

2018

## Bath Maine Land Use Code

Bath, Me.

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**City of Bath, Maine**  
**Land Use Code**  
**Table of Contents**

[As amended through May 24, 2017]

<b>Article 1: General Provisions</b>		<b>page</b>
Section 1.01	Short Title	1-1
Section 1.02	Authority	1-1
Section 1.03	Purposes	1-1
Section 1.04	Applicability of the Code	1-1
Section 1.05	Conflict with Other Ordinances	1-2
Section 1.06	Severability	1-2
Section 1.07	Amendments	1-2
 <b>Article 2: Definitions</b>		
Section 2.01	Meaning of Words	2-1
Section 2.02	Definitions	2-1
 <b>Article 3: Permit Administration and Approval Process</b>		
Section 3.01	General	3-1
Section 3.02	Role of the Codes Enforcement Officer	3-1
Section 3.03	Approvals Required	3-1
Section 3.04	Building Permits	3-2
Section 3.05	Certificate of Occupancy Required	3-4
Section 3.06	Enforcement	3-4
Section 3.07	Penalties	3-5
Section 3.08	Informal Adjustment of Land Use Code Violations	3-5
Section 3.09	Coordination of Multiple Approvals	3-6
Section 3.10	Coordination with State and Federal Approvals	3-7
Section 3.11	Fees	3-7
 <b>Article 4: Zoning Board of Appeals, Variances, and Appeals</b>		
Section 4.01	Composition	4-1
Section 4.02	Appointments	4-1
Section 4.03	Qualifications	4-1
Section 4.04	Terms of Office	4-1
Section 4.05	Dismissal of Members	4-1
Section 4.06	Officers	4-2
Section 4.07	Meetings of the Board	4-2
Section 4.08	Quorum	4-2
Section 4.09	Conflict of Interest	4-2
Section 4.10	Voting	4-3
Section 4.11	Powers and Duties	4-3
Section 4.12	Variances	4-4
Section 4.13	Appeals Procedures	4-7
Section 4.14	Procedures When Property Is In The Shoreland Zone	4-8

<b>Article 5: Planning Board</b>		<b>page</b>
Section 5.01	Planning Board Established	5-1
Section 5.02	Composition	5-1
Section 5.03	Appointments	5-1
Section 5.04	Qualifications	5-1
Section 5.05	Terms of Office	5-1
Section 5.06	Dismissal of Members	5-1
Section 5.07	Officers	5-2
Section 5.08	Meetings of the Board	5-2
Section 5.09	Quorum, Voting, and Rules of Procedure	5-2
Section 5.10	Conflict of Interest	5-3
Section 5.11	Powers and Duties	5-3
<b>Article 6: Nonconformities</b>		
Section 6.01	Intent	6-1
Section 6.02	General Provisions	6-1
Section 6.03	Nonconforming Uses	6-2
Section 6.04	Nonconforming Lots	6-4
Section 6.05	Nonconforming Structures	6-7
<b>Article 7: The Establishment of Districts and the Zoning Map</b>		
Section 7.01	Districts Created	7-1
Section 7.02	Establishment of District Boundaries and Zoning Map	7-1
Section 7.03	Interpretation of District Boundary Lines	7-2
Section 7.04	Location of Documents	7-2
Section 7.05	Water Bodies and Wetlands Incorrectly Delineated	7-2
Section 7.06	Land Within Street Lines	7-3
Section 7.07	Lots Located in Two Districts	7-3
Section 7.08	Lots Partially Within Another Municipality	7-4
Section 7.09	Compliance by Principal Buildings	7-4
<b>Article 8: District Regulations</b>		
Section 8.01	High-density Residential District - R1	8-1
Section 8.02	Medium-density Residential District - R2	8-3
Section 8.03	Low-density Residential District - R3	8-6
Section 8.04	Waterfront High-density Residential District - R4	8-8
Section 8.05	Waterfront Activity District - R5	8-10
Section 8.06	Waterfront Medium-density Residential District – R6	8-11
Section 8.07	Downtown Commercial District - C1	8-12
Section 8.08	Mixed Commercial and Residential District - C2	8-14
Section 8.09	Business Park District - C3	8-15
Section 8.10	Route 1 Commercial Contract District - C4	8-16
Section 8.11	Marine Business District - C5	8-17
Section 8.12	Historic Overlay District - HO	8-18

<b>Section 8 continued</b>		<b>page</b>
Section 8.13	Special Purpose Commercial Contract Overlay District - SPCCO	8-22
Section 8.14	Industrial/Shipyard District - I	8-24
Section 8.15	Golf Course District - GC	8-25
Section 8.16	Park and Open Space District – P & O	8-26
Section 8.17	Resource Protection District - RP	8-27
Section 8.18	Natural Resource Preservation Overlay District – NRPO	8-28
Section 8.19	Trufant Marsh Contract District - TMC	8-32
Section 8.20	Contract Rezoning	8-33
Section 8.21	Shoreland Zone	8-37
Section 8.22	Plant Home Zone - PH	8-39
Section 8-23	Neighborhood Commercial Zone - NC	8-41
Section 8-24	Museum District	8-42
Section 8-25	School District – S	8-43
<b>Article 9: Uses</b>		
Section 9.01	Compliance Required	9-1
Section 9.02	Land Use Table	9-2
Section 9.03	Mobile Home Park	9-15
Section 9.04	Uses Allowed in the Park and Open Space District	9-15
Section 9.05	Provisional Use Permits	9-15
Section 9.06	Prohibited Uses	9-15
<b>Article 10: General Performance Standards</b>		
Section 10.01	Applicability and Purpose	10-1
<b>Part A Public Facility and Safety Protection</b>		
Section 10.02	Access Control and Traffic Impacts	10-1
Section 10.03	Access Drive Construction	10-3
Section 10.04	Corner Clearances	10-6
Section 10.05	Multiple Principal Buildings on a Lot	10-6
Section 10.06	Parking and Loading	10-6
Section 10.07	Pedestrian Circulation	10-15
Section 10.08	Setbacks from Future Streets	10-15
<b>Section 10.09-10.13 reserved</b>		

<b>Article 10 continued</b>	<b>page</b>
<b>Part B Environmental and Health Protection</b>	
Section 10.14 Erosion and Sedimentation Control	10-16
Section 10.15 Hazardous or Dangerous Wastes and Materials	10-17
Section 10.16 Refuse Disposal	10-17
Section 10.17 Sewage Disposal	10-18
Section 10.18 Stormwater Management	10-18
Section 10.19 Water Quality Protection	10-19
Section 10.20 Adequate Water Supply	10-19
<b>Section 10.21-10.25 reserved</b>	
<b>Part C Neighborhood Protection</b>	
Section 10.26 Access to Back Lots	10-19
Section 10.27 Exterior Lighting	10-21
Section 10.28 Historic and Archeological Resources	10-21
Section 10.29 Landscaping and Screening	10-21
Section 10.30 Noise	10-25
Section 10.31 Setback Reduction Plan	10-25
Section 10.32 Exception to Space and Bulk Regulations	10-26
Section 10.33 Viewshed Protection Plan	10-27
Section 10.34 R1 Setback Plan	10-27
<b>Section 10.34-10.38 reserved</b>	
<b>Article 11: Performance Standards, Specific Activities and Land Uses</b>	
Section 11.01 Applicability	11-1
Section 11.02 Agricultural Practices	11-1
Section 11.03 The Keeping of Animals	11-2
Section 11.04 Campgrounds	11-3
Section 11.05 Clearing of Vegetation in the Shoreland Zone	11-4
Section 11.06 Cluster Developments	11-6
Section 11.07 Commercial Vehicle Parking	11-9
Section 11.08 Congregate Housing	11-9
Section 11.09 Day-care Homes and Day-care Facilities for Children or Adults	11-10
Section 11.10 Farmstand	11-12
Section 11.11 Fences and Walls	11-12
Section 11.12 Garage and Yard Sales	11-13
Section 11.13 Home Occupations	11-13
Section 11.14 In-home Lodging	11-14
Section 11.15 Individual Private Campsites	11-15
Section 11.16 Kennels	11-15
Section 11.17 Deleted	11-16
Section 11.18 Manufactured Housing and Mobile Homes	11-17
Section 11.19 Minor Earthmoving Activities	11-17

