TOWN OF KENNEBUNKPORT

LAND USE ORDINANCE

November 8, 2016 Revision

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ARTICLE 1: GENERAL

1.1 Short Title

This Ordinance shall be known and may be cited as the "Kennebunkport Land Use Ordinance" and will be referred to herein as "this Ordinance"

1.2 Purposes

This Ordinance and its regulations are designed for all the purposes of zoning embraced in Maine Revised Statutes, among other things: to promote and conserve the health, safety, convenience, and welfare of the inhabitants; to encourage the most appropriate interrelationships of land uses and groups of land uses in the various parts of the town; to secure safety from fire, panic, epidemics, flooding and other dangers; to provide adequate access of light and air; to prevent overcrowding of real estate; to lessen congestion in the streets; to facilitate the adequate provision of transportation, water, sanitary facilities, schools, parks and other public requirements, and to preserve and increase amenities throughout the Town of Kennebunkport. This Ordinance has been amended to comply with the Mandatory Shoreland Zoning Act and DEP Minimum Shoreland Zoning Guidelines to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in Shoreland areas.

1.3 Authority and General Requirements

Under the authority of Title 30-A M.R.S.A. § 2691, 3001, 4352-4358 and Title 38 M.R.S.A. § 435-449, any other enabling statutes, and all amendments thereto, the Town of Kennebunkport hereby regulates pursuant to this Ordinance the inspection, materials, construction, demolition, alteration, repair, height, bulk, area, ground coverage, location and use of buildings and structures, and the use of land, throughout the Town; and also, hereby divides the Town into zones.

1.4 Applicability

For Articles related to Shoreland Zoning this Ordinance applies to all land areas within two hundred fifty (250) feet, horizontal distance of the:

Normal high-water line of any river;
Upland edge of a coastal wetland, including all areas affected by tidal action; or the upland edge of a freshwater wetland.

Shoreland Zoning provisions also apply to:

All land areas within seventy-five (75) feet, horizontal distance of the normal high water line of a stream, to the entire area designated as the Dock Square and Riverfront Zoning Districts, and to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

1.5 Conflict with Other Ordinances

In general, this Ordinance is complementary to other town ordinances affecting the use, height, area and location of buildings and the use of land, but whenever a provision of this Ordinance conflicts with, or is inconsistent with another provision of this Ordinance, or other town ordinances, or where there is a conflict between this Ordinance and any other federal, state or local rule, regulation, ordinance, statute or other restriction, the more restrictive provision shall control.

1.6 Validity and Severability

The invalidity of any section or provision of this Ordinance shall not affect the validity of any other section or provision of this Ordinance.

1.7 Availability

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

1.8 Omitted Uses

It is the intent of this Ordinance that any use not specifically allowed as either a permitted use or conditional use is specifically prohibited.

1.9 Effective Date

This Ordinance shall become effective as soon as it receives a favorable vote of the voters of the Town.

ARTICLE 2: CONSTRUCTION OF LANGUAGE AND DEFINITIONS

2.1 Construction of Language

In the interpretation and enforcement of this Ordinance, all words other than those specifically defined in the Ordinance shall have the customary dictionary definition unless a different meaning is clearly implied by the context in which they are used. In the event of a conflict between the text of this Ordinance and any map, illustration, or table the text shall control.

The word "person" includes an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

The present tense includes the future tense; the singular includes the plural, and the plural includes the singular.

The words "shall" and "will" are mandatory, the work "may" is permissive.

The word "he" means either "he" or "she".

2.2 Definitions

In this Ordinance, the following terms shall have the following meanings:

Abutting Property: Any lot that is physically contiguous with the subject lot even if only at a point, and any lot which is located directly across the street or right-of-way from the subject lot such that the extension of the side lot lines of the subject lot would touch or enclose the abutting property

Accessory Use or Structure: A subordinate use or structure customarily incidental to and located on the same lot as the principal use or structure, such as a detached garage, workshop, or the like. Accessory uses, in the aggregate, shall not subordinate the principal use or structure on a lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Acre: A measure of land containing 43,560 square feet.

Aggrieved Person or Party: An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting of denial of such permit or variance.

Agriculturally Related Products: Includes such items as homemade jams and jellies, honey, cheese, dairy products, baked goods, herbs and spices, ice cream and maple syrup. These products are to be produced privately or by an approved home occupation. It does not include items purchased for wholesale for the purpose of selling for retail, except as permitted within part b of the Farm Stand definition. Any licenses, either State or Federal, are the owner/applicant's responsibility to obtain and maintain. (Also, see Farm Stand).

Agriculture: The cultivation of soil for the production or raising of food, crops, or other valuable or useful products including commercial gardening, and the growing of nursery stock. Agriculture does not include forest management and timber harvesting activities.

Alteration: A change, addition, or modification requiring construction, including any change in the location of structural member of buildings such as bearing walls, columns, beams or girders, but not including cosmetic or decorative changes.

Animal Husbandry: Boarding, raising, breeding or keeping of animals, fish or fowl for commercial purposes including without limitation swine, poultry, cattle and horses.

Apartment, Accessory: A separate dwelling unit which may be located within a single-family dwelling or a detached accessory structure as permitted under Article 7.1 of this Ordinance.

Aquaculture: The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Automobile Oriented Business: A business establishment which serves its customers while they remain in their motor vehicles, such as a drive-in restaurant, drive-up bank teller and car wash.

Automobile Repair Shop: A business establishment where motor vehicles and/or their related parts are serviced, repaired, reconditioned, painted or rebuilt.

Automobile Service Station or Gas Station: A business establishment selling fuel and related products for motor vehicles.

Basal Area: The area of cross-section of a tree stem at four and one half (4½) feet above ground level and inclusive of bark.

Basement: Any portion of a structure with a floor-to-ceiling height of six (6) feet or more and having more than fifty (50%) percent of its volume below the existing ground level.

Bed and Breakfast: A business establishment having nine (9) or fewer guest rooms in which lodging is offered to guests for compensation and meals may be offered for compensation only to the lodgers.

Boat House: A non-residential structure designed for the purpose of protecting or storing boats for non-commercial purposes.

Boat Launching Facility: A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Boat Yard: A business establishment where boats are hauled, stored, built and/or repaired.

Body of Water: The phrase "body of water" includes the following:

a. Tidal Water – All waters affected by tidal action and below the upland edge of the coastal wetland as defined by this Ordinance including the Kennebunk River.

b. Pond – An inland impoundment of water, natural or manmade, which collects and stores surface water.

c. Stream – A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map to the point where the body of water becomes a river or flows to another body of water or wetland within the Shoreland area. Streams with flood plains, as indicated by the FEMA Flood Insurance Rate Maps for the Town of Kennebunkport, shall be defined as streams for the purposes of this Ordinance along any sections of their length that are located within the limits of the 100-year floodplain and outside of the Shoreland zone.

d. Great Pond – Any inland body of water which in a natural state has a surface area in excess of ten (10) acres and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except, for purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

e. River – A free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty-five (25) square miles to its mouth. NOTE: The portion of a river that is subject to tidal action is a coastal wetland.

f. Tributary Stream – A channel between defined banks created by the action of surface water which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock, and which is connected hydrologically with other water bodies. "Tributary Stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving body of water or wetland. Water setback requirements apply to tributary streams within the Shoreland Zone.

Building: Any structure arranged, designed, intended or used for the shelter, housing or enclosure of persons, animals, processes, equipment or property of any kind.

Building Footprint: The area of a lot covered by all portions of any building and/or detached or attached accessory structures, including but not limited to garages, sheds, decks, porches, bulkhead entrances, steps, cantilevered sections, and roof overhangs.

Building Height: The vertical distance measured from the average elevation of the original ground level on all sides with twenty (20) feet of a building to the highest point of the building, not including such building features as chimneys, decorative cupolas, spires or similar non-habitable appurtenances.

Campground: Any area of tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Canopy: The more or less continuous cover formed by tree crowns in a wooded area.

Cemetery: A burial ground for the interment of the dead.

Change In Use: The change from an existing use to another use, including without limitation, the addition of a new use to an existing use.

Channel: A natural or artificial watercourse with defined beds and banks to confine and conduct continuously or periodically flowing water. Channel flow is water flowing within the limits of the defined channel.

Child Care Center: An establishment providing day care for five (5) or more children under the age of sixteen (16) which charges for the care of the children whether in a private home or separate establishment, and whether or not licensed by the State of Maine.

Church: A building or group of buildings arranged, designed, intended or used for the conduct of religious services, and accessory uses associated therewith.

Club: Any voluntary association of persons organized for fraternal, social, religious, benevolent, recreational, literary, patriotic, scientific, or political purposes whose facilities are open to members but not the general public, and which is principally engaged in activities which are not customarily carried on for pecuniary gain.

Cluster Development: A type of development where lot sizes are reduced below the minimum requirements of this Ordinance and the land gained thereby is preserved as open space.

Coastal Wetland: All tidal and sub-tidal lands, and any other adjacent lands below an elevation of seven (7) feet above mean sea level, utilizing the National Geodetic Vertical Datum (NGVD) of 1929. Coastal wetlands may include portions of coastal sand dunes, and may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

Code Enforcement Officer: A person appointed by the Municipal Officers to administer and enforce this Ordinance. Reference to the Code Enforcement Officer shall include the Building Inspector, Plumbing Inspector, Electrical Inspector, and the like, where applicable.

Commercial Center: Commercial premises owned or managed as a single entity, which accommodate more than one retail or service business, including professional offices, and contain between 2,500 and 12,000 square feet of gross floor area.

Commercial Complex: Commercial premises owned or managed as a single entity, which accommodate more than one retail or service business, including professional offices, and contain more than 12,000 square feet of gross floor area, including department stores and grocery stores with more than 12,000 square feet of gross floor area.

Commercial Recreation – Indoor: A business establishment providing indoor recreation facilities such as a bowling alley, skating rink, swimming pool, tennis or racquet ball courts, but not including mechanical, electronic or video game arcades.

Commercial Recreation – Outdoor: A business establishment providing outdoor recreational facilities such as a golf course, tennis courts, swimming pool, ice skating rink, or riding stables, but not including campgrounds, drive-in movie theaters, race tracks, water slides or mechanical or motorized rides.

Commercial Use: The use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Community Building: A building owned by a non-profit organization available to the community for purposes of public assembly and community activities.

Community Use: A governmental or public service use for the general benefit of citizens funded in whole or in part by the Town of Kennebunkport or a quasi-public organization, including by way of illustration and without limitation, municipal buildings, schools, public parks and recreational facilities, fire stations, ambulance services and sewage treatment plants.

Conditional Use: A conditional use is a structure or use which is generally inappropriate without restrictions in a given zone, which if controlled as to location, size and off-site impacts may have no adverse effects upon the public health, safety or welfare. The only structures or uses which shall be permitted as conditional uses are those listed as conditional uses in Article 4 or specifically described as conditional uses in other provisions of this Ordinance.

Contract Zoning: The process by which the property owner, in consideration of the rezoning of that property owner's property, agrees to the imposition of certain conditions and restrictions not imposed on other zoned proprieties.

Cross-sectional Area: The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight-line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

DBH: The diameter of a standing tree measured 4.5 feet from ground level.

Deck: A level structure adjacent to a building elevated above the surface of the ground which may have a railing and an awning or other covering, but not a roof.

Decorative Changes: Re-painting, re-siding, re-roofing; adding, removing or replacing trim, railings, or other non-structural architectural details.

Demolition: The act of destroying or pulling down a building or structure.

Development: A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Dimensional Requirements: Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disability: Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness. This also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

Disruption of Shoreline Integrity: The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

Dock: See Pier

Driveway: A vehicular access-way for residential use. See Article 6.14 and 6.15.

Dwelling: Any building or structure or portion thereof containing one or more dwelling units, but not including a motel, hotel, inn or similar use.

a. Single Family Dwelling – A building designed or intended to be used exclusively for residential occupancy by one (1) family only and containing only one (1) dwelling unit, or one (1) dwelling unit with an accessory apartment as permitted under Article 7.1, including a modular home unit.

b. Two Family Dwelling – A building designed or remodeled to be used exclusively for residential occupancy to two (2) families living independently of one another and containing two (2) dwelling units. Each unit shall have not less than 650 square feet.

c. Multiplex Dwelling – A building for residential occupancy by three (3) or more families living independently of one another and containing three (3) or more dwelling units; including apartment buildings and condominiums but excluding single-family dwellings with accessory apartments.

Dwelling Unit: One or more habitable rooms arranged, designed or intended to be used, or used as a complete housekeeping unit for one or more individuals living together as a family with independent living, cooking, sleeping, bathing and sanitary facilities. Recreational vehicles are not residential dwelling units. Within any Shoreland Zone, the term "dwelling unit" shall include seasonal rental units which meet the above definition, regardless of the time-period rented.

Earth: Topsoil, sand, gravel, clay, peat, rock or other minerals.

Elder Care Facility: A residential facility that is licensed in whole or in part as a residential care facility, congregate facility, or assisted living facility by the Maine Department of Human Services and occupied exclusively by elderly persons that provides accommodations, a program of supportive services appropriate to the needs of the residents, and shared community space and dining facilities for the use of residents of the facility. All residents of the facility shall be fifty-five (55) years of age or older or shall be a member of a household in which one member of the household was a least fifty-five (55) years of age at the time of entry to the facility. Facilities financed wholly or partially with federal funds may include units available for occupancy by handicapped persons who are not elderly provided that the number of such units is the minimum needed to establish eligibility for the financing program. To be considered an eldercare facility, at least sixty (60) percent of the residents shall be provided with a program of supportive services that, at a minimum, includes housekeeping assistance, personal care assistance, transportation, social and recreational activities, and one main meal per day served in a common or shared dining room.

The accommodations in an eldercare facility may consist of individual dwelling units, residential care units, or a combination of both. Residential care units shall contain at least two hundred and forty (240) but not more than seven hundred twenty (720) square feet of living area and may have a portable or compact kitchen but shall not have permanent, full kitchen facilities within the unit.

An eldercare facility may include a range of types of housing including, but not limited to, independent living units, congregate units, assisted living units, Alzheimer's care units, boarding care units, respite care units, sub-acute care units, and similar living units. Nursing home facilities may be a part of an eldercare facility but a facility that provides nursing home accommodations exclusively shall not be considered to be an eldercare facility. An eldercare facility may include supportive facilities including, but not limited to, administrative facilities, common dining facilities, care facilities, common areas, temporary housing accommodations for visitors and relatives of residents, maintenance facilities, and similar facilities necessary for the operation of the facility or the provision of services to the residents of the facility and other elderly people and/or people with disabilities such as healthcare, restorative therapies, rehabilitation services, financial services, personal care services, and other services that meet the day-to-day needs of the residents of the facility.

Emergency Operations: Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Essential Services: Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Expansion of a Structure: An increase in the floor area or volume of a structure, according to the provisions of Article 8 of this Ordinance.

Expansion of Use: The addition of one (1) or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use. *See Article 8 for specific standards and exemptions.*

Extractive Industries: The excavation, processing or storage of soil, topsoil, peat, loam, sand, gravel, rock or other mineral deposits, not including:

a. The excavation of material incidental to approved construction of buildings, driveways or parking areas.

b. The excavation of material incidental to and at the site of construction or repair of streets.

c. The excavation, processing or storage of less than ten (10) cubic yards of material on a lot within a one year period.

Family: One or more persons occupying a dwelling unit and living together as a single housekeeping unit where all occupants have common use and access to all living and eating areas, bathroom, and food preparation and serving areas.

Farm Stand: A roadside stand not exceeding four hundred (400) square feet in floor area selling only farm, garden, greenhouse, or nursery products and, between Labor Day and Christmas, cut Christmas trees, garlands, wreaths and wreath materials. In addition to products or produce raised or produced on the premises, farm and garden products may include:

a. Goods processed on the premises under a home food manufacturing license from the Maine Department of Agriculture; and

b. Fresh produce purchased off-site to supplement sales during the growing season and agriculturally related products provided that such produce and products do not occupy more than twenty-five (25%) percent of the space devoted to Farm Stand permitted sales.

For the purpose of the Ordinance, "agriculturally related products" includes such items as homemade jams and jellies, honey, cheese, dairy products, baked goods, herbs and spices, ice cream and maple syrup. These products are to be produced privately or by an approved home occupation. Retail sales only to include items that are wholesale purchased fresh produce or items defined under agriculturally related products. Any licenses, either State or Federal, are the owner/applicant's responsibility to obtain and maintain. (Also, see Agriculturally Related Products).

Fishing Equipment: Personal property designed, intended or used in connection with commercial and/or recreational fishing activities including boats, nets, buoys, traps and line.

Fish Processing: The loading, unloading, packing, processing and packaging of edible fish and other seafood products but not including processing of fish wastes or fish by-products.

Floats: A floating structure, designed to rise and fall with the tide or wave action, which provides direct access to a watercraft secured alongside, and is usually connected to the shore or to a pier, dock or wharf by a ramp.

Floodway: The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one (1) foot in height.

Floor Area: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks. *See Article 8 for standards and exemptions when measuring floor area for the purpose of determining allowable expansions of nonconforming uses or structures.*

Forest Management Activities: Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

Forested Wetland: A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller. Forested wetlands of greater than two (2) contiguous acres, which are not adjacent to a surface water body, but nonetheless are found within any Shoreland Zone, are subject to inclusion in the Resource Protection District, pursuant to Article 5, but shall not require any Shoreland Zoning structure setbacks.

Forest Stand: A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

Foundation: The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material.

Freshwater Wetland: Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

a. Of ten (10) or more contiguous acres, or of less than ten (10) contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of ten (10) acres; and

b. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

c. Freshwater wetlands may contain small stream channels or inclusion of land that do not conform to the criteria of this definition.

d. Freshwater or forested wetlands of less than ten (10) contiguous acres but greater than two (2) contiguous acres, which are not adjacent to a surface water body, but nonetheless are found within any Shoreland Zone, are subject to inclusion in the Resource Protection District, pursuant to Article 5, but shall not require any Shoreland Zoning structure setbacks. Freshwater or forested wetlands less than two (2) acres are not subject to inclusion in the Resource Protection District and shall not require any Shoreland Zoning structure setbacks.

Frontage, Shore: The horizontal distance, measured in a straight line, between the intersections of the side lot lines of a lot with the shoreline at the normal high water mark.

Frontage, Street: The horizontal distance measured in a straight line between the intersections of the side lot lines with the right-of-way of a street.

Functionally Water-Dependent Uses: Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to coastal or inland waters.

Great Pond: See "Body of Water".

Ground Cover: Small plants, fallen leaves, needles and twigs and the partially decayed organic matter of the forest floor.

Half Story: That story of a building immediately beneath a sloping roof when not more than fifty (50%) percent of its floor space can accommodate a seven (7') foot ceiling. A half story may be used for any purpose that is permissible for a full story.

Hand Crafts: The manufacturing of handcrafted articles, such as ceramics, leather goods and jewelry.

Harvest Area: The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting un-harvested areas greater than ten (10) acres within the area affected by a harvest.

Health Institution: A public or private facility that provides services for health maintenance of the diagnosis and/or treatment of human disease, pain, injury, or physical condition including but not limited to hospitals, health centers, clinics, treatment centers, and similar institutions. Health Institutions do not include facilities that provide long-term residential care such as nursing homes or eldercare facilities or the professional offices of doctors, psychiatrists, or other health care professionals.

Height: See Building Height.

Home Occupation: An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1): clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2): which employs no more than two (2) persons other than family members residing in the home. See Article 7.6 of this Ordinance.

Hotel: A building or group of buildings having ten (10) or more guest rooms in which lodging, or meals and lodging, are offered for compensation, including motels, tourist courts, motor lodges and cabins.

Impervious Surface: That portion of a lot or site which is or will be improved with buildings, structures, driveways, parking lots, pedestrian walkways, signs and other improvements on the surface of the ground which are more impervious to water than the natural surface of the site.

Increase in Non-conformity of a Structure: Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the non-conformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of non-conformance of the existing structure shall not be considered to increase non-conformity.

Industrial: The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Inn: A business establishment having nine (9) or fewer guest rooms in which lodging is offered to guests for compensation and meals may be offered for compensation to the lodgers and the general public.

Institutional: A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Invasive Plant Species: A non-native (adventitious) species that is capable of moving aggressively into a habitat and monopolizing resources such as light, nutrition, water, and space to the detriment of other species. (Note: For guidance consult the "Invasive Plant Atlas of New England", Department of Ecology and Evolutionary Biology, University of Connecticut for the current approved listing of invasive plants or a list provided at the Town Office.)

Junkyard:

a. Automobile graveyard: a yard, field or other area used as a place of storage for three (3) or more unserviceable, discarded, worn-out or junked automobiles.

b. Junkyard: a yard, field or other area used as a place of storage for discarded, worn-out or junked plumbing, heating supplies, household appliances, furniture, discarded scrap and junked lumber, old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and scrap iron, steel and other ferrous and non-ferrous material, including garbage dumps, waste dumps and sanitary landfills.

Kennel: Any commercial establishment where dogs and/or cats are kept or boarded for a fee or where animal grooming is performed for a fee.

Land Management Road: A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

Library: A non-profit facility, publicity or privately owned, open to all members of the public, where books, manuscripts, musical scores, or other literary and artistic materials are kept for use, as the principal use of the premises.

Licensed Forester: A forester licensed under Title 32 M.R.S.A. Chapter 76.

Lot: An area of land in one (1) ownership, or one (1) leasehold with ascertainable boundaries established by deed or other instrument of record, or a segment of land ownership defined by a lot boundary line on a subdivision plan duly approved by the Planning Board and recorded in the York County Registry of Deeds.

Lot Area: The total area located within the lines of a lot as measured on a horizontal plan. Within the Shoreland Zone, lot area shall exclude land areas below the normal high water line of a water body and any other adjacent areas of sand, if any, located between the normal high water line of a water body and either the seaward edge of a structure such as a sea wall or the seaward edge of dune vegetation.

Lot, Corner: A lot with at least two (2) contiguous sides abutting upon a street or right-of-way.

Lot Coverage: The percentage of the lot covered by structures. Within the Shoreland Zone, lot coverage shall include driveways, parking lots, and other non-vegetated surfaces.

Lot, Interior: Any lot other than a corner lot.

Lot Lines: The property lines bounding a lot as defined below:

a. Front Lot Line: On an interior lot the line separating the lot from the street or private road. On a corner or through lot, the line separating the lot from each street or right-of-way.

b. Rear Lot Line: The lot line opposite the front lot line. On a lot point at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten (10) feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.

c. Side Lot Line: Any lot line other than the front lot line or rear lot line.

Lot Minimum Area: See Minimum Lot Area.

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file with the York County Registry of Deeds as of March 12, 1985, or as of the effective date of any amendment to this Ordinance as the case may be.

Lot Width: The width of any lot as measured wholly within the lot at the required front setback along a line parallel to the straight line connecting the intersections of the front lot line with the side lot lines.

Manufactured Home: A structure or structures having the meaning given to "manufactured housing" as defined in Title 30-A M.R.S.A. § 4358 (1) (A), provided that, for purposes of this Article, such structural units are transportable in no more than two sections.

Manufactured Housing: A structural unit designed for human occupancy, constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site, as defined more specifically in Title 30-A M.R.S.A. § 4358 (1) (A).

Manufacturing: The making of goods and articles by hand or machinery including assembly, fabrication, finishing, packaging and processing.

Marina: A business establishment having frontage on the navigable waters within the Town which offers for rent or sale to the boating public; moorings, dock space, boats and marine equipment, shower and laundry facilities, water, ice, diesel fuel, gasoline, oil and related products; and where boats may be hauled, stored, repaired and/or constructed.

Marina, Commercial: A business establishment having frontage on the navigable waters within the Town, which business establishment offers for rent or sale to persons engaged in commercial fishing, lobstering, or other harvesting of marine resources, but not to pleasure craft, some or all of the following: moorings, dock space, boats and marine equipment, shower and laundry facilities, water, ice, diesel fuel, gasoline, oil and related products; and where boats may be hauled, stored, repaired and/or constructed.

Marine Transport Services: The providing of marine transportation for consideration including, but not limited to, whale watches, fishing excursions, cruises with or without a specific destination, ferries, boat charter and excursion services.

Market Value: The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Mineral Exploration: Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral Extraction: Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

Minimum Lot Area: The lot area, less the area of any land subject to rights-of-way or drainage or storm water management easements, or any other easement other than utility easements servicing the lot and also excluding lands which are below the normal high water mark of any water body or wetlands, as defined by this Ordinance, regardless of size.

Minimum Lot Width: The closest distance between the side lot lines of a lot. When only two lot lines extend into the Shoreland Zone, both lot lines shall be considered to be side lot lines.

Mobile Home: Any unit of manufactured housing constructed prior to June 15, 1976, or which is not included in the definition manufactured housing unit.

Mobile Home Park: A parcel of land under unified ownership designed and/or used to accommodate three or more manufactured homes.

Mobile Home Park Lot: The area of land on which an individual manufactured home is situated within a mobile home park and which is reserved for use by the occupants of that housing unit.

Modular Home: A structure or structures as defined in Title 30-A M.R.S.A. § 4358 (1)(A)(2), which are transportable in one or more sections, which are not constructed on a permanent chassis and which are designed to be used as dwellings on foundations when connected to required utilities. A modular home is a type of "manufactured housing" as defined herein and in Title 30-A M.R.S.A. § 4358 (1) (A).

Motel: See "Hotel".

Multiplex: See "Dwelling", definition c.

Museum: A non-profit institution operated principally for the purpose of preserving and exhibiting objects of historical, cultural, scientific or artistic interest and which may also engage in incidental retail sales of items related to its principal purpose.

Native: Indigenous to the local forests.

Net Residential Area: The area of a lot or site available for development determined by the Code Enforcement Officer by subtracting from the gross acreage of a lot the following:

a. Fifteen (15%) percent for roads and parking.

b. Land which is cut off from the main parcel by a road, existing land uses, or where no means of access has been provided so that it is isolated and unavailable for building purposes or for common use.

c. Land shown to be in the flood way or coastal high hazard area on a flood boundary and flood way map or flood insurance rate map prepared by the U.S. Department of Housing and Urban Development or its successor agency.

d. Other areas which are unsuitable for development in their natural state because of topography, drainage or subsoil condition. Specific conditions include but are not limited to:

1. Water table at or near the surface for all or part of the year.
2. Unstable soils such as Sebago mucky peat, coastal dune or tidal marsh.
3. Wetlands of any kind regardless of area.

e. Land in rights-of-way or drainage or storm water management or easements other than utility easements serving the premises except tree maintenance easements granted to the Town.

f. Land in the Resource Protection Zone.

g. Wetland that has been filled.

Net Residential Density: The number of dwelling units per area of net residential area.

Non-Conforming Condition: Non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

Non-Conforming Lot: A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-Conforming Structure: A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Normal High-Water Line (non-tidal waters): That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Normal High-Water Line (tidal waters): The upland edge of the “coastal wetland”, as defined by this Ordinance

Nursing Home: A facility licensed by the Maine Department of Human Services that provides skilled nursing care and medical services for convalescent or other patients who are not in need of hospital care but do require licensed nursing supervision and related medical services provided under the general direction of persons licensed to practice medicine in the State of Maine.

One Hundred (100) Year Flood Plain: That area with a one (1%) percent chance of flooding in any given year, as depicted as the special flood hazard area on the most recent Flood Insurance Rate Map for the Town of Kennebunkport, prepared by the Federal Emergency Management Agency.

Open Space: The portion of a lot or site which is maintained in its natural state or planted with grass, shrubs, trees or other vegetation and which is not occupied by buildings, structures or other impervious surfaces.

Parking, Commercial: A business which offers parking facilities to the general public for a fee, when the parking facilities are the principal use on the lot.

Parking Space, One: An area of ten (10) feet x twenty (20) feet, exclusive of drives or aisles, for the parking of a vehicle.

Parking, Temporary Overflow Public: Parking of vehicles for the general public for no more than twenty-four (24) days per year per site, located on land owned, operated or controlled by the Town of Kennebunkport, as authorized by the Board of Selectmen.
Patio: A floored structure without any walls or roof that does not extend more than three (3) inches above the original ground level. A patio shall be considered to be a structure and shall be subject to setback requirements.

Person: An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having joint or common interest, or other legal entity.

Pier (or Dock or Wharf), Accessory Residential: A rigid platform, accessory to a structure or structures devoted to residential uses, extending from a shore over water and supported by piles or pillars, and used to secure, protect, and provide access to boats or other water-based activity. In order to access craft on tidal waters, the pier is usually connected to a float by a ramp.

Piers, Docks, Wharves, Bridges and Other Structures and Uses extending over or beyond the normal high-water line or within a wetland:

a. Temporary: Structures which remain in the water for less than seven (7) months in any period of twelve (12) consecutive months.

b. Permanent: Structures which remain in the water for seven (7) months or more in any period of twelve (12) consecutive months.

Pond: See “Body of Water”.

Porch: A structure that is attached to a building that consists of a floor and a wall or walls and which also contains framing that supports a roof, all of which (the total structure) is built to resist wind, rain and snow load and which structure may be open or enclosed by screening. A fabric-covered structure is not considered to be a porch under this definition.

Portable Toilet: A portable, enclosed, self-contained unit, with or without other utilities, whose purpose is the collection of human waste into self-contained tanks. Portable toilets consist of four (4) exterior walls, a roof, self-closing doors and may have more than one (1) bathroom unit under one (1) common roof.

Principal Building: The building in which the primary use of the lot is conducted.

Principal Use: The primary use to which the premises are devoted or for which the premises are arranged, designed or intended to be used.

Professional and Business Offices: The place of business of doctors, lawyers, accountants, financial advisors, architects, surveyors, real estate and insurance agents, psychiatrists, psychologists, counselors, and the like, or in which a business conducts its administrative, financial or clerical operations and also including providers of personal services such as barbers, hairdressers and beauticians.

Public Facility: Any facility not otherwise defined by this Ordinance, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Public Hospitality Facility: A public restroom facility and/or a facility offering information to the general public about the amenities, services and businesses in the Town of Kennebunkport or by a non-profit public service organization such as a Chamber of Commerce.

Public Hospitality Facility, Temporary: A public restroom facility consisting of portable toilet(s), operated by the Town of Kennebunkport on property owned or operated by the town or in a town right-of-way, placed for less than six (6) months per calendar year on a vacant lot or on a lot occupied by a pre-existing use/structure, and screened from view by landscaping and/or fencing, forming a visual barrier not less than five (5) feet in height along all public streets and exterior lot lines, except that the entrance(s) and appurtenances thereto of said facility may be kept open and unscreened to permit foot traffic to and from said facility.

Public Utility: Any person, municipal department or other entity authorized to furnish water, gas, electricity, waste disposal services, communication facilities or transportation to the public.

Recent Floodplain Soils: The following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Alluvial	Cornish	Charles
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

Recreational Facility: A place designed and equipped for the conduct of sports, leisure time activities, other customary and usual recreational activities, excluding boat-launching facilities.

Recreational Vehicle: A vehicle or vehicular attachment designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home, or converted van or truck. In order to be considered as a recreational vehicle, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles. Recreational vehicles are not residential dwelling units or structures.

