

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Planning Board
DATE: December 22, 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 any revision can be considered a policy change. The Planning Board wants to emphasize that this amendments package goes beyond a classic "errors and omissions" type of amendments package.

Although the Planning Board reviewed these changes originally as technical amendments, in an abundance of caution and in an effort to be as transparent as possible, the Board is flagging what some could consider as potential "substantive changes" to the ordinances as opposed to being strictly "technical changes." We have done our best to flag the changes below which members of the Board thought could be potentially substantive. Please be aware, however, that one could consider all or none of the recommended changes as "substantive." We defer to the Town Council the final decision on disposition of the amendments.

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.

Summary of proposed amendments

This amendments package has been assembled based on recommended changes from department heads, including the Code Enforcement Officer, Public Works Director and Town Planner, as well as the Town Engineer. Some amendments have been recommended by the Planning Board. People reviewing the amendments may be more comfortable referring to this package as Miscellaneous amendments rather than Technical Amendments. The Technical Amendments title has been retained to preserve the legislative history starting with Planning Board referral in August, 2021, which also makes it easier for the public to track. Transparency in the substance of an amendment is preserved by providing an explanation of each amendment, noted by page and line, below. The amendment revisions are shown in **redline** with deletions in ~~strikethrough~~ and additions in underline.

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 referenced as part of other types of development review, such as Site Plan Review. For this reason, specific references to "subdivision" have been replaced with the more generic term "project."
1/24	This amendment addresses a situation where an applicant receives site plan approval and then applies 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. See 1/7 above.
1/36	This is another change to a more generic term.
2/31	Generic term change.
3/14	Generic term change.
3/16	The Records drawing section is deleted as it essentially repeats an existing provision in Sec. 16-2-7 (f), which has been augmented to retain the more detailed description of digital records. See 5/17.
3/31	Similar to Sec. 16-2-1 above, Sec. 16-2-7 hosts construction administration procedures for other types of review, such as Site Plan Review. This is a generic term change from "subdivider" to "applicant."
3/32	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. The provision also explicitly recognizes that the Planning Board may recommend that a fine be assessed when vegetation is removed from buffer areas in violation of the approval.
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 by developers on new 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 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.
- 4/39 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).
- 5/18 The Record Drawings requirement has been combined into 1 section (See 3/16 for deletion). The reference to digital files is more detailed and has replaced the existing electronic file requirement.
- 5/22 This aligns with the construction monitor revisions (4/18 above).
- 5/29 This aligns with more generic development terminology (1/7 and 3/13 above).
- 5/40 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 to include parking areas, which has been a focus of conflict at a recent Planning Board review.
- 6/3 This aligns with more generic development terminology (1/7 above).
- 6/16 This provision regarding road right-of-way currently is located in a section called Additional Standards. It is more logically relocated with all the other road right-of-way provisions.
- 6/21 This section includes construction standards for sidewalks and parking areas, and the title has been amended to create a larger umbrella.
- 7/3 The gravel base for roads, sidewalks and parking areas has been revised to accomplish several objectives. It now explicitly 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. A Planning Board member notes that establishing a clear gravel base standard for parking lots make increase commercial costs. Other Board members support establishing a clear, industry standard for base gravel in the ordinance. **The Planning Board is flagging this as a potentially substantive change.**

7/21 Clarifying word added.

7/29 The Public Works Director is recommending the gravel base depth for sidewalks be increased from 8 inches to 12 inches.
The Planning Board is flagging this as a potentially substantive change.

7/44 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. Again, establishing specific paving standards for parking lots aligns with industry standards, and may also increase commercial costs.
The Planning Board is flagging this as a potentially substantive change.

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.
The Planning Board is flagging this as a potentially substantive change.

9/2 In keeping with broadening the construction standards to include more than just road infrastructure, Sec. 16-3-3 is proposed to be held in reserve 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.

9/32 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.

- 10/4 This change corrects a reference to a section that does not exist in the Zoning Ordinance.
- 11/28 The Code Enforcement Officer is recommending that residentially sized generators be explicitly recognized as accessory.
- 11/30 The State of Maine, Department of Environmental Protection Shoreland Zoning Unit has recommended the Town adopt the state height of a structure definition for structures within the Shoreland Zone.
The Planning Board is flagging this as a potentially substantive change.
- 10/42 The State of Maine, Department of Environmental Protection Shoreland Zoning Unit has recommended the Town adopt the state height of a structure definition for structures within the Shoreland Zone.
The Planning Board is flagging this as a potentially substantive change.
- 12/3 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.
- 12/7 Same as above.
- 12/23 The Building Permit section has been reformatted to use headings.
- 13/7 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 the zoning district layers that a property is located in.

In response to comments that this is not a clarification but instead a policy change, attached are minutes from the February 26, 2013 Zoning Board meeting. The Zoning Board denied an appeal of the Code Enforcement Officer's interpretation that Sec. 19-4-3 applied to a property even though a portion of the property was also located in the Shoreland Performance Overlay District. During that appeal, the Code Enforcement Officer referenced a decision dating back to 2001. These decisions demonstrate that the amendments *clarify* existing policy.

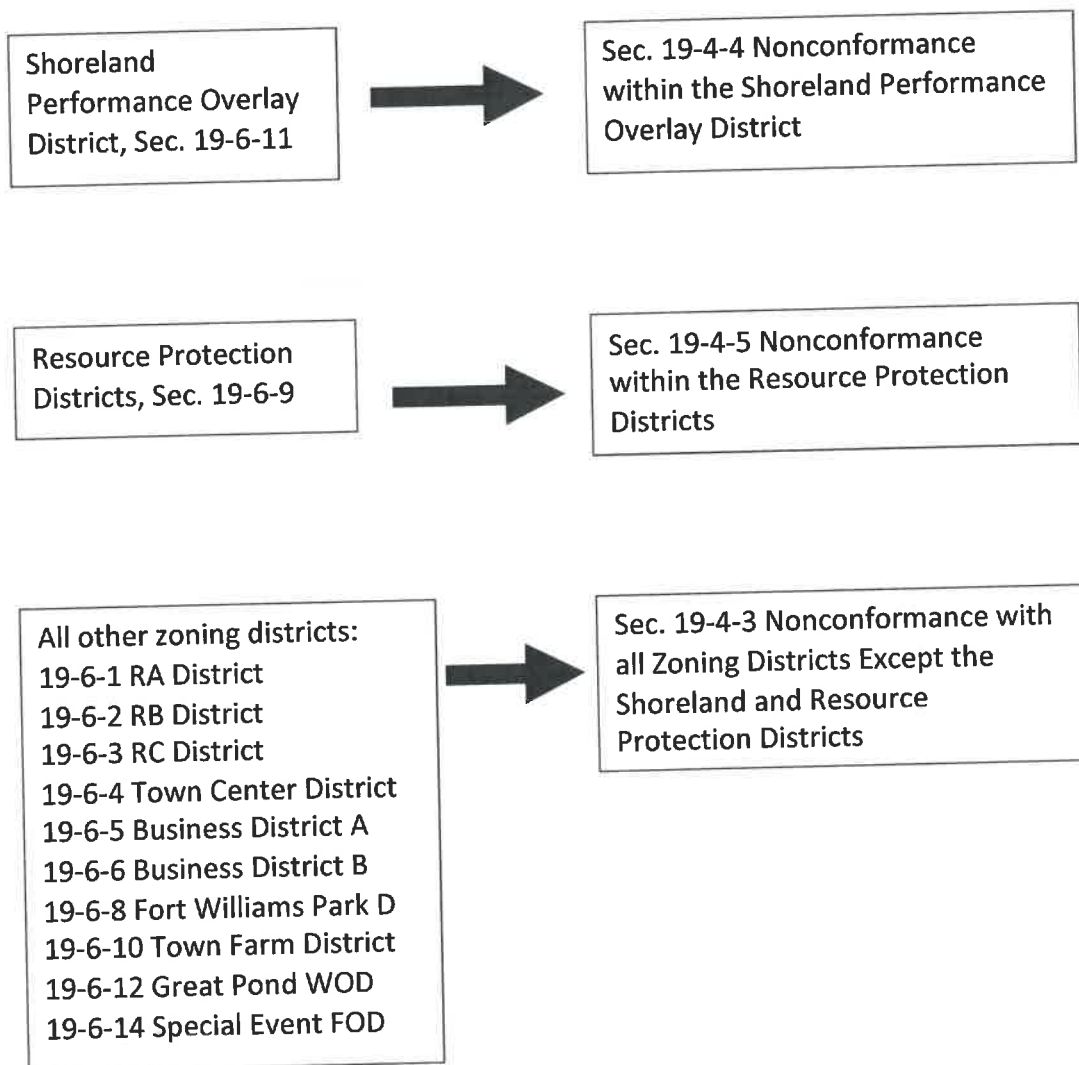
When you have overlay districts, it is common for a lot to be located in more than one zoning district. In the Clifford example noted above, the property is located in the RA base zoning district, as well as in the Shoreland Performance Overlay District. The base zoning districts typically have a full complement of dimensional standard requirements such as minimum lot size, front, side and