<b>Article 11: continued</b>		<b>page</b>
Section 11.20	Mobile Home Parks	11-18
Section 11.21	Parabolic Dish Antennas	11-23
Section 11.22	Parking and Use of Motor Vehicles and Trailers	11-23
Section 11.23	Piers, Docks, and Other Marine Structures	11-24
Section 11.24	Provisional Use Permits	11-25
Section 11.25	Recreational Facility	11-25
Section 11.26	Seasonal Sale of Home Produce	11-25
Section 11.27	Single-family Dwelling in Resource Protection District	11-25
Section 11.28	Small Utility Structures	11-26
Section 11.29	Storage of Boats	11-27
Section 11.30	Transit Shelters	11-27
Section 11.31	Temporary Uses	11-27
Section 11.32	Timber-harvesting	11-28
Section 11.33	Use of Recreational Camping Vehicles and Tents	11-30
Section 11.34	Shared Parking	11-30
Section 11.35	Accessory Uses Not on the Same Lot as the Principal Building or Use	11-30
Section 11.36	Manufacturing, Processing, Creating, Renovating, or Assembling of Goods, Merchandise, or Equipment in the Downtown Commercial District	11-31
Section 11.37	The Sale of Motor Scooters and Small ATVS	11-31
Section 11.38	Essential Services In The Shoreland Zone	11-32
Section 11.39	Septic Waste Disposal In The Shoreland Zone	11-32
 <b>Article 12: Site Plan Review</b>		
Section 12.01	Purpose	12-1
Section 12.02	Applicability	12-1
Section 12.03	Review and Approval Authority	12-2
Section 12.04	Pre-review Procedures	12-2
Section 12.05	Planning Board Review	12-4
Section 12.06	Staff Review Committee Review	12-6
Section 12.07	Approval Void	12-7
Section 12.08	Submission Requirements	12-8
Section 12.09	Approval Criteria	12-9
Section 12.10	Site Plan Approval with Conditions	12-10
Section 12.11	Approval Subject to Additional Information	12-10
Section 12.12	Change in Ownership	12-10
Section 12.13	Amendments	12-10
Section 12.14	Conditional Certificate of Occupancy for Any Use That Has Received Site Plan Approval	12-11
Section 12.15	Appeals	12-12
 <b>Article 13: Subdivisions</b>		
Section 13.01	Title	13-1
Section 13.02	Authority and Purpose	13-1

<b>Article 13: Subdivisions continued</b>		<b>page</b>
Section 13.03	Notices	13-1
Section 13.04	Administration and Enforcement Prior to Approval	13-2
Section 13.05	Developmental Subdivision	13-2
Section 13.06	Pre-application Workshop	13-3
Section 13.07	Sketch Plan Review	13-3
Section 13.08	Submission of Applications for Subdivision Approval	13-4
Section 13.09	Planning Office Processing of Applications for Subdivision Approval	13-4
Section 13.10	Planning Board's Processing of Applications for Subdivision Approval	13-5
Section 13.11	Submission Requirements for Applications for Subdivision Approval	13-7
Section 13.12	Approval and Filing	13-11
Section 13.13	Performance Standards	13-12
	A. Applicability and Purpose	13-12
	B. Pollution	13-13
	C. Sufficient Water	13-13
	1. Water Supply	13-13
	2. Water Quality	13-14
	D. Soil Erosion	13-14
	E. Traffic Conditions	13-15
	F. Sewage Disposal	13-16
	1. Public System	13-16
	2. Private Systems	13-17
	G. Solid Waste	13-17
	H. Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access To the Shoreline	13-18
	1. Preservation of Natural Beauty and Aesthetics	13-18
	2. Protection of Historic, or Prehistoric Features	13-18
	3. Protection of Unique Natural Areas and Sites	13-18
	4. Preservation of Open Spaces and the Creation of Recreation Areas	13-18
	5. Protection of Significant Wildlife Habitat	13-19
	6. Rights to the Shoreline	13-20
	I. Conformance with Ordinances and Plans	13-20
	J. Financial and Technical Capacity	13-21
	1. Financial Capacity	13-21
	2. Technical Ability	13-21
	K. Impact on Water Quality or Shoreline	13-21
	L. Impact on Groundwater Quality and Quantity	13-22
	1. Groundwater Quality	13-22
	2. Groundwater Quantity	13-23
	M. Floodplain Management	13-23
	N. Identification of Freshwater Wetlands	13-23

<b>Article 13: Subdivisions continued</b>		<b>page</b>
	O. Stormwater Management	13-23
	P. Spaghetti-lots Prohibited	13-24
	Q. Impact on Adjoining Municipalities	13-24
Section 13.14	Design and Construction Requirements	13-24
	A. Applicability	13-24
	B. Street Design Criteria	13-25
	1. General Requirements	13-25
	2. Specific Design Requirements	13-26
	C. Street Construction Criteria	13-29
	1. Preparation	13-29
	2. Street Bases and Pavement	13-30
	3. Curbing	13-30
	4. Clean-up	13-30
	D. Lot Numbering	13-30
	E. Street Names	13-31
	F. Street Signs	13-31
	G. Street Lighting	13-31
	H. Sidewalks	13-31
	I. Monumentation	13-31
Section 13.15	Amendments to Approved Plans	13-32
Section 13.16	Performance Guarantees	13-32
	A. Types of Guarantees	13-32
	B. Contents of Guarantee	13-33
	C. Interest from the Escrow Account	13-33
	D. Letter of Credit	13-33
	E. Conditional Agreement	13-33
	F. Phasing of Development	13-33
	G. Release of Guarantee	13-34
	H. Default	13-34
Section 13.17	Inspections and Enforcement	13-34
	A. Improvements Guaranteed	13-34
	B. Inspection of Required Improvements	13-34
	C. Violations and Enforcement	13-35
Section 13.18	Waivers	13-36
	A. Waivers Authorized	13-36
	B. Waivers to be shown on Subdivision Plan	13-36
Section 13.19	Appeals	13-36
<b>Article 14: Mining Activity</b>		
Section 14.01	Derivation and Findings	14-1
Section 14.02	Purpose	14-2
Section 14.03	Site Plan Approval Required	14-2
Section 14.04	Requirements and Limitations for Mining Activity	14-3
Section 14.05	Review Standards	14-4
Section 14.06	Mining Activity Phasing	14-8