Replacement System (wastewater disposal): A system intended to replace: 1) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structures; or 2) any existing overboard wastewater discharge.

Residential Mixed Use: A primary use to which a principal building may be devoted which blends and combines a residential use with a commercial use located within no more than one principal building on a lot. For purposes of minimum lot size calculations, outside of the Shoreland Zone, a Residential Mixed Use as defined shall be considered a single use.

Residential Rental Accommodation: The permitted accessory use of no more than two (2) bedrooms in a legally existing dwelling or dwelling unit. This dwelling unit shall be an owner-occupied dwelling. Rooms rented may be for either short term or long term rental to a roomer who may be unrelated to the owner or occupant of the unit. Individual rooms shall be rented no more than once per week. For purposes of this section a week shall be defined as Monday through Sunday.

Residual Basal Area: The average of the basal area of trees remaining on a harvested site.

Residual Stand: A stand of trees remaining in the forest following timber harvesting and related activities.

Resource Protection Zone: An overlay zone which intentionally covers one or more of the zones described in Article 3, as further defined in Article 3.3.L.

Restaurant: An establishment where food and drink are prepared and served to the public and where no food or beverages are served directly to occupants of motor vehicles.

Retail Business: A business establishment engaged in the sale of goods or services to an ultimate consumer for direct use or consumption and not for resale, not including automobile oriented businesses, electronic, mechanical or video game arcades, or other retail businesses expressly defined elsewhere in this Article.

Riprap: Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River: See “Body of Water”.

Road: A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Roomer: A person residing in and paying rent for a room in a Residential Rental Accommodation whether or not the person eats meals on the premises. See Residential Rental Accommodation.

Salt Marsh: Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (Spartina alterniflora). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

Salt Meadow: Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (Spartine patens) and black rush; common three-square occurs in fresher areas.

School: An institution for education or instruction including a college, university, and public or private school conducting classes pursuant to a program approved by the State Board of Education or similar governmental agency, but not including commercially operated schools such as schools of beauty, culture, business, dancing, driving, music or recreation which shall be deemed retail businesses.

Seasonal Use: Occupancy or use for one hundred eighty (180) continuous days or less, but generally between April 15 and October 15 of each year.

Service Drop: Any utility line extension which does not cross or run beneath any portion of a water body provided that:

a. in the case of electric service:

    1. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and

    2. the total length of the extension is less than one thousand (1,000) feet.

b. in the case of telephone service:

    1. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or

    2. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

Setback: The horizontal distance from a lot line to the nearest part of a structure.

Setback from Water: The horizontal distance from the normal high water line of a water body or tributary stream, or upland edge of a wetland, or the upland edge of the coastal wetland as defined by this Ordinance, to the nearest part of a structure, road, parking space or other regulated object or area.

Ship Chandlery: A retail store located within a marina selling supplies and equipment for boats.

Shore Frontage: The length of a lot bordering on streams, ponds, rivers, tidal waters, or coastal or freshwater wetlands, measured in a straight line between the points of intersection of the lot lines with the shoreline.

Shoreland Zone: The land area located within two hundred fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within two hundred fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; horizontal distance, of the normal high-water line of a stream. For purposes of this Ordinance the entire Dock Square and Riverfront Zones as depicted on the Official Zoning Map shall also be considered as Shoreland General Development Districts, (see Article 3.1).

Shoreline: The normal high-water line, or upland edge of a freshwater or coastal wetland.

Sign: An object, device or display, or part thereof, situated outdoors or indoors, which is directed at persons outside the premises, used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

Skid Road or Skid Trail: A route repeatedly used by forwarding machinery or animals to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

Slash: The residue, e.g., treetops and branches, left on the ground after a timber harvest.

Story: That portion of a building contained between any floor and the floor or roof next above it, but not including any portion so contained if more than one-half of such portion vertically is below the average mean finished grade of the ground adjoining such building.

Stream: See “Body of Water”.

Street: An existing state, county, or town way or a street dedicated for public use and shown upon a subdivision plan duly approved by the Planning Board and recorded in the York County Registry of Deeds or a street dedicated for public use and shown on a plan duly recorded in the York County Registry of Deeds prior to the establishment of the Planning Board. The term “street” shall not include ways which have been discontinued or abandoned.

Streetscape: An area that lies between the street curb and the façade of the adjacent building.

Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind together with anything constructed or erected with a fixed location above, below or upon the surface of the ground or water. Not all structures are subject to setback requirements. See Article 6.1 for exemptions.

Substantial Start: Completion of thirty (30%) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface Sewage Disposal System: Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks, disposal fields, grandfathered cesspools, holding tanks, pretreatment filter, piping, or any other fixture, mechanism or apparatus used for those purposes; does not include any discharge system licensed under Title 38 M.R.S.A. § 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

Sustained Slopes of Twenty (20%) percent, Areas of: A measurable land area with steep topography, where a change in elevation of twenty (20%) percent or twenty (20) feet of vertical change per one hundred (100) feet of horizontal change, is substantially maintained or exceeded throughout.

Temporary Overflow Public Parking: See "Parking, Temporary Overflow Public".

Tent: A portable shelter made of fabric or other like materials which is supported by one or more poles and stretched tight by cords or loops attached to pegs driven into the ground, except that a backyard tent used for sleeping is not considered a structure under this Ordinance.

Terrace: See "Patio".

Theater: A fully enclosed building used for display or presentation to the public of films, plays or other kinds of performance.

Tidal Water: See "Body of Water".

Timber Harvesting: The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the Shoreland Zone on a lot that has less than two (2) acres within the Shoreland Zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Article 5.4.

Timber Harvesting and Related Activities: Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

Trailer: A vehicle without motive power and not intended for human occupancy, designed to be towed by a motor vehicle including a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

Tributary Stream: See “Body of Water”.

Upland Edge of a Wetland: The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the contour line, established as seven (7) feet above mean sea level, utilizing the National Geodetic Vertical Datum (NGVD) of 1929. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller.

Use: The purpose for which land or a building or structure is arranged, designed or intended, or for which it is occupied.

Variance: A relaxation of the terms of the zoning ordinance which impose restrictions of height, lot coverage, lot size, or setback as permitted by Article 9.2 of this Ordinance.

Vegetation: All live trees, shrubs and other plants including without limitation, trees both over and under four (4) inches in diameter, measured at four and one half (4½) feet above ground level.

Velocity Zone: An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources, as shown on the most recent FEMA Flood Insurance Rate Map.

Volume of a Structure: The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Warehouse: A structure or building used primarily for the storage of articles, goods or materials.

Water Body: See “Body of Water”.

Water Crossing: Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Wetland: Any of the various types of wetlands defined by this Ordinance.

Wetland Coastal: See “Coastal Wetland”.

Wetland, Forested: See “Forested Wetland”.

Wetland, Freshwater: See “Freshwater Wetland”.

Wetlands Associated with Great Ponds and Rivers: Wetlands contiguous with or adjacent a great pond or river, and which, during normal high water, are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway or similar feature less than one hundred (100) feet in width, and which have a surface elevation at or below the normal high water mark of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river.

Wetland, Inland: Areas enclosed by the normal high water of any inland body of water; areas which are identified as having very poorly drained soils by the Soil Survey of York County, Maine, issued June,1982, by the U.S.D.A. Soils Conservation Service; and areas defined as freshwater wetlands by Title 38 M.R.S.A. § 406, et seq. to be shown on Inland Wetland Maps prepared by the Maine Department of Environmental Protection.

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Wholesaling: A business establishment engaged in the bulk sale of goods or materials not manufactured or processed on the premises.

Windfirm: The ability of a forest stand to withstand storm winds and resist windthrow, wind rocking, and major breakage.

Woody Vegetation: Live trees or woody, non-herbaceous shrubs.

Workforce Housing: Affordable housing for households with earned income that is insufficient to secure quality condition housing in reasonable proximity to the work place.

Zoning Envelope: The area of a lot within which a structure is permitted to be built, and which is defined by subtracting out those portions of the subject lot that fall within the required setbacks from the front, side, and rear property lines, and from the normal high water mark of any water body or coastal wetland, as defined in this Article.

ARTICLE 3: ESTABLISHMENT OF ZONES

3.1 Zoning Districts

For the purposes of this Ordinance, the Town shall be divided into the following zones:

A. The Village Residential Zone
B. The Village Residential East Zone
C. The Dock Square Zone
D. The Riverfront Zone
E. The Cape Arundel Zone
F. The Goose Rocks Zone
G. The Cape Porpoise East Zone
H. The Cape Porpoise Square Zone
I. The Cape Porpoise West Zone
J. The Free Enterprise Zone
K. The Farm & Forest Zone
L. The Shoreland Zone
M. The Resource Protection Zone
N. The Goat Island Light Contract Zone

The Dock Square and Riverfront Zones shall be considered as Shoreland General Development Districts for the purposes of compliance with the Maine DEP Shoreland Zoning Guidelines.

3.2 Official Zoning Maps

A. Signed Copies on File

The above zones are located as shown on the Official Zoning Maps, entitled "Kennebunkport Zoning Map". The Official Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map. The Official Maps, and any subsequently amended copies, shall be certified by the attested signatures of both the Chair of the Planning Board and the Town Clerk within thirty (30) days of adoption by the Town Meeting, and shall be kept on file in the Municipal Offices as a public record. Said maps shall be available for inspection during normal business hours.

B. Authority to Interpret Maps

The Code Enforcement Officer shall have sole authority to interpret zoning maps, except where another municipal official or body is specifically empowered to administer a related provision of this Ordinance.

C. Rules for Interpreting Boundaries

When uncertainty exists with respect to district boundaries as shown upon the above maps, the following rules shall apply:

1. In case of any conflict between these maps and the specific descriptions of Zoning District boundaries in Article 3.3, the written description shall govern;

2. Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;

3. Boundaries indicated as approximately following well-established lot lines shall be construed as following such lot lines;

4. Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;

5. Boundaries indicated as following shorelines shall be construed to follow the normal high water mark, and in the event of natural change in the shoreline shall be construed as moving with the actual shoreline;

6. Boundaries indicated as approximately following the center line of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center line;

7. Boundaries indicated as being parallel to or extensions of features indicated in paragraphs 1 through 6 above shall be so construed;

8. Distances not specifically indicated on the Zoning Map or in Article 3.3 shall be determined by the scale of the map; and

9. Where physical or cultural features existing in the field are at variance with those shown on the Zoning Map, or in any situation where the interpretation of zoning boundaries or the location of the normal high water mark is problematic, the Code Enforcement Officer may require the applicant to provide a field determination by a suitably qualified person or firm. The depictions of the Resource Protection Zone, and the Shoreland Zone are merely illustrative of their general locations. In the event of a dispute, the boundaries of these districts shall be measured in the field by a suitable qualified person or firm, at the applicant's expense, according to the distances in Article 3.3 from the actual field location of the normal high water mark.

D. Code Officer's Interpretation May be Appealed

In the event that a dispute cannot be resolved by the use of the rules in Article 3.2.C above, the applicant or the Code Enforcement Officer may refer the matter to the Board of Appeals who shall interpret location of the disputed zoning district boundaries or location of the normal high water mark, pursuant to the procedure for administrative appeals, as set forth in Article 9.3. The Code Enforcement Officer shall provide copies of any such administrative appeal application to both the Conservation Commission and the Growth Planning Committee, as well as to the Department of Environmental Protection in cases involving any Shoreland Zone, so these bodies may have an opportunity to provide background information, comments and recommendations to the Board of Appeals regarding interpretation of the official maps. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to the location of district boundaries subject to the appeals provisions in Article 9.3.

3.3 Description of Zone Boundaries

A. Village Residential Zone: Beginning at a point, being the intersection of the channel of Goff's Mill Creek and the channel of the Kennebunk River, and proceeding northerly by said channel of Goff's Mill Creek, being the Town Line, to the intersection of said creek and Arundel Road, thence easterly by Arundel Road to a granite stone post at the easterly corner of Merrill Cemetery, thence generally southerly and easterly to a granite post on the southerly corner of land now or formerly of Palmer Clough and on the westerly side of North Street, thence south on North Street to the intersection of Beachwood Avenue, thence by Beachwood Avenue northeasterly to the northerly corner of land now or formerly of Moore, thence southeasterly by land of said Moore and of Fred Merrill to the southerly corner of land of Fred Merrill at land of Bishop Hutchins, thence northeasterly on the line between the said Merrill and Hutchins lands to a corner, thence southeasterly on the line between said Merrill and Hutchins lands and a projection thereof to the transmission line of Central Maine Power Company, thence by said transmission line southerly to the southerly border of land now or formerly of Aline Frink and turning northeasterly by said line one hundred and five (105) rods, thence southeasterly by southwesterly bound of said Frink a distance of forty (40) rods more or less, thence southwesterly by northwesterly bound of land now or formerly of John Smith a distance of thirty (30) rods, thence southeasterly by southwesterly boundary of John Smith land a distance of sixty-two (62) rods to School Street (Buttonwood Road), thence directly across said School Street to the Old William Cluff Farm Road, thence southerly by said Farm Road to the end of an ancient right-of-way leading by easterly boundary of Old District No. 13 School to the Wildes District Road, thence westerly by said Wildes District Road to land formerly of Kenneth Roberts, thence southerly by a stone wall between Roberts and (formerly) Rankin six hundred and ninety-five (695) feet, thence easterly nearly at right angles on a line between Roberts and Rankin three hundred and eighty-eight (388) feet, thence southerly by a stone wall marking the boundary between Roberts and land now or formerly of Wildes to a corner and land of the Kennebunkport Seashore Company, thence southwesterly by land formerly of Roberts and northerly bound of land of Kennebunkport Seashore Company to land now

or formerly of Oscar Cox, thence by easterly bound of Cox and westerly bound of Roberts by a wall and land of Cox to the northeasterly corner of land of Cox, thence by northerly bound of Cox and southerly bound of Roberts and in part by a stone wall to the land of Henry W. Hoagland, thence by northerly bound of Hoagland to South Main Street, thence southerly by Maine Street (South) to Fairfield's Creek at the juncture of a way once land out as Glen Haven Avenue, thence directly to the thread of Fairfield's Creek at a point being the intersection of the northwesterly line of land on the northeasterly side of King's Highway of the Kennebunkport Seashore Company (and Braun) extended, thence by said thread of Fairfield's Creek generally northerly to Ocean Avenue, thence in a northerly direction along the center line of Ocean Avenue to the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 8, Block 1, Lot 14 (now or formerly owned by Gourley); thence in a westerly direction along the southerly boundary of said Gourley lot and a projection of said bound to the thread of the Kennebunk River, thence upriver along the thread of the Kennebunk River to the intersection of said thread with a westerly projection of the northerly bound of the lot shown on the 1980 town of Kennebunkport Assessors Maps as Map 8, Block 1, Lot 20 (now or formerly owned by Edmands), thence easterly along said projection and said northerly bound to Ocean Avenue, thence by Ocean Avenue northerly to Chestnut Street, thence easterly by Chestnut Street to the westerly bound of land shown on the 1980 Town of Kennebunkport Assessors Maps as Map 11, Block 9, Lot 12 (now of formerly owned by Chetwynd); thence northwesterly by said Lot 12 to Lot 10 (now or formerly Schmalo); then northeasterly by Lot 10 and Lot 9 (now of Port Building Trust) to the easterly corner of Lot 9; thence northwesterly by the northeasterly side of Lot 9 to Union Street, thence by Union Street easterly to Cross Street, thence northerly by Cross Street to Spring Street, thence easterly by Spring Street to Temple Street, thence by Temple Street northerly to the southerly bound of land now or formerly of the Olympian Club, thence westerly by land of Olympian Club to southwesterly bound of land of said Olympian Club, thence northerly by land of Olympian Club and continuing across the exit from the Municipal Parking Lot to the northerly bound of said exit, thence by the northerly bound of said exit and by the northerly bound of the Municipal Parking Lot to the Town boundary at the thread of the Kennebunk River, thence by said Town boundary to the point of beginning.

B. Village Residential East Zone: Beginning at the intersection of the center line of the Wildes District Road with the centerline of the Perkin's Road (now Land's End Road), thence generally southerly by the center line of said Perkin's Road extended to the flats at Cross Creek at a granite monument now fallen, thence on said line to the thread of Turbats Creek, thence in a southerly direction along the thread of Turbats Creek to the Atlantic Ocean, thence westerly by the Atlantic Ocean to the northeasterly boundary of the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 20, Block 1, Lot 77, thence along the northeasterly boundary of said lot and of the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 20, Block 1, Lot 19 to Ocean Avenue, thence crossing Ocean Avenue and proceeding northwesterly on the northeast side of the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 20, Block 4, Lot 5 (now or formerly of Kashey), thence continuing on this line northwesterly on the northeast boundary of the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 20, Block 4, Lot 4 (now or formerly of Kennebunkport Seashore

Company), thence southwesterly on the line between said Seashore Company lot and the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 20, Block 4, Lot 35 (now or formerly of Matthews), thence northwesterly on the southwest side of the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 20, Block 4, Lot 35, thence northwesterly on the southwest side of the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 21, Block 1, Lot 8, thence westerly three hundred eighty-eight (388) feet along the boundary between land formerly of Roberts shown on the 1980 Town of Kennebunkport Assessors Maps as Map 8, Block 3, Lot 18 and land formerly of Rankin, thence nearly at a right angle northerly by a stone wall six hundred ninety-five (695) feet along the boundary between land formerly of Roberts shown on the 1980 Town of Kennebunkport Assessors Maps as Map 9, Block 10, Lot 23 and land formerly of Rankin to the centerline of the Wildes District Road, thence easterly along the center line of the Wildes District Road to its point of intersection with an extension of the easterly sideline of the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 9, Block 4, Lot 31, thence northerly along the westerly sideline of a private right-of-way lying on the easterly boundary of the lots shown on the 1980 Town of Kennebunkport Assessors Maps as Map 9, Block 4, Lots 31 and 28, and an extension thereof to the intersection of the westerly sideline of said private right-of-way with a line running five hundred (500) feet northerly of and parallel to the centerline of the Wildes District Road, thence northeasterly along said line running five hundred (500) feet northerly of and parallel to the centerline of the Wildes District Road to the centerline of the Perkin's Road, thence southeasterly along the centerline of the Perkin's Road to its point of intersection with the centerline of the Wildes District Road at the point of beginning.

C. Dock Square Zone: Beginning at a point being the intersection of the southerly bound of land now or formerly of Nedeau and Thompson and Ocean Avenue, thence westerly by said southerly bound and continuing on the same course to the thread of the Kennebunk River and Town Line, thence generally northerly by said thread and Town Line to the intersection of the northerly bound of the Kennebunkport Municipal Parking Lot continued, thence by said northerly bound generally northerly and easterly to the southwesterly bound of land formerly of the Olympian Club extended across westerly entrance to Municipal Parking Lot, thence by said line and southwesterly bound of Olympian Club to southerly bound of land of Olympian Club, thence by southerly bound of Olympian Club generally easterly to Temple Street, thence by Temple Street to Spring Street, thence westerly by Spring Street to Cross Street, thence southerly by Cross Street to Union Street, thence by Union Street to the northerly corner of land of Port Building Trust shown on the 1980 Kennebunkport Tax Assessors Maps as Map 11, Block 9, Lot 9, thence southeasterly to the easterly corner of Lot 9; thence southwesterly by Lot 9 to the westerly bound of land now or formerly of Frank Thompson, thence generally southerly by westerly bound of land of Thompson to Chestnut Street, thence by Chestnut Street to Ocean Avenue (westerly), thence northerly by Ocean Avenue to a point of beginning.

D. Riverfront Zone: Beginning at a point being the intersection of the southerly bound of land of the Boughton Hotel Corporation and the Atlantic Ocean, thence by said southerly bound of land of said Boughton generally easterly to Arlington Avenue, thence northeasterly to King's Highway (by Arlington Avenue) thence westerly by King's Highway to the northwesterly bound of land now or formerly of Braun (from Schnorr), thence northeasterly by said line of Braun (and southeasterly bound of land of Boughton Hotel Corporation on east side of King's Highway) and northwesterly bound of land of Kennebunkport Seashore Company to the thread of Fairfield's Creek, thence northerly (north-northwest) by said thread of the Creek to the easterly side of Ocean Avenue, thence by Ocean Avenue northerly to the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 8, Block 1, Lot 14 (now or formerly owned by Gourley), thence in a westerly direction along the southerly boundary of said Gourley lot and a projection of said bound to the thread of the Kennebunk River, thence upriver along the thread of the Kennebunk River to the intersection of said thread with a westerly projection of the northerly bound of the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 8, Block 1, Lot 20 (now or formerly owned by Edmands); thence easterly along said projection and said northerly bound to Ocean Avenue, and thence by Ocean Avenue northerly to the southerly bound of land now or formerly of Nedeau and Thompson, thence by said southerly bound westerly to the thread of the Kennebunk River and the Town boundary, thence southerly by Kennebunk River and the Town boundary to the Atlantic Ocean generally southeasterly to the point of beginning.

E. Cape Arundel Zone: Beginning at a point on the northerly bound of land of the Kennebunkport Seashore Company at the intersection of land formerly of Roberts and the land now or formerly of Wildes and proceeding easterly between land of Wildes and land of Kennebunkport Seashore Company to a stone wall at the easterly bound of Kennebunkport Seashore Company land, thence southerly by a stone wall and the easterly bound of Kennebunkport Seashore Company to the Shore Road and continuing southerly by a stone wall and the easterly boundary of land now or formerly of one Larsen to the Atlantic Ocean, thence generally westerly by the Atlantic Ocean to the southerly bound of land of Boughton Hotel Corporation, thence by southerly bound of said Boughton land generally easterly to Arlington Avenue, thence northeasterly to King's Highway (by Arlington Avenue), thence westerly by King's Highway to the northwesterly bound of land now or formerly of Braun (from Schnoor), thence northeasterly by said line of Braun (and southeasterly bound of land of Boughton Hotel Corporation on east side of King's Highway) and northwesterly bound of Kennebunkport Seashore Company to the thread of Fairfield's Creek, thence directly (easterly) to South Main Street (at the juncture of a way once laid out as Glen Haven Avenue), thence northerly by South Main Street to northerly bound of Hoagland, thence by northerly bound of Hoagland to the intersection of land of Cox and formerly of Roberts to a wall, thence by said wall and easterly bound of Cox and westerly bound of Roberts generally southerly to the intersection of land of Kennebunkport Seashore Company, thence by generally southerly line of Roberts and generally northerly line now or formerly of Kennebunkport Seashore Company generally northeasterly to the point of beginning.

F. Goose Rocks Zone: Beginning at the center of the channel at the mouth of the Batson River, thence generally northwesterly by the thread of the River to a point five hundred (500) feet northwest of the centerline of the traveled portion of Route #9, thence generally northeasterly five hundred (500) feet from and parallel to the centerline of Route #9 to the Biddeford town line, thence southeasterly on the town line through the middle of the Island in Little River, thence southerly on the town line down the thread of Little River to the Atlantic Ocean, thence southwesterly by the Atlantic Ocean to the point of beginning. Also, a portion of land beginning at the same point southerly by the edge of the marsh and upland to the channel of Samson's Cove, thence by said channel or thread easterly to the Atlantic Ocean, thence northerly by the Atlantic Ocean to a point northeasterly of Marshall's Point, thence westerly by the Atlantic Ocean to the channel of the Batson River and to the point of beginning, said zone being approximately four hundred (400) feet in width westerly from the mean high water mark of the Atlantic Ocean.

G. Cape Porpoise East Zone: Beginning at the east side of Mills Road at the intersection of Eel Bridge Road, thence generally northerly by the east bound of Mills Road to the Marshall Point Road, thence easterly by said Marshall Point Road to a point four hundred (400) feet westerly of mean high water mark of the Atlantic Ocean, thence by the marsh and southerly and, in general, four hundred (400) feet westerly of the high water mark of the Atlantic Ocean, to the flats in Samson's Cove, thence southwesterly across the flats following the Kennebunk, Kennebunkport and Wells Water District line to the marsh at the northeasterly terminus of Fishers Lane, thence by the flats and generally southerly and easterly around Bickford Island to the Pier Road's most southerly extension at the flats, thence by Pier Road and generally northerly to the intersection of the Pier Road causeway and the easterly bound of Cape Porpoise Harbor, thence by the edge of the flats along the easterly bound of Cape Porpoise Harbor to the northerly bound of Crowell thence easterly by land of said Crowell to the Pier Road, thence northerly by Pier Road to the southerly bound of Bradbury, thence easterly by said southerly bound to easterly bound of C.M. Bradbury, thence northerly by said easterly bound to Beech Street, thence northerly by Beech Street and land of C.M. Bradbury to the flats, thence northwesterly across the flats to the terminus of Eel Bridge on the east side of Back Cove, thence by Eel Bridge Road generally northwesterly to the point of beginning. **Notwithstanding** the preceding language, this zone shall include a five hundred (500) foot-wide strip of land parallel to and lying on the generally northwesterly sideline of Route 9/Mills Road, across the road from the existing Cape Porpoise East Zone, and running from the Eel Bridge Road intersection to the Marshall Point Road intersection, as shown on the attached Zoning Map amendment.

H. Cape Porpoise Square Zone: Beginning at the intersection of Route #9 and the westerly bound of the Atlantic Engine Company and proceeding northeasterly by the land of Bradbury three hundred and eight (308) feet, more or less, to the land of now or formerly Clarabel Hutchins heirs, thence northerly through Hutchins land to the westerly corner of land of Freemont Ridlon, thence by land of said Ridlon northeasterly ninety-two (92) feet, more or less, to the northerly corner of Ridlon at land of Harry Emmons, thence northwesterly by land of Emmons four hundred seventy-seven (477) feet, more or less, to the land of E.V. Roberts heirs, thence northeasterly by said Roberts bound two

hundred seventy-three (273) feet to the northeasterly bound of said Emmons, thence southeasterly by said northeasterly bound of Emmons four hundred forty (440) feet to Route #9 (Mills Road), thence directly across Mills Road to Eel Bridge Lane, thence generally southeasterly to Old Eel Bridge Lane to Creek (Back Cove), thence by the flats to the land of C.M. Bradbury at its northwesterly corner, thence by northerly and easterly bounds of C.M. Bradbury and Beech Street to land of Howarth at its easterly corner, thence southerly bound of said Bradbury to the Pier Road, thence southerly by Pier Road to the northerly bound of Crowell, thence westerly by land of Crowell to Cape Porpoise Harbor, thence across the Harbor to a point near the rear of Seth Pinkham's store two hundred (200) feet southerly to the Pier Road, thence by a line parallel with and two hundred (200) feet distant from Pier Road southerly and westerly to a stone wall at land of Emery Huff, thence following the stone wall southeasterly to the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 30, Block 1, Lot 25 (now or formerly of Emery Huff); thence northwesterly on the line as it runs between said Lot 25 (Huff) and Lot 24 (Troost) to the Langsford Road, thence southerly by the westerly side of Langsford Road to the southerly boundary of land now of David H. Wright (formerly Deinstadt), thence west by said Wright southerly bound to southwesterly bound of Wright land, thence northerly by westerly bound of Wright and westerly bound of land now or formerly of Raymond Nunan and continuing by westerly bound of Bradbury (Brothers) to Route #9, thence easterly by Route #9 to the point of beginning.

Also, a portion of land beginning at the bridge on Pier Road crossing to Bickford Island and proceeding southerly by said Pier Road to its intersection (extended) beyond the southerly end of the Pier, thence generally northerly by the flats and channel of Cape Porpoise Harbor to the point of beginning.

I. Cape Porpoise West Zone: Beginning at a point on the southerly side of Route #9 being the intersection of the Bradbury (Brothers) westerly bound and Route #9, thence generally westerly by Route #9 over Crow Hill passing the Three Strings to the former Perkins Road thence generally southerly by Perkins Road to the Wildes District Road, thence generally southerly by the former Perkins Road (now Land's End Road) extended to the flats at Cross Creek at a granite monument now fallen, thence by the flats and the northerly side of Cross Creek generally northeasterly and crossing Paddy Creek to the shore line in front of the former Langsford House (G. W. Wood), thence northeasterly and northerly by the flats on the westerly shore of Cape Porpoise Harbor to a point two hundred (200) feet southerly of the Pier Road, thence westerly by a line parallel with and two hundred (200) feet from said Pier Road southerly and westerly to a stone wall at land of Emery Huff, thence following the stone wall southeasterly to the lot shown on the 1980 Town of Kennebunkport Assessors Maps as Map 30, Block 1, Lot 25 (now or formerly of Emery Huff); thence northwesterly on the line as it runs between said Lot 25 (Huff) and Lot 24 (Troost) to the Langsford Road, thence westerly across Langsford Road, and thence southerly by the westerly side of said Langsford Road to the southerly boundary of land now of David H. Wright (formerly Deinstadt), thence west by said Wright southerly bound to southwesterly bound of Wright land, thence northerly by westerly bound of Wright and westerly bound of land now or formerly of Raymond Nunan and continuing by westerly bound of Bradbury (Brothers) to Route #9 and point

of beginning. **Notwithstanding** the preceding language, this zone shall include a five hundred (500) foot-wide strip of land parallel to and lying on the generally northwesterly sideline of Route 9/Main Street, across the road from the existing Cape Porpoise West Zone, and running from a point on the Old Cape Road near its intersection with Route 9/Main Street to the westerly boundary of Lot 41 on Tax Map 22, Block 9, but not including said Lot 41 (Currently the Cape Porpoise House of Pizza), as shown on the attached Zoning Map amendment.

J. Free Enterprise Zone: Beginning at a granite post in the easterly corner of the Merrill Cemetery, thence in a northeasterly direction along the Arundel Road to the Town House Square, and including the Old Town House Property now or formerly of Brigham and Garrett, thence in a southeasterly direction along the Springer Hill Road (Old Cape Road) to its intersection with the Beachwood Avenue, thence in a generally northeasterly direction along the Beachwood Avenue to its intersection with Stone Road, thence northerly along the Stone Road to the Goose Rocks Road, thence northeasterly along the Goose Rocks Road to the Oak Ridge Road, thence northerly along the Oak Ridge Road to the Town Line. All property lying in a southerly direction of this boundary line not already included in the preceding zones is in the Free Enterprise Zone. **Notwithstanding** the preceding language, this zone shall not include a five hundred (500) foot-wide strip of land parallel to and lying on the generally northwesterly sideline of Route 9/Mills Road, across the road from the existing Cape Porpoise East Zone, and running from the Eel Bridge Road intersection to the Marshall Point Road intersection; nor shall it include a five hundred (500) foot-wide strip of land parallel to and lying on the generally northwesterly sideline of Route 9/Main Street, across the road from the existing Cape Porpoise West Zone, and running from a point on the Old Cape Road near its intersection with Route 9/Main Street to the westerly boundary of Lot 41, Tax Map 22, Block 9, but not including said Lot 41 (currently the Cape Porpoise House of Pizza), as shown on the attached Zoning Map amendment.

K. Farm and Forest Zone: The Farm and Forest Zone shall include all of the Town of Kennebunkport except those areas included within the preceding zones.