rear yard setbacks, building height, density, etc. Overlay districts like Shoreland Zoning and Resource Protection usually do not have a full complement of dimensional requirements, but rather resource specific standards. If the Clifford appeal had been granted, the result would be that no front, side or rear yard setback would apply to the lot because those setbacks are not included in the Shoreland Performance Overlay District.

Zoning Ordinance Nonconformance Decision flow

Zoning District Provisions District Provisions

Noncompliance with Zoning



Requiring that a property must comply with the specific requirements of each zoning district in which the property is located is logical and provides the greatest land use protection. And if the property does not comply with the specific requirement, and the town has adopted nonconforming relief provisions for that specific district, those nonconforming provisions can then be applied.
The Planning Board is flagging this as a potentially substantive change.

- 13/23 This corrects a section reference error.
- 13/29 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.
The Planning Board is flagging this as a potentially substantive change.
- 14/33 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.
The Planning Board is flagging this as a potentially substantive change.
- 17/3.a 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 Planning Board is flagging this as a potentially substantive change.
- 19/3.a Same as 17/3.a above for the RB District
The Planning Board is flagging this as a potentially substantive change.
- 20/3.a Same as 17/3.a above for the RC District
The Planning Board is flagging this as a potentially substantive change.
- 21/4.a Same as 17/3.a above for the BB District
The Planning Board is flagging this as a potentially substantive change.
- 21/9 A Planning Board member has recommended that clarity be provided regarding the surface treatments allowed for parking lots. This is a new provision, located in the existing Sec. 19-7-8, Off-Street Parking, where most parking requirements are located. The draft reflects past town practice, where parking lots are allowed as paved, gravel or grass if temporary parking. Note that both paved and gravel

parking lot are required to meet gravel base, and if applicable, pavement specifications.

The Planning Board is flagging this as a potentially substantive change.

22/20

The revision updates the reference to the construction administration provisions located in the Subdivision Ordinance.

Recommendation

At the December 21, 2021 meeting, the Planning Board adopted the following motion by a vote of 5-0.

BE IT ORDERED that, based on the draft amendments and the information presented, the Planning Board recommends the Technical Amendments to the Town Council for consideration.

Attachment:

Zoning Board of Appeals meeting minutes 2-26-2013

**Town of Cape Elizabeth
Minutes of the February 26, 2013
Zoning Board of Appeals Meeting**

Members Present:

Josh Carver
Christopher Straw

Matthew Caton
John Thibodeau

Barry Hoffman
Joanna Tourangeau

Also present were the Code Enforcement Officer (CEO), Benjamin McDougal, and the Recording Secretary, Carmen Weatherbie.

A. Call to Order – The meeting was called to order by Chairman John Thibodeau at 7:00 pm. A quorum was present.

B. Approval of Minutes for January 29, 2013 - A motion to approve the minutes was made by Mr. Carver; seconded by Mr. Straw. All were in favor. Vote: 6 – 0.

C. Old Business – None.

D. New Business

1. To hear the request of Peter and Stephanie Clifford of 36 Lawson Road, Map U8, Lot 31, for an administrative appeal based on the Code Enforcement Officer's interpretation of Section 19, Article IV, Nonconformance.

Mr. Carver stated that he coached Little League Baseball with Mr. Clifford. He feels he can be fair and impartial. No one expressed concern.

Mr. Clifford came to the podium and stated he lives at 36 Lawson Road. The administrative appeal is due to his interpretation of the Ordinance, subsequent to meeting with Ben McDougal. The central issue is that under the Ordinance the Zoning Board has the responsibility to interpret legal questions that are in the Ordinance the way he reads the sections relating to nonconformance, which are Section 19-4-3. (not in the Shoreland Zone) and Section 19-4-4. (Shoreland Zone). The intent of this Ordinance is that an applicant has to meet the standards set in 19-4-3. and possibly also 19-4-4. if there is an implication of the Shoreland Zone - if the nonconformity relates to the 75-foot setback near the shore. Our house sits much further back than 75 feet from the shore. It's an old house, built in 1939, on a long, narrow lot.

Mr. Straw asked if the house was within the 250-foot Shoreland Zone. Mr. Clifford said it was.

Mr. Clifford said the heart of his argument was with the language. The first paragraph of Section 19-4-3., "The following provisions shall govern the use and modification of nonconforming lots, structures, and uses in all areas of the Town" here is the critical language "that are not located within a Shoreland Performance Overlay District or a Resource Protection District." He said his situation does not fit into the 19-4-3. section and the town has said that he does have to meet Section 19-4-3.

Mr. Straw mentioned Section 19-4-3., subsection B.3., in the restriction of building outside the footprint or increase in the square footage. He asked if that is why this matters? Mr. Clifford said he was focusing on the extent that 19-4-3. applies. 19-4-3.A.2.a. is what I think applies to our project.

There was discussion with the board about what the nonconformity was. Ms. Tourangeau said the issue here was that it was a nonconforming structure because it does not meet the setbacks from the lot lines; the lot is not at issue because it is not changing. Mr. Clifford said it was a nonconforming lot. He said he looked to Section 19-4-3.A.2.a. "Single Lots: A single nonconforming lot that is improved with a principal building or structure may continue to be used. Any existing principal or accessory building or structure may be modified, enlarged, or relocated ... even though it does not conform to the setback requirements of the district in which it is located provided that such modification, construction, or relocation conforms to the standards, except minimum lot size, set forth in Sec. 19-4-3.A.1.a. above."

Mr. Clifford said any conforming lot would be 40,000 square feet; his lot was about .43 of an acre - less than 20,000 square feet.

Mr. Straw summarized Mr. Clifford's reasoning that B would be applicable if it were a nonconforming building on a conforming lot. But here we are dealing with nonconforming lot where the building is also nonconforming, so it is governed by A.

Mr. Clifford said the alternative argument is if you look at the Shoreland Zone, Section 19-4-4., enlargement is governed by Section B.1. with a. and b. being the two significant limitations. He said the Code Enforcement Officer is allowed to grant the permit under this section. As he understands Section 19-4-3., the Zoning Board has to approve expansion of a nonconforming use. That's the way Mr. Clifford read it; he's trying to follow the rules as set forth.

Mr. Clifford stated they have tried very hard to respect their neighbors and limit any issues with this expansion. One of the neighbors, Dick Russell, was present. Mr. Clifford said they have tried to stay in the existing footprint and expand vertically up to 35 feet.

Mr. Straw noted that Sections 19-4-3.A.2 and 19-4-4. are left to the Code Enforcement Officer not the Zoning Board. Mr. Clifford agreed, stating that's how he had read them today.

There was lengthy discussion with the board about which section and setbacks applied and whether the Cliffords wanted to table or withdraw their request. Mr. Clifford reviewed the proposed floor plan sketches of the project for the board.