	<b>page</b>
<b>Article 14: Mining Activity continued</b>	
Section 14.07 Mining Activity License	14-8
Section 14.08 Non-transfer of Permit	14-8
Section 14.09 Experts	14-9
Section 14.10 Financial Feasibility-Escrow	14-9
Section 14.11 Failure to Reclaim	14-9
<b>Article 15: Flood</b>	
Section 15.01 Purpose and Establishment	15-1
Section 15.02 Permit Required	15-1
Section 15.03 Application for Permit	15-2
Section 15.04 Application Fee and Expert's Fee	15-3
Section 15.05 Review Standards for Flood Hazard Development	
Permit Applications	15-4
Section 15.06 Development Standards	15-5
Section 15.07 Conditional Use Review	15-11
Section 15.08 Certificate of Compliance	15-12
Section 15.09 Review of Subdivision and Development Proposals	15-13
Section 15.10 Appeals and Variances	15-13
Section 15.11 Enforcement and Penalties	15-15
Section 15.12 Validity and Severability	15-16
Section 15.13 Conflict with Other Ordinances	15-16
Section 15.14 Definitions	15-16
Section 15.15 Abrogation	15-22
<b>Article 16: Contract Zoning Districts</b>	
Section 16.01 Cahill Tire District	16-1
Section 16.02 Cumberland Farms District	16-2
Section 16.03 Global Filling Station District	16-3
Section 16.04 Cahill Tire District – II	16-4
Section 16.05 M. W. Sewall Co. District	16-5
Section 16.06 Former Bath Hospital and 2 Davenport Circle	16-7
Section 16.07 Bath Shopping Center	16-10
Section 16.08 Plant Memorial Home	16-11
Section 16.09 Maine Maritime Museum Contract Zone	16-13
Section 16.10 C.N. Brown – Route 1- Contract Zone	16-15
Section 16.11 Texas Steamship Contract Zone	16-16
Section 16.12 99 Commercial Street Contract Zone	16-17
Section 16.13 1065 Washington Street Contract Zone	16-19
Section 16.14 South PO2 Contract Zone	16-20
Section 16.15 832 Washington Street Contract Zone	16-22
Section 16.16 11 Elsinore Avenue Contract Zone	16-23
Section 16.17 619 High Street Contract Zone	16-24
Section 16.18 South PO2 Contract Zone, Number 2	16-26
Section 16.19 Plant Home Contract Zone, Number 2	16-28

**Article 16: Contract Zoning Districts continued**

Section 16.20	Winnegance Store Contract Zone	16-30
Section 16.21	Residence Inn District	16-32
Section 16.22	CVS Pharmacy Contract Zone	16-34
Section 16.23	Sewall Retail District	16-37
Section 16.24	Huse School District	16-39

**Article 17: Wireless Communications Facilities**

Section 17.01	Purpose	17-1
Section 17.02	Definitions	17-1
Section 17.03	Applicability	17-3
Section 17.04	Review Authority	17-4
Section 17.05	Application Process and Submission Requirements	17-4
Section 17.06	Performance Standards for WCF's	17-7
Section 17.07	Approval from State and Federal Agencies	17-10
Section 17.08	Abandonment	17-11
Section 17.09	Appeals	17-11

# **CITY OF BATH, MAINE LAND USE CODE**

## **ARTICLE 1: GENERAL PROVISIONS**

### **SECTION 1.01 SHORT TITLE**

This ordinance and the accompanying official zoning map(s) are known and may be cited as the "Land Use Code of the City of Bath, Maine." It is referred to herein as "the Code" or "this Code."

### **SECTION 1.02 AUTHORITY**

This Code is prepared pursuant to Maine Revised Statutes Annotated (M.R.S.A.), Title 30-A, Sections 2691, 3001, 4351-4353, 4358, 4403, and 4452; 38 M.R.S.A. Sections 435-449; and any other applicable provisions of the statutes; as well as pursuant to the Comprehensive Plan of the City of Bath.

### **SECTION 1.03 PURPOSES**

The Land Use Code of the City of Bath, Maine, is designed to promote and conserve the health, safety, convenience, and welfare of the inhabitants of the City; to encourage appropriate uses of land throughout the City; to provide for suitable interrelationships between differing land uses; to secure safety from fire, flooding, and other dangers; to provide adequate access to light and air; to provide for adequate sewage disposal, water supply, vehicular and pedestrian access, and public facilities; to avoid undue concentration of population; to prevent overcrowding of the land; to preserve and increase amenities throughout the City; and to carry out the policies contained in the Comprehensive Plan of the City of Bath.

### **SECTION 1.04 APPLICABILITY OF THE CODE**

The use of any land, building, or structure; the division of any tract of land; and the construction or alteration of any building or structure must be in conformance with the standards and procedures set forth in this Code. All uses of land, buildings, or structures; construction or modification of buildings; and divisions of land that do not meet the requirements of this Code are prohibited, except for those lawfully nonconforming uses, buildings, structures or lots provided for in Article 6. [amended August 6, 2003]

## **SECTION 1.05 CONFLICT WITH OTHER ORDINANCES**

Wherever the requirements of this Code are at variance with the requirements of any other lawfully adopted rules, regulations, statutes administered by the City of Bath, or ordinances, the more restrictive or that which imposes the higher standard governs. [amended October 28, 2009]

## **SECTION 1.06 SEVERABILITY**

In the event that any section, subsection, or portion of this Code is declared by any competent court to be invalid for any reason, such decision does not affect the validity of any other section, subsection, or portion of this Code.

## **SECTION 1.07 AMENDMENTS**

This Code may be amended in accordance with the laws of the State of Maine, the charter and ordinances of the City of Bath, and the following requirements and procedures.

### **A. Application**

An amendment to the district designation established pursuant to this Code or to the text of the Code is initiated by completing and filing a form for such purposes with the Planning Office; City Hall; Bath, Maine, together with an application processing fee in an amount established from time to time by the City Council. If the applicant voluntarily offers, in writing, reasonable conditions or restrictions under contract rezoning, a list of all such proposed conditions or restrictions must be included with the application form. If the applicant voluntarily offers to be bound by an architect's plan in accordance with 30-A M.R.S.A. Section 4352(7), and with Section 1.07, G of this Code, the application must include the Site Plan conditionally approved by the Planning Board and evidence of the posting of a bond equal to 25 percent of the estimated cost of the development.

Application for zoning-map amendments may be made only by the Planning Board, a City Council member, the Planning Director, the City Manager, or the owner or optionholder of the land being proposed for rezoning.

Applications for Land Use Code text amendments may be made by the Planning Board, a City Council member, the Planning Director, the City Manager, or by a resident of the City of Bath.

### **B. Processing**

Upon receipt of a completed application form and the application processing fee, the Planning Director must take all necessary action on the request.

### **C. City Council Action on Land Use Code Text Amendment Applications from the Public**

Within 35 days of receipt of a completed application for a Land Use Code text amendment by the Planning Director, the application will be placed on the agenda of a City Council meeting. The City Council will review the request to determine if it has merit and whether it should be referred to the Planning Board. If the City Council determines by vote that the application has merit, it will be referred to the Planning Board for public hearing. Applications referred to the Planning Board by the City Council will be processed substantially according to Items D through F, following. If the City Council votes that the application lacks merit, it will not be referred to the Planning Board and action on the application will cease.

### **D. Public Hearing**

Prior to the public hearing and in accordance with requirements of this Code and laws of the State of Maine, the Planning Board must give proper notice of the hearing. This notice must include at least the following information:

1. date, time, and place of the hearing
2. a summary or map of the proposed amendment
3. a list of all proposed conditions or restrictions

The hearing notice must be posted in City Hall at least 14 days prior to the public hearing and published in a daily newspaper of general circulation in the City of Bath at least 2 times in advance of the hearing. The date of the first publication must be at least 14 days before the hearing; the date of the second publication must be at least 7 days before the hearing. The notice also must be sent by first-class mail to all persons initiating the proposed amendment and to all persons owning abutting property and/or within 100 feet of the exterior boundaries of the real estate to be affected by the proposed change.

The Planning Office must prepare, keep a copy on file, and file with the City Clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed, and from what location it was mailed. Notice of any proposed amendment being processed under the contract rezoning provisions of this Code also must comply with the requirements of 30-A M.R.S.A. Section 4352, or successor statutes, as may be amended. For purposes of the notice required herein, the owners of property are considered the owner listed in the Bath Tax Assessor's database. Failure of any person owning property within 100 feet to receive notices provided herein does not necessitate another hearing or invalidate any action by the Planning Board or the City Council.