L. Shoreland Zone: The Shoreland Zone includes the following areas outside of the Dock Square and Riverfront Zones, which meet the following criteria:

1. Lands lying with two hundred fifty (250) feet of the normal high water mark of the following bodies of water:

    a. Tidal water;
    b. Smith Brook, downstream of Goose Rocks Road;
    c. The Batson River, downstream of Arundel Road
    d. Tyler Brook, downstream of the abandoned right-of-way of the Atlantic Shore Railway Company;
    e. Beaver Pond; and
    f. The pond on property formerly of Kenneth Roberts located between the Shore Road and Wildes District Road.

2. The one hundred (100) year flood plain, adjacent to non-tidal or non-riverine waters, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

3. Lands lying within seventy-five (75) feet of the normal high water mark of any stream, other than those named in paragraph 1 above.

4. Lands lying within two hundred fifty (250) feet of the upland edge of coastal and freshwater wetlands.

M. Resource Protection Zone:

The Resource Protection Zone shall include the following areas:

1. All islands in the Atlantic Ocean with the exception of Bickford and Goat Island.

2. Freshwater and coastal wetlands, as defined in Article 2.

3. Land below the normal high water mark of Lake of the Woods.

4. All land within the Town of Kennebunkport below the normal high water mark of any tidal water.

5. Areas within two hundred fifty (250) feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with rivers, including Lake of the Woods, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIFW) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIFW or the DEP. For the purposes of this paragraph "wetlands associated with rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a river, and have a surface elevation at or below the water level of the river during the period of normal high water. "Wetlands associated with rivers" are considered to be part of that river.

6. Outside of the Dock Square and Riverfront Zones, the one hundred (100) year flood plains adjacent to tidal waters and along rivers, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils.

7. Areas of two or more contiguous acres with sustained slopes of twenty (20%) percent or greater.

8. Within the limits of the Shoreland Zone areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a body of water during normal spring high water.

9. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

N. Goat Island Light Contract Zone: A certain tract of land or island lying at the mouth of Cape Porpoise Harbor in the Town of Kennebunkport in the County of York, known by the name of Goat Island, said land or island being the same where the lighthouse has been built.

ARTICLE 4: ZONE REGULATIONS

4.1 Permitted Uses

Permitted land uses in all zones shall conform to all applicable standards and requirements. Article 5 contains performance standards for the Shoreland and Resource Protection Zones, Article 6 for all land uses, and Article 7 specific standards for specific land uses. Where the specific standards contain dimensional requirements different than those listed in this Article, the stricter requirement shall apply.

4.2 Prohibited Uses

Any land use which is not listed as a permitted use or a conditional use shall be prohibited. The land uses permitted in each zone are listed below. Except as otherwise provided, any accessory use is permitted in each zone subject to the same approvals and requirements as are applicable to the principal use to which the accessory use is subordinate.

4.3 Village Residential Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Appeals Review
Accessory Apartment	Accessory Apartment*	Animal Husbandry
Agriculture	Cemetery	Home Occupation
Essential Services	Church	Residential Rental Accommodation
Farm Stand	Community Building	
Single Family Dwelling	Community Use	
Storage and Repair of Fishing Equipment	Eldercare Facility	
Parking of motor vehicles limited to any publicly owned lot in excess of two (2) acres in size, with frontage on and access from a state controlled highway. The maximum number of parking spaces for this use may not exceed one hundred fifty (150), and there shall be no bus or large recreational vehicle parking on the lot. Further, with the exception of road frontage, dense vegetative buffering, a minimum of six (6) feet in height, is required beginning at the property line and extending inward for a distance of ten (10) feet.	Golf Courses in existence since January 1, 2008	
Parking, Temporary Overflow Public	Library	
Timber Harvesting	Multiplex	
Timber Management	Museum	
Two Family Dwelling	Park	
	School	*See Article 7.1.J

4.3 Village Residential Zone									
	Min Lot Area *1 (sq ft)	Min Lot Width (feet)	Max Lot Coverage	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	40,000	100	20%	40,000	20	15	15	20%	35
Two-Family Dwelling	40,000	100	20%	20,000	40	20	20	20%	35
Multiplex	60,000	150	20%	20,000	25	50	50	20%	35
Public Libraries	40,000	100	75%		20	15	15	5%	35

*1 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in Article 4.16

4.4 Village Residential East Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment*	Animal Husbandry
Agriculture	Cemetery	Home Occupation
Essential Services	Church	Residential Rental Accommodation
Farm Stand	Community Building	
Single Family Dwelling	Community Use	
Storage and Repair of Fishing Equipment	Eldercare Facility	
Timber Harvesting	Hotel & Motel Expansion	
Timber Management	Library	
Two Family Dwelling	Multiplex	
	Museum	
	Park	
	School	*See Article 7.1.J

4.4 Village Residential East									
	Min Lot Area *2 (sq ft)	Min Lot Width (feet)	Max Lot Coverage	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	40,000	100	20%	40,000	20	15	15	20%	35
Two-Family Dwelling	40,000	100	20%	20,000	40	20	20	20%	35
Multiplex	90,000	150	20%	30,000	40	50	50	20%	35

*2 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in Article 4.16.

4.5 Dock Square Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment**	Childcare Center
Essential Services	Bed & Breakfast	Hand Crafts
Single Family Dwelling	Boatyard	Home Occupation
Storage and Repair of Fishing Equipment	Club	Residential Rental Accommodation
Two Family Dwelling	Commercial Center	
	Financial Institution	
	Hotel	
	Inn	
	Marina	
	Motel	
	Multiplex	
	Park	
	Parking, Commercial	
	Professional & Business Offices	
	Public Hospitality Facility	
	Restaurant	
	Retail Business	
	Ship Chandlery	
	Theater	

*Note: Exceptions to the requirement for Planning Board Site Plan Review Approval are set forth in Article 10.2.B.3

**See Article 7.1.J

4.5 Dock Square Zone										
	Min Lot Area *3 (sq ft)	Min Lot Width (feet)	Max Lot Cov	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Coastal Wetland Setback (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	20,000	100	70%	20,000	20	15	15	25	20%	30
Two-Family Dwelling	20,000	100	70%	10,000	40	20	20	25	20%	30
Multiplex	30,000	150	70%	10,000	40	20	20	25	20%	30

*3 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in Article 4.16.

4.6 Riverfront Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment*	Childcare Center
Agriculture	Bed & Breakfast	Hand Crafts
Essential Services	Boatyard	Home Occupation
Farm Stand	Club	Residential Rental Accommodation
Single Family Dwelling	Commercial Center	
Storage and Repair of Fishing Equipment	Community Building	
Two Family Dwelling	Community Use	
	Financial Institution	
	Fish Processing	
	Hotel	
	Inn	
	Library	
	Marina	
	Marine Transport Svcs	
	Motel	
	Multiplex	
	Museum	
	Park	
	Professional & Business Offices	
	Residential Mixed Use	
	Restaurant	
	Retail Business	
	School	
	Ship Chandlery	
	Theater	*See Article 7.1.J

4.6 Riverfront Zone										
	Min Lot Area *4 (sq ft)	Min Lot Width (feet)	Max Lot Cov	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Coastal Wetland Setback (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	20,000	100	20%	20,000	20	15	15	75	20%	30
Two-Family Dwelling	20,000	100	20%	10,000	40	20	20	75	20%	30
Multiplex	60,000	150	20%	20,000	25	50	50	75	20%	30

*4 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in Article 4.16.

4.7 Cape Arundel Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment*	Home Occupation
Agriculture	Cemetery	Residential Rental Accommodations
Essential Services	Church	
Farm Stand	Museum	
Library		
Park		
Single Family Dwelling	Commercial Center	
Storage and Repair of Fishing Equipment	Community Building	
Timber Harvesting		
Timber Management		
Two Family Dwelling		*See Article 7.1.J

4.7 Cape Arundel Zone

	Min Lot Area *5 (sq ft)	Min Lot Width (feet)	Max Lot Cov	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	40,000	100	20%	40,000	20	15	15	20%	35
Two-Family Dwelling	40,000	100	20%	20,000	40	20	20	20%	35

*5 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontag
Article 4.16.

4.8 Goose Rocks Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment*	Childcare Center
Agriculture	Cemetery	Home Occupation
Essential Services	Club	Residential Rental Accommodations
Farm Stand	Community Building	
Public Hospitality Facility, Temporary	Community Use	
Single Family Dwelling	Library	
Storage and Repair of Fishing Equipment	Museum	
Timber Harvesting	Park	
Timber Management		
Two Family Dwelling		*See Article 7.1.J

4.8 Goose Rocks Zone

	Min Lot Area *6 (sq ft)	Min Lot Width (feet)	Max Lot Cov	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	40,000	100	20%	40,000	20	15	15	20%	30
Two-Family Dwelling	40,000	100	20%	20,000	40	20	20	20%	30

*6 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in Article 4.16.

4.9 Cape Porpoise East & Cape Porpoise West Zones

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment*	Home Occupation
Agriculture	Boatyard	Residential Rental Accommodations
Essential Services	Commercial Marina	
Farm Stand	Community Use	
Single Family Dwelling	Eldercare Facility	
Storage and Repair of Fishing Equipment	Fish Processing	
Timber Harvesting	Library	
Timber Management	Museum	
Two Family Dwelling	Park	
	Residential Mixed Use	
	Ship Chandlery	*See Article 7.1.J

4.9 Cape Porpoise East & Cape Porpoise West Zones

	Min Lot Area *7 (sq ft)	Min Lot Width (feet)	Max Lot Cov	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	20,000	100	20%	20,000	20	15	15	20%	30
Two-Family Dwelling	30,000	100	20%	15,000	40	20	20	20%	30

*7 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in Article 4.16.

4.10 Cape Porpoise Square Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment*	Childcare Center
Agriculture	Automobile Repair Shop	Hand Crafts
Essential Services	Automobile Service Station	Home Occupation
Farm Stand	Bed & Breakfast	Residential Rental Accommodation
Single Family Dwelling	Boatyard	
Storage and Repair of Fishing Equipment	Church	
Two Family Dwelling	Club	
	Commercial Center	
	Commercial Marina	
	Community Building	
	Community Use	
	Financial Institution	
	Fish Processing	
	Inn	
	Library	
	Multiplex	
	Museum	
	Park	
	Professional & Business Offices	
	Restaurant	
	Retail Business	
	School	
	Ship Chandlery	
	Theater	*See Article 7.1.J

4.10 Cape Porpoise East & Cape Porpoise West Zones									
	Min Lot Area *8 (sq ft)	Min Lot Width (feet)	Max Lot Cov	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	20,000	100	20%	20,000	20	15	15	20%	30
Two-Family Dwelling	20,000	100	20%	10,000	40	20	20	20%	30
Multiplex	60,000	150	20%	20,000	25	50	50	20%	30

*8 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore frontage requirements set forth in Article 4.16

4.11 Free Enterprise Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment*	Childcare Center
Agriculture	Automobile Oriented Business	Hand Crafts
Animal Husbandry	Automobile Repair Shop	Home Occupation
Essential Services	Automobile Service Station	Residential Rental Accommodation
Farm Stand	Bed & Breakfast	
Manufactured Housing	Boatyard	
Single Family Dwelling	Campground	
Storage and Repair of Fishing Equipment	Cemetery	
Timber Harvesting	Club	
Timber Management	Commercial Center	
Two Family Dwelling	Commercial Complex	
Parking, Temporary Overflow Public	Commercial Recreation, Indoor	
	Commercial Recreation, Outdoor	
	Community Building	
	Community Use	
	Eldercare Facility	
	Extractive Industry	
	Financial Institution	
	Fish Processing	
	Funeral Home	
	Golf Course	
	Health Institution	
	Hotel	
	Inn	
	Kennel	
	Library	

4.11 Free Enterprise Zone (continued)

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
	Manufacturing	
	Marina	
	Mobile Home Park	
	Motel	
	Museum	
	Nursing Home	
	Park	
	Parking, Commercial	
	Professional & Business Offices	
	Public Utilities	
	Residential Mixed Use	
	Restaurant	
	Retail Business	
	School	
	Ship Chandlery	
	Theater	
	Veterinary Clinic	
	Warehouse	
	Wireless Telecommunications Facilities	
	Wholesaling	*See Article 7.1.J.

4.11 Free Enterprise Zone									
	Min Lot Area *9 (sq ft)	Min Lot Width (feet)	Max Lot Cov	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	40,000	100	20%	40,000	20	15	15	20%	35
Two-Family Dwelling	40,000	100	20%	20,000	40	20	20	20%	35

*9 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore front requirement set forth in Article 4.16

4.12 Farm and Forest Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
Accessory Apartment	Accessory Apartment*	Childcare Center
Agriculture	Bed & Breakfast	Hand Crafts
Animal Husbandry	Boatyard	Home Occupation
Essential Services	Campground	Residential Rental Accommodation
Farm Stand	Cemetery	
Manufactured Housing	Club	
Single Family Dwelling	Commercial Recreation, Outdoor	
Storage and Repair of Fishing Equipment	Community Building	
Timber Harvesting	Community Use	
Timber Management	Extractive Industry	
Two Family Dwelling	Fish Processing	
	Funeral Home	
	Golf Course	
	Health Institution	
	Hotel	
	Inn	
	Kennel	
	Library	
	Manufacturing	
	Mobile Home Park	
	Motel	
	Museum	
	Nursing Home	
	Park	
	Professional & Business Offices	

4.12 Farm and Forest Zone (continued)

Permitted Uses	Conditional Uses Subject to Site Plan Review*	Conditional Uses Subject to Zoning Board of Appeals Review
	Public Utilities	
	Restaurant	
	Retail Business	
	Theater	
	Veterinary Clinic	
	Warehouse	
	Wholesaling	*See Article 7.1.J

4.12 Farm and Forest Zone									
	Min Lot Area *10 (sq ft)	Min Lot Width (feet)	Max Lot Cov	Min. Net Residential Area per Dwelling Unit (sq ft)	Min Setbacks Front (feet)	Min Setbacks Side (feet)	Min Setbacks Rear (feet)	Min Open Space	Max Building Ht. (feet)
Single Family Dwelling (one per lot) or Other Use Art. 4.16	3 acres/ 130,680 sq. ft.	200	10%	130,680	20	15	15	20%	35
Two-Family Dwelling	3 acres/ 130,680 sq. ft.	100	20%	65,340	40	20	20	20%	35

*10 Note: Land use activities within the Shoreland Zone shall conform to the minimum lot size and shore fron requirements set forth in Article 4.16

4.13 Uses Permitted Without a Permit: Shoreland and Resource Protection Zones

A. Activities and Land Uses allowed in both the Shoreland and Resource Protection Zones without a permit:

1. Non-intensive and non-commercial recreational uses not requiring structures, such as hunting, fishing and hiking.

2. Motorized vehicular traffic on roads and established trails.

3. Timber management activities, except timber harvesting.

4. Fire prevention activities.

5. Wildlife management practices.

6. Soil and water conservation practice.

7. Mineral exploration disturbing less than one hundred (100) square feet of ground surface area.

8. Surveying and resource analysis.

9. Emergency operation, as defined.

10. Essential services accessory to permitted uses.

11. A temporary public hospitality facility, provided that the following conditions are met:

a. Such facility is located within the Goose Rocks Zone;

b. Such facility is anchored or secured so as to prevent it from tipping or becoming dislodged;

c. Such facility will be removed by the Town just prior to a storm, tide or other event that is anticipated to cause the water level to rise to the elevation level of the facility; and

d. Such facility is located on land that is currently developed and that no longer exists in its natural state.

4.14 Uses Permitted; Shoreland Zone

In those portions of the Shoreland Zone which are not within the Resource Protection Zone only those uses permitted in the underlying zone shall be permitted. In addition to permits required elsewhere in this Ordinance, the following activities shall require permits as follows:

A. Activities and Land Uses Requiring a Permit from the Code Enforcement Officer issued in accordance with the provisions in Article 1.

1. Filling or other earthmoving activity and involving more than five (5) cubic yards of earth within any twelve-month period.

2. Clearing of vegetation for approved construction and other allowed uses.

3. Mineral exploration activities disturbing less than one hundred (100) square feet of ground surface.

4. Single and two family dwellings including driveways.

5. Structures accessory to allowed uses.

6. Uses similar to uses requiring a CEO permit.

B. Activities and Land Uses Requiring approval from the Planning Board issued in accordance with the provisions in Article 10.

1. Road construction.

2. Mineral extraction including sand and gravel.

3. Essential services (except that non-roadside or cross country distribution lines involving ten (10) or fewer poles in the Shoreland Zone may be approved by the CEO).

4. Public and private recreational areas involving minimal structural development.

5. Parking facilities.

6. Any commercial, industrial, governmental or institutional use permitted in the underlying zone.

7. Campgrounds.

8. Marinas.

9. Piers, docks, wharves, bridges, or other structures and uses extending over or below the normal high water line of a body of water or within a wetland.

10. Any use similar to uses requiring approval from the Planning Board.

4.15 Uses Permitted: Resource Protection Zone

A. Activities and Land Uses Requiring approval from the Code Enforcement Officer. The following activities may occur in the Resource Protection Zone with approval from the Code Enforcement Officer issued in accordance with the provisions in Article 11:

1. Timber harvesting.

2. Clearing of vegetation for approved construction or other allowed uses.

3. Filling or other earthmoving activity of less than five (5) cubic yards within any twelve (12) month period.

4. Uses similar to uses allowed without a permit.

5. Uses similar to uses requiring approval from the Code Enforcement Officer.

B. Activities and Land Uses Requiring approval form the Planning Board. The following activities and land uses may occur in the Resource Protection Zone with a permit from the Planning Board issued in accordance with the provisions in Article 10:

1. Agriculture.

2. Road and driveway construction for access to a use permitted within the Resource Protection Zone as allowed by the standards in Article 5.12.

3. Structures accessory to permitted uses, but not the accompanying principal structures.

4. Non-residential facilities for educational, scientific, or nature interpretation purposes.

5. Filling or other earthmoving activity of more than five (5) cubic yards within any twelve (12) month period.

6. Public and private parks and recreation areas involving minimal structural development.

7. Piers, docks, wharves, bridges, causeways and uses projecting into the water.

8. Public utilities and essential services.

9. Mineral extraction including sand and gravel extraction.

10. Uses similar to uses requiring approval from the Planning Board.

4.16 Lot Standards

A. All permitted or conditional uses allowed in the underlying zone shall, if conducted within the Shoreland Zone, conform with the stricter of the requirements in the underlying zone or the following provisions:

Minimum Lot Standards

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
Residential per dwelling unit		
1. Within the Shoreland Zone Adjacent to Tidal Areas	40,000	150
2. Within the Shoreland Zone Adjacent to Non-Tidal Areas	40,000	200
Community and Commercial Recreation		
3. Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	40,000	200
Water dependent uses		
4. Within the Shoreland Zone Adjacent to Tidal Areas	same as underlying zone	same as underlying zone

Other uses

5.	Within the Shoreland Zone Adjacent to Tidal Areas	40,000	200
6.	Within the Shoreland Zone Adjacent to Non-Tidal Areas	60,000	300

B. Land below the normal high water mark of a body of water or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

C. Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

D. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

E. If one or more residential dwelling unit, principal commercial structure, or principal industrial structure is constructed or established on a single parcel, all dimensional requirements shall be met for each dwelling unit and principal structure.

4.17 Structures and Setbacks

A. All structures in the Shoreland Zones shall be set back at least seventy-five (75) feet horizontal distance from the normal high water mark of bodies of water, tributary streams, and from the upland edge of a wetland, except that in the Dock Square Zone, the setback shall be at least twenty-five (25) feet, horizontal distance. In areas zoned Resource Protection, the setback requirement shall be two hundred fifty (250) feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition:

1. The body of water, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the body of water or wetland as an operational necessity, such as piers, docks, and retaining walls, nor to other functionally water-dependent uses. Only water-dependent uses and structures may be located below the normal high-water mark of tidal waters within the Town's geographic boundaries, provided that all necessary permits and approvals are obtained. A tributary stream may be perennial or intermittent. Where a tributary stream is present within the Shoreland Zone, setback standards from that tributary stream are applicable.

2. On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required body of water, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area or eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

3. A building or structure built on or over a pier, dock, wharf or other structure extending beyond the normal high water mark of a body of water or within a wetland, which was in existence on May 12, 1985, and which contained a principal use which was not water dependent on that date, may be used for any other use which is allowed in the underlying zone, except a residential use.

4. All structures shall conform to the height restrictions set forth in Article 6.2 of this Ordinance. The lowest floor elevation or openings of all buildings and structures (except for accessory structures as defined in the Flood Plain Management Ordinance), including basements, shall be elevated at least two (2) feet above the elevation of the one hundred (100) year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.

5. The total foot print area of all structures, parking lots and other non-vegetated surfaces, within the Shoreland Zone shall not exceed twenty (20%) percent of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the Dock Square Zone, where lot coverage shall not exceed seventy (70%) percent.

6. Permanent structures, and expansions thereof, projecting into or over bodies of water shall require a permit from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A. § 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

7. Notwithstanding the requirement stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A. § 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

8. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:

   a. The site has been previously altered and an effective vegetated buffer does not exist;

   b. The wall(s) is(are) at least twenty-five (25) feet, horizontal distance, from the normal high-water line of a water body, tributary steam, or upland edge of a wetland;

   c. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;

   d. The total height of the wall(s), in the aggregate, is no more than twenty-four (24) inches;

   e. Retaining walls are located outside of the one hundred (100)-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps of Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils;

f. The area behind the wall is re-vegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and

g. A vegetated buffer area is established within twenty-five (25) feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

i. The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking, the area must be supplemented with leaf or bark mulch

ii. Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of storm water runoff;

iii Only native species may be used to establish the buffer area;

iv A minimum buffer width of fifteen (15) feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;

v. A footpath not to exceed the standards in Article 5.4 B 2, may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within seventy-five (75) feet, horizontal distance, of a body of water, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

4.18 Goat Island Light Contract Zone

Permitted Uses	Conditional Uses Subject to Site Plan Review*
Activities listed under Article 4.13 and 4.15 Uses Permitted: Resource Protection	Activities listed under Article 4.18 - Goat Island Contract Zone

Goat Island Light Contract Zone

Contract Zoning Agreement Between the Town of Kennebunkport and the Kennebunkport Conservation Trust

This Contract Agreement is made this 9th day of June, 2009 by and between the **Town of Kennebunkport**, a body corporate and politic located in the County of York and State of Maine (hereinafter the "Town") and the **Kennebunkport Conservation Trust**, a body corporate located in the County of York and State of Maine (hereinafter the "Trust").

WHEREAS, the Kennebunkport Conservation Trust is the owner of a parcel of real estate located in Kennebunkport, Maine which is shown on Tax Map 29, Block 5, Lot 4 (hereinafter the "Property") and is shown on Exhibit 1 attached hereto and incorporated herewith.

WHEREAS, all of the property is located in the Farm and Forest, Resource Protection and Shoreland Zones.

WHEREAS, the property is improved with a lightkeepers house, light tower, boat house with boat ramp, electrical utility building, and a seasonal dock, which are operated as such and portions thereof are legal conforming uses in these zones.

WHEREAS, the Trust desires to reconstruct a number of buildings that have historically existed on Goat Island for the purpose of preserving a significant part of Kennebunkport history, while providing educational and recreational opportunities for the public.

WHEREAS, the Trust is proposing to reconstruct a number of historically significant structures as portrayed on Exhibit 1A.

WHEREAS, the Trust is not able to reconstruct such buildings due to restrictions imposed by the Kennebunkport Flood Plain Management Ordinance and Land Use Ordinance.

WHEREAS, the Trust wishes to create a separate zone known as the Goat Island Light Contract Zone which will enable the reconstruction of a number of historically significant structures while also allowing for recreational and educational opportunities for the general public, with appropriate conditions and restrictions to protect the public.

WHEREAS, the Town has the authority to enter into a contract rezoning for the Property pursuant to Title 30-A M.R.S.A. § 4352 and Article 13 of the Kennebunkport Land Use Ordinance.

WHEREAS, after notice and hearing and due deliberation on the contract rezoning, the Kennebunkport Planning Board recommends the contract rezoning of the Property to the Board of Selectmen.

WHEREAS, the Planning Board and the Board of Selectmen have determined that the rezoning will be pursuant to and consistent with the Town's Comprehensive Plan.

WHEREAS, the rezoning has been authorized at Town Meeting.

NOW THEREFORE, in consideration of the mutual promises made to each other, the parties covenant and agree as follows:

1. The Town will amend the Zoning Ordinance and map to create and make reference to the Goat Island Light Contract Zone as identified on Exhibit 1.

2. Subject to final Site Plan approval of the Planning Board and after public hearing, the Trust will be authorized to further develop the Property according to the specifications and conditions below in this Contract Zone and as depicted in Exhibit 1 and Exhibit 1A which is incorporated herewith:

    A. To construct a single-story structure no larger than 14'x 26" for storage.

    B. To construct a covered walkway 10'x 125' between the existing lightkeepers house and the existing light tower.

    C. To construct a 20'x 20' Bell Tower.

    D. No structure on the island is to exceed forty (40') feet in height.

    E. To allow the continued operation of the light house along with recreational and educational opportunities for the public.

    F. To allow the operation of a museum for display of artifacts and other items to the public.

    G. To allow the continued residential use for the lighthouse keeper and guests.

    H. To allow special events to be hosted under the direction of the Trust.

    I. To allow excursion boats access to the island in conjunction with Trust sponsored activities.

J. Public access to the island is encouraged with discretion given to the Trust to set hours and conditions of operation.

K. All structures and uses shall fully comply with restrictions imposed by the Maine Historic Preservation Commission.

3. In reviewing any application involving the Property, the Planning Board will apply the standards set forth in the Kennebunkport Land Use Ordinance except as modified by the provisions of this Goat Island Light Contract Zone.

4. The Trust shall record the Contract Zoning Amendment in the York County Registry of Deeds and shall submit proof of recording to the Town's Code Enforcement Officer before any site work is undertaken or any building permits are issued.

5. The provisions of this Contract Zoning Amendment shall be deemed restrictions on the use of the Property and shall be amended only upon further written agreement of the Trust and/or its successors in interest to the Property and upon approval of a Town Meeting.

6. The above restrictions, provisions and conditions are an essential part of the rezoning. They shall run with the Property and shall bind the Trust, its successors in interest and any assigns of the Property or any party in possession or occupancy of the Property or any part thereof and shall inure to the benefit of and be enforceable by the Town.

7. If any of the restrictions, provisions, conditions or portions of this Agreement is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portions shall be deemed as separate, distinct and independent provisions and such determination shall not affect the validity of the remaining portions hereof.

8. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Town of Kennebunkport Land Use Ordinance.

9. The Town shall have the right to enforce the terms of this contract zone in a court of competent jurisdiction.

ARTICLE 5: SHORELAND AND RESOURCE PROTECTION PERFORMANCE STANDARDS

In addition to the Town-wide Regulation in Article 6, and the Performance Standards for Specific Activities and Land Uses in Article 7, the following performance standards shall apply to land uses in Shoreland, Stream Protection and Resource Protection.

5.1 Purpose

To further the maintenance of safe and healthful conditions and general welfare; prevent and control water pollution; protect spawning grounds, fish, aquatic life, bird and other wildlife habitat; control building sites, placement of structures and land uses; and conserve shore cover, visual as well as actual points of access to inland and coastal waters and natural beauty.

5.2 Agriculture

A. All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (Title 7 M.R.S.A. § 4201-4209).

B. There shall be no new tilling of soil within twenty-five (25) feet, horizontal distance of tributary streams and freshwater wetlands; nor within seventy-five (75) feet, horizontal distance, from other bodies of water and coastal wetlands. Operations in existence on the effective date of this Ordinance and not in conformance with this provision may be maintained.

C. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area within the Shoreland Zone, shall require a Conservation Plan to be filed with the Planning Board, which meets the standards of the State Soil and Water Conservation Commission, and is approved by the York County Soil and Water Conservation District. Non-conformance with the provisions of such Conservation Plan shall be considered to be a violation of this Ordinance.

D. Manure shall not be stored or stockpiled within seventy-five (75) feet, horizontal distance, of bodies of water, tributary streams, or wetlands. All manure storage areas within the Shoreland Zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

E. Newly established livestock grazing areas shall not be permitted within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands; nor within seventy-five (75) feet, horizontal distance, of other bodies of water and coastal wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a York County Soil and Water Conservation Plan and filed with the Planning Board.

5.3 Campgrounds

Campgrounds shall conform to the minimum requirements imposed under State Licensing Procedures and the following:

A. Recreational vehicle and tenting areas shall meet the following criteria:

1. The site of the campground shall contain a total area of at least five thousand (5,000) square feet per recreational vehicle, tent, or shelter, not including roads and driveways. Land supporting wetland vegetation, and land below the normal high water mark of a body of water shall not be included in calculating land area per site.

2. Each recreational vehicle, tent or shelter site shall be provided with a trash receptacle and fireplace.

3. No recreational vehicle, trailer or tent shall be allowed to remain in a campground on a permanent basis.

B. The areas intended for placement of recreational vehicles, tents or shelters, and utility and service buildings shall be set back a minimum of seventy-five (75) feet, horizontal distance, from the normal high water line of bodies of water and tributary streams, and the upland edge of a freshwater or coastal wetland; and a minimum of one hundred (100) feet from the other exterior lot lines of the campground.

C. All campgrounds shall be screened from adjacent land areas by a continuous landscaped area not less than twenty-five (25) feet in width containing evergreen shrubs, trees, fences, walls, or any combination thereof which forms an effective visual barrier of not less than six (6) feet in height.

5.4 Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

A. In a Resource Protection Zone cutting or removal of vegetation shall be limited to uses expressly authorized in the Zone.

Within the Shoreland, and Resource Protection Zones, invasive species may be removed by manual or hand tools or other methods as approved by the Department of Environmental Protection. Where necessary to control erosion, a replanting with native plants is required to replace any removed invasive species.

B. In the Shoreland Zone other than Resource Protection areas, and except to allow for the development of permitted uses, within a strip of land seventy-five (75) feet, horizontal distance, from any body of water, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

1. Existing lawn areas may not be expanded or relocated. Gardens may be moved or expanded within existing lawns, provided no invasive species are used.

2. There shall be no cleared area greater than two hundred fifty (250) square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

3. Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other natural vegetation is maintained. For purposes of this section, a "well-distributed stand of trees" shall be defined as maintaining a rating score of 16 or more in each 25 foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system:

Diameter of Tree at 4 ½ feet Above:

Ground Level (Inches)	Points
2 - < 4 in.	1
4 - < 8 in.	2
8 - < 12 in.	4
12 in. or greater	8

The following shall govern in applying this point system:

a. The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;

b. Each successive plot must be adjacent to, but not overlap a previous plot;

c. Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;

d. Any plot not containing the required points must have no vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;

e. Where conditions permit, no more than fifty (50%) percent of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than twelve (12) inches in diameter.

For purposes of this Article "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until five (5) saplings have been recruited into the plot.

Notwithstanding the above provisions, selective cutting of no more than forty (40%) percent of the total volume of trees four (4) inches or more in diameter, measured at four and one half (4 ½) feet above ground level, may be removed in any ten (10) year period.

4. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered or removed, except to remove an invasive plant species or to provide for a footpath or other permitted uses as described in paragraphs 2 and 3 above.

5. Pruning of tree branches, on the bottom one third (⅓) of the tree is allowed.

6. In order to maintain a buffer strip of vegetation, when the removal of storm damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

7. No activity shall result in accelerated erosion or sedimentation with the buffer strip.

This Article does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

C. At distances seventy-five (75) feet, or greater horizontal distance, from the normal high-water line of any body of water, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40%) percent of the volume of trees four (4) inches or more in diameter, measured four and one half (4½) feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40%) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area. In no event, shall cleared openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate twenty-five (25%) percent of the lot area within the Shoreland Zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the Dock Square and Riverfront Zones.

D. Where natural vegetation is removed, it shall be replaced with other vegetation that is equally effective in retarding erosion and preserving natural beauty.

E. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.

F. Fields and other cleared openings which have reverted to primarily shrubs, trees or other woody vegetation shall be regulated under the provisions of this section.

5.5 Construction of Beaches

Construction of a beach on any great pond, river, stream, brook or coastal wetlands shall require a permit from the Department of Environmental Protection.

5.6 Erosion and Sedimentation Control

A. All activities which involve filling/grading, excavation or other similar activities which result in un-stabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

1. Mulching and re-vegetation of disturbed soil.

2. Temporary runoff control features such as hay bales, silt fencing or diversion ditches.

3. Permanent stabilization structures such as retaining walls or riprap.

B. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.

C. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

D. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases, permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

1. Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until vegetation is established.

2. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.

3. Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.

4. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions.

5. Fill shall be stabilized according to accepted engineering standards.

6. Fill shall not restrict a natural drainage way, a flood way, or destroy the storage capacity of a flood plain.

7. Sides of a channel or artificial waterway shall be stabilized to prevent slumping.

8. Sides of channels or artificial watercourses shall be constructed with slopes of two (2) feet horizontal to one (1) foot vertical or less steep, unless bulkheads or riprapping are used.

5.7 Essential Services

A. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

B. The installation of essential services, other than dry hydrants for drawing water for fire protection purposes and other road-side distribution lines, is not allowed within seventy-five (75) feet of the normal high water mark of a stream (exclusive of those areas within two hundred and fifty (250) feet of the upland edge of tidal water, or the upland edge of a freshwater or coastal wetland) or in the Resource Protection or Stream Protection Zone. Notwithstanding this general prohibition, the installation of essential services shall be allowed to provide services to a permitted use within said areas, if the applicant can demonstrate that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

C. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

5.8 Historical and Archaeological Sites

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

5.9 Mineral Exploration and Extraction

A. Mineral exploration to determine the nature of extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measure, so as to restore disturbed areas and to protect the public health and safety.

B. Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph 4 below.

2. No part of any extraction operation, including drainage and runoff control features, shall be permitted within seventy-five (75) feet, horizontal distance, of the normal high-water line of any body of water, tributary stream, or upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal of any property line, without written permission of the owner of such adjacent property.

3. Developers of new gravel pits along Significant River Segments shall demonstrate that no reasonable mining site outside the Shoreland Zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.

4. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

   a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site. See NOTE below.

   b. The final graded slope shall be two and one-half to one (2 ½:1) slope or flatter.

   c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

5. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operation on surrounding uses and resources.

   NOTE: The State of Maine Solid Waste Laws, the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of materials.

5.10 Parking Areas

A. Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the zone in which such areas are located, except that parking areas for commercial or public piers in conjunction with adjoining commercial areas, may be located no less than twenty-five (25) feet, horizontal distance, from the shoreline. Lot coverage in conjunction with these parking areas may cover up to seventy (70%) percent of the lot provided all other standards are met. The setback for public boat launching facilities shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

B. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent storm water runoff from flowing directly into a body of water, tributary stream or wetland and where feasible, to retain all runoff on-site.

C. Parking Space: Dimensional Requirement: ten (10) feet wide and twenty (20) feet long, except parking spaces for a vehicle and boat trailer shall be forty (40) feet long.

5.11 Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High Water Line of a Body of Water or Within a Wetland.

A. Any new permanent, temporary, or material expansion or alteration of a pier, dock, wharf, bridge, or other structure or use extending over or below the normal high water line of a body of water or within a wetland shall require a Site Plan Review and approval by the Planning Board. Any new permanent structure, or expansion thereof, shall require a permit from the Department of Environmental Protection (DEP) pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A. § 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters. Applicants shall also be required to obtain, when necessary, other approvals including, but not limited to, U.S. Fish and Wildlife Service, Maine Departments of Inland Fisheries and Wildlife, Marine Resources, Conservation, and the Board of Selectmen. The applicant shall present a copy of a submerged land lease from the Maine Bureau of Public Lands, if applicable. The Board of Selectmen, in consultation with the Harbormaster and the Waterfront Advisory Committee having jurisdiction, shall review and approve the proposed project according to the procedures and standards set forth in Title 38 M.R.S.A. § 1021 through 1027, before the application may be submitted to the Planning Board.

B. In addition to all required Federal or State permits, structures and uses shall also conform to the following:

1. For the purpose of the protection of property against flood and/or storm damage and the protection of identified sensitive environmental habitats, accessory residential piers, docks, wharves walkways, ramps or floats shall not be permitted in any areas identified as Velocity Zones as shown on the most recent Flood Insurance Rate Map produced by FEMA or as determined by FEMA via the Letter of Map Amendment process (LOMA).

2. No new permanent, temporary or material alteration of a pier, dock, wharf, bridge or other structure shall be permitted within the wildlife habitat of species considered endangered or threatened by the Maine Department of Inland Fisheries and Wildlife or the U.S. Fish and Wildlife Service.

3. Piers, docks, wharves, walkways, ramps and floats shall be constructed to meet the standards for "Appurtenant Structures" as set forth in FEMA 55, Coastal Construction Manual, third edition, June 2000, or as amended. The area of a float or floats shall not exceed two hundred (200) square feet, except that when shared by two or more abutting property owners as delineated in Article 5.11.B.4, two such floats may be used.

4. Accessory residential piers, docks, wharves walkways, ramps or floats require the lot to have a minimum of sixty (60) feet of shore frontage. If a property owner does not meet this standard, the applicant may co-apply with an abutter or abutters, and must demonstrate that in combination with such abutting property, this standard will be met. The agreement for partitioning, maintenance, and repair costs, outlining pier location and partitioning access, including any property easements, must be recorded with the York County Registry of Deeds, in the deeds of all affected properties. Once a property owner has entered into a shared pier agreement, that property owner forfeits the right to build his or her own pier, or to enter into an agreement with another abutter for a second pier. Notwithstanding Section 6.1.B.2.E, the Planning Board may include a part of the lot that is part of a right-of-way in satisfying the minimum shore frontage requirement of this paragraph B.4 only, provided that the accessory residential pier, dock, wharf, walkway, ramp or float may be located in a manner that does not interfere with the use of the right-of-way and the Planning Board determines that including the part of the lot that is part of a right-of-way for this purpose would not interfere with any other provision of this ordinance. If such modification is approved, the Planning Board shall include the modification in the Site Plan Review's written Findings of Fact and the applicant shall record the Findings of Fact with the York County Registry of Deeds before commencing any

work or before receiving a building or land use activity permit from the Code Enforcement Officer. Subdivisions and Condominium Homeowner Associations with sixty (60) feet or more frontage are allowed to build only one pier and if the frontage is at least one hundred (100) feet may have a maximum of two floats.

5. No portion of a pier or float shall be within twenty-five (25) feet of a property line or property line extension seaward, unless the pier is a shared pier as per Article 5.11.B.4.

6. Access from the shore shall be developed on soils and appropriate for such use and constructed so as to control erosion and avoid adverse impact on coastal or freshwater vegetation. Any ramp, walkway or pier shall be at least one (1) foot above the ground, as measured from the lowest part of the structure. Deck boards shall be a maximum of six (6) inches in width and spaced one half (½) inch apart. Paint, stains and water proofing shall be applied in accordance with EPA standards as not to contaminate surrounding areas. Coastal banks shall be protected from erosion by the use of suitable stairs no wider than four (4) feet.

7. The location of any structure shall not interfere with existing developed or natural beach areas, nor impede legitimate passage along a beach.

8. The facility shall be located so as to minimize adverse effects on fisheries.

9. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A noncommercial ramp, pier, walkway, dock or wharf shall not be wider than four (4) feet. Pairs of pilings or supports shall be no closer than ten (10) feet.

10. Lighting shall be to illuminate walkways, ramps and floats only. Spotlights and floodlights or any other fixture that casts a direct beam are specifically prohibited.

11. No new structure shall be built on, over or abutting a pier, dock, or other structure extending beyond the normal high waterline of a body of water or within a wetland unless the structure requires direct access to the body of water or wetland as an operational necessity.

12. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the DEP, pursuant to the Natural Resources Act, Title 38 M.R.S.A. § 480-C.

13. No existing structures built on or over a pier, dock, wharf or other structure extending beyond the normal high waterline of a body of water or within a wetland shall be converted to residential dwelling units in any district.

14. Except in the Riverfront and Dock Square Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high waterline of a body of water or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

15. Any accessory residential pier, walkway, dock or wharf, including ramps and floats, shall be no longer than a total length of one hundred (100) feet nor extend more than one fifth (1/5) of the way across a body of water. The Planning Board may, upon review, modify the length requirement if it is demonstrated that no other reasonable alternative exists to provide water access from the lot.

16. Off-season storage of temporary floats, ramps or walkways must be on upland areas so as to not damage marine or freshwater vegetation. Caution must be exercised to avoid damage to shoreline banks and shoreline vegetation. Ramps may be stored on piers or docks. All stored items must be properly and safely secured so as not to become a wind or wave borne hazard in a severe storm or hurricane.

17. Accessory residential piers, docks, wharves, walkways, ramps and floats shall not be used for any commercial purposes, other than permitted commercial fishing or lobstering conducted by the landowner.

18. Enlargements, alterations, repairs, or the rebuilding of non-conforming piers, docks, walkways, wharves, ramps or floats shall be governed by the provisions of Article 8 of this Ordinance.

5.12 Roads and Driveways

The following standards shall apply to the construction of all roads and/or driveways and drainage systems, culverts and other related features in the Shoreland Zone:

A. All roads and driveways shall be set back at least seventy-five (75) feet, horizontal distance from the upland edge of bodies of water, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon a clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the body of water, tributary

stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the body of water, tributary stream, or wetland.

On slopes of greater than twenty (20%) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5%) percent increase in slope above twenty (20%) percent.

This paragraph does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures, and facilities located nearer to shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this Article except that portion of the road or driveway necessary for direct access to the structure.

B. Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a body of water, tributary stream or wetland.

C. New roads and driveways are prohibited in the Resource Protection Zone except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the zone.

D. Road crossings of watercourses shall be kept to the minimum number necessary.

E. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Article 5.6.

F. Road and driveway grades shall be no greater than ten (10%) percent except for segments of less than two hundred (200) feet.

G. In order to prevent road and driveway surface drainage from directly entering bodies of water, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an un-scarified buffer strip at least fifty (50) feet plus two (2) times the average slope in width between the outflow point of the ditch or culvert and the normal high water mark of a body of water, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an un-scarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

H. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto un-scarified buffer

strips before the flow gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply:

1. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

Grade (percent)	Spacing (feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
16-20	60-45
21+	40

2. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10%) percent or less.

3. On sections having slopes greater than ten (10%) percent, ditch relief culverts shall be placed at approximately a thirty (30º) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

4. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

I. Bottoms of culverts shall be installed at streambed levels.

J. All cut or fill banks and areas of exposed mineral soil shall be re-vegetated or otherwise stabilized as soon as possible.

K. Bridges or culverts of adequate size and design shall be provided for all road and driveway crossings of water courses which are to be used when surface waters are unfrozen. The requirement for a bridge or culvert may be waived by the Planning Board upon a finding that it is not required to meet the standards contained in this Ordinance regarding erosion, sedimentation, and drainage.

L. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

5.13 Septic Waste Disposal

All subsurface disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:

1. Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than one hundred fifty (150) feet, horizontal distance from the upland edge of a body of water or wetland, unless installed under the provisions of Article 5.13.4.

2. A holding tank is not allowed for a first-time residential use in the Shoreland Zone.

3. Replacement of an existing subsurface wastewater disposal system is authorized if the replacement is required by law and there is no suitable area further away from the upland edge of a body of water or wetland.

4. Installation of a new subsurface wastewater disposal system field, including fill extensions, shall be permitted no closer than one hundred fifty (150) feet, horizontal distance from the upland edge of a body of water for first-time development on lots within the Shoreland Zone, unless no reasonable alternative exists as determined by the Licensed Plumbing Inspector. If no other reasonable alternative exists, the Licensed Plumbing Inspector may reduce the setback requirement to no less than one hundred (100) feet upon a clear showing that appropriate measures will be taken to minimize any negative impacts to the body of water.

5.14 Soils

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial developments and other similar intensive land uses, shall require a soils report based on any on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientist, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soils and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitation where they exist.

See also Article 6.3 Soil Suitability – Town Wide Regulations

5.15 Storm Water Runoff

A. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of storm waters.

B. Storm water runoff control systems shall be maintained as necessary to ensure proper function.

5.16 Water Quality

A. No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the body of water tributary stream or wetland.

B. No person shall convert a seasonal dwelling to a year-round or principal dwelling without first obtaining a seasonal conversion permit from the Local Plumbing Inspector.

5.17 Timber Harvesting

A. In a Resource Protection Zone abutting a great pond, timber harvesting shall be limited to the following:

1. Within the strip of land extending seventy-five (75) feet, horizontal distance, inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:

a. The ground is frozen;

b. There is no resultant soil disturbance;

c. The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the seventy-five (75) foot strip of land;

d. There is no cutting of trees less than six (6) inches in diameter; no more than thirty (30%) percent of the trees six (6) inches or more in diameter, measured at four and one half (4½) feet above ground level, are cut in any ten (10) year period; and a well-distributed stand of trees and other natural vegetation remains; and

e. Licensed Professional Forester has marked the trees to be harvested prior to a permit being issued by the municipality.

2. Beyond the seventy-five (75) foot strip referred to in Article 5.17.A above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over four and one half (4½) inches in diameter at four and one half (4½) feet above ground level be reduced to less than thirty (30) square feet per acre.

B. Except in areas as described in Article 5.17.A above, timber harvesting shall conform with the following provisions:

1. Selective cutting of not more than forty (40%) percent of the total volume of trees four (4) inches or more in diameter measured at four and one half (4½) feet above ground level on any lot in any ten (10) year period is permitted. In addition:

a. Within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA and within seventy-five (75) feet, horizontal distance, of the upland edge of bodies of water, tributary streams, or the upland edge of a wetland, there shall be no clear-cut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

b. At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA and greater than seventy-five (75) feet, horizontal distance, from the normal highwater line of other bodies of water or the upland edge of a wetland, harvesting operations shall not create single clear-cut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clear cut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

2. Timber harvesting operations exceeding the forty (40%) percent limitation in subparagraph a. above may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine Licensed Professional Forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purpose of this Ordinance. The Planning Board shall

notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

3. No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal-high water line of a body of water. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a body of water or tributary stream shall be removed.

4. Timber harvesting equipment shall not use stream channels as travel routes except when:

   a. Surface waters are frozen; and

   b. The activity will not result in any ground disturbance.

5. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

6. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary steam. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.

7. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located so that an un-scarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10%) percent shall be retained between the exposed mineral soil and the normal high-water line of a body of water or upland edge of a wetland. For each ten (10%) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the body of water or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty-five (25) feet, horizontal distance, from the normal high-water line of a body of water or the upland edge of a wetland.

C. Anticipatory Repeal of Municipal Timber Harvesting Regulation.

In accordance with Title 38 M.R.S.A. § 438-B, it is the intent of the Town to cease municipal regulation of timber harvesting activities in the Shoreland Zone when statewide timber harvesting standards go into effect, at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer and enforce those standards within the Town. Accordingly, upon notification by the State that statewide timber harvesting standards have gone into effect, the Town shall, at the next annual or special town meeting, authorize the repeal of all provisions in this Ordinance (including but not limited to Article 5.17.A and 5.17.B above) that regulate timber harvesting activities within the Shoreland Zone, and shall notify the Director of the Bureau of Conservation of the repeal.

NOTE: The statutory date established under Title 38 M.R.S.A. § 438-A (5) is the effective date of state-wide timber harvesting standards. That date is "the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commission of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards. Title 38 M.R.S.A. § 438-A (5) further provides that "the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards".

ARTICLE 6: TOWN WIDE REGULATIONS

6.1 General Provisions

A. No structures shall be erected or used, and no lot shall be used or divided, unless in conformity with the provisions of this Ordinance. All structures and lots, and uses of structures and lots, which fail to conform with the provisions of this Ordinance are prohibited, except as provided herein.

B. All structures, as defined in this Ordinance, shall be required to meet dimensional setback requirements unless exempted as set forth below: (Setbacks and/or restrictions may differ in the Shoreland and Resource Protection Zones.)

1. The following structures shall be exempt from meeting the front, side and rear property line setbacks except where prohibited in the Shoreland and Resource Protection Zones:

   a. Any combination of materials covering less than ten (10) square feet constructed or erected above, below or upon the surface of the ground or water such as mailboxes, light poles and the like;

   b. Walls or fences;

   c. An awning or tent for a specific event(s) that meets the requirements of 11.2.L;

   d. A retractable awning or shade used solely to screen a door or window;

   e. Backyard tent used for sleeping;

   f. An enclosed, self-contained portable toilet, such as a “Portapotty” by Portables, Inc. and the like placed on a site for less than six (6) months per calendar year or as long as necessary for approved construction.

2. The following structures shall be exempt from meeting setback requirements from any wetlands or from the normal high water mark of water bodies in all zones including the Shoreland and Resource Protection Zones. Any structures other than those listed below shall be required to meet any required setbacks from bodies of water or wetlands.

a. A temporary ramp, placed on a site for less than six (6) months per calendar year, and used for the purpose of providing public access to publicly owned property in accordance with the Americans with Disabilities Act.

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

D. When a lot is divided by a zone boundary, the requirements and standards of this Ordinance shall apply as follows:

1. When the lot area is equal to or less than 20,000 square feet, the provisions of the more restrictive zone shall apply to the lot as a whole.

2. When the lot area is more than 20,000 square feet, the provisions of this Ordinance which apply to the larger portion of the lot may be applied to that part of the smaller portion of the lot which is within thirty (30) feet of the zone boundary.

E. No part of any lot which is below the normal high water mark of any body of water, no part of any lot which is part of a right-of-way, other than utility easements servicing the lot or tree maintenance easements granted to the Town, and also excluding lands which are below the normal high water mark of any body of water or wetlands, as defined by this Ordinance, regardless of size shall be used for the purpose of computing lot area or any size, setback, frontage, or density requirement of this Ordinance.

F. Land within the lines of a right-of-way or street on which a lot abuts shall not be counted as part of such lot for the purpose of meeting the area requirements of this Ordinance even though the fee to such land may be in the owner of such lot.

G. No new lot may be created with less than the minimum lot area, as defined in this Ordinance that is required for the zone in which it is located. No part of any lot that is excluded from the gross lot area shall be used for the purpose of computing lot area of any size, setback, frontage or density requirement of this Ordinance. This section is not intended to circumvent the operation of laws relating to pre-existing non-conformities or other laws affecting the use and/or development of lots that do not meet the current minimum lot size requirements in this Ordinance.

H. If a lot in separate ownership is reduced in area or dimension below the minimum lot size or lot width requirements of this Ordinance as a result of the taking of a portion of the lot by eminent domain, or a result of a conveyance of a portion of the lot for a purpose for which the land could have been taken by eminent

domain, such transfer shall not be deemed to violate the minimum lot size or minimum lot width requirements of this Ordinance; and the portion of the lot remaining after the transfer may be used for any use permitted in the applicable zone provided that applicable setback, lot coverage and building dimensional requirements are met. An existing structure located on the remaining portion of such a lot may be expanded or enlarged provided that the expansion or enlargement complies with applicable setback and dimensional requirements and does not result in a violation of lot coverage requirements.

6.2 Height Restrictions

In the Village Residential, Village Residential East, Cape Arundel, Free Enterprise and Farm and Forest zones, no structure or building shall exceed two and one-half (2½) stories or thirty-five (35) feet in building height as measured from the average elevation of the original ground level on all sides within twenty (20) feet of the building, not including such building features as chimneys, decorative cupolas, spires or similar non-inhabitable appurtenances. In the Dock Square, Riverfront, Goose Rocks, Cape Porpoise East, Cape Porpoise Square and Cape Porpoise West zones, no structure or building shall exceed two and one-half (2½) stories or thirty (30) feet in building height as measured from the average elevation of the original ground level on all sides within twenty (20) feet of the building, not including such building features as chimneys, decorative cupolas, spires or similar non-inhabitable appurtenances. These restrictions shall not apply to farm buildings not used for human habitation, municipal salt or sand sheds, chimneys, church steeples, water towers, flagpoles, windmills, or antennae provided that such structures are not used for human occupancy and are set back from all property lines a distance at least equal to their height.

6.3 Soil Suitability

In all districts, the approval of building permit applications shall be subject to evidence of satisfactory subsurface soil conditions for drainage and sewage disposal, and where on-site septic disposal is proposed, shall be subject to presentation of a completed site evaluation form (HHE-200) which evidences adequate soil conditions for sewage disposal prior to issuance of a building permit. As of June 13, 2006, any lot that has not received prior Planning Board review and approval must be served by a septic system located entirely within its boundaries.

6.4 Water Quality

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous, or solid materials of such nature, quality, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness, or be harmful to human, animal, plant or aquatic life.

6.5 Dust, Fumes, Vapors and Gases

Emission of dust, dirt, fly ash, fumes, vapors or gases, which could damage human health, animals, vegetation, or property, or which could soil or stain persons or property, at any point beyond the lot line of a commercial or industrial establishment creating such emission, shall be prohibited.

No land use or building shall produce offensive or harmful odors perceptible beyond the lot lines so as to create a public or private nuisance.

6.6 Explosive Materials

All flammable or explosive liquids, solids or gases shall be stored in a manner and location which is in compliance with the rules and regulations of the Maine Department of Public Safety and other federal and state regulations.

6.7 Construction in Flood Hazard Areas

In areas designated within the 100-year flood plain, all new construction, additions, and modifications to existing structures, including piers, docks, wharves, bridges and causeways, shall conform to the Town's Flood Plain Management Ordinance.

6.8 Outdoor Display

No merchandise, banners, displays or similar objects shall be permitted on or about the outside of structures except signs permitted by Article 6.12 of this Ordinance and yard sales on residential property for no more than three (3) days in any ninety (90) day period.

Upon application by an association representing merchants in any particular district, the Code Enforcement Officer may permit the outside display of merchandise for no longer than three (3) consecutive days in any ninety (90) day period for special promotional events involving more than three (3) merchants.

6.9 Off-Street Parking and Loading – Non-Residential

A. Except in the Dock Square Zone, the following standards shall apply to all new uses or establishments, and also to all existing uses or establishments which expand or increase their volume or intensity of use, whether such expansion occurs inside or outside of a building. All new or enlarged off-street parking, loading or vehicular service facilities including driveways shall also conform to this section.

1. Required off-street parking for all land uses shall be located on the same lot as the principal building or facility or within one hundred (100) feet measured along lines of access.

2. The Planning Board may approve the joint use of a parking facility by two (2) or more principal buildings or uses where it is clearly demonstrated that said parking facility would substantially meet the intent of the requirements of this Ordinance by reason of variation in the probable time of maximum use by patrons or employees of such establishments and where said parking facility is located within one hundred (100) feet of each establishment.

3. Parking spaces shall be provided as required and made available for use before the issuance of an occupancy permit under Article 11.8.

4. All parking areas shall be located off the street so that vehicles can be turned around without backing into the street.

5. Loading facilities shall be located so that trucks, trailers, and containers shall not be parked upon any town way. The following loading requirements shall be met:

   a. Office buildings, hotels and motels with a gross floor area of more than 100,000 square feet require one bay.

   b. Retail, wholesale, warehouse and manufacturing operations with a gross floor area of more than 5,000 square feet require the following:

5,001 to 40,000 sq. ft.	1 bay
40,001 to 100,000 sq. ft.	2 bays
100,001 to 160,001 sq. ft.	3 bays
160,001 to 240,000 sq. ft.	4 bays
240,001 to 320,000 sq. ft.	5 bays
320,001 to 400,000 sq. ft.	6 bays

   c. Each 90,000 square feet over 400,000 square feet requires one additional bay.

6. Off-street parking, either by means of open air spaces or by garage space, in addition to being a permitted use, shall be considered as an accessory use when required or provided to serve conforming uses located in any district.

7. The following minimum off-street parking requirements shall be provided and maintained:

Use	Minimum Required Parking
Boatyards	1 space/employee
Campgrounds	1 space/campsite
Churches, Theaters, Auditoria and Clubs	1 space/3 seats for every 100 sq ft of assemblage space if no fixed seats
Commercial Centers, Commercial Complexes, Retail Businesses and Ship Chandleries	1 space/200 sq ft of floor area used for retail area used for retail trade of display
Day Care Centers	1 space/4 children
Financial Institutions	1 space/150 sq ft of floor area
Funeral Homes	1 space/2 seats
Health Institutions	1 space/3 beds
Hotels, Motels and Inns	1 space/sleeping room
Libraries, Municipal Buildings, Museums and Public Utilities	1 space/600 sq ft of floor area
Manufacturing	1 space/employee based on the largest number of employees at any time
Marinas	1 space/slip
Marine Transport Services	1 space/2 passengers of capacity
Medical Offices	1 space/100 sq ft of floor area
Professional and Business Offices (other than Medical)	1 space/200 sq ft of floor area
Public Libraries in the Village Residential Zone	1 space/800 sq ft of floor area without any requirement for employee parking
Residential Mixed Use	Parking for the non-Residential Component based on the requirements listed in this section
Restaurants and Eating & Drinking establishments	1 space/3 seats
Schools	5 spaces/room used for purpose of instruction
Warehouses and Wholesaling Operations	1 space/employee based on above largest number of employees at any time

8. One (1) space for every two (2) employees on the largest shift shall be provided in addition to the above requirements, unless these requirements reference the number of employees.

9. For any structure or use not specifically provided for in Article 6.9.A.7 above, the Planning Board shall determine the number of off-street parking spaces required in order that the necessity of parking in the street may be eliminated.

10. Where floor area is to be used in calculation the number of required spaces, gross floor area shall be used unless otherwise noted.

11. Where not enclosed in a building and unless otherwise permitted by the Kennebunkport Planning Board in the course of Site Plan Review of Libraries in the Village Residential Zone, off-street parking and loading spaces shall be screened from view by a continuous landscaped area not less than six (6) feet in width, forming a visual barrier not less than five (5) feet in height along all public streets and exterior lot lines adjacent to residential uses, except that driveways shall be kept open as required in Article 10.7.B.1.d.

12. All applications for building permits for non-residential uses shall include an off-street parking and loading plan showing all elements necessary to indicate that the requirements above are fulfilled.

13. Unless otherwise permitted by the Kennebunkport Planning Board in the course of Site Plan Review of Libraries in the Village Residential Zone, parking spaces shall have a minimum width of ten (10) feet and a minimum length of twenty (20) feet when angular parking is permitted, the minimum width being measured along an imaginary line perpendicular to the lines marking the length of the space, and minimum length then being measured from that imaginary line parallel to the lines marking the spaces. In addition, parking area access lanes shall be a minimum of twelve (12) feet wide for one-way driving lanes and a minimum of twenty (20) feet wide for two-way driving lanes. Access lane widths are to be calculated from the end of the stripes in one bank of spaces to the end of stripes in the bank of spaces directly across the access lane. Spaces designated for use by the handicapped must be no less than the twelve (12) feet wide and no less than twenty (20) feet long.

14. Any parking accessory to a Community Use, where the principal community use was in existence on November 4, 2003, shall be exempted from the requirements of Article 6.9.A.4 (no backing into the street) and from the requirements of Article 6.9.A.11 (screening), but shall not be exempted from the other requirements in Article 6.9 or from the site plan review requirements of Article 10, where applicable. Such accessory

parking to a Community Use may be offered to the general public during hours when the Community Use is not in full operation, with the prior authorization of the Board of Selectmen. If so authorized, such parking for the general public during hours when the Community Use is not in full operation shall not be considered a separate use, notwithstanding the requirements of Article 1.6 and Article 4.

15. Any temporary overflow public parking, as defined by this Ordinance, shall be exempted from the requirements of this section. Such temporary overflow public parking may be offered to the general public only with the prior authorization of the Board of Selectmen, for a maximum of twenty-four (24) days per year per site, on property owned, operated or controlled by the Town of Kennebunkport. If so authorized, such temporary overflow public parking shall not be considered a separate principal use, notwithstanding the requirements of Article 1.6 and Article 4.

16. Parking spaces must be composed of sufficient impervious or semi-pervious material (e.g. asphalt, concrete, composites, gravel) to support a vehicle in all conditions. Semi-pervious materials such as "grass pavers" or similar materials can be used and can qualify for a reduction in lot coverage up to 50% of the material's total square footage.

6.10 <u>Residential Parking Standards</u>

1. Each single dwelling shall be provided with two off-street parking spaces. Accessory apartments shall be provided with parking in accordance with subsection 2.b below.

2. Each multiplex shall meet the following standards:

   a. The design, layout, size, area, construction, and screening standards of Articles 7.11 and 10.7 shall be met.

   b. Parking spaces shall be provided to conform with the number required in the following schedule:

   c.

1	bedroom units	1 space per unit
2	bedroom units	2 spaces per unit
3	and 4 bedroom units	2 spaces per unit

3. Off-street parking shall be provided for eldercare facilities in accordance with the following schedule:

1 space for each employee on the shift with the greatest number of employees

Plus

1 space for each independent living unit in which the occupant receives no supportive services

Plus

1 space for every two-congregate living or similar units in which the occupant receives only a basic level of supportive services

Plus

1 space for every three-assisted living or similar units or beds in a nursing home in which the occupant receives a high level of supportive services.

4. Parking spaces must be composed of sufficient impervious or semi-pervious material (e.g. asphalt, concrete, composites, gravel) to support a vehicle in all conditions. Semi-pervious materials such as "grass pavers" or similar materials can be used and can qualify for a reduction in lot coverage up to 50% of the material's total square footage.

5. Parking for residential components of Residential Mixed Use shall be as follows:

1 Bedroom Unit	1 Parking Space
2 or more Bedroom Unit	2 Parking Spaces

6. Parking for a Residential Rental Accommodation shall include one (1) additional off-street parking space per room rented, in addition to the minimum parking spaces required for the dwelling unit.

6.11 <u>Sanitary Provisions</u>

A. Connection to Public Facilities

All plumbing shall be connected to public collection and treatment facilities when required by other ordinances.