Chairman Thibodeau reminded the board that the issue before the board was whether Section 19-4-4. applied. Mr. Clifford decided to continue with the request for an administrative appeal. Ms. Tourangeau asked a procedural question of the Code Enforcement Officer. Mr. McDougal replied if the appeal is upheld, that the board would give him direction under which section to review the permit. If it were denied, the board would move to the next item on the agenda.

Chairman Thibodeau asked the CEO to speak to the administrative appeal. Mr. McDougal explained his thought process. He stated there are a Zoning District of RA and an Overlay District of the Shoreland Zone. It is a basic tenant of zoning that both rules apply when you have a base zone district and an overlay district. The strong wording of the Ordinance was to satisfy the DEP. Nonconformity in 19-4-3. would also have to comply with 19-4-4. Maureen O'Meara told him when the Planning Board wrote the Ordinance, they were focused on where was the nonconformance. In this case the nonconformance is in the base zoning district; it is not in the Shoreland Zoning District.

The CEO continued saying, the nonconformance in this building project is the rear setback. It is a RA District setback, even though it is coincidental that the entire property is in the Shoreland Zone. The person across the street, who is not in the Shoreland Zone, could have the exact same situation. The nonconformity is an RA nonconformity. It is not a nonconformity related to the Shoreland Zone.

It could be nonconforming with both, if the house was closer to the ocean. Then both standards would need to be complied with.

There was discussion about the wording of the Ordinance and what the actual language implies.

Mr. Straw brought up the question of whether the language was plain and unambiguous? If so, we only deviate if the outcome is absurd. The CEO stated he believes it is ambiguous. The focus when the Ordinance was written was as to where was the nonconformance. Mr. Carver mentioned the ambiguity must be in the language not in outside thoughts and arguments; he did not see an ambiguity.

There was discussion about what might be able to be built within the restrictions and would there be absurd results. Section 19-4-3.A.2. applies to the rest of town. The CEO can permit expansions meeting the requirements within the table in 19-4-3.1.A. If people want to expand beyond what listed in the table they come to the Zoning Board.

Mr. McDougal presented a document from David Brunner, Architect, of August 2001, concerning the same property, to contest a statement in the Clifford appeal that his interpretation was totally inconsistent with the past practice of CEO, Bruce Smith. The document reads: "Article IV, NONCONFORMANCE, Section 19-4-3., Bruce stated that though this section specifically is titled as nonconformance outside of shoreland and resource protection districts, it is the intent of the Ordinance that the requirements stated in the section also apply to nonconformances in the Shoreland Zone which occur beyond the 75' setback but within the 250' setback."

Ms. Tourangeau asked if this project was impacted substantively regardless which section was applied? Mr. McDougal replied that he did not think the project was impacted. It is a relatively modest expansion of the house. There were no neighbors here that were opposed to it. There doesn't appear to be a neighbor that could have their view blocked. So the CEO thought it is a modest expansion that is approvable by the board under 19-4-3.B.3.

There was discussion about the impact of this decision and the interpretation of the choice of words in the Ordinance depending on the perspective. Mr. McDougal commented that the Town Counsel was comfortable with his interpretation on this.

Ms. Tourangeau made a motion to deny the administrative appeal of Peter and Stephanie Clifford. Mr. Straw seconded. Four were in favor and two were opposed. The appeal was denied. Vote: 4 – 2.

Findings of Fact:

1. Administrative Appeal for Map U 8, Lot 31, 36 Lawson Road, Applicant: Peter and Stephanie Clifford.
2. Peter and Stephanie Clifford are the owners of record of the property at Map U 8, Lot 31, 36 Lawson Road.
3. Peter and Stephanie Clifford met with Benjamin McDougal, Code Enforcement Officer, on February 1, 2013. At this meeting, Mr. McDougal informed the Cliffords that the proposed reconstruction and expansion of their house would require Zoning Board approval based on Section 19-4-3.B.3 of the Zoning Ordinance.
4. On February 7, 2013, Peter and Stephanie Clifford applied for an Administrative Appeal because they feel that the Code Enforcement Officer is not interpreting the Zoning Ordinance properly, specifically Sections 19-4-3. and 19-4-4.

Conclusion: The Administrative Appeal was denied by a vote of four to two.

New Business 2. To hear the request of Peter and Stephanie Clifford, 36 Lawson Road, Map U 8, Lot 31, for approval to reconstruct and expand their house based on Section 19-4-3. of the Zoning Ordinance.

Mr. Clifford came to the podium and thanked the board for their effort on his administrative appeal.

Mr. Clifford showed the board a rough sketch of the project by the architect. There is a proposed footprint in the package. This house was built in 1939. It has a very irregular shape, and most of the front section of the house, that they plan on destroying and rebuilding is obsolete and well past its useful age.

Responding to questioning, Mr. Clifford discussed which sections, according to the floor plan, were staying and which were being destroyed. He said their intent was to stay within the existing footprint, with a couple additions and subtractions, and to go up vertically to 35 feet. The plans show that they could get a third floor within the 35 feet. There is a change, where they are expanding 200 square feet to get a side porch and some square footage was also subjected.

Mr. Clifford responded to additional questions stating he did not know the current height, but that he did not think there would be a dramatic increase in height. The existing foundation may or may not be redone. The project is to stay within the existing

footprint and the setbacks will stay the same, except for the porch. Except for a few architectural changes they are expanding up vertically.

Mr. McDougal commented that he had not seen specific plans. Mr. Clifford did not want to make the investment without knowing whether this would be approved. The CEO had seen the drawings by Harvey Wells. The plans would be reviewed for building and height purposes.

Mr. Clifford said the porch is within the setback; it is minimally intrusive.

The board discussed which section of 19-4-4. applied. Whether there was an increase in nonconformity due to the modification or enlargement of the existing structure.

Mr. McDougal stated there was some awkwardness between 19-4-3.A. and 19-4-3.B. The issues between A. and B. do not affect this project. He mentioned 19-4-3.B.3. applies because they are expanding outside the envelope due to additional floor area in the second floor, as well as the porch. He noted that this language ("removed or destroyed") is commonly used for demo/rebuilds in Shoreland Zoning.

Mr. Clifford added that the language used "to the greatest practical extent" would give him, as homeowner, the certainty to build.

Mr. McDougal said the building is expanding in areas that are not compliant with the chart. Vertical expansion and the porch would not be covered under A. The second floor is a straight vertical expansion.

Chairman Thibodeau closed the floor to public discussion.

The Chairman asked the CEO for clarification of why B.3. was being used as opposed to A.2.a. Mr. McDougal replied because there is expansion of the structure outside the parameters set in the chart. Mr. Straw added there is an increase in square footage occurring within 10 feet of one of the setbacks, which is not permitted under the table.

Mr. Carver motioned to approve the request to reconstruct and expand a single family dwelling per Section 19-4-3.B.3. of the Zoning Ordinance at Map U 8, Lot 31, 36 Lawson Road. It was seconded by Ms. Tourangeau. All were in favor. Vote: 6 - 0.

Findings of Fact:

1. This is a request to reconstruct and expand a single family dwelling per Section 19-4-3.B.3. of the Zoning Ordinance at Map U 8, Lot 31, 36 Lawson Road, Applicant: Peter and Stephanie Clifford.
2. Peter and Stephanie Clifford are the owners of record of the property at Map U 8, Lot 31, 36 Lawson Road.

Additional Findings of Fact:

1. The Zoning Board of Appeals has considered the size of the lot, the slope of the

land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the relocation.

2. The proposed structure will not increase the nonconformity of the existing structure.
3. The proposed structure is in compliance with the setback requirement to the greatest practical extent.
4. The building height will not exceed 35 feet.

All were in favor of the findings of fact. Vote: 6 – 0.

Conclusion: The request of Peter and Stephanie Clifford, 36 Lawson Road, Map U 8, Lot 31, for approval to reconstruct and expand their house based on Section 19-4-3. of the Zoning Ordinance was approved by a vote of six to zero.