### **E. Planning Board Action**

The Planning Board must make its recommendations in writing to the City Council within 21 days of the conclusion of any public hearing conducted pursuant to this Code; however, to

constitute the Planning Board's recommendation of approval, a proposed amendment must receive at least 4 affirmative votes from the Planning Board. The 21-day period may be extended for an additional 21 days by vote of the Planning Board. Failure of the Planning Board to issue its recommendation within the 21-day period, or extension thereof, constitutes the Planning Board's recommendation of approval of the proposed amendment.

#### **F. City Council Action After the Planning Board's Recommendation**

After receipt of the Planning Board's recommendations, as described previously, the City Council must consider and take all appropriate action on the proposed amendment in accordance with requirements of the Bath City Charter, the Council's Rules of Procedure adopted pursuant thereto, and the laws of the State of Maine.

#### **G. Application for Zoning-map Amendment in Accordance with an Architect's Plan**

1. In accordance with 30-A M.R.S.A. Section 4352 (7), an applicant for a zoning-map amendment may volunteer prior to the rezoning to be bound by an architect's development plan if the rezoning occurs.
2. The applicant for a zoning-map amendment must post a performance bond equal to 25 percent of the estimated cost of the development, guaranteeing to the City that if the rezoning occurs, the area will be developed in accordance with the plan that is filed as part of the application for the zoning-map amendment. The estimated cost must be found to be reasonable by the Planning Board. The plan must have received Site Plan Approval, which may be granted by the Planning Board conditioned upon the rezoning.
3. If the applicant fails to begin construction in a substantial manner and in accordance with the architect's development plan within 1 year of the effective date of rezoning, the total amount of the bond will be paid to the City.

\* \* \*

## ARTICLE 2: DEFINITIONS

### SECTION 2.01 MEANING OF WORDS

All words except those defined herein carry their customary and usual meanings. Words used in the present tense include the future. Words used in the singular include the plural and vice versa. The word *lot* includes the words *parcel* and *plot*. The word *must* is used to indicate the mandatory and the word *may* is used to indicate the permissive. The use of *may* as in “no buildings may be built,” or “buildings may not be built,” means that permission to build buildings is not granted and, thus, they are not allowed to be built. The words *occupied* or *used* are considered as though followed by the words *or intended, arranged, or designed to be used or occupied*.

### SECTION 2.02 DEFINITIONS

For the purpose of interpreting this Code, the following terms, phrases, words, and their derivations have the meaning given herein.

**Abutting Property.** Any lot that is physically contiguous with the lot in question, even if only at a point, and any lot that is located directly across a public street or way from the lot in question.

**Access Drive.** That portion of a lot set aside for vehicular access between the public or private road and the portion of the lot used for buildings, structures, parking, or other uses to which the lot is devoted. The driveway.

**Accessory Building.** A subordinate building or a portion of the main building that is occupied by an accessory use.

**Accessory Use.** Use of a building or of land that:

1. is clearly incidental to and customarily found in connection with a principal building or use
2. is subordinate to and serves a principal building or a principal use
3. is subordinate in area, extent, and purpose to the principal building or principal use served
4. contributes to the comfort, convenience, or necessity of the occupants, business, or industry in the principal building or principal use served, and
5. is located on the same lot as or a lot under the same ownership as the principal building or use and meets the performance standards of Section 11.35.

**Agent.** Anyone having written authorization signed by a property owner to act on behalf of that property owner, or applicant.

**Aggrieved Party.** A person whose land is directly affected by the granting or denial of a permit or variance under this Code; a person whose land abuts land for which a permit or variance has been granted.

**Agriculture.** The production, keeping, or maintenance for sale or lease of plants and/or animals. Agriculture does not include timber-harvesting activities or the raising or breeding of dogs, cats, and other typical household pets.

**Airport.** An area of land or water designed and set aside for landing and takeoff of aircraft, including airplanes, helicopters, and ultralight aircraft. This use also includes accessory facilities for housing and maintaining the aircraft.

**Alteration.** Any material change to a structure or building, including but not limited to reconstruction, enlargement, relocation, or other similar actions. Also, any material change to the site, including but not limited to the construction, erection, or location of structures; changes to the stormwater drainage; and the creation of new impervious surfaces.

**Ambient Quality.** As it relates to noise, vibrations, or odor, the condition that exists at any particular geographical area before the start of development.

**Animal-care Facility.** The use of a building or land for the diagnosis, care, and treatment of ailing or injured animals, which may include overnight accommodations.

**Applicant.** Any person having standing to apply for a review or approval required or provided under this Code. To have standing under this Code, an applicant must have a legal interest in any land, parcel, site, or development subject to any action by the City of Bath under this Code. Such interest must be either fee-simple ownership; holder of a valid, enforceable contract (or option agreement) to purchase; or a long-term (i.e., 10 years or longer) exclusive leasehold. Applicants may designate others to represent them in any application under this Code and must do so in writing. The terms *owner*, *subdivider*, and *developer* are interchangeable with the term *applicant*, unless the context clearly indicates otherwise.

**Architectural Details and Decorative Elements.** Include, but are not limited to, cornices; frames and moldings around windows, doors, and building corners; lintels; arches; columns; wrought-iron work; siding; and chimneys.

**Area of Special Flood Hazard.** The land in the floodplain having a 1 percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in the Flood Damage Prevention Ordinance.



**Art Studio.** The room or building where an artist works. There may be no outdoor evidence of the art studio activity caused by such things as storage, deliveries, customers, noise, or odors. No on-site display or sales.

**Assisted Residential Facility** – A place where individuals: [added February 24, 2010]

- reside in private apartments that include an individual bedroom and an individual bathroom, and may include an individual food preparation area;
- are provided with common dining services; and
- receive assisted-living services with activities such as dressing, eating, toileting, bathing, and personal hygiene.

An Assisted Residential Facility does not include correctional facilities, hospitals, hotels, or rooming houses.

An Assisted Residential Facility must meet the standards in Section 11.08 of this Code.

**Assisted Residential Unit.** The individual unit or apartment located within any Assisted Residential Facility that is intended to be occupied by the resident of an assisted residential facility. This unit is not considered to be a dwelling unit. [added February 24, 2010]

**Automobile Graveyard.** That definition contained in 30-A M.R.S.A. Section 3752 (1). Also the keeping or storing of 3 motor vehicles that cannot pass the state inspection test in their current condition.

**Base Flood.** The flood having a 1 percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Bed and Breakfast.** A dwelling occupied by the owner as his/her principal place of residence that accommodates paying guests for a limited duration with sleeping and dining facilities; payable on a per-diem basis; having less than 10 sleeping rooms; and in which some bath, sitting, and dining rooms are used in common by such guests. All dining facilities are limited to use by overnight guests of that particular establishment. For purposes of this definition, *principal place of residence* means that the owner of the land and buildings must be in residence on the premises while the bed-and-breakfast business is conducted. All of the bed and breakfast activities and the residence of the owner must be in the same building and may only be in 1 building.

**Borrow Pit.** A mining operation undertaken for the removal of gravel.

**Buffer.** An open area with landscaping, fencing, grade changes, or other measures to reduce the transfer of noise, dust, light, and similar nuisances from one property to another, and to improve the visual appearance of the property from abutting properties or public ways.

**Building.** Any structure with a roof supported by columns or walls and intended for the shelter, housing, or enclosure of persons, animals, or personal property. Each portion of a building separated from other portions by a firewall is considered a separate building.

**Campground.** Any premises established for overnight use for the purpose of temporary camping and for which a fee is charged.

**Canopy.** The more or less continuous cover formed by tree crowns in a wooded area.  
[added October 28, 2009]

**Car Wash.** An area of land and/or a structure with machine- or hand-operated facilities used principally to clean, wash, polish, or wax motor vehicles.

**Cemetery.** Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries, when operated in conjunction with and within the boundaries of the cemetery.

**Child-care Facility.** A building or group of buildings used to house children overnight, with supervision and meals but not necessarily medical care.