B. Subsurface Sewage Disposal

1. No plumbing Permit shall be issued for a subsurface disposal system unless:

a. The system meets the requirements of the State of Maine Subsurface Wastewater Disposal rules, C.M.R. Chapter 241; A second disposal site that meets the State Rules is not required unless mandated by other law. Any such site shall be shown on the permit application as a reserve area and be set aside on the plot plan for possible future use as a disposal site; and

b. Any other optional provisions adopted by the town have been complied with.

6.12 Signs and Billboards

A. General

Except for business directional signs permitted under paragraph B, all signs shall relate to goods and services available on the premises on which the sign is located, or to the availability of the premises themselves for sale, rent or lease.

B. Off-premise directional signs and official business directional signs as defined in Title 23 M.R.S.A. § 1903 shall not be permitted, except that directional signs not larger than six (6) inches in width and twenty-four (24) inches in length are permitted on posts provided for that purpose by the Town without the necessity of a permit. Such directional signs shall be placed on the Town posts on a space-available basis.

C. Size, Location and Illumination

1. No sign shall be erected adjacent to any public way in such a manner as to obstruct clear and free vision or where, by reason of its position, shape, color, illumination or working, the sign or billboard may interfere with, obstruct the view of, or be confused with any authorized sign, signal or device, or otherwise constitute a hazard to pedestrian or vehicular traffic.

2. Roof mounted signs are prohibited.

3. No sign or portion of a sign structure shall exceed twenty (20) feet in height measured from the adjacent road surface.

4. Illuminated signs shall be permitted, subject to the following restrictions and prohibitions:

   a. There shall be no intermittently illuminated, traveling light, animated, flashing light, or internally illuminated signs.

   b. All illuminated signs shall be shielded or hooded so the light source itself is not visible off of the premises.

5. In all zones, allowable square footage of signage per building occupant shall be based on the gross square footage of unit floor space and no sign shall exceed the area as permitted in Section 6.12.H.

6. All signs overhanging a sidewalk or public way shall be no less than ten (10) feet from the surface of the pavement.

7. No signs shall be posted on trees which are under the jurisdiction of the Tree Warden of the Town.

8. The area of a sign shall be calculated by measuring the area of the smallest rectangle capable of enclosing the sign in every plane. If a three-dimensional sign has a depth of more than one (1) foot, the area of the sign shall be calculated by measuring the total surface area of the smallest box capable of enclosing the entire sign.

9. Window lettering displaying information such as business name, hours of operation, website, etc. are permitted to occupy up to 35% of the glazed area per window. Lettering governed by this subsection shall not be considered signage for purposes of calculating the area of allowable square footage or number of signs. (See Section 6.12.H)

10. Signs erected or installed in the interior of a structure which form an integral part of a bona fide window display which is related to merchandise or services available within the structure shall not be considered signs for purposes related to this section.

D. Number of Signs

1. Except as expressly prohibited under this Ordinance, in all zones each business occupant or non-profit organization may erect sign(s) attached to the building. Freestanding signs shall be limited based on the specifications set forth in this Ordinance.

2. No free-standing sign shall be located within five (5) feet of the lot line adjacent to the street.

3. In addition to the signs permitted under subparagraph 1, and except as expressly prohibited under this Ordinance, on premise signs advertising the availability of the premises for sale, rent or lease shall be permitted.

E. Home Occupations Signs

One (1) sign identifying the name, address and profession of a permitted home occupation or a lawfully existing non-conforming home occupation shall be allowed provided such sign does not exceed two (2) square feet in area and is not illuminated.

F. Temporary Signs

The following temporary signs (in addition to those specified in Section 6.12.H) not exceeding six (6) square feet in area, may be posted in any zone for no longer than thirty (30) days:

1. Temporary Signs Giving Notice.

   Signs of a temporary nature such as political posters, advertisements of charitable functions, notices of meetings and other non-commercial signs of a similar nature, are permitted for a period not to exceed thirty (30) days and shall be removed by the person(s) who posted the signs. Temporary signs specified in this section shall not be attached to fences, trees, utility poles, or the like and shall not be placed in a position that will obstruct or impair vision or traffic or in any manner create a hazard or disturbance to the health and welfare of the general public.

2. Temporary Development or Construction Sign.

   One (1) temporary development or construction sign, attached to a building or free standing, may be erected provided such sign shall be limited to a general identification of the project and shall be removed within thirty (30) days after completion of the project.

3. Once removed, no temporary sign shall be posted within thirty (30) days of the removal date.

4. Street banners may exceed six (6) square feet but be no larger than fifty (50) square feet.

5. Temporary signs do not require a permit but must conform to all provisions of this Ordinance.

G. The above regulations shall not apply to the following:

1. Flags and insignia of any government.

2. Traffic control signs, signs designating route numbers or other informational signs erected or required by governmental bodies.

3. Integral decorative or architectural features of buildings except letters, trademarks, moving parts, or moving or flashing lights.

4. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.

H. Commercial Sign Dimensions and Number

Commercial Unit Size (gross sq. footage)	0-500	500-1000	1000-2500	2500+
Window Lettering (% of window covered)	35	35	35	35
Window Display	permitted	permitted	permitted	permitted
Menu (sq. footage) Restaurant/Take out Only	15	15	20	20
Total sq. footage of signage (Excluding window lettering, window displays and menus) for all zones	50	70	90	100
Maximum gross area per sign in all zones	20	20	30	40
Number of Attached Signs	2	3	3	4
Number of Free Standing Signs	1	1	2	2
Temporary sale, special events, daily menu (10 sq. feet)	1	1	2	2

6.13 Tillage of Soil

Where soil in excess of twenty thousand (20,000) square feet is tilled, such tillage shall be carried out in conformance with the provisions of a Conservation Plan, which meets the standards of the State Soil and Water Conservation Commission and is approved by the York County Soil and Water Conservation District. The number of the plan shall be filed with the Planning Board. Non-conformance with the provisions of such Conservation Plan shall be considered to be a violation of this Ordinance.

6.14 Road Construction, Filling, Grading

A. On lots greater than five (5) acres in area, the construction of a road, or grading or filling of the land may not commence prior to site plan review under Article 10, unless the planned land use is to serve no more than two residential units, or a use accessory to an existing single-family home. On lots of five (5) acres or less, and on any lot when the planned use is to serve no more than two residential units, or a use accessory to an existing single-family home, such construction, grading or filling requires a permit from the Code Enforcement Officer.

B. A driveway/private road over fifty (50) feet long for a single-family or two-family dwelling that the Code Enforcement Officer may permit, shall not be less than twelve (12) feet wide, with a minimum five (5) foot setback from the lot line.

C. A driveway/private road for a three (3) unit multiplex, or for three (3) detached dwellings, must be approved by the Planning Board, and the right-of-way shall not be less than two (2) rods (which is 33 feet) in width. The traveled way shall not be less than sixteen (16) feet in width of gravel, of hard durable particles free from vegetative matter, sixteen (16) inches thick after compaction. Drainage swales must have slopes no steeper than 3:1. The centerline of the roadway shall not be more than three (3) feet off the centerline of the right-of-way.

D. A driveway/private road for four (4) or more detached dwellings must be approved by the Planning Board, and the right-of-way shall not be less than fifty (50) feet in width. The traveled way shall not be less than twenty (20) feet in width of gravel, of hard durable particles free from vegetative matter, sixteen (16) inches thick after compaction. Drainage swales must have slopes no steeper than 3:1. The centerline of the roadway shall not be more than three (3) feet of the centerline off the right-of-way.

E. The Planning Board may reduce or modify the driveway/private road standards where strict adherence to the limitations cannot be met when considering a pre-existing right-of-way, or cannot be met due to environmental concerns. If such a modification is approved, the Planning Board shall include the modification in the Site Plan Review's written Findings of Fact, and the applicant shall record the Findings of Fact with the York County Registry of Deeds before commencing any work or before receiving a building or land use activity permit from the Code Enforcement Officer.

6.15 Entrance to Public Ways

A. Permit Requirement:

Any person proposing an entry to a public way shall fill out an application for a permit clearly describing such entry whether or not further development or use is a part of that application. The grant or denial of a permit request for an entry to a public way may be appealed to the Board of Appeals as an administrative appeal.

B. In considering an application including an entrance to a public way, the Code Enforcement Officer, in cooperation with other agencies of the Town, including fire, police and highway, shall apply the following criteria:

1. When an entrance and exit driveway or curb cut serves a residential use:

a. The width of said entrance or exit at its entrance to the public way shall not be less than ten (10) feet nor more than twenty (20) feet.

b. No such driveway, entrance or curb cut shall be located within twenty (20) feet of any intersection of ways at its entry to a public way.

c. The Code Enforcement Officer shall consider traffic volume and conditions, both vehicle and pedestrian, on the public way into which entrance is sought.

d. The Code Enforcement Officer shall determine that there is no obstruction to the view of any person using said proposed driveway or curb cut.

2. When an entrance and exit driveway or curb cut serves a business, commercial or industrial use:

a. The width of said entrance or exit at its entrance to the public way shall be not less than ten (10) feet nor more than twenty-six (26) feet, except for direct access to parking for Libraries in the Village Residential Zone, approved by the Planning Board, in which event said width shall be as approved by the Planning Board.

b. Whenever possible, no such entrance or exit at its entrance to the public way shall be located within two hundred (200) feet of any intersection, similar entry or exit, or within a like distance as measured along a public way from any playground, school, church, hospital, place of public assembly, fire station or other municipal structure.

C. Minimum Sight Distance Required

After November 4, 2003, no property owner may erect any structure, fence, wall, sign, or install any landscaping features that would diminish any existing driveway's sight distance below a minimum sight distance of at least ten (10) feet for every mile per hour of posted speed limit on the street. Sight distance shall be measured from the driver's seat of a vehicle that is located ten (10) feet behind the curb or edge of the shoulder line of the street, with the height of the driver's eye 3.5 feet above the pavement, to an object with a height of 4.25 feet, located within any travel lane of the street. The minimum sight distance requirement shall apply regardless of whether said driveway is located on the property owner's own property or on a different property.

6.16 Sound Pressure Levels

A. The maximum permissible sound pressure level of any continuous, repetitive or frequent source of sound produced by any activity shall be established for daily time periods as set forth below. Sound pressure levels shall be measured at or beyond the lot lines of the lot on which the source of the sound is located at a height of a least four (4) feet above the surface of the ground or water.

1. Sound Pressure Level Limits Measured in Decibels

7 am - 7 pm		7 pm - 7 am	
dB(A)	dB(C)	dB(A)	dB(C)
60	72	50	62

2. Either or both of the dB(A) and dB(C) scales may be used, and a violation of the standard for either scale shall be a violation of this Ordinance.

B. Sound shall be measured with a sound level meter meeting the Type 1 or 2 performance requirements of the American National Standards Institute (ANSI S1. 4-1983) "American National Standard Specifications for Sound Level Meters". Sound levels shall be measured by the maximum reading on a sound level meter set to the A or C weighted scale and the slow response.

C. No person shall engage in, cause or permit construction activities on a site abutting any residential use between the hours of 10 p.m. one day and 7 a.m. of the following day in violation of the sound pressure level limits established under this section.

1. The following uses and activities shall be exempt from sound pressure level regulation under this section:

a. Railroad equipment which is subject to federal noise regulations.

b. Aircraft operations which are subject to federal noise regulations.

c. Registered and inspected vehicles.

d. Water craft.

e. Bells, chimes and carillons.

f. Occasional sporting, cultural, religious or public events allowed by the Town.

g. The un-amplified human voice and other sounds of natural origin.

h. Farming, fishing and aquacultural activity.

i. Forest management, harvesting and transportation activities.

j. Operation of lawn mowers, snow blowers, chain saws and garden tractors.

k. Snow removal, landscape and street sweeping activities.

l. Emergency maintenance and repairs.

m. Warning signals and alarms.

n. Safety and protective devices installed in accordance with code requirements.

o. Test operations of emergency equipment occurring in the daytime and no more frequently than once per week.

p. Boiler start-up, testing and maintenance operations occurring no more frequently than once per month.

q. A force majeure event and other causes not reasonably within the control of the owners or operators of the source of the sound.

r. Blasting in connection with construction projects between the hours of 7:00 a.m. and 7:00 p.m.

s. Other noises created by construction activities between 7:00 a.m. and 10:00 p.m.

D. The sound pressure level standards established in this section shall be enforceable by law enforcement officers of the Town of Kennebunkport and by the Code Enforcement Officer of the Town of Kennebunkport in accordance with the procedures and provisions of Articles 11.9 and 11.10.

6.17 Blasting

No blasting shall be done as part of any excavation or mineral extraction operation, nor as part of any approved construction activity, without first obtaining a permit to blast from the Code Enforcement Officer pursuant to this section.

The application for a license to blast shall include:

1. A completed application form for a permit to blast;

2. A site plan showing where the blasting will take place;

3. A statement of the purposes and extent of the blasting, further indicating the approximate dates and times the blasting will occur;

4. Identification by name, address, and telephone number of the entity that will actually perform the blasting operation;

5. Proof that the entity applying for the permit to blast is properly licensed by the State of Maine and in compliance with Title 25 M.R.S.A. § 2471 et seq. and State Fire Marshal Rules, Chapter 31, and any other applicable State statutes and regulations;

6. Evidence that notice of the proposed blasting operation has been sent by certified mail to all landowners abutting the subject property of the application within five hundred (500) feet of the proposed blast site. Said notice shall indicate the location of the proposed blasting; approximate date and times that blasting will occur; and name, address, and telephone number of the entity that will actually perform the blasting operation; and

7. A blasting permit fee will be established in accordance with Article 11.6 of this Ordinance.

The Code Enforcement Officer shall issue a license to blast within ten (10) days of the receipt of a complete application form, fee, and all supporting evidence as set forth above.

6.18 Maine Uniform Building and Energy Code

A. The Town of Kennebunkport adopts and enforces the Maine Uniform Building and Energy Code ("MUBEC"), as authorized by Title 10 M.R.S.A., § 9724 (1-A). The Code Enforcement Officer of the Town of Kennebunkport shall serve as the building official as defined in Title 25 M.R.S.A., § 2371 and shall be responsible for issuing building permits and certificates of occupancy. The Code Enforcement Officer shall be responsible for inspecting all permitted construction for compliance with all components of MUBEC, as such components may be revised from time to time. Administration and enforcement of MUBEC, including permits, fees, violations, penalties and appeals, shall be in accordance with MUBEC along with Article 11 of the Town of Kennebunkport Land Use Ordinance.

B. Any person who violates a provision of this Code or fails to comply with any of the requirements thereof, or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of the Ordinance, shall be subject to penalties in accordance with Title 30-A M.R.S.A., § 4452. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

C. The fee for a building permit and certificate of occupancy hereunder shall be as specified in Article 11.6 of the Kennebunkport Land Use Ordinance.

D. This Section and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby be effective June 12, 2012.

6.19 Dwellings

A. Single Family Dwellings

A single-family dwelling and any accessory apartment located therein shall be constructed on one continuous foundation and under one continuous roof; no part of the dwelling unit shall be located in a detached building or structure.

B. Two Family Dwellings

Each unit in a two-family dwelling shall have not less than 650 square feet. The two-family dwelling shall have only one (1) front entrance, and all other entrances shall be on the side or in the rear of the dwelling. An entrance leading to a foyer with entrances leading from the foyer to the two (2) dwelling units is permitted. One (1) dwelling shall be subordinate in size. A Home Occupation shall not be permitted in the subordinate unit. A two-family dwelling shall be constructed on one continuous foundation and under one continuous roof; no part of the dwelling units shall be located in a detached building or structure.

ARTICLE 7: PERFORMANCE STANDARDS FOR SPECIFIC ACTIVITIES, LAND USES, AND ZONES

7.1 Accessory Apartments

Accessory apartments may only be located in a single-family dwelling, shall not be defined as a two-family or a multiplex, are allowed as a permitted use in all zones, except where otherwise noted in Article 7.1.J, and are subject to the limitations below:

A. A request for an accessory apartment requires submittal of a site plan that shall include the property owner with deed reference, lot boundaries and dimensions to scale and the location and setbacks of all buildings and parking areas.

B. A request for an accessory apartment shall include a plan of the entire building showing a separate floor layout of all finished levels identifying the use of all rooms and the location of all entrances/exits.

C. The dwelling shall have only one (1) front entrance and all other entrances shall be either on the side or in the rear of the dwelling. An entrance leading to a foyer with interior entrances leading from the foyer to the two (2) dwelling units is permitted. The living area of the dwelling must be at least one thousand six hundred twenty-five (1,625) square feet, including basement and attic spaces that have a ceiling height greater than seven (7) feet. The living area of an accessory apartment shall be a minimum of six hundred (600) square feet, and a maximum of forty (40%) percent of the living area of the dwelling or eight hundred (800) square feet, whichever square footage is less. An accessory apartment may not have any living space on a third story unless it meets the minimum Life Safety requirements as defined in the Building Code.

D. Accessory apartments are not permitted in the Shoreland Zone unless the lot on which it will be located has at least double the lot size for that zone, double the minimum lot size, and double the shore frontage for that zone.

E. Only one (1) accessory apartment shall be permitted per lot.

F. Either the primary residence or converted accessory apartment shall be occupied by the owner of the property as the owner's primary residence (primary residence shall be defined as more than six (6) months per year). Both the primary residence and accessory apartment shall be occupied as primary residences.

When requesting an accessory apartment, the property owner must provide proof of primary residency, to include possession of a State of Maine driver's license, current registration of a motor vehicle in Maine, and current registration to vote in Maine. If the property owner does not have a valid motor vehicle license in Maine or any other political jurisdiction, or does not have a motor vehicle currently registered in Maine or any other political jurisdiction, alternative evidence of primary residency may be accepted subject to the discretion of the Board of Appeals, or the Code Enforcement Officer.

G. A home occupation is allowed in either the primary dwelling or the accessory apartment, but not in both. Such home occupation shall be subject to approval as a conditional use.

H. No permit for an accessory apartment shall be legal until the owner files the following notice with the Code Enforcement Officer and in the Registry of Deeds: "A permit for an accessory apartment has been issued to the owner of this property. This permit does not run with the land, and is automatically invalidated by the sale, grant, devise, conveyance or transfer of this property."

I. Accessory apartments located on properties connected to the Town's wastewater collection system must be approved by the Sewer Department. Properties utilizing subsurface waste system and private wells must meet the standards required in the Maine Subsurface Waste Rules. In addition:

1. Existing septic systems must be evaluated for condition and capacity by a licensed Site Evaluator. A reserve area is required for existing and new systems in the event that replacement is necessary. Bi-annual pump-outs of septic systems servicing the property are required and documentation must be provided to the Town upon request.

2. Properties serviced by private wells must provide to the Code Enforcement Office a water quality test to ensure adequate water quality prior to issuance of a certificate of occupancy.

J. An accessory apartment located in a detached accessory structure that conforms to property setback requirements is allowed as a permitted use subject to all requirements below. An accessory apartment constructed within an existing structure that is legally non-conforming due to setbacks is allowed as a conditional use subject to Planning Board review per Article 10 of the Land Use Ordinance. The following requirements must be met, in addition to the requirements of Article 7.1.A-I above:

1. Calculation of floor area for the detached accessory apartment's living space is based on forty (40%) percent of the living space of the primary structure to include the basement and attic spaces that have a ceiling height greater than seven (7) feet.

2. If the primary dwelling is located on a non-conforming lot, at least fifty (50%) percent of the floor area of the detached accessory structure must be devoted to uses other than living space which are accessory to the principal structure, such as storage or parking, and must be available for use by the occupants of the principal structure.

7.2 Automobile Service Stations

A. All structures, including underground storage tanks, shall be no less than fifty (50) feet from any property line.

B. Point of ingress and egress shall be located not less than fifty (50) feet from the nearest intersecting street centerlines, measured along the street centerline.

C All fuel storage tanks shall be located underground, and shall be constructed of fiberglass or corrosion protected steel.

7.3 Campgrounds

Campgrounds shall conform to the minimum requirements imposed under State Licensing Procedures and the following:

A. Recreational vehicle and tenting areas shall meet the following criteria:

1. The site of the campground shall contain a total area of at least five thousand (5,000) square feet per recreational vehicle, tent, or shelter, not including roads and driveways. Land supporting wetland vegetation, and land below the normal high water mark of a body of water shall not be included in calculating land area per site.

2. Each recreational vehicle, tent, or shelter site shall be provided with a trash receptacle and fireplace.

3. No recreational vehicle, trailer or tent shall be allowed to remain in a campground on a permanent basis.

B. The areas intended for placement of recreational vehicles, tents or shelters, and utility and service buildings shall be set back a minimum of one hundred (100) feet from the normal high water line of a great pond; a minimum of seventy-five (75) feet from the normal high water line of other bodies of water and tributary streams, and the upland edge of a freshwater or coastal wetland; and a minimum of one hundred (100) feet from the other exterior lot lines of the campground.

C. All campgrounds shall be screened from adjacent land areas by a continuous landscaped area not less than twenty-five (25) feet in width containing evergreen shrubs, trees, fences, walls or any combination thereof which forms an effective visual barrier of not less than six (6) feet in height.

7.4 Cluster Development

A. Purpose

The purpose of Cluster Development shall be to encourage housing which will result in:

1. Open space and recreation areas.

2. A pattern of development which preserves trees, outstanding natural topography and geologic features and prevents soil erosion.

3. An efficient use of land resulting in small networks of utilities and streets, and in lots which are contiguous.

B. Uses Permitted

The use of the land in a cluster development shall not differ from the uses permitted in the zone in which the plan is located; and all cluster developments shall meet the requirements of the Kennebunkport Subdivision Ordinance. The minimum site size for a cluster development shall be ten (10) acres in the Farm and Forest Zone and five (5) acres in all other zones.

C. Lot Size

Notwithstanding other provisions of this Ordinance relating to minimum lot size, lot width and setback in single family detached dwelling developments, the Planning Board, in reviewing proposed residential developments, may modify said provisions related to minimum lot size, lot width and setback, to permit innovative approaches to housing and environmental design, provided that minimum requirements for shore frontage and setback from the normal high water mark shall not be reduced under this Article. The Planning Board may reduce minimum lot sizes under this Article only if a net residential area at least equal in area to the cumulative lot size reduction is maintained as common open space, provided that the developer may request an open space density bonus in accordance with Paragraph H of this Article.

D. Open Space

Where a cluster development abuts a body of water, a portion of the shoreline, as well as access to it, shall be a part of the common open space. Open space shall be owned either jointly or in common by the owners of the building lots, by a trust or association which has as its principal purpose the conservation or preservation of land in essentially its natural conditions, or by the Town. Further subdivision of the common open space or its use for other than non-commercial recreation or conservation, except for easement for underground utilities, shall be prohibited by deed restrictions or recorded easements. Structures and buildings accessory to non-commercial recreation or conservation uses may be erected on common open space.

E. Water Supply

All dwelling units in a cluster development shall be connected to a common water supply and distribution system, either public or private, unless the developer clearly demonstrates to the Planning Board that:

1. The costs of providing a common water supply and distribution system are prohibitive;

2. Adequate ground water is available at all locations proposed for individual water systems; and

3. The ground water source(s) proposed for individual water systems is safe from both on-site and off-site contamination.

F. Waste Disposal

All structures with required plumbing in the development shall be connected to a public sanitary sewer system if available, or to a private central collection and treatment system in accordance with minimum standards set forth in the State of Maine Plumbing Code, unless the developer shall clearly demonstrate to the Planning Board that:

1. The costs of connection to a public sanitary sewer system or of providing a central collection and treatment system are prohibitive;

2. Adequate soils and land area are available at all locations proposed for individual septic systems;

3. The proposed individual septic systems shall in no way endanger ground water supplies which are currently being utilized as a water source for any existing development; and

4. The proposed individual septic systems shall in no way endanger ground water supplies which will be utilized by any proposed common or individual water system in the cluster development.

G. Buildings

Buildings in cluster developments shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas, in accordance with an overall plan for site development and will be compatible in terms of physical size, visual impact, intensity of use, proximity to other structures, and density of development with other uses within the zone.

H. Open Space and Density Bonus

The total area of common open space within the cluster development shall be equal to or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the zone, except that the developer shall be entitled to a Density Bonus increasing the total number of building lots allowed in a proposed cluster development by ten (10%) percent if more than sixty (60%) percent of the land in the cluster development is dedicated to common open space.

I. Procedure

The Planning Board shall review the proposed cluster development under the Site Plan Review regulations in Article 10 simultaneously with its review of the development under the Town of Kennebunkport Subdivision Ordinance.

J. Submissions

1. Preliminary Plan

In addition to all information requested in the Town of Kennebunkport Subdivision Ordinance, the following information shall be provided at the time of the submission of a Preliminary Plan:

a. Proposed location, size, and type of all structures;

b. Proposed traffic circulation, parking areas and pedestrian walks;

c. Proposed landscaping plan, including site grading and landscape planting;

d. Proposed construction sequence for buildings, parking spaces and landscaping area, including preliminary drawings of building to be constructed in the current phase; and

e. Proposed use, ownership and maintenance of all common land.

2. Other Information

The Planning Board may request additional information necessary to determine if the proposed development meets the provisions of this Ordinance.

7.5 Eldercare Facilities

Notwithstanding other provisions of the Land Use Ordinance, an eldercare facility shall be governed by the following performance standards:

A. Minimum Lot Size

An eldercare facility shall be located on a lot with a minimum lot area of two hundred thousand (200,000) square feet.

B. Minimum Lot Width

The lot shall meet the minimum lot width requirement of the zone in which it is located.

C. Setbacks

An eldercare facility shall conform to the following setback requirements:

1. Buildings with less than five thousand (5,000) square feet of gross floor area:

Front:	50 feet
Side:	50 feet
Rear:	50 feet

2. Buildings with five thousand (5,000) or more square feet of gross floor area:

Front:	75 feet
Side:	100 feet
Rear	100 feet

3. The area of the required front setback shall be maintained as a landscaped area. This area may be crossed by access drives and pedestrian facilities, but shall not be used for parking or service areas.

D. Height

Notwithstanding the provisions of Article 6.2, Height Restrictions, the height of all buildings associated with an eldercare facility shall be limited to a maximum of two (2) stories and thirty (30) feet. The Planning Board may permit an increase in the height to a maximum of thirty-five (35) feet as part of the site plan review if the applicant demonstrates that the additional height is needed to accommodate a pitched roof, in accordance with Subsection G.

E. Density

The minimum lot area for each dwelling unit and each residential care unit in an eldercare facility shall be:

Dwelling Units	2,500 square feet of net residential area
Residential Care Units	1,500 square feet of net residential area

F. Sewer and Water Supply

All eldercare facilities shall be connected to the public sewer and water supply systems. No eldercare facility shall dispose of sewage by means of an on-site sewage disposal (septic) system or other private sewage disposal system.

G. Architectural Appearance

All new construction of eldercare facilities shall have pitched roofs, which may include a gable roof, hip roof, or gambrel roof. If a gable roof or hip roof is used, the roof pitch shall be at least four (4) feet in twelve (12) feet. All new construction shall use exterior materials compatible with other structures in the surrounding area.

H. Buffering and Landscaping

1. An eldercare facility regardless of size, shall submit a landscape plan for the parking areas that serve the development as part of its application for site plan review. The plan shall be prepared by a landscape architect licensed in the State of Maine. The plan shall show adequate provisions for screening the parking, loading/unloading, and service areas from adjacent properties.

2. In addition, an eldercare facility with more than fifteen (15) dwelling units, residential care units, and/or nursing home beds that abuts a lot in a residential district or in residential use shall comply with the following standards:

a. The first fifty (50) feet of the side or rear setback, measured from the property line, shall be retained in its natural vegetated state to the maximum extent possible to provide a visual screen between the abutting lot and the project.

b. When natural buffering does not exist, cannot be fully retained as a visual screen or, in the sole judgment of the Planning Board, is not sufficient to achieve an effective visual screen, the first fifty (50) feet of the side or rear setback shall be landscaped to create a visual screen.

c. In addition to the landscaping of side and rear yards required to serve as buffers between the development and abutting lots in residential districts or residential use the applicant shall submit a landscape plan, prepared by a landscape architect licensed in the State of Maine, for other yard areas, parking areas, public areas, and site entrances.

I. Outdoor Lighting

Outdoor lighting shall be compatible with the project's location. Outdoor lighting shall be designed to provide only the minimum lighting necessary to ensure adequate vision, safety, and comfort in pedestrian and vehicle areas and to not cause glare beyond the limits of the property boundaries. Lighting shall conform to the Town's Outdoor Lighting Ordinance.

7.6 <u>Home Occupation</u>

A. Any home occupation or profession which is accessory to and compatible with a residential use may be permitted as a conditional use by the Board of Appeals provided that:

1. It is customarily carried on in a dwelling unit or in a structure customarily accessory to a dwelling unit.

2. It is carried on primarily by a member or members of the family residing in the dwelling unit.

3. It does not materially injure the character or usefulness of the dwelling unit or accessory structure for normal residential purposes.

B. All home occupations shall conform with the following conditions:

1. The home occupation shall be carried on wholly within the dwelling or accessory structure.

2. The home occupation shall be carried on primarily by a member or members of the family residing in the dwelling unit. Not more than two (2) persons, other than family members residing in the dwelling unit, shall be employed on the premise in connection with the home occupation.

3. There shall be no exterior display, no exterior signs other than those permitted in Article 6.12.E, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.

4. Objectionable conditions such as noise, vibration, smoke, dust, electrical disturbance, odors, heat, glare, or activity at unreasonable hours, shall not be permitted.

5. The traffic generated by such home occupation shall not increase the volume of traffic so as to create a traffic hazard or disturb the residential character of the immediate neighborhood.

6. In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the vehicles of each employee and the vehicles of the maximum number of users the home occupation may attract during peak operating hours. Parking for more than one (1) vehicle used primarily for the home occupation shall require explicit approval of the Board of Appeals.

7. The home occupation may utilize:

   a. Not more than twenty (20%) percent of the dwelling unit floor area, provided that for the purposes of this calculation, unfinished basement and attic space are not included.

   b. Unfinished attic and basement spaces.

   c. One accessory structure. The floor area utilized in the accessory structure shall not exceed the floor area of the dwelling unit as calculated under subparagraph “a” above.

8. Except in the Free Enterprise and Farm and Forest Zones, a home occupation shall not be permitted in a single-family dwelling in which there is an accessory apartment.

9. Only one (1) home occupation shall be permitted per dwelling unit.

7.7 Hotels, Motels, Bed & Breakfasts, and Inns

A. Except in the Dock Square Zone where the minimum property line setbacks in Section 4.5 shall apply, no part of any building used for a Hotel, Motel, Bed & Breakfast, or Inn shall be closer than forty (40) feet to the property line, provided that any such building used for a Hotel, Motel, Bed & Breakfast, or Inn constructed prior to January 1, 2015, shall be exempt from applicable dimensional requirements only to the extent necessary to achieve compliance with Americans with Disabilities Act (ADA) and Life Safety requirements for stairwells and elevator assemblies. An area of open space, not less than twenty (20) feet wide, shall be maintained and planted with grass, bushes, flowers or trees, all along each lot line and along the street, except for entrance and exit driveways and except as needed for construction or renovation of ADA and Life Safety compliant stairwells and elevator assemblies. The open space shall not be used for automobile parking.