E. Communications – None.

F. Adjournment – Chairman Thibodeau adjourned the meeting 8:47 pm.

Technical Amendments
(12-22-2021)

Chapter 16, Subdivision Ordinance

Sec. 16-2-1. General Procedures. In all stages of the ~~subdivision-project~~ review process, the burden of proof shall be upon the applicant proposing the ~~subdivision project~~.

(c) **Review Escrow Account.** In addition to the application fees set by the Town Council, a Review Escrow Fee to defray the Town's costs for application review by the Town Engineer and/or other independent consulting services shall be provided. The fee shall be recommended by the Town Engineer or consultant and approved by the Town Manager upon initial review of the application and paid to the Town by the applicant prior to the next meeting with the Planning Board. The fee shall be deposited in a Review Escrow Account designated for that application. If the costs of application review by the Town Engineer and/or other consulting services exceed the amount of the Review Escrow Account, the applicant shall pay an additional fee to the Town that shall be recommended by the Town Engineer or consultant and approved by the Town Manager based upon the status of the application. Any balance in the account remaining after a final decision on the application by the Planning Board and satisfaction of any approval conditions shall be returned to the applicant unless there is an appeal or other legal action pending with respect to the Planning Board's approval. All interest from the Review Escrow Account shall accrue to the account and shall be applied toward the Town's cost in reviewing the application. No application amendment or new application for that project shall be submitted for review until any outstanding escrow account costs have been paid in full.

Sec. 16-2-6. Post Approval Requirements.

(a) **Satisfaction of Planning Board Conditions of Approval.** Following the Planning Board Decision, the ~~project-subdivision~~ plans and materials shall be revised by the applicant to comply with any conditions placed on the approval by the Planning Board. Two (2) sets of revised plans shall be submitted to the Planner. The Planner, and other town staff as necessary, shall review all plans for compliance with the Planning Board conditions of approval. The Planner shall determine whether the plans have been revised to comply with the Planning Board approval. If the applicant fails to obtain confirmation from the Planner that the plans are in compliance with the conditions placed on the approval, the applicant may submit the revised ~~projectsubdivision~~ plans to the Planning Board as an approved plan amendment. in accordance with Sec. 16-2-3(a)(1) of this Ordinance for minor subdivisions or Sec. 16-2-4(c)(1) of this Ordinance for major subdivisions.

(b) **Plan Recording.** Once the plans are determined to be in compliance with the Planning Board approval, the recording plan shall be properly signed by a majority of the Planning Board, and shall be recorded by the subdivider in the Cumberland County Registry of Deeds. If the subdivision approval includes phasing of the subdivision, the recording plan shall depict all phases of the subdivision. Any final plans not so recorded within ninety (90) days following the date of Planning Board Decision shall become null and void. The applicant may request, prior to the expiration date, that the Planning Board grant an extension due to particular

1 circumstances of the applicant which extension shall not exceed an additional period of
2 ninety (90) days. Once recorded, the subdivider shall provide the Planner with three (3) paper
3 copies of the subdivision plat with the Planning Board signatures and the book and page
4 recording information from the Registry of Deeds.

5
6 **(c) Performance Guarantee.** There shall be no sale of lots, nor building permits issued, nor site
7 work commenced until a Performance Guarantee has been approved by and posted with the
8 Town of Cape Elizabeth Town Manager.

- 9
10 1. Form. The Performance Guarantee shall be in the form of an irrevocable letter of credit
11 or escrow account in favor of the Town. Such Performance Guarantee shall be
12 satisfactory to the Town Manager and to the Town Attorney as to the issuer, substantive
13 sufficiency, surety and manner of execution. All performance guarantees shall contain a
14 provision requiring the issuer to notify the Town Manager in writing of the scheduled
15 expiration date at least thirty (30) days and not more than ninety (90) days in advance
16 of its scheduled expiration date. Extensions of the Performance Guarantee may be
17 granted by the Town Manager for up to three (3) years from the initial expiration date
18 at the request of the applicant for good cause.
- 19
20 2. Amount. The Performance Guarantee amount shall be based on a detailed estimate
21 prepared by the applicant, broken down by unit cost and quantity, and reviewed by the
22 Town Engineer. Costs included in the estimate shall include, but not be limited to,
23 completion of all roads, sewer, water, drainage, open space, landscaping, lighting and
24 other required improvements shown on the approved plans. The cost estimate shall also
25 include a contingency amount equal to ten (10) percent of the Performance Guarantee
26 estimate. When the Performance Guarantee estimate exceeds two hundred fifty
27 thousand (\$250,000) dollars, the contingency amount shall be calculated at a rate of
28 five (5) percent for that portion of the Performance Guarantee estimate in excess of
29 two-hundred fifty thousand (\$250,000) dollars.
- 30
31 3. Phasing. When the Planning Board has approved phasing of a ~~project subdivision~~, a
32 Performance Guarantee may be posted for one (1) or more phases. The amount, terms
33 and conditions of the Performance Guarantee shall correspond with the phase or phases
34 scheduled to be constructed. Construction activity shall only be located and permitted
35 in phases for which a Performance Guarantee has been posted.
- 36
37 4. Reductions and Release. All requests for reduction or release of the Performance
38 Guarantee shall be submitted in writing to the Town Manager. Reduction requests
39 should only be submitted after significant construction has been accomplished. Prior to
40 approving a reduction or release of a Performance Guarantee, the Town Manager shall
41 request a report from the Town Engineer confirming the quality and value of the
42 construction completed. Any reduction or release shall preserve the Town's ability to
43 require or complete construction that is consistent with the approved plans and the
44 Town's construction standards and/or restore and stabilize the site if construction will
45 not be continued. There shall be no final release of any Performance Guarantee until the
46 record drawings have been received and approved by the Town Engineer.

1
2 (d) **Inspection Fee.** In addition to the Performance Guarantee, the applicant shall pay an
3 inspection fee. When the Performance Guarantee equals five hundred thousand dollars
4 (\$500,000) or less, the inspection fee amount shall be five percent (5%) of the amount of the
5 total performance guarantee, except that the minimum inspection fee amount shall be one-
6 thousand five hundred dollars (\$1,500). When the Performance Guarantee exceeds five
7 hundred thousand dollars (\$500,000), the inspection fee amount shall be two and one-half
8 percent (2.5%) of the cost of the total Performance Guarantee. The fee shall be payable to the
9 Town of Cape Elizabeth. The inspection fee shall be held by the Town to defray the Town's
10 cost for inspection by the Town Engineer and Town staff. Any funds not disbursed for this
11 purpose shall be returned to the applicant upon release of the Performance Guarantee. If the
12 costs for inspection exceed the amount of the inspection fee, the applicant shall pay an
13 additional fee to the Town, which shall be recommended by the Town Engineer and
14 approved by the Town Manager based on the status of the development project.

15
16 ~~(e) **Record drawings.** Upon completion of construction, the subdivider or, when a private road~~
17 ~~is built, the owner shall present to the Town one (1) set of reproducible mylar, one (1) hard~~
18 ~~copy, and digital files in a format used by the project engineer during project design or other~~
19 ~~format approved by the Public Works Director suitable for import into the Town Geographic~~
20 ~~Information System (GIS). The record drawings shall be based on the field logs of the~~
21 ~~construction monitor and of a quality acceptable to the Town. The record drawings shall~~
22 ~~include an engineer's seal, distances, angles and bearings for complete and accurate~~
23 ~~determinations of locations on the ground, right-of-way monuments and as set, as built~~
24 ~~profiles of the centerlines of traveled ways, ledge elevations encountered during construction~~
25 ~~and information on the locations, size, materials and elevations of storm drains, sanitary~~
26 ~~sewers and other underground utility lines, including but not limited to water, electric,~~
27 ~~telephone, natural gas, cable television.~~