**City Park.** Any facility that is owned by the City of Bath and managed for the active or passive recreational use or open space enjoyment by city residents.

**Cluster Development.** A form of development that allows a developer to create smaller lots in return for setting aside a portion of the tract of land as permanent, undeveloped open space. Cluster developments must conform to the standards of Section 11.06.

**Codes Enforcement Officer (CEO).** That person appointed by the Bath City Council as Codes Enforcement Officer.

**Commercial Greenhouse.** A building or group of buildings whose sides and/or roof are made primarily of glass or other sunlight-transmitting material, and used to grow or store plants and/or produce for sale.

**Community Activity Center.** A building or other place that is used for meetings, recreation, and similar uses by the general public, and not operated for profit.

**Community Garden.** The non-commercial use of land to grow plants for the use of residents of the neighborhood or the Bath community.

**Community-living Arrangement.** A housing facility for 8 or fewer persons with disabilities that is approved, certified, or licensed by the state. A community-living arrangement may include a group home, foster home, or intermediate-care facility. *Disability* has the same meaning as the term *handicap* in the Federal Fair Housing Act, 42 United States Code, Section 3602. As required by 30-A M.R.S.A. Section 4357-A, Paragraph 2, a community-living arrangement is considered a single-family use.

**Comprehensive Plan.** The Comprehensive Plan duly adopted by the City Council as the City's official policy with respect to the use and development of land within the City, as currently exists and as may be amended from time to time.

**Constructed.** Includes built, erected, altered, reconstructed, moved onto or upon, or any physical operations on the premises that are required for construction. Excavation, fill, drainage, and other activities associated with construction are considered part of that construction.

**Contract Rezoning.** Contract rezoning is a process by which the City Council, after considering the recommendation of the Planning Board, may rezone property, consistent with the Planning Board's findings, to permit the use of that property subject to variations or conditions not generally applicable in non-contract zones. The contract rezoning process must comply with Section 8.19 of this Code and with 30-A M.R.S.A. Section 4352 (8).

**Convenience Store.** A business, the principal building of which has no more than 2,500 square feet, that sells prepackaged food products and household items. A convenience store also may sell food already prepared, but does not include establishments designed or arranged to accommodate the consumption of food on the premises. A convenience store may sell motor-vehicle fuel but may not have more than 8 fuel-dispensing locations. (Each individual fuel-filling site is a fuel-dispensing location.) This use does not include uses in Land Use Table Category 12, in Section 9.02.

**Correctional Facility.** A building or group of buildings used to house persons who are awaiting action by the courts, or persons who have been confined by the courts. This use may not be considered an accessory use. The temporary holding of pretrial detainees, for no longer than 72 hours, prior to arraignment, release, or transfer to another facility is considered accessory to a Public Safety Facility. [amended September 18, 2002]

**Council or City Council.** The Bath City Council.

**Craft and Flea Market.** The sale of used merchandise or homemade crafts where vendors may rent tables or display space.

**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. [added October 28, 2009]

**Day-care Facility.** A house or other place in which there is maintained or otherwise carried out, a regular program, for consideration, for any part of a day, care and protection, and possibly instruction, for children under the age of 16 or adults who cannot care for themselves.

**Day-care Home.** A house or other place in which there is maintained or otherwise carried out by the occupants of the dwelling unit on the lot, a regular program, for consideration, for any part of a day, care and protection, and possibly instruction, for 3 but not more than 12 children under the age of 16 or adults who cannot care for themselves.

**DBH.** The diameter of a standing tree measured 4.5 feet from ground level. [added October 28, 2009]

**Deck.** An unroofed structure with a floor.

**Demolition.** The intentional destruction or removal of a building or structure either partially or as a whole.

**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. [added October 28, 2009]

**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. [added October 28, 2009]

**District.** A specific portion of the City delineated on the official zoning map, within which certain regulations and requirements, or various combinations thereof, apply under the provisions of this Code. Also may be called *zone* or *zoning district*.

**Dock.** Any structure, whether permanent or temporary, that acts as a landing place for watercraft, including any combination of piers, docks, or floats.

**Drive-up Window.** A window designed or used in such a manner as to permit customers or patrons to receive goods or services while remaining in their motor vehicle.

**Dry Cleaner.** An establishment where garments and the like are cleaned by using solvents and not soap and water.

**Dwelling.** A building containing 1 or more dwelling units.

**Dwelling, Single-family.** A building containing only 1 dwelling unit for occupation by not more than 1 family.

**Dwelling, Two-family.** A building containing only 2 dwelling units for occupation by not more than 2 families.

**Dwelling, Multi-family.** A building containing 3 or more dwelling units designed for residential use and occupancy by 3 or more families living independently of one another, with the number of families not exceeding the number of dwelling units.

**Dwelling Unit (in non-shoreland zones).** A room or group of rooms designed and equipped for use as permanent, seasonal, or temporary living quarters for only 1 family at a time, and containing cooking, sleeping, and toilet facilities. The term includes manufactured housing and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented, but does not include recreational vehicles, so-called park-model mobile homes, assisted residential units, or rooms in land-use categories other than Category 1.0, Residential, in the Land Use Table (see Section 9.02). [amended October 28, 2009 and October 27, 2010]

**Dwelling Unit (in shoreland zone).** A room or group of rooms designed and equipped for use as permanent, seasonal, or temporary living quarters for only 1 family at a time, and containing cooking, sleeping, and toilet facilities. The term includes motels, hotels, inns, tourist cabins, manufactured housing and other rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented, but does not include recreational vehicles, so-called park-model mobile homes, or assisted residential units. [added October 27, 2010]

**Easement.** A right or privilege, less than fee-simple ownership, that a person may have in another's land, such as a right-of-way.

**Elderly housing.** A dwelling unit occupied by persons 55 years or older. In the case of double occupancy of a unit, only 1 resident is required to be at least 55 years of age. The housing must be self-contained and physically accessible to elderly persons.

**Engineered System.** A subsurface wastewater-disposal system designed, installed, and operated as a single unit to treat 2,000 gallons per day or more; or any system designed to treat wastewater that has characteristics significantly different than domestic wastewater.

**Environmental Impact Report.** A detailed study describing and analyzing the environmental impacts of a mining activity, discussing ways to mitigate or avoid such impacts, and evaluating responsible alternatives to the proposed activity or the method in which it is proposed to be conducted.

**Erect.** Any building activity including construction, reconstruction, renovation, relocation, alteration, enlargement, placement, or any other similar activities.

**Expansion of Use.** The addition of weeks or months to a use's operational season, additional hours of operation, or an increase of floor or ground area devoted to a particular use.

**Exterior Siding Residential in Appearance.** Siding materials such as clapboards, shingles, and shakes, including synthetic or metal siding manufactured to closely resemble clapboards, shingles, and shakes. This term also includes masonry, wood board-and-batten, and "Texture 1-11" exterior plywood.

**Family.** One or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit; however, a group of 4 or more persons who are not within the second degree of kinship are not considered a family.

Notwithstanding the definition in the preceding paragraph, a family is deemed to include 5 or more persons not within the second degree of kinship occupying a dwelling unit and living as a single, nonprofit housekeeping unit, if the occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968 and amended by the Fair Housing Amendments of 1988. Such unrelated individuals have the right to occupy a dwelling unit in the same manner and to the same extent as any family unit, as defined in the first paragraph of this definition.

**Farmstand.** A lot or structure from which farm, garden, greenhouse, or nursery products or Christmas trees, garlands, wreathes, or wreath materials are sold.

**Farmers' Market.** The outdoor display and sale by 1 or more vendors of locally grown farm products. May also include the display and sale of homemade craft items.

**Fence.** Any structure, constructed of any material or combination of materials, erected to enclose or screen areas of land.