B. The size and location of water lines and fire hydrants on the property shall be approved in writing by the Fire Chief and the Kennebunk, Kennebunkport and Wells Water District.

C. Prior to the issuance of a building permit, building construction plans shall be approved in writing by the State Fire Marshal's office.

D. The total area of Motel, Hotel, Bed & Breakfast, or Inn buildings plus the total area of parking spaces and driveways, taken together, shall not exceed one third (⅓) of the total area of the lot, in the case of single story buildings, nor exceed one quarter (¼) of the total area of the lot, in the case of two story buildings.

E. Where a hotel or motel provides kitchens or kitchenettes in guest rooms of less than one thousand one hundred (1,100) square feet in area, such guest rooms shall not be considered dwelling units for purposes of this Ordinance so long as the guest rooms are occupied exclusively by hotel or motel guests who occupy such guest rooms for no more than one hundred twenty (120) days in any calendar year. Except that within any Shoreland Zone hotels and motels must meet the minimum residential lot size requirements per guest room if the room contains a kitchen or kitchenette. Units containing a kitchen or a kitchenette may not be used to establish residency and are limited to a maximum stay of no more than one hundred twenty (120) days in any calendar year per guest.

F. Any Hotel, Motel, or Inn constructed after January 1st 2011 shall be required to hook up to Municipal sewer and water, except that parcels containing existing Hotels, Motels or Inns may be expanded within the standards allowed without complying with this requirement. Parcels described by this subsection may not be deeded additional land that would circumvent the purposes of this Ordinance. Bed and Breakfasts are intentionally omitted from this subsection and would be permitted to utilize a subsurface waste system, or municipal facilities.

7.8 Kennels

Structures or pens for housing or containing the animals in a kennel shall be set back at least one hundred (100) feet from the property lines of the lot on which the kennel is located.

7.9 Mobile Homes

No mobile home or manufactured housing unit constructed prior to June 15, 1976, shall be brought into the Town after the effective date of this Ordinance.

7.10 Mobile Home Parks

A. Design and Performance Standards

Mobile home parks are subject to Planning Board Site Plan Review. Except as stipulated below, mobile home parks shall also meet all the requirements for a residential subdivision, and shall conform to all applicable State laws and local ordinances or regulations. Where the provisions of this section conflict with specific provisions of the Kennebunkport Subdivision Regulations, the provisions of this section shall prevail. The plan presented to the Planning Board shall designate all lots to be used within the proposed mobile home park.

B. Lot Area and Lot Width Requirements

Notwithstanding the dimensional requirements located in Article 4 of this Ordinance, lots in a mobile home park shall meet the following lot area and lot width requirements:

1. Lots served by public sewer:
   Min. lot area: 6,500 square feet
   Min. lot width: 50 feet

2. Lots served by individual subsurface waste water disposal systems:
   Min. lot area: 20,000 square feet
   Min lot width: 100 feet

3. Lots served by a central on-site subsurface waste water disposal system approved by the Maine Department of Human Services:

Min. lot area:	12,000 square feet
Min. lot width:	75 feet

4. The overall density of any park served by any subsurface waste water disposal system shall not exceed one (1) dwelling unit per twenty thousand (20,000) square feet of total park area.

5. Lots located within any Shoreland Zoning district shall meet the lot area, lot width and shore frontage requirements for that district.

6. No part of any lot which is part of a road right-of-way, part of a required buffer strip, part of a required open space, or part of a required shoreland setback shall be used for the purpose of computing lot area or any size, setback, frontage or other dimensional requirement which may be imposed.

C. Unit Setback Requirements

1. On lots ten thousand (10,000) square feet in area or larger, structures shall not be located less than fifteen (15) feet from any boundary lines of an individual lot. On lots less than ten thousand (10,000) square feet in area, structures shall not be located less than ten (10) feet from any boundary lines of an individual lot.

2. On lots which abut a public way either within the park or adjacent to the park, structures shall meet the front setback provisions of this Ordinance. On lots which are located within the Shoreland Zoning district, structures shall meet the applicable setback from high water mark requirements of this Ordinance or the Kennebunkport Subdivision Regulations, whichever provisions are stricter.

D. Buffering

If a mobile home park is proposed with a residential density of at least twice the density of residential development on immediately adjacent parcels of land, or at least twice the net residential density permitted in the zoning district in which the park is located if the immediately adjacent parcels of land are undeveloped, the park shall be designed with a continuous landscaped area not less than fifty (50) feet in width which shall contain no structures, streets or utilities, except that utilities may cross a buffer strip to provide service to the mobile home park. For the first twenty-five (25) feet of the buffer strip as measured from the exterior boundaries of the park, the Planning Board shall consider natural buffering which forms an effective visual barrier to be located on all exterior lot lines of the park,

except that driveways shall be kept open to provide visibility for vehicles entering and leaving the park. When natural features such as topography, gullies, stands of trees, shrubbery or rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.

E. Open Space Reservation

An area no less than ten (10%) percent of the total area of those lots with a lot area of ten thousand (10,000) square feet or less shall be reserved as common open space. Common open space shall be owned either jointly or in common by the owners or residents of the mobile home park, by an association of the residents of the mobile home park, by a trust or association which has as its principle purpose the conservation or preservation of land in essentially its natural condition, or by the Town. The Planning Board may waive the requirement for open space when the park is located within one-half mile of a publicly owned recreation area.

F. Road Design, Circulation and Traffic Impacts

Streets within a park shall be designed by a Professional Engineer, registered in the State of Maine.

1. Streets which the applicant proposes to be dedicated as public ways shall be designed and constructed in accordance with the standards for streets in the Kennebunkport Subdivision Regulations.

2. Streets which the applicant proposes to remain private ways shall meet the following minimum geometric design standards:

   a. Minimum right-of-way width: 23 feet

   b. Minimum width of paved way: 20 feet

3. Any mobile home park expected to generate average daily traffic of two hundred (200) trips per day or more shall have at least two (2) street connections with existing public streets. Any street within a park with any average daily traffic of two hundred (200) trips per day or more, shall have at least two (2) street connections leading to existing public streets, other streets within the park or other streets shown on an approved subdivision plan.

4. No individual lot within a park shall have direct vehicular access onto an existing public street.

5. The intersection of any street within a park and an existing public street shall meet the following standards:

   a. Angle of intersection. The desired angle of intersection shall be ninety (90º) degrees. The minimum angle of intersection shall be seventy-five (75º) degrees.

   b. Maximum grade within seventy-five (75) feet of intersection. The maximum permissible grade within seventy-five (75) feet of the intersection shall be two (2%) percent.

   c. Minimum sight distance. A minimum sight distance of ten (10) feet for every mile per hour of posted speed limit on the existing road shall be provided. Sight distance shall be measured from the driver's seat of a vehicle that is ten (10) feet behind the curb or edge of shoulder line with the height of the eye three-and-one half (3 ½) feet above the pavement and the height of object four-and-one-quarter (4 ¼) feet.

   d. Distance from other intersections. The centerline of any street within a park intersecting an existing public street shall be no less than one hundred twenty-five (125) feet from the centerline of any other street intersecting that public street.

6. The application shall contain an estimate of the average daily traffic projected to be generated by the park. Estimates of traffic generation shall be based on a recognized methodology of the kind relied on by transportation engineers. If the park is projected to generate more than four hundred (400) vehicle trip ends per day, the application shall also include a traffic impact analysis by a registered professional engineer with experience in transportation engineering.

G. Ground Water Impacts

1. Assessment submitted. The application for approval of any mobile home park which is not served by public sewer shall include an analysis of the impacts of the proposed mobile home park on ground water quality. The hydro-geologic assessment shall be prepared by a Certified Geologist or Registered Professional Engineer experienced in hydrogeology and shall contain at least the following information:

   a. A map showing the basic soils types.

   b. The depth of the water table at representative points throughout the mobile home park.

c. Drainage conditions throughout the mobile home park.

d. Data on the existing ground water quality, either from test wells in the mobile home park or from existing wells on neighboring properties.

e. An analysis and evaluation of the effect of the mobile home park on ground water resources. The evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the mobile home park, at the mobile home park boundaries and at a distance of one thousand (1,000) feet from potential contamination sources, whichever is a shorter distance. For mobile home parks within the watershed of a lake, projections of the development's impact on ground water phosphate concentrations shall also be provided.

f. A map showing the location of any subsurface waste water disposal systems and drinking water wells within the mobile home park and within two hundred (200) feet of the mobile home park boundaries.

2. The proposed mobile home park shall not, alone or in conjunction with existing activities, render the groundwater unfit as a public or private drinking water supply as determined by applicable regulations.

3. Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the Plan.

H. No development or subdivision which is approved under this section as a mobile home park may be converted to another use without the approval of the Planning Board, and without meeting the appropriate lot size, lot width, setback and other requirements. The plan to be recorded at the Registry of Deeds and filed with the municipality shall include the following restrictions as well as any other notes or conditions of approval:

1. The land within the park shall remain in unified ownership and the fee to lots or portions of lots shall not be transferred.

2. No dwelling unit other than a manufactured home shall be located within the park.

I. Non-Permitted Areas

Mobile home parks are not permitted in the following areas which are deemed not reasonably suitable as indicated in Title 30-A M.R.S.A. § 4358 (3) (M):

1. Land zoned as Resource Protection.

2. Land included within the jurisdiction of the Army Corps of Engineers under the Clean Water Act, 33 U.S.C. § 1251-1376, as amended.

3. Land rated as high for wildlife diversity by the State Department of Inland Fish and Wildlife.

4. Land included under Maine's Tree Growth Tax Law, Title 36 M.R.S.A. § 571 to 584-A, as amended; or under Maine's Farm and Open Space Tax Law, Title 36 M.R.S.A. § 1101-1121 as amended.

J. Subsurface Waste Water Disposal

The following provisions apply in the case of parks not served by public sewer:

1. In addition to any other requirements, including the State of Maine Subsurface Waste Water Disposal Rules, no subsurface waste water disposal system may be located on land with any of the following soils which have "severe" limitations for "septic tank absorption", as indicated in Table 11 of the 1982 Soil Survey of York County, USDA, SCS:

Adams (AdD)
Becket (BcB, BcC, BcD, BeB, BeC, DeD)
Biddeford (Bm)
Brayton (BrB, BsB)
Buxton (BuB, BuC, BuD)
Chocorua (Ch)
Colton (CoD, CoE)
Croghan (CrB, CuB)
Elmwood (EmB, EmC)
Hermon (HeD, HmD, HnC, HnE)
Lyman (LnB, LnC, LnD, LyB, LyC, LyE)
Madawaska (MaB)
Marlow (MrB, MrC2, MrD2, MvB, MvC, MvD)
Naumburg (Na)
Ondawa (On)
Peru (PeB)
Podunk (Po)
Raynham (Ra)
Rumney (Ru)
Saco (Sa)

Scantic (Sc, UsA)
Scio (SeB, SeC, SeD)
Sebago (Sg)
Skerry (SkB, SkC, SrB, SrC)
Vassalboro (Va, Vp)
Waskish (Wa)
Westbury
Winooski

2. When a central on-site subsurface waste water disposal system is proposed, the applicant must demonstrate that suitable land area with suitable soils exists on the property to provide for a replacement system. Such replacement system must also be approved by the Local Plumbing Inspector and, if required under the State of Maine Subsurface Waste Water Disposal Rules, by the Maine Department of Human Services. The location for that replacement system must be located on the site plan. The area devoted to the replacement system may not be used for any other purpose.

7.11 Multiplex

A. A multiplex building shall contain no more than eight (8) dwelling units. In a site with more than one (1) multiplex building, the total number of dwelling units shall not exceed an average of six (6) dwelling units per building. Multiplex buildings shall be located at least forty (40) feet apart from each other. All living area shall be located entirely or substantially above grade.

B. All multiplex buildings shall be connected to a central water supply and distribution system (either public or private) at no expense to the municipality. The applicant shall demonstrate by actual test, or by a signed letter from an authorized representative of the servicing water company, that water can be supplied at the rate of at least eight hundred fifty (850) gallons per day per dwelling unit and at an adequate pressure for firefighting purposes.

C. Fire hydrants shall be located so that they are not more than five hundred (500) feet from any building, as hose is laid in the street.

D. All multiplex buildings shall be connected to a public sewer or to a central sewage disposal system, in accordance with the provisions of The Maine State Plumbing Code.

E. It shall be the responsibility of the developer, the owner, or an owners' association to provide for rubbish disposal, snow removal and site maintenance. All outdoor storage areas for waste collection shall be enclosed by a wooden or masonry screen at least four (4) feet in height.

F. Garages or other accessory buildings shall not be located between multiplex buildings and the front lot line. Accessory buildings shall be located so as not to inhibit the access of emergency vehicles and fire apparatus to any side of a residential building.

G. Buildings shall be so designed and laid out to protect bedroom windows from night invasion by vehicle headlights or glare from existing outdoor lighting or illuminated signs, insofar as practicable. However, orientation of buildings for passive solar heat or views shall take precedence.

H. An area of open space not less than twenty (20) feet wide shall be maintained with grass, bushes, flowers or trees all along the side and rear lot lines and (except for entrance and exit driveways) along the entire front line of each lot. Such open space area shall not be built on or paved or used for parking or storage.

I. No existing building or structure may be converted to multiplex use without Planning Board Site Plan Review Approval under Article 10 or without complying with the standards of this section. Prior to the conversion of dwelling units in a multiplex or other spaces in a building to a condominium form of ownership, a plan of the proposed condominium units shall be submitted to the Code Enforcement Officer to enable him/her to determine whether structural changes will be made which require site plan review approval under Article 10.

7.12 Retail Sales

Unless otherwise provided for in this Ordinance, any use involving the retail sale of goods or services, whether as a retail business or other category of use, within the Dock Square and Riverfront Zones, shall comply with this section.

A. Each individual retail business shall contain no less than five hundred (500) square feet of gross floor area.

B. The creation of separate areas under this section within existing structures, or as a part of proposed structures, is subject to site plan review by the Planning Board under the provisions of Article 10.

7.13 Residential Mixed Use

Purpose: To provide for smaller scale housing options, specifically workforce housing and small scale commercial options by encouraging mixed use structures without requiring twice the minimum lot size on conforming lots.

A. A request for Residential Mixed Use requires submittal of a site plan that shall include the property owner with deed reference, lot boundaries and dimensions to scale, the location and set backs of all buildings and parking areas and open spaces.

B. Minimum lot size and building setbacks shall meet the underlying zone requirements. Minimum open space (area not occupied by structures or parking) shall be 60% of total lot area.

C. Streetscapes created by new development must be pedestrian-oriented. There shall be a direct pedestrian connection between the principal building entrance and the sidewalk(s) or path(s) along the adjoining street(s) if the commercial use is open to the public and/or fronts an existing public sidewalk or path.

D. Parking shall meet the requirements set forth in Article 6. Parking shall be predominantly located to the side and/or rear of the building.

E. Residential Mixed Use structures located on properties connected to the Town's wastewater collection system must be approved by the Sewer Department. Properties utilizing subsurface waste system and private wells must meet the standards required in the Maine Subsurface Waste Rules.

In addition:

1. Existing septic systems must be evaluated for condition and capacity by a licensed Site Evaluator. A reserve area is required for existing and new systems in the event that replacement is necessary. Bi-annual pump-outs of septic systems servicing the property are required and documentation must be provided to the Town upon request.

2. Properties serviced by private wells must provide to the Code Enforcement Office a water quality test to ensure adequate water quality prior to issuance of a Certificate of Occupancy.

F. A request for Residential Mixed Use shall include a plan of the entire building showing a separate layout of all finished levels identifying the use of all rooms and the location of all entrances/exits.

G. The number of dwelling units permitted with a commercial use as identified in the definition of Residential Mixed Use shall be limited to two.

H. Individual dwelling units shall consist of a minimum of 600 square feet of habitable space and may not have any living space on a third story unless it meets the minimum Life Safety requirements as defined in the Building Code.

I. The dwelling unit(s) shall be occupied as a primary residence (primary residence shall be defined as more than six (6) months per year).

J. Where permitted only one (1) home occupation shall be permitted per dwelling unit.

K. The minimum commercial unit size shall be 500 square feet of gross floor area. The commercial area may not exceed 2 times the total residential area.

L. All new or redeveloped structures shall meet or exceed NFPA requirements for the applicable fire suppression system.

M. Any specific performance standards otherwise identified in this Ordinance related to the commercial use must also be met.

7.14 Residential Rental Accommodations

A. Purpose. The purpose of allowing Residential Rental Accommodations is to authorize the use of legally-existing single-, two-, and multi-family structures for the accommodation of roomers, for compensation, while ensuring the safety of the occupants and minimizing the impact of such use on the surrounding neighborhood. Such rentals and the revenue they make to homeowner's help make Kennebunkport affordable for persons on fixed or limited incomes; enhance and diversify accommodations available to visitors and tourists; and provide travelers with affordable accommodations from which to explore Kennebunkport and the Seacoast region. If not made the subject of appropriate, limited regulations, however, the use of residential properties for Residential Rental Accommodations may create adverse impacts on surrounding residential uses including, without limitation, increased levels of traffic, parking demand, light and glare, and noise. Such impacts are deleterious to the public health, safety, and welfare of the neighborhood and the Town because they impair the livability and desirability of Kennebunkport neighborhoods for residential uses.

B. Performance Standards

No more than two (2) rooms in a Residential Rental Accommodation may be let out to Roomers provided that:

1. No separate kitchen or cooking facilities are provided for or use by the roomers;

2. No sign is located on the premises advertising the availability of rooms for lease or rent to roomers;

3. No alteration or change of the dwelling unit in its exterior appearance is made to accommodate the presence of roomers;

4. The bedroom(s) being rented shall be inspected by the Code Enforcement Officer and shall have code compliant smoke and carbon monoxide detectors in addition to complying with current building code requirements for primary and secondary means of escape;

5. The rooms occupied by the roomers do not have a separate entrance from the outside;

6. The rooms occupied by the roomers are within the principal structure;

7. The roomers use utilities which are not separately metered from those used by the remaining occupants of the dwelling unit;

8. One (1) off-street parking space per room rented shall be required as per Article 6.10 6; and

9. The owner of the Residential Rental Accommodation shall remain in residence while rooms are being rented.

C. Approval; Permit; Appeal

1. Approval to operate a Residential Rental Accommodation shall be granted by the Zoning Board of Appeals contingent upon a successful property inspection by the Code Enforcement Officer subject to section B. above. Following such approval, the Code Enforcement Officer shall issue a permit. Such permit shall be issued to the property owner only, and is subject to sufficient evidence that the property is owner occupied.

2. A permit to operate a Residential Rental Accommodation shall expire upon a change in ownership or a change in owner residency status.

3. A single-family dwelling approved to accommodate Roomers prior to November 8th 2016 may continue to operate under the conditions of approval as specified by the Zoning Board of Appeals including the Land Use Ordinance requirements and restrictions in effect at the time of such approval.

4. Permit shall be revoked upon confirmation of a second (2nd) confirmed Noise or Barking Dog Citation related to use of a dwelling unit by a Roomer. Permit shall also be revoked upon any confirmed violation of the requirements contained within the definition of Residential Rental Accommodation located in Article 2. Any such permit having been revoked shall not be reissued to the same property owner within one (1) year (365 days) from the date of revocation, which shall require Zoning Board of Appeals re-approval.

5. An appeal from any decision of the Code Enforcement Officer related to the issuance, non-issuance, suspension or revocation of a Residential Rental Accommodation Permit shall be taken by an aggrieved party to the Zoning Board of Appeals within thirty (30) days of the decision.

ARTICLE 8: NON-CONFORMANCE AND VESTED RIGHTS

8.1 Purpose

It is the intent of this Ordinance to promote land use conformities; except that a nonconforming condition is permitted to continue as it existed prior to the date such condition became non-conforming under the provisions of this Ordinance, as amended. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

8.2 General

A. Transfer of Ownership. Non-conforming structures, lots and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.

B. Repair and Maintenance. This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures.

8.3 Expansion of Non-Conforming Structures

A. Within any Zoning District, a non-conforming structure shall not be changed, extended or enlarged in any manner except as provided in this subsection, after obtaining a permit from the reviewing authority specified by this Ordinance.

1. A structure which is non-conforming due to lot coverage, height or setback requirements may be reconstructed, expanded or enlarged, provided the expansion, enlargement, or reconstruction is in accordance with the requirements in subsection B below. In no case shall a structure be enlarged, expanded or reconstructed so as to increase its non-conformity.

2. Any enlargement, expansion or reconstruction of a non-conforming structure which enlargement, expansion or reconstruction will be located between the lot lines and the setback lines (including setback from lot lines or high water or similar lines) or will not meet the lot coverage or height requirements of this Ordinance, and which cannot meet the requirements of subsection B below, shall not be permitted unless a variance is obtained in accordance with the requirements of Article 9.2. In no case shall a structure be enlarged, expanded or reconstructed so as to increase its nonconformity.

3. Neither the addition of steps for access to the ground floor nor the addition of exterior stairs for access to the second floor of a building shall constitute an enlargement or expansion of an existing use.

B. Within any zoning districts, non-conforming structures only may be expanded, relocated, reconstructed, or replaced, subject to the following conditions, in addition to those required by section A, above:

1. Determination of the Extent of Allowable Expansion.

After January 1, 1989, if any portion of a structure is less than the required setback from a lot line or from the normal high water line of a body of water or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by thirty (30%) percent or more, during the lifetime of the structure. Footprint expansions are not permitted except that the existing area may be reconfigured as described in Article 8.3.B.3.a.

a. Calculation of Basis of Floor Area. The basis of the floor area of the original structure, for determining the allowable expansion, shall be defined as follows:

The total of the following areas:

1. The sum of the horizontal areas of the floor or floors of the structure enclosed by exterior walls, plus

2. The sum of the horizontal areas of unenclosed portions of the structure such as open porches and decks, plus

3. The sum of the floor area of attached garages.

b. Exclusions from Basis of Floor Area. The following areas shall be excluded from the basis of the floor area of the original structure, for determining the allowable expansion:

1. Unfinished attics;

2. Crawl spaces; and

3. Basements, as defined in Article 2 of this Ordinance, whether finished or unfinished.

c. Calculation of Basis of Volume. The basis of the volume of the original structure, for determining the allowable expansion, shall be defined as follows:

The total of the following volumes:

1. The volume of all portions of the structure enclosed by roof and fixed exterior walls, as measured from the exterior faces of these walls and roof; plus

2. The volume of attached garages.

d. Exclusions from Basis of Volume. The following volumes shall be excluded from the basis of the volume of the original structure, for determining the allowable expansion:

1. Crawl spaces; and

2. Basements, as defined in Article 2 of this Ordinance, whether finished or unfinished.

e. Conversions of Porches, Decks, or Basements. Enclosing an existing open porch or deck shall be considered an expansion of volume under this Article. Conversion of an unfinished basement to a finished basement shall not be considered an expansion of area or volume, unless the foundation is expanded below the threshold set in section 3 below.

f. Notice Requirements. In accordance with Article 10.8.C, the names and addresses of the owners of all properties within two hundred (200) feet of the property in question, as shown by the most recent tax records of all municipalities in which such properties lie, shall be submitted with the Building Permit or Site Plan applications. Notification of the receipt of a completed application for an expansion of non-conforming dwellings in any Shoreland Zoning District shall be sent via certified, return receipt mail to all owners of properties within said two hundred (200) feet of the property in question. The applicant shall pay a fee sufficient to cover one hundred (100%) percent of the postage cost for mailing said notices. A Building Permit for said expansion shall not be issued prior to ten (10) days of mailing said notification to said abutters, to allow said abutters the opportunity to review the application at issue. A complete list of all property owners so notified shall be maintained as a part of the Building Permit. Failure of any property owner to receive a notice shall not invalidate the action of the Code Enforcement Officer.

An expansion in accordance with this section shall be approved by permit from:

1. The Code Enforcement Officer, where expansion involves no change to the footprint, foundation or landscaping; or

2. The Planning Board in all other cases.

2. Thirty (30%) Percent Expansion Allowable One Time Only

If a replacement structure is erected in conformance with the requirements of section 5 below, and it is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by thirty (30%) percent in floor area and volume since that date.

3. Replacement Foundations Under a Non-Conforming Structure.

Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in section 4, Relocation, below.

a. If a new, or replacement foundation is constructed under a non-conforming structure, the footprint of the new foundation may be reconfigured, provided that any changes are in conformance with the provisions of this Article. An overlay comparison of the two foundation plans shall indicate that the proposed new footprint will not, when superimposed deviate from the area of the existing footprint by more than two hundred fifty (250) square feet. The new footprint shall not exceed the square footage of the existing footprint. Any reconfiguration shall not increase the area of the structure towards any water body or wetland and shall meet the property line setbacks.

b. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with section 1 above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first-floor sill), it shall not be considered to be an expansion of the structure.

c. Repairs to existing foundations may be made without Planning Board approval.

4. Relocation of a Non-Conforming Structure.

A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider 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, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

a. Trees removed in order to relocate a structure must be replanted with at least one (1) native tree, three (3) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than fifty (50%) percent of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

b. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

5. Reconstruction or Replacement of a Non-Conforming Structure.

Any non-conforming structure which is located less than the required setback from a lot line or the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, damaged or destroyed by more than fifty (50%) percent of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the applicable setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to section 1 above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with section 4 above.

Any non-conforming structure which is located less than the required setback from a lot line or a water body, tributary stream, or wetland and which is removed by fifty (50%) percent or less of the market value, or damaged or destroyed by fifty (50%) percent or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in section 3 above, the physical condition and type of foundation present, if any.

A structure to be reconstructed pursuant to this section can be lifted vertically and then moved horizontally and stored on the same lot for a period not to exceed one hundred eighty (180) days. The temporary storage location of the structure shall not be more non-conforming in terms of wetland, water body or stream setbacks unless permission to do so has been granted by the Planning Board.

[Note: The words "damaged" and "destroyed" include voluntary removal by owners, as well as "Acts of God" such as fire, flood, wind or other causes.]

8.4 Change of Use of a Non-Conforming Structure

The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the body of water, tributary stream, or wetland, or on the subject of adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

8.5. Non-Conforming Due to Lack of Required Parking or Loading Space

A building or structure, other than a single-family dwelling, which is non-conforming as to the requirements for off-street parking and/or loading space shall not be extended or enlarged in any manner unless off-street parking and/or loading space is provided to bring parking and/or loading space into conformance with the requirements of this Ordinance for both the addition or alteration and for the original building or structure.

8.6 Conversion of Use

Once converted to a conforming structure, use or lot, no structure, use or lot shall revert to a non-conforming status.

8.7 Non-Conforming Lots

A. A non-conforming lot of record, not adjoined by any other lot in common ownership, may be built upon, as a matter of right for a single-family dwelling, and without the need for a variance, subject to all the requirements of this Ordinance for the zone where located, except for those area and frontage requirements which made the lot nonconforming, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicles.

B. If any lot in separate and distinct ownership from abutting lots contains less than ten thousand (10,000) square feet and has any outside dimension of less than fifty (50) feet, the minimum setback requirements from the lot lines intersecting with such outside dimension of less than fifty (50) feet shall be reduced to ten (10) feet. The setbacks from the other outside dimensions shall be met in full.

C. Contiguous Built Lots – Vacant or Partially Built: If two (2) or more contiguous lots are in a single or joint ownership of record as of March 12, 1985, if all or part of the lots do not meet the dimensional requirements of this Ordinance or subsequent amendments, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (Title 12 M.R.S.A. § 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with. If two or more principal uses or structures existed on a single lot of record on March 12, 1985, each may be sold on a separate lot provided that the above referenced laws and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

D. Contiguous Lots – Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two (2) or more contiguous lots, at least one (1) of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the Registry of Deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

a. Each lot contains at least one hundred (100) feet of shore frontage and at least twenty thousand (20,000) square feet of lot area; or

b. Any lots that do not meet the frontage and lot size requirements of subsection a above, are reconfigured or combined so that each new lot contains at least one hundred (100) feet of shore frontage and twenty thousand (20,000) square feet of lot area.

E. Existing Lots of Record: Notwithstanding any other provisions of this Article any non-conforming vacant lot of record, located entirely outside of any Shoreland Zone, containing at least twenty thousand (20,000) square feet or shown on a subdivision plan approved by the Kennebunkport Planning Board and recorded in the York County Registry of Deeds may be built upon as a matter of right and need not be consolidated with adjoining lots.

F. New Construction, Replacement or Substantial Renovation and Additions to Existing Structures on Non-Conforming Lots of Record: Structures shall be designed to conform with the same architectural style as the original building or a design that is comparable to the majority of structures in the immediate neighborhood. In addition, the principal (50% or more of the gross roof area) roof design shall be one or more of the below mentioned styles:

Gable, hip, cross gable, multi-gable, mansard or gambrel. Shed roofs and flat roofs (pitches of 3:12 or less) shall be primarily confined to porches and rear additions and shall not constitute more than 50% of the actual roof area.

Interior renovations involving existing structures that do not comply with this section need not comply with the above-mentioned requirements.

Requirements dictated by other laws (including but not limited to: DEP Sand Dune Requirements or Floodplain Management Ordinance) shall not be considered when evaluating architectural style.

8.8 Non-Conforming Uses

A. Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansion of such structures in Shoreland Zones as allowed in Article 8.3.B.1 above.

B. Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one (1) year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

C. Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. In Shoreland Zones, the determination of no greater adverse impact shall be made according to criteria listed in Article 8.4.

8.9 Vested Rights

Vested rights shall not arise by the mere filing of a notice of intent to build, an application for a building permit, or an application for required state permits and approvals. Such rights shall only arise when actual construction has begun, or, in the case of pending applications under this Ordinance, when the substantive review of a complete application commences. To establish vested rights, construction must be legal in all respects at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both state and local.

ARTICLE 9: BOARD OF APPEALS

9.1 Appointment and Composition

A. There shall be a Board of Appeals of seven (7) members, all of whom shall be residents of the Town of Kennebunkport. The members of the Board of Appeals shall be appointed by the Board of Selectmen, in conformance with the provisions of Title 30-A M.R.S.A. § 2691.

B. Terms of members shall be for three (3) years except that initial appointments shall be such that the terms of office of no more than three (3) members shall expire in any single year. The members of the Board of Appeals shall annually elect one (1) of their number to serve as Chairman to preside at all meetings of the Board. The Board shall annually elect one (1) of their number to serve as Vice Chairman to act as Chairman when the Chairman is unable to serve, and to assume such other responsibilities as the Board may direct. The Board shall annually elect a secretary/recorder from its own membership who shall provide for the keeping of the minutes of the proceedings of the Board. The minutes shall show the vote of each member upon each question. All minutes of the Board shall be public record. A quorum shall consist of four (4) members.

9.2 Powers and Duties

The Board of Appeals shall have the following powers and duties:

A. Administrative Appeals

1. To hear and decide, on a de novo basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. The action of the Code Enforcement Officer may be modified or reversed by the Board of Appeals by a majority vote. Any notice of violation, or any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals. Such enforcement actions are appealable only to the Courts as allowable by law and rules of civil procedure.