28 29 **Sec. 16-2-7. Construction Administration**

30 (a) **Commencement of Construction.** At least ten (10) days prior to commencing construction
31 of required improvements, the applicant subdivider shall request a pre-construction meeting
32 with the Town Engineer Manager. At the meeting, the applicant subdivider shall submit plans
33 for construction of the project subdivision and notify the Town Engineer Manager when
34 construction of such improvements will commence. The applicant subdivider is also
35 responsible for communicating ongoing progress of construction so that the Town can cause
36 inspections and so that requirements shall be met during construction and to assure
37 satisfactory completion of all improvements and utilities required by the Planning Board.
38 [Revised eff. 11/11/83; Revised eff. 6/13/90]
39

40 (b) **Site Controls.** Prior to site clearance or any alteration of the site, continuous, physical
41 markers or barriers (for example reflective surveyor's tape or orange snow fencing) shall be
42 installed on the site to mark the boundaries of "no-clear areas" and proposed open space and
43 shall be inspected by the Town Engineer or their designated project inspector. Markers and
44 barriers must be easily visible to equipment operators during site clearance and construction

and shall be installed to accurately represent the Planning Board approved plans. At the completion of construction, the applicant and Town Engineer shall confirm that construction has not encroached on "no-clear areas" and proposed open space utilizing the approved plans, the site marker digital record, and as-built conditions. Encroachment into these areas shall require submission to the Planning Board of a plan amendment that includes mitigation and replanting within areas of encroachments. The Planning Board may also recommend to the Town Council that a fine be assessed for the removal of vegetation that was proposed to be preserved and then removed during project construction.

(cb) Notice of Inspection. To assure proper inspection of roads and other required improvements, the Town Engineer should be given not less than twenty-four (24) hour notice by the applicant subdivider for inspections required at the following construction stages: (1) before backfilling of any surface water, sanitary sewer, domestic water or other underground lines or improvements, (2) at completion of road subgrades and after installation of gravel surface, (3) at the commencement of paving, loaming, or other final surface preparation, and (4) upon final completion.

(de) Inspection- Supervision of Required Improvements. A site manager shall be designated by the applicant for any project subject to a Performance Guarantee. The name and contact information for the site manager shall be provided to the Town Engineer and the site manager shall be responsible for keeping the applicant informed of Town communications. The site manager shall provide a schedule of construction to the Town Engineer, as well as notification when significant construction shall be taking place. All required subdivision improvements for which a Performance Guarantee are required shall be constructed under the observation of a qualified construction monitor. The qualifications of the construction monitor shall be subject to the review and approval of the Town. Construction monitoring costs shall be borne by the subdivider. The construction monitor site manager shall be on the site during all periods of time when significant construction is taking place. Significant construction shall include (1) embankments, (2) bedding and backfilling of all underground utilities including water lines, unless the installation is supervised by the utility company, (3) installation of storm drainage and associated structures, (4) installation of sanitary sewers and associated structures, (5) roadway subbase material, (6) roadway base material, (7) paving, (8) compaction testing, and (9) sewer and manhole testing. The duties of the site manager ~~construction monitor~~ shall also include (1) knowledge of product reports and material submittals, (2) maintenance of a diary of construction progress, and (3) implementation of remedial measures.

(ed) Authority of Town Engineer. The Town Engineer shall have access to the site at all times to review the progress of the work and shall have the authority to review the field logs maintained by the ~~site manager~~ ~~construction monitor~~. Any deficiencies noted by the Town Engineer shall be brought to the attention of the site manager ~~construction monitor~~ who shall see that remedial measures are taken.

If the Town Engineer finds upon inspection of required improvements, including an inspection to be done by the Town Engineer before expiration of the Performance Guarantee, that any of such improvements are not constructed in accordance with plans and specifications filed by the applicant subdivider, or that in the Town Engineer's judgment the

applicant will be unable to complete the required improvement within the period specified in the Performance Guarantee, the Town Engineer shall then so notify the ~~applicant subdivider~~ and the Town Manager, who shall take all necessary steps to preserve the rights of the Town under the Performance Guarantee, including authorization to the Town Engineer to stop the construction of said improvements.

(fe) Field Changes. If at any time before or during the construction of the required improvements the ~~applicant subdivider~~ demonstrates to the satisfaction of the Town Engineer that unforeseen conditions make it desirable to modify the design of such improvements, the Town Engineer may, in consultation with the Public Works Director and Planner, authorize modifications provided that they are within the spirit and intent of the Planning Board approval and do not constitute waiver or substantial alteration of the function of any improvements required by the Planning Board. The Town Engineer shall issue any authorization under this section in writing, and shall transmit a copy of such authorization to the Planner and Planning Board.

(gf) Record drawings. Upon completion of construction, the ~~applicant subdivider~~ shall present to the Town one (1) set of reproducible mylar, one (1) hard copy, and digital files in a format used by the project engineer during project design or other format approved by the Public Works Director suitable for import into the Town Geographic Information System (GIS).one ~~(1) electronic file of record drawings indicating facilities as constructed.~~ The record drawings shall be based on the field logs of the ~~site manager construction monitor~~ and of a quality acceptable to the Town. The record drawings shall include an engineer's seal, distances, angles and bearings for complete and accurate determinations of locations on the ground, right-of-way monuments and as set, as-built profiles of the centerlines of traveled ways, ledge elevations encountered during construction and information on the locations, size, materials and elevations of storm drains, sanitary sewers and other underground utility lines, including but not limited to water, electric, telephone, natural gas, cable television.

(hg) Completion and Acceptance. Upon completion of the ~~project subdivision~~ infrastructure, the ~~applicant subdivider~~ shall request that the Town Council accept proposed public improvements. The request shall include confirmation from the Town Manager that the improvements have been constructed consistent with the approved plans and town construction standards and that any applicable deeds have been submitted in a form acceptable to the Town Attorney and signed by the ~~applicant subdivider~~. The applicant shall be required to maintain all improvements and to provide for snow removal on roads and sidewalks, until their acceptance by the Town or the assumption of those responsibilities under such other approved arrangements. Any applicable Storm water Maintenance Plan shall also be recorded in the Cumberland County Registry of Deeds.

Sec. 16-3-2. Road-Infrastructure Design and Construction Standards. The purposes of the ~~infrastructure subdivision road construction~~ standards are to minimize traffic safety hazards and the cost of municipal maintenance and reconstruction, to ensure that roads are consistent with the Town's rural character, to promote a sense of community, and to be consistent with the Comprehensive Plan. The standards shall be flexible where an applicant can demonstrate that alternative approaches will meet the above stated purposes. Roads, sidewalks, parking areas and accessways within a ~~project subdivision~~ shall be classified by the Planning Board in accordance

1 with their location and their present and contemplated usage. A road which is likely to be
2 upgraded in classification in the foreseeable future shall be laid out to the standards of the
3 potential future classification. The widths and grades for all ~~project subdivision~~ roads shall be
4 determined in accordance with the **Road Classification Standards Table**, subject to the
5 following qualifications:

- 6 1. Where an existing road with right-of-way of less than fifty (50) feet is being extended, the
7 new right-of-way may be the same width as the existing road upon approval by the Planning
8 Board and Public Works Director.
- 9 2. Width of right-of-way may be forty (40) feet for a road shorter than three-hundred (300) feet
10 which ends in a cul-de-sac, upon approval by the Planning Board and Town Engineer.
- 11 3. Notwithstanding the **Road Classification Standards Table**, dead-end roads in excess of one
12 thousand (1,000) feet in length must comply with Sec. 16-3-2 (a)(9) of this Ordinance.

13 4. Right of Way. The Planning Board, with the advice of the Town Engineer, may require
14 rights-of-way wider than those set forth in the **Road Classification Standards Table**, in
15 order to satisfy the purposes of this Ordinance.

