

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 ~~striketrough~~ 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.

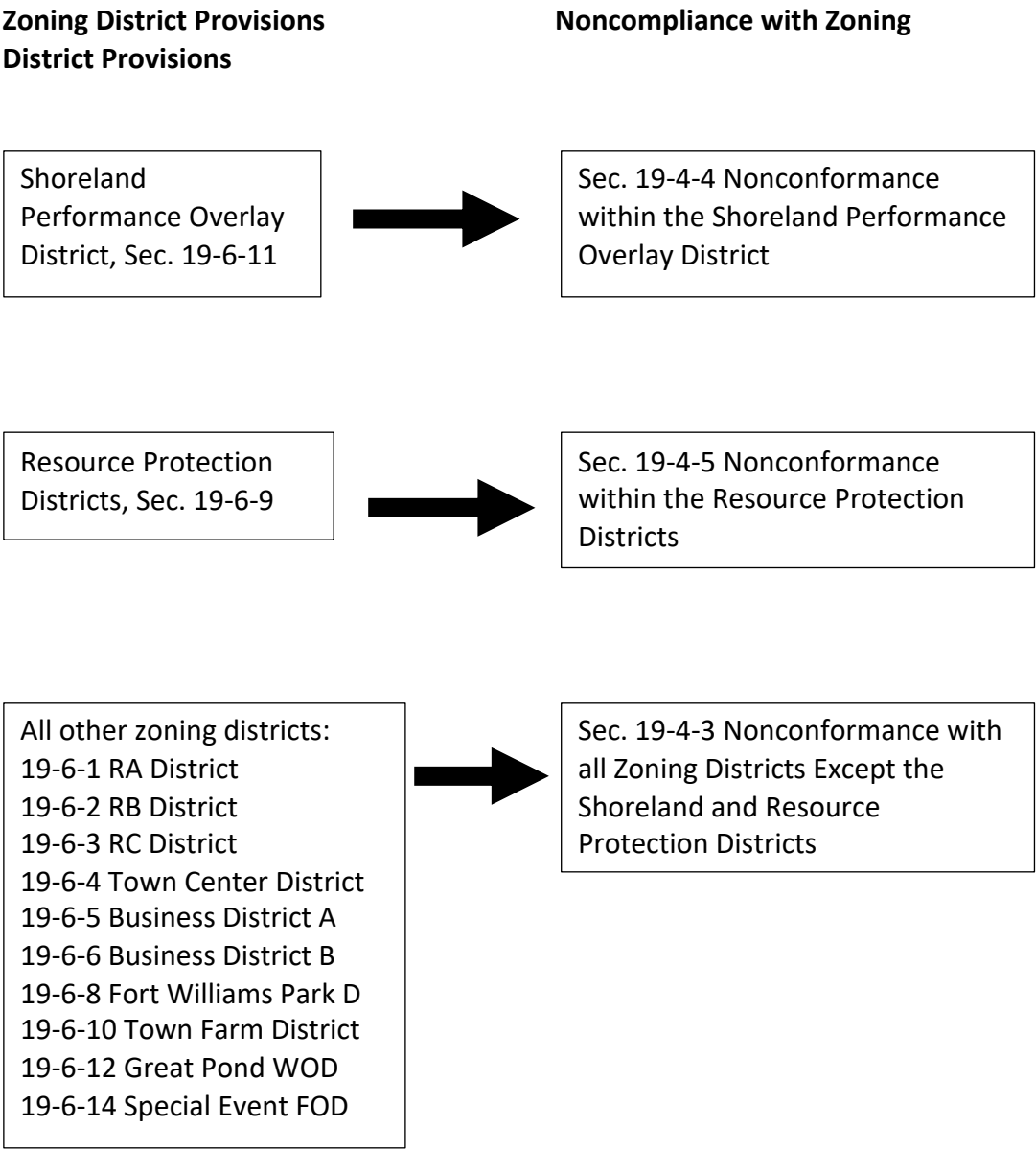
- 10/4 This change corrects a reference to a section that does not exist in the Zoning Ordinance.
- 11/28 The Code Enforcement Officer is recommending that residentially sized generators be explicitly recognized as accessory.
- 11/30 The State of Maine, Department of Environmental Protection Shoreland 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



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