**Filling.** Depositing or dumping any matter on or into the ground or water.

**Floodplain.** The lands adjacent to a body of water that have been or may be covered by the base flood.

**Floor Area, Gross, of a Structure.** The sum of the contiguous horizontal areas of the floor(s) of a structure enclosed by exterior walls, including unfinished areas within the exterior walls, attached garages, plus porches, and decks and excluding basement space unless the basement is used as living space or commercial space. Floor area is calculated by measuring the outside dimensions of exterior walls, or in the case of porches or decks by measuring the surface area. [amended May 16, 2001]

**Floor Area Ratio.** That number determined by dividing the gross floor area of all buildings on a lot by the area of that lot.

**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. [added October 28, 2009]

**Foundation.** The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material. [added October 28, 2009]

**Function or Assembly Facility.** The use of a building or structure by a private organization for meetings and other purposes attended by the organization's members and guests. Such uses may include food or liquor service on a regular basis. Also, the use of a structure or a parcel of land for meetings, social events, and similar gatherings by people other than the property owner or occupant and their guests.

**Funeral Home.** A building or part thereof used for human funeral services. Such building may contain space and facilities for (1) the embalming and performance of other services used to prepare the dead for burial; (2) the performance of autopsies and other surgical procedures; (3) the storage of caskets, funeral urns, and other related funeral supplies; and (4) the storage of funeral vehicles. Facilities for cremation are not included. Where a funeral home is permitted, a funeral chapel also is permitted.

**Garage and Yard Sales.** Sales conducted from or on residential premises for the purpose of disposing of used personal property.

**Ground cover.** Small plants, fallen leaves, needles, and twigs, and the partially decayed organic matter of the forest floor. [added October 28, 2009]

**Hazardous Waste.** Any waste material identified as being hazardous by either the Maine Department of Environmental Protection (MEDEP) or the U.S. Environmental Protection Agency (USEPA).

**Height of Structure - all districts except Shoreland Zone.** The vertical distance from the mean grade level to the top surface of the roof or to the top of the structure. [amended May 16, 2001]

**Height of Structure - Shoreland Zone.** The vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area. If any portion of the structure is in the Shoreland Zone this definition applies. [amended May 16, 2001 and October 28, 2009]

**High-volume Traffic Generation Use.** All uses in Land Use Table Category 2.0, except 2.1.3 Low-volume Traffic Generation uses.

**Historic and Archeological Resources.** Any area, site, or building listed on the National Register of Historic Places or identified in the Comprehensive Plan as an archeological or historic resource.

**Historic District Committee.** A committee comprised of the Planning Director, and 2 Planning Board members designated annually by the Chair of the Planning Board. The committee is authorized to act on certain requests for Historic District Approval according to Section 8.12, D. [amended February 7, 2007]

**Home Occupation.** An occupation or profession, carried out for monetary gain, that is conducted in a dwelling unit or structure accessory to a dwelling unit and is clearly incidental and secondary to the use of the dwelling unit for residential purposes. There are 2 sizes of home occupations defined in the following paragraphs. All home occupations must meet the performance standards of Section 11.13.

**Home Occupation - A.** A home occupation that has little or no impact on the neighborhood in which it is located. This category includes home occupations that have no warehousing, no sales on-site, no parking of commercially-registered vehicles larger than 1 ton capacity based upon the manufacture's rating, no deliveries by trucks larger than the single-unit trucks typically used by United Parcel Service or Federal Express, and no employees other than family members residing in the home. This category may not be conducted in an accessory building.

**Home Occupation - B.** Any home occupation that does not meet the definition of *Home Occupation - A*.

**Hospital.** A building or buildings where health services primarily for human in-patient medical and surgical care for the sick or injured is provided, including accessory facilities such as laboratories, out-patient departments, training facilities, central services, and staff offices.

**Household Pets.** Animals that are customarily kept for personal use or enjoyment within the home, including but not limited to domestic dogs, domestic cats, rabbits, rodents, and domestic birds.

**Hydric Soils.** Hydric soils include the following types:

- Biddeford silt loam
- coastal beach
- Leicester fine sandy loam
- Leicester very stony, fine sandy loam
- Limerick silt loam
- peat and muck
- Saco silt loam
- Scantic soil loam, 0 to 3 percent slopes
- Scarboro fine sandy loam



- Swanton fine sandy loam, 0 to 3 percent slopes
- tidal marsh
- Walpole fine sandy loam
- Whately fine sandy loam
- Whitman loam

**Individual Private Campsite.** An area of land not associated with a campground, developed for repeated camping by only 1 group not to exceed 10 individuals, and which involves site improvements that may include but are not limited to gravel pads, parking areas, fireplaces, and wooden tent platforms.

**In-home Lodging.** The renting of a bedroom without cooking facilities in a single-family home. The lodger may or may not be allowed use of kitchen facilities in the home.

**Junkyard.** That definition contained in 30-A M.R.S.A. Section 3752 (4). This does not include the City of Bath sanitary landfill

**Kennel.** Any place, building, tract of land, or enclosure where a person, for compensation:

1. provides food, shelter, care, or training for household pets for purposes not primarily related to medical care, or
2. engages in the breeding of more than 2 female household pets for the sale of their offspring

Except that any building where non-medical care such as washing, grooming, and similar services are provided to household pets is considered a service use (Use Category 3.1.1), provided that the animals are not kept overnight and are kept within the building. [amended October 5, 2005]

**Laundromat.** An establishment where, for compensation, clothes and the like are washed with soap and water.

**Legislative Body.** The City Council of the City of Bath.

**Library.** A building or buildings open to the public where books and other reference materials are kept for reading, reference, and loaning.

**Lot.** All contiguous lands under the same ownership.

**Lot, Back.** A lot that is located to the rear of 1 or more other lots and that lacks street frontage or has frontage that is less than the required lot width as measured along a street. [amended May 16, 2001]

**Lot, Corner.** A lot with at least 2 contiguous sides abutting on a street.

**Lot, Shorefront.** Any lot abutting a river, stream, or tributary stream.

**Lot, Through.** Any interior lot with frontages on 2 more or less parallel streets, between a street and a water body, or between 2 water bodies, as distinguished from a corner lot. All sides of through lots, adjacent to the streets and water bodies, are considered front lot lines, and front setbacks and yard areas must be provided as required.

**Lot area.** The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath existing or proposed roads or road rights-of-way serving more than two lots. [amended October 28, 2009]

**Lot Coverage—all districts except Shoreland Zone.** That part of the lot area covered by buildings. [amended May 16, 2001]

**Lot Coverage—Shoreland Zone.** That part of the lot covered by structures, parking lots, and all non-vegetated surfaces. [added May 16, 2001]

**Lot Lines.** The property lines bounding a lot, as follows:

**Front Lot Line.** On a lot that abuts only 1 street, the line separating the lot from the street right-of-way. On a corner or through lot, the lines separating the lot from each street right-of-way or waterbody. On a back lot, the line separating the lot from the lot in front of and closer to the nearest street than that lot. [amended May 16, 2001]

**Rear Lot Line.** The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line is an imaginary line between the side lot lines parallel to the front lot line, not less than 10 feet long, lying farthest from the front lot line. On a corner lot, there are 2 rear lot lines.

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

**Lot Net Area.** The area of the lot minus the area of the lot that contains:

- hydric soils
- wetlands
- areas of 1 or more contiguous acres with sustained slope of 25 percent or more
- floodplain
- water body and any portion of the lot that is regularly inundated by water
- exposed bedrock
- any isolated portion of the site that is cut off from the main portion of the site by a road, existing land uses, major stream, or similar physical feature such that it creates a major barrier to the common use or development of the site.

**Lot Width.** The distance between the side lot lines of a lot measured at the front setback as required by this Code. For corner lots, lot width is measured between the rear lot line and the opposite front lot line. Corner lots have 2 lot widths.