16 B. **Road-Infrastructure Construction**

17 1. Clearing

- 18 a. Prior to site alteration, a land surveyor registered in the State of Maine shall mark the
19 layout of the road and verify for the Town Engineer that the layout is in conformance
20 with the approved plans.
- 21 b. The construction area shall be selectively cleared of all trees, brush and vegetation
22 only as necessary for construction of the roadway, shoulder, utilities and any drainage
23 ways as approved by the Planning Board. Clearing provisions shall be accomplished
24 in accordance with the most recent revision of the Standard Specifications of the
25 Maine Department of Transportation, Section 201.
- 26 c. Limits of clearing shall be marked in the field and may be inspected by the Town
27 Engineer prior to further site preparation. In a Rural Connector, a ten (10) foot wide
28 strip shall be preserved at the edge of the right-of-way, where a sidewalk path may be
29 placed. The ten (10) foot wide strip shall be retained in a natural state and serve as a
30 buffer, although trimming may be allowed to preserve scenic views.

31 2. Grading to Subgrade

32 The roadway shall be brought to subgrade through the process of excavation and/or
33 placement of fill. Such earthwork shall be accomplished in compliance with the technical
34 provisions of Section 203 of said MDOT Specifications. Blasted ledge, which is, less
35 than fourteen (14) inches in any dimension, may be used as fill up to a level one foot and
36

one-half (1.5) feet below subgrade, and shall be mixed with sufficient finer material to make a firm, stable embankment.

3. Base Gravel for Roadways, Sidewalks, and Parking areas. The total gravel courses shall be a minimum of one and one-half (1.5) feet in depth for roads, parking, access and circulation areas. When subgrade materials are marginal, the Town Engineer may require additional subbase or base gravel.

a. SubBase Gravel Course. ~~The gravel base course shall be a minimum of one and one-half (1.5) feet in depth. When subgrade materials are marginal, the Town Engineer may require additional base gravel.~~ The lower subbase course shall be a minimum of fifteen (15) inches ~~one (1) foot~~ of material and shall conform to the requirement of Section 703.06 (b) Types D ~~or E~~ of the said MDOT Specifications, except that no particle of rock shall exceed three (3) inches as determined by a three (3) inch square mesh sieve.

b. Base Gravel Upper Course. The base gravel course shall be upper three (3) six (6) inches of material shall conform to the requirements of Section 703.06 (a), Types A and B of said MDOT Specifications except that maximum particle size for Type B shall be two (2) three (3) inches.

c. Compaction. The total base gravel shall be placed and compacted in accordance with technical requirements of Section 304 of said MDOT Specifications. Initial compaction tests shall be taken at a minimum interval of every fifty (50) linear feet along the roadway for each lift of material placed, and then compaction tests at a greater separation if initial tests pass. Retesting of any failed areas must be conducted after remedial action has been accomplished. Additional compaction tests may be required by the Public Works Director.

d. Sidewalk. Gravel for sidewalk base shall be eight (8) twelve (12) inches in depth and shall meet the requirements of Section 703.06 (a) of said MDOT specifications, Types A, B, or D, placed in one lift compacted to ninety-five (95) percent of optimum density.

e. Esplanade. The base of the esplanade located between the road and the sidewalk shall not be filled with gravel. The underlying material under the loam layer shall be common borrow or a similar material conducive to tree growth. The maximum grade of the esplanade cross-slope shall be two (2) percent.

4. Paving.

a. HMA. Paving shall be of Hot Mix Asphalt (HMA) meeting the requirements of Section 401 and 403 of said MDOT Specifications. Placement of HMA shall conform to MDOT Specifications (Section 401). Sidewalk HMA shall be placed in two (2) one and one quarter (1.25) inch lifts using 9.5 mm (fine) mix. HMA thickness shall be as follows:

	Pavement Base Course 10 mm Mix unless otherwise noted	Pavement Surface Course 12.5 mm Mix, except local roads which shall be 9.5 mm	Pavement Surface Course 9.5 mm fine Mix	Total
Arterial	2.5 inches	1.5 inches	--	4 inches
Collector	2.5 inches	1.5 inches	--	4 inches
Rural Connector	2.5 inches	1.5 inches	--	4 inches
Feeder	2.5 inches	1.5 inches	--	4 inches
Local Roads	2.5 inches of 19 mm	1.5 inches	--	4 inches
Sidewalks	--		2.5 inches	2.5 inches
Parking	2.5 inches	1.5 inches		4 inches

b. **Base Course.** The HMA base course shall be 12.5 mm or 19 mm mix for all classes of roads, sidewalks, access and parking areas, except local roads and sidewalks which shall be 9.5 mm mix as defined in Section 703.09 of said MDOT Specifications. ~~Sidewalk paving shall be 9.5 mm (fine) mix.~~

c. **Surface Course.** The HMA surface course shall be 9.5 mm mix for all classes of roads, sidewalks, access and parking areas. The Public Works Director may approve use of 12.5 mm mix when not part of a subdivision.

d. **Placement.** Placement of all HMA shall be in compliance with the technical requirements of Section 401 of said MDOT Specifications.

Road Classifications Standards Table

	Right of Way	Traveled Way	Minimum Intersection Sight Distance	Width of Shoulder	Horizontal Sight Distance	Design Speed	Sidewalk	Esplanade	Center Line Radius
ARTERIAL	52'	24'	200'	5'	200-400	30-45	5' (1)	5'	300-800
COLLECTOR	50'	24'	200'	1'	200-250	30-35	5' (1)	6'	300-400
RURAL CONNECTOR	66' 50'	24'	200'	4'	200-250	30-35	5'	7'	300-400
FEEDER	50'	24'	150'	0'	150-200	25-30	5'	7'	150-300
LOCAL	50'	22'	125'	0'	125-150	20-25	5'	8'	125-150

(1) Either sidewalk or bikeway. Width should increase for dual purpose

1
2 **Sec. 16-3-3. Design of Other Improvements Reserved**

3 **CA. Storm and Surface Water Drainage** [move from Sec. 16-3-3 to 16-3-2]

- 4 1. Storm water collection and transport systems shall comply with the Town of Cape
5 Elizabeth Stormwater and Non-Stormwater Control Ordinance, Chapter 18, Article II and
6 the Town of Cape Elizabeth Post Construction Stormwater Management Ordinance,
7 Chapter 18, Article IV.
8
9 2. Ditches, where permitted, on the approved plans shall have a slope of at least two (2)
10 percent and side slopes not exceeding three to one (3:1). Where required to prevent
11 erosion, ditches shall be riprapped, sodded, or otherwise protected.
12
13 3. Storm drain pipelines and culverts shall be installed in accordance with the technical
14 requirements of Section 603 of said MDOT Specifications. All pipes shall be designed to
15 withstand earth backfill plus H-20 wheel loadings. Trench backfill over drain lines within
16 the paved way shall be compacted to ninety-five (95) percent of optimum density.
17 Outside of paved areas backfill shall be compacted to ninety (90) percent of optimum
18 density.
19
20 4. When required to assure a stable subbase, rigid perforated underdrain pipe shall be
21 installed in accordance with the technical requirements of Section 605 of said MDOT
22 Specifications. Coiled underdrain pipe will not be permitted. (Revised eff. 12/10/03)
23
24 5. Manholes and catch basins on storm drain lines shall meet the technical requirements of
25 Section 604 of said MDOT Specifications. Shop drawings for the units desired for use
26 shall be submitted to the Town Engineer for approval prior to placement.
27
28 6. Upon the advice of the Town Engineer, the Town Council may require an applicant to
29 construct storm or sanitary sewers at a greater depth or of larger diameter than is required
30 to serve the area being developed subdivided, when said greater depth or larger diameter
31 is deemed necessary to provide proper service for adjacent areas.

32 **DB. Underground Utility Lines** [moved from Sec. 16-3-3 to 16-3-2]
33

34 **Sec. 16-3-4. Additional Standards. Reserved.**

35 ~~(a) Right of Way. The Planning Board with the advice of the Town Engineer may require~~
36 ~~rights of way wider than those set forth in the Road Classification Standards Table, in~~
37 ~~order to satisfy the purposes of this Ordinance.~~
38

39 **(b) Reserved**

40
41 ~~(c) Sewers. Upon the advice of the Town Engineer, the Town Council may require an applicant~~
42 ~~to construct storm or sanitary sewers at a greater depth or of larger diameter than is required~~
43 ~~to serve the area being subdivided, when said greater depth or larger diameter is deemed~~
44 ~~necessary to provide proper service for adjacent areas.~~

Sec. 16-3-6. Legal Provisions

(c) Amendments to the Subdivision Ordinance. This Ordinance may be amended by the Town Council following the procedure outlined in Sec. ~~19-10-3~~ ~~19-4-9~~ of the Zoning Ordinance.