2. In hearing appeals or considering applications under this Ordinance, whenever there is uncertainty as to the meaning and/or intent of any part of this Ordinance, the Board of Appeals shall have the power to interpret such part.

B. Variance Appeals

Variances may be granted by the Board of Appeals only for lot size, lot width, frontage, height, lot coverage and setbacks and:

1. Only when strict application of the Ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship; and

2. When the proposed structure or use would meet all the provisions of this Ordinance except for the specific provision(s) from which relief is sought. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance. The words "undue hardship" as used in this subsection shall mean:

   a. That the land in question cannot yield a reasonable return unless a variance is granted;

   b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

   c. That the granting of a variance will not alter the essential character of the locality; and

   d. That the hardship is not the result of action taken by the applicant or a prior owner.

C. Practical Difficulty Variance

1. Notwithstanding Article 9.2.B, the Board of Appeals may grant a variance, but only from the dimensional standards of this Ordinance, when strict application of the provisions of the Ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:

   a. The need for a variance is due to the unique circumstances of the property, and not to the general conditions of the neighborhood;

   b. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;

   c. The practical difficulty is not the result of action taken by the applicant or a prior owner;

d. No other feasible alternative is available to the applicant;

e. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and

f. The property is not located, in whole or in part, within a Shoreland area, as defined in Title 38 M.R.S.A. § 435, nor within a Shoreland Zone or flood hazard zone as defined by this Ordinance.

2. The following words have the meanings set forth below:

a. Dimensional standards: Those provisions of this Ordinance which relate to lot area, lot coverage, frontage and setback requirements.

b. Practical difficulty: A case where strict application of the dimensional standards of the Ordinance to the property for which a variance is sought would both preclude a use of the property which is permitted in the zone in which it is located would also result in significant economic injury to the applicant.

c. Significant economic injury: The value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

d. Except as modified above, the other provisions of Article 9 will apply to practical difficulty variances.

e. A practical difficulty variance may not be used to grant relief from the provisions of the land use standards of the Ordinance, to increase either volume or floor area, nor to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this Article.

D. Setback Variance for Single Family Dwellings

The Board of Appeals may grant a variance from required setbacks from lot lines only, for single family dwellings subject to the following limitations:

1. The Board must find that strict application of the Ordinance to the applicant and the applicant's property would cause undue hardship. For purposes of this subsection only, the term "undue hardship" means:

a. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

b. The granting of a variance will not alter the essential character of the locality;

c. The hardship is not the result of action taken by the applicant or a prior owner;

d. The granting of the variance will not substantially reduce or impair the use of abutting property; and

e. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

2. A variance may be granted only pursuant to this subsection for a single-family dwelling that is the applicant's primary year-round residence.

3. A variance granted under this subsection may not exceed twenty (20%) percent of the applicable setback requirement.

4. A variance shall not be granted under this subsection if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage.

E. Disability Variance: See Article 11.2.M

F. Granting of Variances to be Handled Strictly

The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

G. Copy of Application to Department of Environmental Protection

For any application within the Shoreland Zone, a copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the Board of Appeals to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

H. Conditional Uses

1. Conditional uses subject to Board of Appeals review under Article 4 may be approved by the Board of Appeals after considering the characteristics and location of the proposed use and of other properties in the surrounding neighborhood, provided that the petitioner shall submit to the Board of Appeals statements in writing, which may be accompanied by diagrams or photographs which shall become part of the record of such petitions, demonstrating that the proposed use:

    a. Will meet the definition and specific requirements set forth in this Ordinance for such particular use;

    b. Will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, light, glare or other cause;

    c. Will not have a significant adverse effect on adjacent or nearby property values;

    d. Will not result in significant hazards to pedestrian or vehicular traffic or significant traffic congestion;

    e. Will not result in significant fire danger; and

    f. Will not result in significant flood hazards or flood damage, drainage problems, ground or surface water contamination, or soil erosion.

2. In addition, when the proposed use is to be located in the Shoreland Zone or Resource Protection Zone, the Board of Appeals shall make a positive finding that the proposed use will comply with all the standards established in Article 10.10.B.1.a-h of this Ordinance.

9.3 Appeals Procedure

A. Any person aggrieved by a decision of the Code Enforcement Officer, other than a decision or failure to act related to an enforcement-related matter as described in Article 9.2.A.1 of this Ordinance, may appeal that decision by filing an administrative appeal application on forms provided for that purpose with the Town Clerk within thirty (30) days of the decision. The Board, upon showing of good cause, may waive the thirty (30) day requirement. Such application forms shall be used also by any person requesting a variance and by any person requesting approval of a conditional use subject to Zoning Board of Appeals review. The application form shall be completed in full, shall include:

1. The names and addresses of the owners of all property within two hundred (200) feet of the property in question and shall be signed by the applicant;

2. A concise written statement indicating what relief is requested and why the administrative appeal, variance, or conditional use should be granted; and

3. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

B. When the Board of Appeals reviews such a decision of the Code Enforcement Officer, other than a decision or failure to act related to an enforcement-related matter as described in Article 9.2.A.1 of this Ordinance, in an administrative appeal, the Board of Appeals shall hold a "de novo" hearing. At this time, the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

C. At the time of the filing of the application, the fee established by the Municipal Officers in accordance with the provisions contained in Article 11.6, plus the postage costs for sending notices by certified mail as required by paragraph E, shall be paid.

D. The Town Clerk shall give the application immediately to the Board of Appeals which shall schedule a public hearing within thirty-five (35) days of receipt of a complete written application by the Clerk, unless this time period is extended by the parties. Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer shall transmit to the Board of Appeals all of the papers constituting the record from which the decision was appealed.

E. At least ten (10) days prior to the hearing date, the Town Clerk shall publish a notice of the hearing in a newspaper of general circulation in Kennebunkport. The notice shall identify the property involved, the name of the applicant, the nature of the application, and the time and place of the public hearing.

F. A copy of the notice shall be sent by certified mail to the owners of all property within two hundred (200) feet of the property in question at least seven (7) days in advance of the hearing. The owners of property shall be considered to be those shown on the tax lists as those against whom taxes are assessed. The Board of Appeals shall maintain as a part of the record for each case a completed list of all property owners so notified. Failure of any property owner to receive a notice shall not necessitate another hearing or invalidate the action of the Board of Appeals.

G. The Board of Appeals shall keep a written record of all applications, noting the date the application is received, the date of the hearing, the person who presented the application at the hearing, any pertinent testimony presented at the hearing, and the finding of facts and decision of the Board of Appeals. All records of the Board of Appeals shall be maintained at the Municipal Offices in a permanent file which shall be available to the public.

H. The Code Enforcement Officer, or his/her designated assistant, may attend all hearings, and may present to the Board of Appeals plans, photographs, or other materials which will assist the Board of Appeals in making a decision.

I. The applicant's case shall be heard first. If the applicant is not present at the hearing, any person acting as the applicant's representative must demonstrate that he/she has written authority to appear on the applicant's behalf. To maintain orderly procedure, each side shall proceed without interruption. The person filing the appeal shall have the burden of proof. All persons at the hearing shall abide by the order of the Chairman of the Board of Appeals.

J. After the public hearing the Board of Appeals shall make findings of fact, based on the record of the hearing, and issue a decision on the application. The applicant shall be notified in writing of the findings and decision of the Board of Appeals within seven (7) days of the Board's decision, with copies sent to the Code Enforcement Officer, the Planning Board, and the Municipal Officers.

K. In approving an application for an appeal, conditional use or variance, the Board of Appeals may impose reasonable conditions and restrictions, which shall then be enforceable as if part of this Ordinance.

L. Except as provided by Title 30-A M.R.S.A. § 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may appeal to the Superior Court, as provided by law, within forty-five (45) days of the date of the vote on the decision by the Board of Appeals.

M. Reconsideration. In accordance with Title 30-A M.R.S.A. § 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision and proper notification to the landowner, petitioner, Planning Board, Code Enforcement Officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

N. If the Board of Appeals grants an appeal, conditional use or variance, the applicant's legal rights, determined thereby, shall expire if any construction or alteration involved is either not commenced within one (1) year or not substantially completed within two (2) years of the date on which the appeal, conditional use or variance was granted.

O. A copy of all variances granted by the Board of Appeals affecting properties in the Shoreland and Resource Protection Zones shall be submitted to the Department of Environmental Protection within seven (7) days of the decision.

P. The granting of a variance must be recorded in the York County Registry of Deeds within ninety (90) days of issuance of the final written approval in order for it to be deemed valid.

ARTICLE 10: PLANNING BOARD SITE PLAN REVIEW

10.1 General Requirement

No use, change in use, expansion, enlargement, alteration or construction activity requiring approval under this Article shall be commenced unless and until the property owner has submitted to and secured approval by the Planning Board.

10.2 Site Plan Approval Required

A. Except as provided in subparagraph B, Site Plan Review and Approval by the Planning Board shall be required for:

1. Any use listed in Article 4 as a Conditional Use Subject to Planning Board Site Plan Review.

2. Construction, alteration or external enlargement of any building or structure.

3. Expansion, enlargement or change of any existing use, including an expansion, enlargement or change of use occurring entirely within an existing building.

4. Construction or enlargement of any area for parking, loading or vehicular service, including driveways.

B. Site Plan Review and Approval shall not be required:

1. For detached single family dwellings, accessory apartments, two family dwellings, home occupations and their accessory buildings, driveways and parking areas; or structures associated with agriculture, farm stands or storage and repair of fishing equipment.

2. In any case where a building is to be externally changed for the purpose of closing an entrance or creating a new entrance thereto, or for other extensions to a building which in total do not exceed one hundred (100) square feet in area.

3. In the Dock Square Zone, Site Plan Review Approval shall not be required under Article 10.2.A.1 for a change of use within or among the following uses: clubs, financial institutions, professional and business offices and retail businesses; or for a change of use from a restaurant to any one of these uses. This exemption shall apply unless Site Plan Review Approval is required under Article 10.2.A.2 or Article 10.2.A.4, or unless the change in use involves an expansion or enlargement under Article 10.2.A.3.

4. Notwithstanding Section 10.2.A.3, Site Plan Review and Approval shall not be required for a change of use to a temporary public hospitality facility, whether located on a vacant or otherwise occupied lot.

10.3 Shoreland Zoning Review

Review and approval shall be required for any use listed in Article 5 as a Use requiring Planning Board permit.

10.4 Powers and Duties

The Planning Board shall hear and approve with modifications or conditions, or disapprove an application for Site Plan Review Approval based on its compliance with standards set forth in this Ordinance.

10.5 Variance Required

If a proposed structure or use does not meet any of the dimensional requirements of this Ordinance, a variance must be obtained from the Zoning Board of Appeals in accordance with Article 9.2, prior to a public hearing by the Planning Board.

10.6 Submissions and Requirements

A. Submission requirement for Planning Board review of a use proposed in the Shoreland or Resource Protection Zone. An application for review of a use in the Shoreland or Resource Protection Zone which does not require Site Plan Review shall be made on forms provided for that purpose. A use which does require Site Plan Review shall meet the submission requirements stated in subsection D below.

B Submission requirement for Site Plan Review of a Mobile Home Park.

An application for Site Plan Review of a mobile home park shall be prepared in accordance with the requirements for a residential subdivision and shall meet all the provisions and standards set forth in Article 7.10 of this Ordinance.

C. Submission requirement for Site Plan Review

The applicant for Site Plan Review in all other Zones and for all other uses shall submit building and site plans in two copies, drawn to a scale of not less than one inch equals forty feet (1"= 40'). The building plans shall show at a minimum the first-floor plan and all elevations, with indication of the proposed construction material. The site plan shall include the following information:

1. A map of the site with reference to surrounding areas and existing street locations.

2. The name and address of the owner and site plan applicant, together with evidence of sufficient right, title or interest in the premises to permit the applicant to undertake the use for which site plan review approval has been requested.

3. The names and addresses of the owners of all properties within two hundred (200) feet of the property in question, as shown by the most recent tax records of all municipalities in which such properties lie.

4. A plan of the area showing lot line dimensions, applicable zone or zones, and the normal high water mark, if applicable.

5. Location of all existing and proposed buildings and structures, streets, easements, driveways, entrances and exits on the site and within one hundred (100) feet thereof.

6. All setbacks from bodies of water and lot lines.

7. All existing physical features on the site and within two hundred (200) feet thereof, including streams, watercourses, existing woodlands, existing trees at least eight (8) inches in diameter as measured four-and-one-half (4½) feet above grade. Soil conditions as reflected by a medium intensity survey (such as wetlands, rock ledge, and areas of high water table) shall be shown, and the Planning Board may require high intensity soils surveys where necessary.

8. Topography showing existing and proposed contours at five (5) foot intervals for slopes averaging five (5%) percent or greater and two (2) foot intervals for land of lesser slope. A reference benchmark shall be clearly designated. Where variations in the topography may affect the layout of buildings and roads, the Planning Board may require that the topographic maps be based on an on-site survey.

9. Parking, loading and unloading areas shall be indicated with dimensions, traffic patterns, access aisles and curb radii.

10. Improvements such as roads, curbs, bumpers and sidewalks shall be indicated with cross sections, design details and dimensions.

11. Location and design of existing and proposed storm water systems, sanitary waste disposal systems and potable water supply, and methods of solid waste storage and disposal.

12. Landscaping and buffering plan showing what will remain and what will be planted, indicating botanical and common names of plants and trees, dimensions, approximate time of planting and maintenance plans.

13. Lighting details indicating type of fixtures, location, radius and intensity of light to comply with Kennebunkport's Outdoor Lighting Ordinance.

14. Location, dimensions and details of signs.

15. Proposed use of all floor area.

D. Submission for site plan review for business, commercial and industrial uses shall also include:

1. A written description of the proposed operations in sufficient detail to indicate the degree to which the operations will create traffic congestion, noise, toxic or noxious matter, vibration, odor, heat, glare, air pollution, waste, and other objectionable effects, along with engineering and architectural plans for mitigating such effects.

2. The proposed number of shifts to be worked and the maximum number of employees on each shift.

3. A list of all hazardous materials to be hauled, stored, used, generated or disposed of on the site, and any pertinent state or federal permits required.

E. Exceptions to these requirements.

Where the Planning Board finds that, due to special circumstances of a particular plan, the submission of required exhibits is not necessary or is inappropriate because of the nature of the proposed development, it may waive such requirements subject to appropriate conditions. The Planning Board may require submission of such additional information as it deems necessary for proper review.

Digital submission requirements. All plan sheets must be submitted in digital format:

1. All plan sheets containing the same information as the hardcopy submission shall be referenced to the town's geographic reference system and shall be digitally submitted.

2. Digital transfer of the proposed plan sheets shall be on the town's Horizontal Datum: Maine State Plane Coordinate System: Maine West Zone 4101, or FIPS Zone 1802, North American Datum 1983: Units: Feet.

3. The preferable vertical datum is North American Vertical Datum 1988 (NAVD88). However, if only National Geodetic Vertical Datum, 1929 (NGVD29) is possible, that is permissible. The choice of vertical datum must be indicated on the digital submission. The Ellipsoid is GRS 80 (Geodetic Reference System 1980).

4. Data should be developed using either Real Time Kinematics (RTK) GPS or survey grade GPS or traditional methods of occupying known, high precision surveyed monuments. All data should meet the ALTA/ASCM relative positional accuracy standard of .07 feet and be delivered in US Survey Feet.

5. A PDF image of the plan sheets containing the same information as the hardcopy submission shall be digitally submitted.

10.7 Performance Standards

All Site Plan applications shall conform to the Town Wide Standards in Articles 6 and the Standards for Specific Activities, Land Uses, and Zones where appropriate in Article 7 of this Ordinance. In addition, where applicable, Site Plans shall also conform to the following standards.

A. Erosion Control

1. Erosion and sedimentation control plans shall be developed so as to ensure that erosion of soil and sedimentation of watercourses and water bodies will be minimized by employing the following "best-management" practices:

    a. Stripping of vegetation, soil removal and regrading or other development shall be accomplished in such a way as to minimize erosion.

b. The duration of exposure of the disturbed area shall be kept to a practical minimum.

c. Temporary vegetation and/or mulching shall be used to protect exposed areas during development.

d. Permanent (final) vegetation and mechanical erosion control measures, in accordance with the standards of the County Soil and Water Conservation District, shall be installed as soon as possible after construction ends.

e. Until a disturbed area is stabilized, sediment in run-off water shall be trapped by the use of debris basins, sediment basins, silt traps or other acceptable methods.

f. The top of a cut or the bottom of a fill section shall not be closer than ten (10) feet to an adjoining property, unless otherwise specified in this Ordinance.

g. During grading operations, methods of dust control shall be employed, wherever practicable.

B. Parking Lot Design Criteria

1. Vehicular Entrance and Exit

a. Entrances and exits shall be clearly identified by the use of signs, curb cuts and landscaping.

b. Entrance/exit design shall be reviewed for size, location, sight-distance, grade separation, and possible future changes in highway alignment of any affected public roads.

c. Access points from a public road to commercial and industrial operations shall be so located as to minimize traffic congestion and also to avoid generating traffic on local access streets of a primarily residential character.

d. At each driveway curb cut, no visual obstructions higher that three (3) feet above street level shall be allowed closer than ten (10) feet to the traveled way for twenty-five (25) feet from the intersection, measured along both the street and the driveway.

e. Where a site occupies a corner of two (2) intersecting roads, no driveway entrance or exit shall be located within fifty (50) feet of the point of tangency of the existing or proposed curb radius of that site.

f. No part of any driveway shall be located within ten (10) feet of a side property line. However, the Planning Board may permit a driveway serving two (2) or more adjacent lots to be located within ten (10) feet of the side lot line between the adjacent lots.

g. Where two (2) or more two-way driveways connect a single site to any one (1) road, a minimum clear distance of one hundred (100) feet measured along the right-of-way line shall separate the closest edges of any two (2) such driveways. If one driveway is two-way and one is a one-way driveway, the minimum distance shall be seventy-five (75) feet.

h. Driveways should intersect the road at an angle of as near ninety (90º) degrees as site conditions will permit and in no case less than sixty (60º) degrees.

i. Acceleration and deceleration lanes should be provided where the volume of traffic using the driveway and the volume of traffic on the road would otherwise create unsafe traffic conditions.

2. Interior Vehicular Circulation

a. Painted arrows and/or signs shall be used as necessary to define desired circulation patterns.

b. Enclosures, such as guardrails, curbs, fences, walls and landscaping shall be used to identify circulation patterns and to restrict driving movements diagonally across parking aisles where necessary, but not to reduce visibility of oncoming pedestrians and vehicles.

c. Any parking lot with an area over one (1) acre shall be provided with shade trees planted at representative points throughout the lot. There shall be one (1) tree planted for every thirty-five (35) parking spaces.

3. Parking

a. Access to parking spaces shall not be from major interior travel lanes, and shall not be immediately accessible from any public way.

b. Parking areas shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

c. Parking aisles should be oriented perpendicular to stores or businesses for easy pedestrian access and visibility.

d. Lighting of parking areas may be required at the discretion of the Planning Board. All lighting shall meet the provisions of the Kennebunkport Lighting Ordinance.

e. When parking areas are paved, painted stripes shall be used to delineate parking spaces.

f. Bumpers and/or wheel stops shall be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.

g. Parking spaces shall be provided to conform with the number required in Articles 6.9 and 6.10.

C. Storm Water Management

Storm water management plans shall be developed so as to ensure that surface water runoff shall be minimized and detained on-site if possible. If it is not possible to detain water on-site, downstream improvements may be required to minimize off-site impacts. The natural state of watercourses, swales, floodways or existing rights-of-way and easements shall be maintained as nearly as possible. Where the development involves more than ten thousand (10,000) square feet of impervious surface, a storm water drainage system capable of handling a fifty (50) year storm without adverse impact on adjacent properties and downstream facilities shall be constructed. Storm water and surface water runoff, whether channelized or not, shall not be diverted onto adjacent properties without an easement, unless in a natural or previously existing channel.

D. Buffers

1. Buffers include natural vegetation, plantings, fences, berms and mounds used to protect adjacent properties or roadways from any detrimental features of a proposed development or use. The following guidelines apply:

   a. Buffers shall be considered in or for the following areas and purposes:

      i. Along property lines, to shield various uses from each other.

      ii. Along interior roads running parallel to roads exterior to the site.

      iii. Around commercial parking areas, waste collection and disposal areas, storage areas and loading and unloading areas, to minimize the visual impact and to prevent wind-borne debris from leaving the site.

   b. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and non-compatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery or rock outcrops do not exist or are insufficient to provide a buffer, other kinds of buffers shall be considered.

   c. Buffers shall be sufficient to shield structures and uses from the view of non-compatible abutting properties and public roadways.

   d. All buffers shall be properly maintained by the owner and shall be located within the property line so as to allow access for maintenance on both sides without intruding upon abutting properties.

E. Emergency Access and Circulation

1. All new commercial and industrial buildings, hotels, motels, nursing homes, eldercare facilities, and buildings used by the general public shall provide a clear, unimpeded route of access for emergency vehicles. This route shall be acceptable to the Fire Chief. The route shall be identified on the site by appropriate pavement marking and/or signs that restrict parking, standing or unloading within this access route.

2. A new facility such as a hospital, nursing home, or eldercare facility that regularly accommodates ill, infirm, or elderly occupants shall provide a separate entrance for the movement of incapacitated people. This entrance shall be designed to accommodate a stretcher and shall allow for a rescue unit to reach the entrance conveniently and in an unimpeded manner.

3. A new facility such as a hospital, nursing home, or eldercare facility that regularly accommodates ill, infirm, or elderly occupants shall provide for the convenient movement of incapacitated people between floors of the building. Where appropriate, at least one elevator capable of accommodating a stretcher in a horizontal position shall be included in the buildings.

10.8 Planning Board Procedure for Site Plan Review

A. At the time of filing of the application, a fee, plus the postage costs for mailing notices required by paragraph H, shall be paid in accordance with the schedule set by the Selectmen pursuant to Article 11.6 of this Ordinance.

1. In addition to the application fee, if the Planning Board determines it necessary for the Board to hire independent consulting services (including, without limitation, planning, engineering and legal services) to review the application because the Board finds that its review of the application under the applicable Ordinance provisions requires review beyond the expertise of Town staff, the applicant shall pay a fee sufficient to cover one hundred (100%) percent of the Town's cost of procuring such independent consulting services and the Town shall hire the independent consultant(s). The results of such independent consulting services shall be available for review by the public, but shall be deemed to have been made solely for the benefit of the Town and shall remain the property of the Town. After the Planning Board has estimated the cost of such independent consulting services and the applicant has had the opportunity to review and comment upon the estimate, the applicant shall pay a fee to the Town for such services as determined by the Planning Board. This fee must be reasonable in amount, based upon the time involved and the complexity of the matter. This fee shall be assessed for the privilege of review and so shall be payable regardless of the results or outcome of the application. Except as provided in paragraph A.3 of this Article, no portion of the application review may go forward unless the applicant has paid this fee to the Town.

2. The Town shall place this fee payment for the independent consulting services into a specific non-interest bearing account to be administered by the Town Manager. Whenever the balance in this account is drawn down by more than seventy-five (75%) percent, the Planning Board shall notify the applicant and, after the applicant has had the opportunity to review and comment upon the Board's estimate of the amount of additional payment for remaining independent consulting services, shall determine the additional amounts to be paid by the applicant to the Town for the remaining consulting services. Until the applicant has paid the Town this additional amount for the remaining independent consulting services, no portion of the project review for which the remaining independent consulting services are required may go forward. Any remaining balance in such account shall be refunded promptly to the applicant after final action upon, or withdrawal of, the application.

3. Any dispute regarding the application of this Article or of the amount required by the Board to be paid may be appealed in writing to the Board of Selectmen within ten (10) days from the date of the Planning Board decision that is in dispute. After due notice and investigation and for good cause shown, the Board of Selectmen may affirm, modify or reverse the decision of the Planning Board or reduce the amount of the fee assessed. Until the Board of Selectmen has resolved the dispute, no portion of the application review for which the independent consulting services are required may go forward.

B. Following the receipt of an application the Board may hold a pre-hearing meeting with the applicant to discuss submission requirements and general concerns of the Board. The Planning Board may also request that the application include a report from the Chief of Police, the Fire Chief, the Superintendent of the Water District and the Superintendent of the Sewer Department containing their recommendations regarding the proposed use. Within forty-five (45) days of the submission of a completed application, with all supporting documentation, the Board shall hold a public hearing. At least ten (10) days prior to the hearing date, the Town Clerk shall publish a notice of the hearing in a newspaper of general circulation in Kennebunkport. The notice shall identify the property involved, the applicant, the nature of the application, and the time and place of the public hearing.

C. A copy of the notice shall be sent to the owners of all property within two hundred (200) feet of the property in question at least seven (7) days in advance of the hearing. The owners of property shall be considered to be those shown on the tax list as the person against whom taxes are assessed. The Board shall maintain as a part of the record of each case a complete list of all property owners so notified. Failure of any property owner to receive a notice shall not necessitate another hearing or invalidate the action of the Board.

D. At any hearing a party may be represented by agent or attorney. Hearings may be continued to other times for good cause as determined by the Planning Board.

E. The Code Enforcement Officer or his/her designated assistant may attend all hearings and may present to the Planning Board plans, photographs or other material he/she deems appropriate for an understanding of the application.

F. The applicant's case shall be heard first. If the applicant is not present at the hearing, any person acting as the applicant's representative must demonstrate that he/she has written authority to appear on the applicant's behalf. To maintain orderly procedure, each side shall proceed without interruption. All persons at the hearing shall abide by the order of the Chairman.

G. Subsequent to the public hearing the Planning Board shall reach a decision and inform, in writing, the applicant and the Code Enforcement Officer of its decision and its reasons therefore.

H. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall issue, with conditions prescribed by the Planning Board, or deny a Building or Use Permit.

I. Approvals secured under the provisions of this Ordinance by vote of the Planning Board shall expire if the work or changes authorized have not commenced within one (1) year or have not been substantially completed within two (2) years of the date on which the building or use permit was issued by the Code Enforcement Officer.

J. An appeal from a decision rendered by the Planning Board under this Ordinance shall be taken directly to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure and no appeal shall lie from a decision of the Planning Board to the Board of Appeals.

10.9 <u>Planning Board Review Procedure for Shoreland Reviews Not Needing Site Plan Review</u>

A. Within thirty-five (35) days of the date of receiving written application, the Planning Board shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board shall make a decision on all permit applications in writing within forty-five (45) days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty-five (35) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty-five (35) days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance, and with the Guidelines for Decisions stated in Article 10.10.B below.

B. If the Planning Board decides to hold a public hearing in order to gather information concerning the proposed land use activity, the fee and hearing procedures set forth in Article 10.8 shall be followed.

C. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

10.10 Guidelines for Decisions

A. Causes for Site Plan Review Denial

1. The Planning Board shall approve an application for Site Plan Review unless it makes one or more of the following written findings with respect to the proposed development:

a. The proposed use does not meet the definition or specific requirements set forth in this Ordinance or will not be in compliance with applicable state or federal laws;

b. The proposed use will create fire safety hazards by not providing adequate access to the site, or to the buildings on the site, for emergency vehicles;

c. The proposed exterior lighting will create hazards to motorists traveling on adjacent public streets or is inadequate for the safety of occupants or users of the site or will damage the value and diminish the usability of adjacent properties;

d. The provisions for buffers and on-site landscaping do not provide adequate protection to neighboring properties from detrimental features of the development;

e. The proposed use will have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor dust, glare or other cause;

f. The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets will create hazards to safety;

g. The proposed use will have a significant detrimental effect on the value of adjacent properties which could be avoided by reasonable modification of the plan;

h. The design of the site will result in significant flood hazards or flood damage or is not in conformance with applicable flood hazard protection requirements;

i. Adequate provision has not been made for disposal of wastewater or solid waste or for the prevention of ground or surface water contamination;

j. Adequate provision has not been made to control erosion or sedimentation;

k. Adequate provision has not been made to handle storm water run-off or other drainage problems on the site;

l. The proposed water supply will not meet the demands of the proposed use or for fire protection purposes;

m. Adequate provision has not been made for the transportation, storage and disposal of hazardous substances and materials as defined by state law;

n. The proposed use will have an adverse impact on significant scenic vistas or on significant wildlife habitat which could be avoided by reasonable modification of the plan;

o. The proposed use will cause unreasonable highway or public road congestion; or

p. Existing off-site ways and traffic facilities cannot safely and conveniently accommodate the increased traffic generated by the development as far away from the development as the effects of development can be traced with reasonable accuracy.

B. Guidelines for All Applications for Development Proposed in the Shoreland and Resource Protection Zones

1. When the proposed development will be located in the Shoreland Zone or Resource Protection Zone, the Planning Board shall approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

a. Will maintain safe and healthful conditions;

b. Will not result in water pollution, erosion, or sedimentation to surface waters;

c. Will adequately provide for the disposal of all wastewater;

d. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

f. Will protect archaeological and historic resources as designated in the comprehensive plan;

g. Will avoid problems associated with flood plain development and use; and

h. Is in conformance with the Performance Standards set forth in Article 5.6.

C. Statement of Findings

All decisions of the Planning Board under this Article shall be accompanied by written statements that set forth with particularity the precise reasons why the findings were made.

10.11 Conditions Attached to Site Plan Review

Upon consideration of the factors listed above, the Planning Board may attach such conditions, in addition to those required elsewhere in this Ordinance, that it finds necessary to further the purposes of this Ordinance. Violation of any of these conditions shall be a violation of this Ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation, specified sewage disposal and water supply facilities, landscaping and planting screens, period of operation, operational controls, professional inspection and maintenance, sureties, deed restrictions, restrictive covenants, type of construction, or any other reasonable conditions necessary to fulfill the purposes of this Ordinance.

10.12 Performance Guarantees

A. At the time of approval of the application for Site Plan Review, the Planning Board shall require the applicant to tender a performance guarantee in the form of a certified check payable to the Town, a letter of credit payable to the Town or a performance bond payable to the Town issued by a financial institution or surety company acceptable to the Planning Board in an amount adequate to cover the total costs of all required improvements, taking into account the time span of the performance guarantee and the effects of inflation upon costs. Required improvements may include but shall not be limited to monuments, street signs, streets, sidewalks, parking lots, water supply, sewerage disposal and storm drainage facilities and required landscaping. The conditions and amount of the certified check, letter of credit or bond shall be determined by the Planning Board with advice from the Code Enforcement Office.

B. Prior to the release of the check, letter of credit, or bond, or any part thereof, the Planning Board shall determine to its satisfaction that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested. Any interest accumulated on an escrow account shall be returned to the applicant after it has been determined that the proposed improvements meet all design and construction requirements.

C. If the Planning Board determines that any of the improvements have not been constructed in accordance with plans and specifications filed by the applicant, the Planning Board shall then notify the applicant, and take all necessary steps to preserve the Town's rights.

