (1/7 above).
- 6/14 This provision regarding road right-of-way currently is located in a section called Additional Standards. Logically, it should be located with all the other road right-of-way provisions.
- 6/19 This section includes construction standards for sidewalks and parking areas, and the title has been amended to create a larger umbrella.
- 7/2 The gravel base for roads, sidewalks and parking areas has been revised to accomplish several objectives. It now specifically references parking areas, which supports the Site Plan regulations. The subbase and base gravel layer terms have been updated to reflect typical industry usage terms. The existing gravel depth language has been confusing for some applicants, so the section has been reorganized to separate the total gravel base depth from the two component depths.
- 7/20 Clarifying word added.
- 7/28 The Public Works Director is recommending the gravel base depth for sidewalks be increased from 8 inches to 12 inches.
- 7/43 Clarifying word added.
- 8/1 The paving chart and technical standards have been updated to explicitly include parking areas. Paving terms have been updated and divided into sections for clarity.
- 8/16 The Road Classifications Standards Table has been revised to reduce the right-of-way requirement for a Rural Connector from 66' to 50' wide.
- 9/2 In keeping with broadening the construction standards to include more than just road infrastructure, Sec. 16-3-3 is proposed to be deleted and the provisions within the section to be added to the preceding Sec. 16-3-2, Infrastructure Design and Construction Standards. Storm and Surface Water Drainage would continue to be located in a separate *subsection*.

- 9/28 The section has been moved from the 'Additional Standards' to the storm and surface water drainage section, with the other design standards. While the section does reference sanitary sewers, sanitary sewer construction details are located in the Sewer Ordinance.
- 9/34 These provisions have been relocated into sections that relate road rights-of-way and sewers, where they are less likely to be overlooked. With the relocation of the 'Additional Standards' to more logical locations, Sec. 16-3-4 is not needed. In order to avoid cross-reference errors for the sections that follow, staff recommends that Section 16-3-4 be held in reserve.
- 10/28 The Code Enforcement Officer is recommending that residentially sized generators be explicitly recognized as accessory.
- 10/30 The Shoreland Zoning Unit has recommended the Town adopt the state height of a structure definition for structures within the Shoreland Zone.
- 10/42 The Shoreland Zoning Unit has recommended the Town adopt the state height of a structure definition for structures within the Shoreland Zone.
- 11/3 The Low Income housing definition is proposed to be updated to reflect that the Maine State Housing Authority has provided affordability numbers to the town for many years now.
- 10/5 Same as above.
- 11/23 The Building Permit section has been reformatted to use headings as part of the wood storage shelter change.
- 11/44 A citizen request to allow wood storage shelters without meeting the accessory structure setback has been added. The shelter size is limited to 100 square feet, no more than 7' in height and must have an open side. Wood shelters that exceed these limits would be allowed as an accessory structure.
- 12/12 This is the latest effort to make clear that nonconformance with a zoning district requirement is addressed with the nonconforming provisions *of that district*. There have been repeated challenges to require that any nonconformance must require a lot to be regulated as nonconforming to all zoning district layers that a property is located in.
- 12/22 The existing variance provisions do not include procedures or submission requirements. The Code Enforcement Officer is recommending that these provisions be added to provide the Zoning Board of Appeals with a minimum amount of information when considering variance applications. Most of the

provisions are current practice, however, a requirement for a standard boundary survey should be provided when reductions in setbacks is requested.

- 13/26 Similar to variances, Nonconforming expansions require Zoning Board of Appeals review, however there are no procedures or submission requirements specified. The procedures reflect current practice and the submission requirements align with existing standards of review in the ordinance. These revisions are recommended by the Code Enforcement Officer.
- 15/3a The Code Enforcement Officer has received many complaints that 10' is too great a setback for storage sheds. The setback is proposed to be reduced from 10' to 5', aligning with the rear setback. (The draft amendments will be expanded to show this change in all districts)
- 16/15 The revision updates the reference to the construction administration provisions located in the Subdivision Ordinance.

Amendments not included

During this process, amendments have been considered and removed, including the following:

- No updating of Appendix C, Trees is proposed.
- No change to the Resource Protection Permit requirements for boardwalks is proposed to avoid creating unintentional loopholes.
- No change to individual single family home lighting level limits is proposed. Research did not find this was adopted elsewhere.

Next Steps

This is the second complete review of the Technical Amendments package and no additional suggest revisions are expected from staff. If there are minimal changes to the draft text, the Planning Board may want to move this to a meeting when a public hearing must be held before the Planning Board makes a recommendation to the Town Council.

The Planning Board can vote at this workshop to schedule a public hearing for December 21, 2021. Alternately, the Technical Amendments can be placed on the December 21st Planning Board meeting agenda, at which time a public hearing can be scheduled for January 18, 2022.