ZONING ORDINANCE

SEC. 19-1-3. DEFINITIONS

For the purposes of this Ordinance, the following terms, words, and phrases shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future tense. Words used in the singular shall include the plural. Where so indicated by the text, these definitions also include substantive regulations. Where reference is made to Town or State laws, ordinances, or regulations, each reference to a particular law, regulation, or section shall include all amendments and successor sections.

Accessory Building or Structure: A detached, subordinate building, the use of which is clearly incidental and related to that of the principal building or use of the land and which is located on the same lot as the principal building 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:

1. garage
2. gazebo
3. greenhouse
4. home workshop, as defined below
5. recreational facilities for the use of occupants of the residence, such as a swimming pool or a tennis court, and related structures
6. Agricultural or aquacultural buildings or other structures (Effective June 10, 2010)
7. wharf, dock, landing, or boathouse
8. Emergency power generators not exceeding 30 KW.

Height, Building: Except for buildings located in the Shoreland Performance Overlay District, The vertical distance from the average original grade to the top of the highest roof beams of a flat roof, or to the mean level of the highest gable or slope of a hip roof. When a building faces on more than one (1) street, the height shall be measured from the average of the original grades at the center of the face of the building fronting on each street. Where the original grade steeply slopes to the extent that the building face along the road frontage will be located below the elevation of the road and within fifty (50) feet of the edge of the road right-of-way, the building height shall be measured from the average finished grade that allows the building first floor elevation facing the street to be constructed up to two (2') feet above the road elevation. Architecturally appropriate building tops, such as but not limited to spires and clock towers, which are not occupied, shall not be included in the measurement of the height of the building.

Height of a structure: For buildings located in the Shoreland Performance Overlay District, the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

1 **Low Income:** Family income which is between fifty percent (50%) and eighty percent (80%) of
2 median family income for the Portland Metropolitan Statistical Area as established by the Maine
3 State Housing Authority, State Planning Office or the Greater Portland Council of Governments.

4
5 **Moderate Income:** Family income which is between eighty percent (80%) and one hundred
6 twenty percent (120%) of median family income for the Portland Metropolitan Statistical Area as
7 established by the Maine State Housing Authority, State Planning Office or the Greater Portland
8 Council of Governments.

9 10 **SEC. 19-3-2. APPROVALS AND PERMITS REQUIRED**

11
12 Activities involving the use of land, the construction, structural alteration, repair, enlargement or
13 relocation of a building or structure, or the demolition of a building or structure may require
14 approvals and/or permits under the requirements of this Ordinance. No activity subject to an
15 approval and/or permit shall commence until after the issuance of all required approvals and
16 permits. A person who is issued a permit pursuant to this Ordinance within the Shoreland
17 Performance Overlay District or any Resource Protection District shall have a copy of the permit
18 on site while the work authorized by the permit is performed. (Effective October 15, 2009). The
19 following activities require approvals or permits:

20 21 **C. Building Permit**

22
23 1. Building Permit required. No construction, structural alteration, enlargement, or
24 relocation of a building or structure shall commence until after the issuance of a
25 Building Permit by the Code Enforcement Officer in accordance with Sec. 19-3-3,
26 Building Permits.

27
28 2. Telecommunications. No installation of an amateur or governmental wireless
29 telecommunication facility antenna which extends 15' feet or more from the roof of a
30 structure shall occur until after the issuance of a Building Permit by the Code
31 Enforcement Officer in accordance with Sec. 19-3-3. No installation of a commercial
32 wireless telecommunication antenna on an alternative tower structure shall occur until
33 after the issuance of a Building Permit by the Code Enforcement Officer in
34 accordance with Sec. 19-3-3, except that the Code Enforcement Officer may refer the
35 antenna installation application to the Planning Board for review under Sec. 19-9, Site
36 Plan Review and Sec. 19-8-12, Tower and Antenna Performance Standards, if the
37 antenna concealment is not complete. (Effective April 15, 2000)

38
39 3. Wind Energy. No installation of a wind energy system shall occur until after the
40 issuance of a Building Permit by the Code Enforcement Officer in accordance with
41 Sec. 19-3-3 and a determination by the Code Enforcement Office that the
42 performance standards in Sec. 19-8-13. Wind Energy Systems, have been met.

43 44 45 **ARTICLE IV. NONCONFORMANCE**

1 **SEC. 19-4-3. NONCONFORMANCE WITH ALL ZONING DISTRICTS EXCEPT THE**
2 **SHORELAND AND RESOURCE PROTECTION DISTRICTS**
3

4 The following provisions shall govern the use and modification of nonconforming lots,
5 structures, and uses in all areas of the Town that do not comply with Zoning District
6 requirements, except for the Shoreland Performance Overlay District or a Resource Protection
7 District. Nonconform~~ances~~^{ances} with~~in~~ the Shoreland Performance Overlay District ~~requirements~~
8 shall be governed by the provisions of Sec. 19-4-4. Nonconformance Within the Shoreland
9 Protection Overlay District, and nonconform~~ances~~^{ances} ~~within~~ the Resource Protection Districts
10 (RP1-CW, RP1-CW Buffer Overlay, RP2-WP and RP3-F) shall be governed by the provisions of
11 Sec. 19-4-5, Nonconformance Within the Resource Protection Districts.
12

13 **A. Nonconforming Lots**
14

15 **2. Developed Nonconforming Lots**
16

17 a. Single Lots. A single nonconforming lot that is improved with a principal
18 building or structure may continue to be used. Any existing principal or
19 accessory building or structure may be modified, enlarged, or relocated or a new
20 building or structure constructed even though it does not conform to the setback
21 requirements of the district in which it is located provided that such
22 modification, construction, or relocation conforms to the standards, except
23 minimum lot size, set forth in Sec. 19-4-3.A.1 ~~1.a.~~ above.
24

25 **ARTICLE V. ZONING BOARD OF APPEALS**
26

27 **SEC. 19-5-4. VARIANCES**
28

29 **A. Variance Application Criteria for Approval**
30

31 **1. Procedure.**
32

- 33 a. Prior to submitting a formal application for a variance, the applicant should
34 meet with the Code Enforcement Officer to informally discuss the proposed
35 application and the review process. The purpose of this informational meeting
36 is to allow the applicant to understand the process and clarify any questions
37 before submitting a formal application.
38
39 b. An application for a variance shall be made to the Code Enforcement Officer
40 on forms provided for that purpose.
41
42 c. The application form shall be accompanied by the supporting materials set
43 forth in Sec. 19-5-4 A (2), Submission Requirements, and an application fee.
44
45 d. The application shall be processed in accordance with the procedures set forth
46 in Sec. 19-5-2, Powers and Duties.

- 1
2 2. Submission Requirements. The applicant's submission shall include the
3 following:
4
5 a. A completed and signed application form
6
7 b. The appropriate fee
8
9 c. The location of the proposed use, including Assessor's tax map and lot
10 number, and a location map
11
12 d. A description of the proposed construction which requires the variance, the
13 setback required by ordinance, the setback proposed to accommodate the
14 proposed construction and the requested amount of setback reduction.
15
16 e. A standard boundary survey of the property, or at a minimum of the property
17 line (s) where the variance would be applied, and the location, drawn to scale
18 of existing and proposed buildings (noting the location of the variance),
19 important natural features, and driveways.
20
21 f. Written statement demonstrating how the application complies with each of
22 the standards of Sec. 19-5-2 B.
23
24 3. Standards of review. The Board may grant a variance from the provisions of this
25 Ordinance only if it finds that literal enforcement of the Ordinance will cause a
26 practical difficulty as defined in Sec. 19-5-2.B, ~~Variances, Powers and Duties.~~
27

28 **B. Conditions**

29
30 The Board may impose such conditions to a variance as it deems necessary. The applicant shall
31 comply with all conditions imposed.