**Low-volume Traffic Generation Use.** Uses such as furniture stores, carpet stores, and major appliance stores that sell items that are large and bulky, that need a relatively large amount of storage or display area for each unit offered for sale, and that, therefore, generate less customer traffic per square foot of floor space than stores selling smaller items.

**Manufactured Housing.** This is defined as follows:

1. Those units constructed after June 15, 1976, commonly called “newer mobile homes,” that the manufacturer certifies are constructed in compliance with the U.S. Department of Housing and Urban Development (HUD) standards, meaning structures, transportable in one or more sections, which, in the traveling mode, are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein. The term includes any structure that meets all the requirements of this paragraph except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the HUD Secretary and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.
2. Those units commonly called “modular homes” that the manufacturer certifies are constructed in compliance with the State’s Manufacturing Housing Act and regulations, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein.

**Marina.** Any complex, having frontage on navigable water, of land buildings, facilities, haul ways, driveways, motor vehicle parking areas, or indoor or outdoor boat storage spaces in a common ownership for docking, mooring, berthing, storing, repairing, selling, supplying, fueling, or servicing boats. [amended October 28, 2009]

**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. [added October 28, 2009]

**Metallic Minerals or Metallic Mineral Deposits.** Any mineral containing any metal, including but not limited to minerals containing gold, silver, iron, manganese, copper, lead, zinc, tin, chromium, cobalt, nickel, molybdenum, platinum, group elements, aluminum, arsenic, antimony or bismuth, as their valuable constituents.

**Mining.** The extraction of borrow, topsoil, clay, rock, sand, or gravel, and the processing of such materials. The following activities are specifically exempt from this definition and are not considered to be mining:

1. Topsoil operations in which no more than 100 cubic yards of topsoil are removed per year, where the removal is accomplished with a vehicle having a capacity of 10 cubic yards or less, and the owner/operator provides a rehabilitation plan to return the topsoil to its original state.
2. Removal of materials when necessary and incidental to the construction or alteration of a building, road, or parking area on the same site as that from which the materials are removed.
3. Activity involved in the removal of metallic minerals or metallic mineral deposits that is not considered a mining activity and is not permitted where mining activity is permitted under the terms and conditions of this Code.

**Minor Revisions.** A minor revision to a site plan is one that is limited in scope and effect so as not to represent a material change in the original approved plan. It is anticipated that such revisions will result from such factors as adjustments to meet on-site conditions, more efficient methods of accomplishing necessary on-site infrastructure, corrections of mistakes on the approved plan, amendments to meet Code requirements, and the like. (See Section 12.13, Item B.)

**Mixed Use.** More than one principal use in the same building.

**Mobile-home Park.** A parcel of land under unified ownership designed and/or used to accommodate 3 or more manufactured housing units.

**Mobile-home-park Lot.** The area of land on which an individual home is situated within a mobile-home park that is reserved for use by the occupants of that home.

**Motor Scooter.** A motorcycle as defined in Title 29-A MRSA, section 101, Subsection 38, provided the maximum piston displacement of the motor does not exceed 250 cubic centimeters. Notwithstanding the definition contained in Title 29-A MRSA, section 101, Subsection 38, for the purposes of this Code a motorcycle may have wheels smaller than 10 inches in diameter and may have a motor with a piston displacement less than 50 cubic centimeters. [added March 11, 2009]

**Motor Vehicle.** Any motor-driven, self-propelled vehicle not operated on a track or tracks and specifically including, in addition to those vehicles licensed by the State of Maine, all motorcycles, off-road vehicles, all-terrain vehicles, and recreational camping vehicles, with the sole exception of snowmobiles.

**Motor Vehicle or Snowmobile Repair Facility.** A place where one or more of the following motor vehicle or snowmobile uses or services is carried out: motor vehicle or snowmobile body work, painting, upholstering, repairing, servicing, or fuel sales.

**Multiple Uses.** More than one principal use on the same lot.

**Museum.** An institution for the acquisition, preservation, study, and exhibition of works of artistic, historical, or scientific value. Also may include incidental sales of merchandise and a restaurant as an accessory use.

**Native.** Indigenous to the local forests. [added October 28, 2009]

**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. The CEO is responsible for the delineation of the normal high line where such is not clearly mapped. [amended October 28, 2009]

**Nursing Home.** A facility where lodging and board, and medical care or nursing supervision to sick, invalid, infirm, disabled, or convalescent persons is provided. [amended May 16, 2001]

**Open Space.** For purposes of Article 14, an area of land left undeveloped to be used as passive recreation, agriculture, resource protection or other similar uses, whether the use is in accordance with the original use, or represents a change in use after completion of development.

**Overburden.** Earth and other materials naturally lying over the product to be mined.

**Parabolic Dish Antenna.** A device incorporating a reflective surface that is solid-, open-mesh-, or bar-configured and is in the shape of a shallow dish, cone, or horn, which is used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based devices.

**Parking Garage.** A building or multilevel structure designed and used for the storage of motor vehicles.

**Parking Lot.** An area, not within a building and not multilevel, designed and used for the storage of motor vehicles.

**Parking Space.** The area within a parking lot or parking garage where the individual motor vehicle may be stored. A parking space must be at least 9 feet wide by 20 feet long, unless it is part of a parking lot that meets the standards of Section 10.06,B, 9. [amended August 6, 2003]

**Person.** Individual, firm, association, organization, partnership, trust, company, corporation, limited liability company, or other recognizable legal entity

**Place of Assembly.** A meeting place at which the public may assemble regularly or occasionally, for purposes such as deliberations, worship, conferences, and lectures. [amended May 5, 2004]

**Planning Board.** The Planning Board of the City of Bath.

**Planning Director.** That person hired by the City of Bath with the job description of Planning and Development Director.

**Preliminary Subdivision Plan.** The preliminary drawings indicating the proposed layout of a subdivision to be submitted to the Planning Board for its consideration.

**Principal Structure.** A building or structure in which a principal use is conducted.

**Principal Use.** The primary use or purpose of a lot or structure.

**Private Meeting Facility.** The use of a structure or parcel of land for the meetings of a private organization, including union halls. [amended August 6, 2003]

**Public Safety Facility.** A place used to house or store public police, fire, or rescue equipment, and/or a building used as temporary living space for on-duty police, fire, or rescue personnel. Uses may include accessory office uses.

**Public Works Facility.** A place used to house or store public highway, park, or cemetery maintenance equipment or materials. Uses may include accessory uses.

**Reclamation.** The rehabilitation and continued maintenance of the area affected by mining activity under a reclamation plan which can include, but is not limited to, grading and land shaping, creation of lakes or ponds, the planting of forest and the seeding of grasses and legumes, the planting of crops for harvest, and the enhancement of wildlife and aquatic resources.

**Recreational Camping Vehicle.** A motor vehicle or an attachment designed to be towed or carried by a motor vehicle and designed for temporary sleeping or living quarters for 1 or more persons, including but not limited to a pickup camper, travel trailer, tent trailer, camp trailer, or motor home. In order to be considered a Recreational Camping Vehicle, and not a dwelling unit, the motor vehicle must remain with its tires on the ground and must be registered with the Maine State Division of Motor Vehicles. [amended October 28, 2009]

**Relocation.** The removal of a building or other structure to a new location, whether to a different lot or to another location on the same lot.

**Residential in Appearance.** (Pertaining to any buildings built to house a home occupation) Having siding materials such as clapboards, shingles, or shakes, including synthetic or metal siding manufactured to closely resemble clapboards, shingles, and shakes; and a pitched, shingled or metal roof, and similar in appearance to the principal, residential building.