D. At least five (5) days prior to commencing construction of any required improvements, the applicant shall pay to the Town an inspection fee equal to two (2%) percent of the cost of such improvements. The applicant shall notify the Code Enforcement Officer in writing of the time when he/she proposes to commence construction of the improvements, so that the Code Enforcement Officer can ensure that all municipal specifications and requirements are met during the construction of required improvements, and that the completion of improvements and utilities required by the Board are satisfactory. If the inspection costs amount to less than the fee collected, the surplus shall be returned to the applicant when inspections are completed.

E. The Planning Board shall require, as a condition of any approval, that the applicant notify the Planning Board prior to any transfer of rights to construct an approved project. The Planning Board may take appropriate steps, including a requirement that any decisions of the Board be recorded in the Registry of Deeds, to ensure that the performance guarantees required by this section become binding on any transfer of rights to build or complete such project. No assignment or transfer of rights to construct a project approved under this Article is valid without prior review and approval by the Planning Board of a new performance guarantee under Article 10.12 to ensure that any assignee or transferee has the financial capacity to undertake or complete the project.

10.13 Conditional Uses

When a proposed subdivision includes a conditional use, the Planning Board may review that conditional use as part of the overall subdivision review as guided by the Kennebunkport Subdivision Regulations. The Planning Board review process and Findings of Fact for the final approval of the subdivision will specifically address compliance with the conditions of Article 10.10 for the proposed conditional use. An additional application, hearing and notification process shall not be required when such proposed uses are reviewed in conjunction with the proposed subdivision. For a conditional use approval obtained under this subsection, the time periods for expiration of the approval contained in Section 10.8.I and Section 11.7.B shall not begin to run on the date of the approval but shall begin to run on the earlier of the following dates: (1) two years prior to the date on which the Kennebunkport Subdivision Regulations require substantial completion of the subdivision or the phase of the subdivision that contains the conditional use; (2) an earlier date designated by the Planning Board in its approval; or (3) any date on which this ordinance is amended to convert the conditional use into a prohibited use.

ARTICLE 11: ADMINISTRATION

11.1 Code Enforcement Officer

A. This Ordinance shall be enforced by the Code Enforcement Officer, who shall be appointed or reappointed annually by July 1st, by the Board of Selectmen under the Administrative Code of the Town of Kennebunkport.

B. The Code Enforcement Officer shall maintain a current file of all pertinent Federal, State and local statues, ordinances, regulations, codes and plans relating to land-use regulation-including local subdivision plans.

C. The Code Enforcement Officer shall maintain a record of fees collected.

D. The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to approval. The Code Enforcement Officer, in the performance of his/her duties, shall have freedom of access during reasonable hours for inspection purposes, with the consent of the owner, to all parts of any building or structure regulated by this Ordinance. When necessary the Code Enforcement Officer may obtain an administrative warrant from District Court.

11.2 Permit Required

After the effective date of this Ordinance, no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

Therefore, a written permit from the Code Enforcement Officer shall be required for the following activities:

A. Flood Hazard Areas: All construction or earth moving activities or other improvements within the 100-year flood plain designated on the Flood Insurance Rate Maps published by the Federal Emergency Management Agency.

B. New construction: New construction of buildings and structures.

C. Any activity and use listed in Article 5 as requiring a permit from the Code Enforcement Officer.

D. Alteration: Alteration of a building or structure, or parts thereof, except as provided in Article 11.3.

E. Moving Demolition: All buildings or structures which are removed from or moved onto, or moved around within a lot, or demolished.

Demolition of Historic Buildings: The following provisions apply to all applications for the demolition or removal of any locally historic building built prior to 1930 in a National Register District. Immediately upon receiving a demolition request from a property owner or applicant and prior to issuing a demolition permit, the Code Enforcement Officer shall post a sixty (60) day waiting period, and at the applicant's expense, provide written notice to abutters, and advertise at least two times in a newspaper of widespread circulation within the Town of Kennebunkport, the applicant's demolition request.

F. Change of Use: The change of any premises from one category of land use to any other land use.

G. Placement of Signs: Placement of signs except temporary signs described in Article 6.12.F.

H. Conditional Uses: Any use requiring approval as a conditional use by the Planning Board or Board of Appeals.

I. Roads, Filling or Grading: Road construction and filling or grading of land, as described in Article 6.14.

J. Entrance to Public Ways: Entrance to public ways, as described in Article 6.15.

K. Growth management permit: Construction or placement of a new dwelling unit, as described in Article 11.12.

L. Temporary placement of an awning or tent(s) exceeding 80 square feet in size: Temporary placement not to exceed 30 days per any calendar year per parcel. Tents that exceed 80 square feet and are in place for more than 30 days per calendar year are subject to conditions and approvals as a permanent structure.

M. Disability Variance: The Code Enforcement Officer may grant a variance from setback or lot coverage requirements only to an owner of a residential dwelling, for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Code Enforcement Officer shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Code Enforcement Officer may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or

effectiveness of the structure. For any application within the Shoreland Zone, a copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Code Enforcement Officer. Any comments received from the Commissioner shall be made part of the record and shall be taken into consideration by the Code Enforcement Officer.

11.3 Permit Not Required

A. Normal maintenance, repairs, re-roofing, re-siding, and decorative changes to a building or structure do not require a permit.

B. A permit is not required for the replacement of an existing road culvert as long as:

1. The replacement culvert is not more than twenty-five (25%) percent longer than the culvert being replaced;

2. The replacement culvert is not longer than seventy-five (75) feet; and

3. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

C. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

D. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

11.4 Permit Procedure

A. All applications for permits shall be submitted in writing in duplicate to the Code Enforcement Officer on forms provided for the purpose.

B. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct. All applications shall be dated, and the Code Enforcement Officer shall note upon each application the date and time of its receipt.

C. All applications for a permit shall be accompanied by a scaled site plan or survey, accurately drawn to scale or showing actual dimensions or distances, and showing:

1. The actual shape and dimensions of the lot for which a permit is sought.

2. The location and size of all buildings, structures, water bodies, and other significant features currently existing on the lot.

3. The location and size of new buildings and structures to be constructed.

4. The existing and intended use of each building or structure.

5. Where applicable, parking lots and driveways, signs, buffer strips, and private wells.

6. Such other information as may be necessary to provide for the administration and enforcement of this Ordinance.

D. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

E. The Code Enforcement Officer shall, within twenty (20) days of receipt of an application, notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. If the application is found to be complete, the Code Enforcement Officer shall issue the permit, if all proposed construction and uses meet the provisions of the Ordinance, or refer the applicant to the Planning Board for Site Plan Review under Article 10, or deny the application. All decisions of the Code Enforcement Officer shall be in writing. Failure of the Code Enforcement Officer to act within twenty (20) days shall constitute denial of the application.

F. One (1) copy of the application, with the permit or other written decision of the Code Enforcement Officer shall be returned to the applicant, and one (1) copy, with a copy of the permit or written decision shall be retained by the Code Enforcement Officer as a permanent public record.

G. No building or use permit shall be issued for any structure or use until all other necessary Federal, State, and local permits and approvals have been obtained.

H. The issuance of a permit under this Ordinance shall not be deemed a permit under any Federal or State statutes or other ordinance of Kennebunkport. It is the responsibility of the land owner or applicant to comply with all other laws and regulations.

I. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

J. Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the Shoreland Zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

11.5 Suspension and Revocation of Permits

A. A permit may be suspended or revoked, if:

1. The permit was issued on incomplete or false information, and/or continuation of the work authorized would result in a violation of Federal or State statutes or local ordinances.

2. A violation has been created during the completion of work initially authorized by the permit.

3. The continuation of the work authorized is endangering or may endanger the safety or general welfare of the community during the construction or work for which the permit was issued.

4. The applicant or his/her agent is exceeding the scope of the work for which the permit was issued.

5. The Code Enforcement Officer determines that he/she is unable to rule on the continued validity of a permit, in which case he/she shall suspend the permit, without penalty, and require the holder to file an appeal.

B. A notice of suspension shall be in writing, stating:

1. The reason for the suspension.

2. The corrective measures to be taken.

3. The period of time given to the applicant to correct the violation.

C. The suspension of a permit shall apply only to that segment of the work authorized which is, or will create, a violation. Such suspension shall cease when the Code Enforcement Officer certifies that the violation or potential violation ceases to exist. When a cause for suspension has been removed or corrected, the Code Enforcement Officer shall so certify, in writing, and state:

1. The reason for the suspension.

2. The corrective measures taken.

3. The period of time which the applicant has to correct the violation.

4. A statement that all applicable penalties have been paid.

D. If, within the time specified for correction, the violation has not been corrected or removed, the suspension may be continued, or the Code Enforcement Officer may then revoke the permit.

E. When a permit is revoked, the Code Enforcement Officer shall prepare a statement stating the reasons for revocation, and the corrective measures, if any, that may be taken to correct the violation. Such revocation shall include a time period given to correct the violation and shall remain in force until:

1. The Code Enforcement Officer determines that the applicant can and will pursue the work (for which the permit was issued) without extending or creating a violation.

2. The permit application has been corrected to complete information required and continuance of work will not result in violation.

3. The violation has been removed or otherwise discontinued.

4. A new permit has been issued.

F. During the period of revocation, no work shall continue on a project for which a permit was issued except in the interests of public safety and protection of the property in place at the time of revocation, such work having the written approval of the Code Enforcement Officer.

11.6 Fees

A. No building or use permit shall be issued by the Code Enforcement Officer without payment to the Town of Kennebunkport of the required fee.

B. The Municipal Officers shall annually set the amount of the fees required by this Ordinance after providing opportunity for public comment and after considering actual costs of implementing this Ordinance.

C. When work has begun prior to the issuance of a permit, the fees shall be doubled.

D. Upon completion of a new building or major remodeling, a Certificate of Occupancy is required. There will be no charge for the first inspection. If a re-inspection is required due to failure to pass a previous inspection a re-inspection fee shall be required.

11.7 Expiration of Building or Use Permits and Approvals

A. A building or use permit issued by the Code Enforcement Officer pursuant to this Ordinance shall expire if the work or changes authorized have not commenced within one (1) year or have not been substantially completed within two (2) years of the date on which the permit was granted.

B. Approvals by the Planning Board and the Zoning Board of Appeals shall expire if a building or use permit is not obtained from the Code Enforcement Officer within one hundred eighty (180) days, provided that the approving Board may, at the time of the initial approval or upon a subsequent request of the applicant, grant an extension of up to an additional one hundred eighty (180) days upon a showing by the applicant that, due to circumstances beyond his/her control, additional time is needed to obtain necessary federal, state or local approvals.

11.8 Occupancy Permit

No new structure shall be occupied or used, nor shall the occupancy of any commercial or industrial building change, prior to the issuance of an occupancy permit by the Code Enforcement Officer. The Code Enforcement Officer shall not issue an occupancy permit unless the new structure or proposed use is in conformance with the Ordinance.

11.9 Violations and Legal Action

A. Nuisances. Any violation of this Ordinance shall be deemed to be a nuisance.

B. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If, after investigation, the Code Enforcement Officer finds that any provision of this Ordinance is being violated, he or she shall give written notice delivered by hand, if the owner/occupant agrees to sign a receipt for the notice, or by certified mail, return receipt requested, to the person responsible for such violation, and/or to the owner and/or to the occupant of such premises. The notice shall indicate the nature of the violation and order the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. The notice shall demand that the violation be abated within some designated reasonable time. If after such notice, the violation is not abated within the time specified, the Code Enforcement Officer shall institute appropriate action in the name of the Town of Kennebunkport to prevent, enjoin, restrain or abate any violation of this Ordinance. A copy of each such notice of violation shall be submitted to the Board of Selectmen and be maintained as a permanent record.

C. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

D. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

E. Legal Actions. When the above action does not result in the correction of abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute, any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Kennebunkport. The Municipal Officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

If the Code Enforcement Officer has been certified by the Commissioner of Human Services as being familiar with court procedures under Title 30 M.R.S.A. § 3222, he/she may serve civil process and, when specifically authorized to do so by the Municipal Officers, represent the Town in District Court. If authorized, the Code Enforcement Officer may obtain assistance from the Town Attorney with any court proceedings. The Code Enforcement Officer shall inform the Town Manager and Municipal Officers of all legal actions instituted under this Article.

11.10 Penalties

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with Title 30-A M.R.S.A. § 4452. Each day of violation after notification shall constitute a separate offense or violation.

11.11 Publication of Building Permits

Within five (5) working days of the fifteenth and thirtieth of each month, a list of all building permits granted by the Code Enforcement Officer shall be made available to a newspaper of general circulation in the Town of Kennebunkport. The failure of the Code Enforcement Officer to make available this list, or the decision of the newspaper not to publish this list, shall not invalidate any building permit.

11.12 Growth Management Permit Required

A. Purpose. The purpose of this section is to:

1. Ensure fairness in the allocation of building permits between sub-dividers and single lot property owners.

2. Avoid a situation in which the rapid completion of major subdivisions could outstrip the Town's capability to expand its municipal services.

3. Guide the Town's growth in an orderly fashion so that the annual increase in population can be adequately served by community facilities as those services are needed.

4. Manage the Town's future residential growth in a manner consistent with the Town of Kennebunkport's Comprehensive Plan.

B. Compliance required; violations.

1. All new dwelling units, including new manufactured housing dwelling units, within the Town, whether occupied permanently or seasonally, shall conform with the provisions of this section. It shall be a violation of this section for any person to construct or place a new dwelling unit within the Town, without first having obtained a growth management permit and building permit, in accordance with this section and Article 11, from the Code Enforcement Officer, unless such construction or placement constitutes an exception under this section.

2. If a dwelling unit has been constructed or placed without a growth management permit or building permit as required under the provisions of this Ordinance, it shall also be a violation for any person to convey such dwelling unit.

C. Exemptions. The following are exempt from the provisions of this section:

1. The repair, replacement, reconstruction or alteration of any existing building or structure not resulting in additional dwelling units;

2. Housing for the elderly which is constructed, operated, subsidized or funded, in whole or in part, by an agency of the state or federal government; and

3. The construction or alteration of a nonresidential building or structure.

D. Maximum rate of house building. The Town shall issue growth management permits on an annual basis. The total number of growth management permits shall be determined as follows:

1. The number of growth management permits allocated for the year, excluding permits allocated for affordable housing, shall be 110% of the mean number of growth management permits issued for the past ten (10) years rounded to the nearest whole number. The mean is determined by adding together the total number of growth management permits issued, excluding permits issued for affordable housing, for each year in the prior ten (10) years and then dividing by ten (10). In no case shall the number of available permits under this paragraph be less than forty (40).

2. The number of growth management permits available for affordable housing shall be ten percent (10%) of the number of growth management permits established pursuant to Article 11.12.D.1, rounded up to the nearest whole number. Growth management permits available under this paragraph are not subject to the allocation requirements of Article11.12.H.2 and Article 11.12.H.3. Growth management permits issued by the Code Enforcement Officer for affordable housing may be replaced by building permits according to their rankings.

E. Legal Authority. This section is adopted pursuant to home rule powers as provided for in Article VIII-A of the Maine Constitution and Title 30-A M.R.S.A. § 2101 et seq. and Title 30-A M.R.S.A. § 4360.

F. Periodic review. The operation of this section shall be reviewed by the Growth Planning Committee periodically, but not less frequently than once every two years, to ensure that the annual maximum growth rate has not become inconsistent with the Town's capital improvement capability to establish or enlarge needed public facilities and services. Based upon its review, the Growth Planning Committee may recommend amending this section as provided in Article 12.1.

G. Application. Applications for growth management permits shall comply with the following:

1. A growth management permit application must be completed by the lot owner of record and/or the owner's agent, including all endorsements and certifications.

2. Applications shall be on forms provided by the Town. The Code Enforcement Officer may request additional information and shall have the authority to require that the application be revised or supplemented in order to meet state or local requirements.

3. Growth management permit applications shall be accompanied by a non-refundable application fee of $250.00, a complete application for a building permit and Planning Board and/or Zoning Board of Appeals approval, when necessary.

H. Issuance procedure. Growth management permit applications shall be submitted to the Code Enforcement Officer who shall endorse each with the date and time of receipt. In the event two or more growth management permit applications are received simultaneously, the Code Enforcement Officer shall give preference to growth management permit applicants who are permanent residents of Kennebunkport constructing dwelling units on property which they are the owner of record. Remaining ties shall be settled by random selection. The Code Enforcement Officer shall review growth management permit applications in the

same order as they are received. The Code Enforcement Officer shall review all growth management permit applications for completeness and accuracy. When the Code Enforcement Officer finds an application to be complete, the Code Enforcement Officer shall approve it by signing the application and endorsing the date and time of approval on the application. For purposes of this section, failure of the Code Enforcement Officer to act within twenty (20) days upon a completed growth management permit application shall not constitute denial of the application.

1. Growth management permits shall be issued on a first come, first served basis according to when the application is approved as complete and signed by the Code Enforcement Officer, and in accordance with the numbers and categories of growth management permits available under Articles 11.12.D and 11.12.H.2 and 3.

2. Growth management permits issued by the Code Enforcement Officer may be replaced by building permits according to their rankings. Growth management permits issued by the Code Enforcement Officer shall be separated into three groups: Growth Areas, Transitional Areas and Rural Areas. These Areas are identified within the Comprehensive Plan and further identified on a Map entitled: Kennebunkport Rate of Growth Areas Comprehensive Plan June 2010. The allocation of growth management permits shall be as follows: fifty percent (50%) available for Growth Areas, thirty percent (30%) available for Transitional Areas and the remaining twenty percent (20%) for Rural Areas. Decimals resulting from this formula shall be rounded up to the nearest whole number for decimals greater than 0.5 and down to the nearest whole number for decimals less than or equal to 0.5. If the rounding results in an unallocated growth management permit, that permit shall be allocated to the Growth Areas.

   If a growth management permit is available on the date the Code Enforcement Officer approves an application as complete, the Code Enforcement Officer shall issue a growth management permit. If no growth management permit is available at the time the application is approved as complete, the application shall remain pending, and as growth management permits subsequently become available, the Code Enforcement Officer shall issue growth management permits in the order in which the applications were approved as complete.

3. No more than seven (7) growth permits shall be issued to any one particular individual, property owner, developer or company during each calendar year. Except that on or after December 1st of any given calendar year, any remaining permits that have not been issued for that year may be issued to any individual, property owner, developer or company, including those who have already received their maximum allocation of seven (7) for the year. During this time period, remaining growth management permits allocated to Transitional or Rural Areas may be allocated to the Growth Area as indicated on the Growth Area Map. Under no circumstance may remaining growth permits be allocated into Transitional or Rural Areas beyond the percentages set forth in Article 11.12.H.2.

I. Submitting false information; reconsideration of disapproved applications.

1. Any person submitting false information on an application shall be subject to the penalties provided by law and shall not be eligible to apply for a growth management permit application for a period of one year.

2. Growth management permit applications which are not approved by the Code Enforcement Officer because of incomplete or inaccurate information or lack of compliance with requirements of all other applicable ordinances shall be automatically re-ranked and reconsidered as a new application upon resubmission following corrections.

J. Expiration of permit. The holder of a valid growth management permit may apply for and be issued a building permit for a building project that is the same as or substantially similar to the project described in the growth management permit and which is on the lot which is specified on the growth management permit. A growth management permit which has not been used to obtain a building permit within one hundred twenty (120) days of the date of issuance by the Code Enforcement Officer of the growth management permit shall expire. Expiration of building permits shall be in conformity with the applicable provisions of this Ordinance. A growth management permit shall remain valid and in effect, and a building permit may be issued based upon it within the prescribed one hundred twenty (120) day period, when the proposed activity authorized by the growth management permit is made non-conforming by a subsequent amendment to this Ordinance during the permit period, unless the amendment explicitly states otherwise.

K. Non-transferability. Growth management permits shall be site-specific, and shall be valid for construction only in the lot specified on the application. However, such permits and applications for permits shall be transferable to new owners of the lot, if the property is sold or otherwise legally transferred. Transfer of ownership of the lot shall leave the application ranking unchanged. An application which has been transferred not in accordance with this section shall be nullified and revoked by the Code Enforcement Officer.

L. Conflict with other provisions. This Ordinance shall not repeal, annul or in any way impair or remove the necessity of compliance with any other rule, regulation, bylaw, permit, ordinance or provision of law. Where this Article imposes a greater restriction upon the use of land, buildings or structures, the provisions of this Article shall prevail.

M. Penalties. Any person, firm or corporation, including but not limited to a landowner, his or her agent or a contractor, who violates any provision of this Ordinance shall be liable for penalties as set forth in Title 30-A M.R.S.A. § 4452.

ARTICLE 12: AMENDMENTS

12.1 Procedure

After a public hearing conducted by the Board of Selectmen, this Ordinance may be amended by secret ballot referendum vote or by written ballot at an annual or special town meeting. The Growth Planning Committee shall attend the public hearing and report its recommendation.

12.2 Shoreland Zone Amendments

If an amendment pertains to the Shoreland or Resource Protection Zones, certified copies of amendments, attested and signed by the Town Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption at an annual or special town meeting and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his or her receipt of the amendment, the amendment shall be automatically approved. Any application for a permit submitted to the Town within the forty-five (45) day period shall be governed by the terms of the amendments if the amendments are approved by the Commissioner.

12.3 Enactment Dates

The Zoning Ordinance was approved March 6, 1972. It has been amended on:

April 30, 1985	November 2, 1999	November 2, 2010
March 18, 1986	November 7, 2000	June 14, 2011
November 15, 1986	March 27, 2001	November 8, 2011
March 24, 1987	May 22, 2001	June 12, 2012
March 22, 1988	June 11, 2002	November 6, 2012
March 26, 1988	November 5, 2002	June 11, 2013
November 19, 1988	June 10, 2003	June 10, 2014
March 14, 1989	November 4, 2003	June 9, 2016
December 12, 1989	June 8, 2004	November 8, 2016
March 24, 1990	November 2, 2004	
October 22, 1991	June 14, 2005	
March 23, 1993	June 13, 2006	
March 23, 1993	November 7, 2006	
March 22, 1994	June 12, 2007	
March 21, 1995	November 6, 2007	
June 11, 1996	June 10, 2008	
March 27, 1997	November 4, 2008	
March 24, 1998	June 9, 2009	
June 9, 1998	November 3, 2009	
August 4, 1998	June 8, 2010	

ARTICLE 13: CONTRACT ZONING

13.1 Authority and Purpose

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

Contract zoning shall promote the general welfare of the residents of the Town of Kennebunkport. The Board of Selectmen shall approve a contract zoning request for placement on the Town Warrant only if it determines that the proposed contract zoning is in the public interest and will have beneficial effects on the Town as a whole, which would not result if the property were developed under the existing zoning district classification. Guidelines for the Board of Selectmen to apply in making those determinations are set forth in Article 13.2.E of this Ordinance

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

13.2 Application Review Process

A. The person proposing contact zoning shall submit an application for contract zoning to the Town Manager, which shall include, at a minimum, the following elements:

1. A map showing existing and proposed zoning district lines;

2. The address or exact location of the request, including the Kennebunkport Assessor's map references for the property to be rezoned;

3. The name, address and telephone number of the property owner and of the applicant, if the applicant is not the owner;

4. Evidence of the applicant's right, title or interest in the property;

5. A site analysis that describes the major features of the property, allowing the Planning Board and Board of Selectmen to make informed judgments about how it will be used;

6. A conceptual development plan showing the approximate layout of all buildings, structures, streets, driveways, parking areas and other significant improvements to be constructed on or above the surface of the ground plus any proposed open spaces, conservation areas, buffer areas or other features of the development to show subsurface infrastructure installations, building plans, engineering plans or other details which would be required for a subdivision plan or site plan;

7. A statement describing the existing use of the property and the proposed new use and development and describing how the proposed contract zone will be consistent with the Town of Kennebunkport Comprehensive Plan, will be consistent with existing and permitted uses within the existing zoning district classification of the property, will be in the public interest, will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification;

8. A proposed contract zoning agreement which complies with the requirements of Article 13.3 below;

9. Any other information requested by the Town Manager and/or the Code Enforcement Office; and

10. A non-refundable application fee as specified in the Schedule of License, Permit and Application Fees established by order of the Board of Selectmen.

B. Nothing within this article shall prevent the Board of Selectmen from meeting in executive session pursuant to Title 1 M.R.S.A. § 405 to discuss matters relating to a potential or proposed contract zoning application.

C. The Town Manager or designee will review the application and, upon being satisfied that the application is sufficiently complete for review by the Planning Board and the Board of Selectmen, will schedule a joint meeting of the Planning Board and the Board of Selectmen, to commence review of the request for contract zoning, at which time a public hearing shall be given in accordance with the requirements of Title 30-A M.R.S.A. § 4352(8). Notice of this hearing shall be posted in the Town Clerk's office at least fourteen (14) days prior to the public hearing and shall be published at applicant's expense in a newspaper of general circulation within the Town at least two (2) times. The date of first publication shall be at least seven (7) days prior to the hearing. The applicant also shall mail by certified mail, at least fourteen (14) days prior to the public hearing, notice of hearing to the owners of the property to be rezoned and to the owners of all property within five hundred (500) feet of the affected lot(s) or parcel(s). This notice shall contain the date, time and location of the hearing and

a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned. Evidence of the mailing shall be presented to the Town. If the area to be rezoned is within a source water protection area, the applicant must also provide notice, by certified mail, at least fourteen (14) days prior to the public hearing to the public drinking water supplier.

D. The joint Planning Board/Board of Selectmen meeting shall be conducted so as to include, but not be limited to, the following elements:

1. Meeting is presided over by the Chair of the Board of Selectmen;

2. Presentation by the applicant;

3. Comments from Town staff;

4. Discussion among members of the Planning Board and the Board of Selectmen, which may include questions posed to the applicant and staff;

5. Comments from members of the public. (This shall constitute the public hearing by the municipal reviewing authority required by Title 30-A M.R.S.A. § 4352(8));

6. Response or rebuttal from applicant;

7. Comments from members of the Planning Board concerning the land use implication of the proposed contract zoning amendment; and

8. Preliminary Board of Selectmen discussion of the contract zoning amendment.

The joint Planning Board/Board of Selectmen meeting may be continued from time-to-time by majority vote of all members from both Boards present and voting. If the meeting is not continued the discussion is concluded. The Planning Board members will, at the conclusion of the discussion, vote as a recommendation to the Board of Selectmen either to:

1. Support the proposed contract zoning amendment; or

2. Support the proposed contract zoning amendment with conditions; or

3. Oppose the proposed contract zoning amendment.

E. At the conclusion of the discussion, the Board of Selectmen shall, prior to adjourning, or at a subsequent meeting of the Board of Selectmen to be held within thirty (30) days, vote either to:

1. Authorize that the proposed contract zone be put on a future warrant for vote by the Town, either as presented or with amendments or conditions approved by the Board of Selectmen;

2. Advise the applicant to withdraw the request for contract zoning; or

3. Advise the applicant to revise and resubmit the application for contract zoning, under Article 13.2.A above. Before taking its vote on putting the contract zoning request on the Town Warrant, the Board of Selectmen shall determine whether the proposed contract zoning amendment; (1) is consistent with the Town of Kennebunkport Comprehensive Plan, (2) is compatible with the existing and permitted uses within the existing zoning district classification of the property, (3) is in the public interest, and (4) will have beneficial effects on the Town as a whole which would not result if the property were developed under the existing zoning district classification. The Board of Selectmen will state its reasons for its findings and conclusions on each of those determinations.

F. The vote of the Board of Selectmen shall constitute direction from the Board of Selectmen to the applicant as to how to proceed, but shall not be binding on either the applicant or the Board of Selectmen to the Town.

G. Upon adoption by a vote of Town Meeting, the language of the contract zone shall be incorporated by reference into Article 4 – Zone Regulations, of this Ordinance. The location of the contract zone shall be indicated on the Official Zoning Map. In addition, the contract zone and any ancillary agreements shall be recorded in the York County Registry of Deeds, and shall be added as an appendix to this Ordinance.

H. Subsequent to adoption of the contract zone by a vote of the Town Meeting, and before any permits can be issued, the proposed development must then undergo a site plan review and be approved by the Planning Board under the terms and conditions of the Kennebunkport Land Use Ordinance.

If the proposed development is a subdivision, the review and approval will be done under the Town of Kennebunkport Subdivision Regulations as well as the Land Use Ordinance.

I. Any rezoning pursuant to this Section that affects a Shoreland area, as identified by this Ordinance shall not take effect until approved by the Commissioner of Environmental Protection as required by Title 38 M.R.S.A. § 438-A (3).

J. Subsequent to all approvals, the applicant and the Town will finalize a legal contract and/or any ancillary agreements conforming to the terms of the approved Ordinance changes and Planning Board review.

13.3 The Contract Zoning Agreement

A. The contract zoning agreement shall include a provision granting the Town of Kennebunkport the power to enforce all conditions and restrictions, both through enforcement action pursuant to this Ordinance and through legal action for specific performance. Conditions and restrictions imposed under the authority of this Article shall relate only to the physical development and operation of the property and, though not limited to, may include, by way of example:

1. Limitations on the number and types of uses permitted;

2. Restrictions on space and bulk standards and on the scale and density of the development;

3. Specifications for the design and layout of buildings and other improvements;

4. Schedules for commencement and completion of construction;

5. Preservation of open space and buffers, provisions for public access to shorelines and protection of natural areas and historic sites;

6. Contributions toward the provision of municipal services required by the development;

7. Performance guarantees securing completion and maintenance of improvements;

8. Provision for enforcement and remedies for breach of any condition or restriction; and

9. Provision for reservation or dedication of land for public purposes.

The Board of Selectmen or the Planning Board, in its site plan review after a Town vote, may impose conditions under the Article 13 which are more restrictive than the otherwise applicable requirements of this Ordinance or of the Subdivision Regulations as applicable.

B. Effects of the Agreement

The conditions and restrictions set forth in the agreement shall run with the land and bind all future owners of the land and any other person who claims an interest in the property, and may be removed only by subsequent action of the voters at a Town Meeting expressly removing, relieving or discharging one or more of the specific conditions or restrictions.

C. Modifications and Amendments

The contract zoning agreement may allow for changes or modifications to the development, but shall specify the procedure for approval of any such changes or modifications, setting forth categories of changes or modifications which would require Planning Board approval only, those which would require Board of Selectmen approval, and those that would require approval by a vote at Town Meeting.

D. Performance Guarantees.

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

E. No Rights Created Before Final Town Meeting Vote.

The submission of a request for contract zoning under the Article 13, the payment of application fees, or the expenditure of funds by the applicant in presenting such a request shall not create any vested rights in the application. The conduct of meetings and hearings, the review of the application, comments by Town officials or staff, preliminary votes, findings or determinations, preliminary subdivision or site plan approval, and the availability of contract zoning under this Article 13 shall not be construed as creating any entitlement to approval of a request for contract zoning. The decision whether or not to rezone remains subject to a vote at Town Meeting, exercising its sole and exclusive judgment as the legislative body of the Town of Kennebunkport and will not be made until the Town votes approval of the contract zone.

13.4 Failure to Act

If the applicant fails to begin construction in a substantial manner and in accordance with any approved site plan within five (5) years of the effective date of the Town Meeting approval of the contract rezoning, the Planning Board may initiate rezoning to the original zoning classification.