32 **SEC. 19-5-6. NONCONFORMING EXPANSIONS**

33
34 The purpose of this section is to establish the procedures to enable the Town to review
35 applications for nonconforming expansions allowed in Article IV, Nonconformance.
36

37 A. Procedure.

- 38
39
40 1. Prior to submitting a formal application for a nonconforming expansion, the
41 applicant should meet with the Code Enforcement Officer to informally discuss
42 the proposed application and the review process. The purpose of this
43 informational meeting is to allow the applicant to understand the process and
44 clarify any questions before submitting a formal application.
45

2. An application for a nonconforming expansion shall be made to the Code Enforcement Officer on forms provided for that purpose.
 3. The application form shall be accompanied by the supporting materials set forth in Sec. 19-5-6 B, Submission Requirements, and an application fee.
 4. The application shall be processed in accordance with the procedures set forth in Sec. 19-5-2, Powers and Duties.
- B. Submission Requirements. The applicant's submission shall include the following:
1. A completed and signed application form
 2. The appropriate fee
 3. A site plan of the property, drawn to scale with a title block including the name of the applicant and address of the property, showing the following:
 - a. location of existing and proposed buildings, and the nearest buildings on adjacent properties;
 - b. existing and proposed setbacks;
 - c. topography;
 - d. important natural features including existing vegetated buffers;
 - e. existing and proposed subsurface wastewater disposal system;
 - f. driveways; and
 - g. other information recommended by the Code Enforcement Officer.
 4. A written statement demonstrating how the proposed application meets the standards of the ordinance to the greatest practical extent in accordance with Sec. 19-9-4 B (2). The statement shall address:
 - a. Size of the lot
 - b. Slope of the land
 - c. Soil erosion potential
 - d. Location of other structures on the property and on adjacent properties;
 - e. Location of subsurface wastewater disposal systems;
 - f. Impact on views;
 - g. Type and amount of vegetation proposed to be removed and replanting plan.
- C. Standards of review. The Board shall review the application for compliance with the standards in Sec. 19-4-4B (2).

1 **ARTICLE VI. DISTRICT REGULATIONS**

2
3 ***SEC. 19-6-1. RESIDENCE A DISTRICT (RA)***

4
5 ***E. Standards***

- 6
7 2. The following Space and Bulk Standards shall apply:
8

MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yards setback	30 ft. The side yard setback may be reduced in accordance with Sec. 19-4-3.A. Developed Nonconforming Lot (Effective August 11, 1999)
b. Rear yard setback	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A. Developed Nonconforming Lot (Effective August 11, 1999)
c. Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in close proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way
-- Arterial street	50 ft.
-- Collector, rural connector, and feeder streets	40 ft.
-- Local and private streets	30 ft.
(2) Eldercare facilities (Effective November 14, 2015)	
a. From property line	75 ft.
(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade	
a. Side yard setback	10-5 ft.
b. Rear yard setback	5 ft.
(4) Reserved (Effective June 10, 2010)	
(5) Antennas extending from 15' to 25' measured from the highest point of the alternative tower structure	

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

E. Standards

2. The following Space and Bulk Standards shall apply:

MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yard setback	30 ft. The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
b. Rear yard setback	30 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
c. Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
- Arterial street	50 ft.
- Collector, rural connector, and feeder streets	40 ft.
- Local and private street	30 ft.
d. Limit on parking within the front yard	A nonresidential use shall not locate its required off-street parking within the front yard setback.
(2) Eldercare facilities (Effective November 14, 2015)	
a. From property line	75 ft.

(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade	
a. Side yard setback	10 ft. <u>5 ft.</u>
b. Rear yard setback	5 ft.
(4) Reserved (Effective June 10, 2010)	

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

E. Standards

2. The following Space and Bulk Standards shall apply:

MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yard setback	20 ft. The side yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
b. Rear yard setback	20 ft. The rear yard setback may be reduced in accordance with Sec. 19-4-3.A.2, Developed Nonconforming Lots. (Effective August 11, 1999)
c. Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way.
-- Arterial Street	40 ft.
-- Collector and rural connector streets	40 ft.

-- Feeder street	30 ft.
-- Local and private streets	20 ft.
(2) Eldercare facilities (Effective November 14, 2015)	
a. From property line	75 ft.
(3) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade	
a. Side yard setback	10 ft. <u>5 ft.</u>
b. Rear yard setback	5 ft.

[Note: No change is proposed in the Town Center District because there is currently no special treatment for accessory structures with a floor area no greater than 100 sq. ft. Accessory structures up to 150 sq. ft. have a 10 ft. side and rear yard setback. No change is proposed in the Business A District because accessory structures with a floor area of no greater than 100 sq. ft. currently have a 5 ft. side and rear yard setback]

SEC. 19-6-6 BUSINESS DISTRICT B (BB)

E. Standards

2. The following Space and Bulk Standards shall apply:

MINIMUM SETBACKS	
(1) All uses unless otherwise specified	
a. Side yard setback	25 ft. 50 ft. if the lot abuts a Residence District
b. Rear yard setback	25 ft. 50 ft. if the lot abuts a Residence District

c. Front yard setback	The front yard setbacks set forth below may be reduced, only on roads which are not classified arterial, to the average setback of the two principal structures fronting on the same road in closest proximity to the site of the proposed structure, but any structure must be at least 20 feet from the right-of-way
-- Buildings with footprints of up to 2,000 sq. ft.	50 ft.
-- Buildings with footprints of more than 2,000 sq. ft.	50 ft. (Effective January 13, 2005)
-- Parking spaces and parking aisles	35 ft.
(2) Nonresidential use abutting a Residence District	A buffer shall be established in accordance with the provisions of Sec. 19-8-1.A Buffering of Nonresidential Uses
(3) Eldercare facilities	50 ft. from property line
(4) Accessory structures with floor area not greater than 100 square feet and a height not greater than 8-1/2 feet from average grade	
a. Side yard setback	10 ft. 5 ft.
b. Rear yard setback	5 ft.

[Note: No change is proposed in the Business B, Fort Williams Park District, Resource Protection Districts and Town Farm District because there is currently no special treatment for accessory structures with a floor area no greater than 100 sq. ft.]

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

C. Off-Street Parking Design Standards

9. Parking Area surface. Parking areas required under Sec. 19-7-8 may be a paved, gravel or grass surface.

a. Paved or gravel. Parking areas subject to Planning Board review shall be constructed to meet the standards in Sec. 16-3-2.B, Infrastructure

1 Construction, if proposed to be paved or have a gravel surface. An existing
2 parking area that may not meet standards may be approved by the Planning
3 Board, with the advice of the Town Engineer and demonstration that it can
4 support expected vehicle loading.

5
6 **b. Grass.** A grass surface parking area may be approved by the Planning Board
7 for temporary parking, and the Planning Board may require demonstration
8 that the grassed parking can support expected vehicle loading.

9 **ARTICLE IX. SITE PLAN REVIEW**

10
11 **SEC. 19-9-4. REVIEW PROCEDURES**

12
13 **B. Application Review Procedures**

- 14
15 4. Performance Guarantee/Post Approval. The Planning Board, at its discretion, may
16 require that a performance guarantee be established with the Town for the cost of
17 site improvements. Each performance guarantee shall comply with Sec. 16-2-6(c)
18 of the Subdivision Ordinance. An inspection fee shall be paid in accordance with
19 Sec. 16-2-6(d). When a project includes a performance guarantee, the applicant
20 shall manage project construction schedule ~~a pre-construction meeting~~ in
21 accordance with Sec. 16-2-7(a) of the Subdivision Ordinance. Upon completion of
22 construction, record drawings shall be submitted to the Town in accordance with
23 Sec. 16-2-7(gf) if any infrastructure has been installed in the public right-of-way or
24 easement conveyed to the Town.
25
26
27