**Residential Use.** Land Use Category 1.0 on the Land Use Table (see Section 9.02).

**Residential Zone or District.** The R1, R2, R3, R4, R5, and R6 zoning districts. [amended October 3, 2001]

**Resource Protection District.** The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district includes the following areas, 1 through 5, below, when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that lots that are currently built upon and lots that are in the I, C1, or C5 Zone need not be included within the Resource Protection District. [added October 28, 2009]

1. Areas within 250 feet, horizontal distance, of the upland edge of salt marshes and salt meadows, freshwater wetlands, and wetlands associated with great ponds (this includes Lilly Pond) or rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Department of Inland Fisheries & Wildlife. Salt marshes and salt meadows are those shown on maps dated January 1, 1997. Freshwater wetlands and wetlands associated with great ponds or rivers are those based upon the December 31, 2008 data layer. For the purposes of this definition "wetlands associated with great ponds or rivers" means 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 great ponds or rivers" are considered to be part of that great pond or river.
2. Floodplains defined by the 100 year floodplain 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. This district also includes 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

3. Areas of two or more contiguous acres with sustained slopes of 20 percent or greater.
4. Areas of two 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 water body during the period of normal high water.
5. 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.

**Restaurant.** A place, the primary use of which, is to prepare and serve food and beverages on the premises to the general public for compensation.

**Resubdivision.** The division of an existing subdivision or any change of lot size therein, or the relocation of any street, lot, or lot line in a subdivision.

**Review Authority.** For Site Plan Review, the Review Authority is designated as either the Planning Board or the Staff Review Committee.

**Rooming House.** Any dwelling in which more than 3 persons are housed for compensation with or without meals and with shared facilities. This definition includes fraternity and sorority houses.

**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. [added October 28, 2009]

**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 (*Spartina patens*) and black rush; common threesquare occurs in fresher areas. [added October 28, 2009]

**School, Public or Private Elementary or Secondary.** A place where courses of study are taught that are sufficient to qualify attendance as compliance with state compulsory education requirements for Kindergarten through Grade 12 or non-boarding schools for the purposes of teaching life skills, such as hygiene, reading, cooking, and money management. [amended November 28, 2012]



**School, Public or Private Post-secondary.** A place where courses of study are taught that are sufficient to lead to a degree recognized by the state.

**School, Special Purpose.** A place where any specialized branch of knowledge is taught for compensation such as martial arts, dancing, gymnastics, music, automobile driving, and business skills, but not including horseback riding. [amended November 28, 2012]

**Service drop.** Any utility line extension which does not cross or run beneath any portion of a water body provided that: [added October 28, 2009]

1. in the case of electric service
  - a. 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
  - b. the total length of the extension is less than 1,000 feet.
2. in the case of telephone service
  - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
  - b. the extension requiring the installation of new utility poles or placement underground is less than 1,000 feet in length.

**Setback (in non-shoreland zones).** The minimum horizontal distance between the front, side, or rear lot line and the nearest point of the building, including decks or any covered projections thereof, on the lot. [amended October 28, 2009]

**Setback (in shoreland zone).** The nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space, or other regulated object or area. [added October 28, 2009]

**Shared Parking.** A parking lot or parking garage that is accessory to a permitted use and which may be used by another principal, permitted use after approval by the Planning Board.

**Shore frontage.** The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline. [added May 16, 2001 and October 28, 2009]

**Shoreland zone.** The land area located within 250 feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within

250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream. [amended October 28, 2009]

**Shoreline.** The normal high-water line, or upland edge of a freshwater or coastal wetland. [added October 28, 2009]

**Site-built Single-family Dwelling.** A dwelling unit that is built on-site or a manufactured housing unit commonly called “modular home” that the manufacturer certifies was constructed in compliance with the State’s Manufacturing Housing Act and regulations, meaning a structure, transportable in one or more sections, that is not constructed on a permanent chassis and is designed to be used as a dwelling on a foundation when connected to required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein. Also includes dwellings that were site-built and moved to a new location. Does not include mobile homes.

**Small ATV.** Any motorized off-road vehicle 50 inches or less in overall width, having a dry weight of 600 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator, having handle bars for steering, and having a the maximum piston displacement not exceeding 375 cubic centimeters. [added March 11, 2009]

**Soil Sediments.** Soil particles settling out from mineral material which are small enough to be transferred or transported by wind or water.

**Soup Kitchen.** A facility that distributes food (prepared and unprepared) and/or clothing to the public on a regular basis, without cost or at a low cost insufficient to generate a profit. *Soup kitchens* are not *restaurants*. [added September 25, 2013]

**Staff Review Committee.** A committee composed of the Police Chief, the Fire Chief, the Public Works Director, the CEO, and the Planning Director, or their designees, and chaired by the Planning Director.

**Street.** For the purpose of determining frontage and access requirements only,  $\bar{\cdot}$   $\bar{\cdot}$  a way established or maintained under public authority,  $\bar{\cdot}$   $\bar{\cdot}$  a private way meeting the standards contained in Section 13.14, B, 2, (e), approved by the Planning Board, and recorded at the Registry of Deeds,  $\bar{\cdot}$   $\bar{\cdot}$  a way shown on a plan of a subdivision duly approved by the Planning Board,  $\bar{\cdot}$   $\bar{\cdot}$  a way shown on a plan recorded in the Registry of Deeds prior to September 23, 1971,  $\bar{\cdot}$   $\bar{\cdot}$  or a way that is existing at the date of adoption of this Section,  $\bar{\cdot}$   $\bar{\cdot}$  which meets the standards contained in Section 13.14, B, 2, (e). [amended May 16, 2001 and June 15, 2005]

**Street Bottle-neck.** That segment of a dead-end street system, which must serve as both ingress and egress. [added June 15, 2005]

**Street, Continuing.** A street having two ends; each end connecting with a different continuing street or loop street. [added June 15, 2005]

**Street System, Dead-end.** A street, or a system of connected streets, whether existing or proposed, which has only one connection with either a continuing street or loop street. [added June 15, 2005]

**Street, Loop.** A street that has two ends, each end connecting with the same continuing street or loop street. The two connections must be at least 500 feet apart. If the connections are less than 500 feet apart the street is considered a dead-end street system.

**Structure.** Anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures both temporarily and permanently located. [amended October 28, 2009]

**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; legally nonconforming 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 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system. [amended October 28, 2009]

**Sustained Slope.** A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Tidal waters.** All waters affected by tidal action during the maximum spring tide. [added October 28, 2009]

**Timber-harvesting.** The cutting and removal of trees from their growing site and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. Timber-harvesting does not include the clearing of land for approved construction.

**Tower.** Any structure whose principal function is to support something such as an antenna, a windmill, a water tank, an observation platform, or other similar uses. A WCF, as defined and regulated by Article 17, is not included in this definition. [amended February 22, 2012]

**Transportation Terminal.** The use of land or structures where goods or passengers are transferred from one mode of transportation to another, where the transport of the goods or passengers begins or ends, or where the vehicle doing the transport begins or ends its run. A transportation terminal does not include permanent or long-term storage of goods. The transportation terminal may include repair of motor vehicles associated with the terminal. This use includes, but is not limited to, railroad stations, bus stations, and taxi operations other than City Council-permitted “taxi parking spaces.”

**Travel Trailer.** A vehicular, portable structure built on a chassis; designed to be used as a temporary dwelling for travel, camping, recreational, or vacation uses; when equipped for the road, has a body width not exceeding 8 feet; and which is eligible to be licensed or registered and insured for highway use.

**Truck Terminal.** The use of land or structures where freight is transferred from one mode of transportation to another, where the transport of freight begins or ends, or where the truck doing the transport begins or ends its run. A truck terminal may include permanent or long-term storage of goods. The truck terminal may include repair of trucks associated with the terminal.

**Upland edge of a wetland.** The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. 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 6 meters (approximately 20 feet) tall or taller. [added October 28, 2009]

**Use.** The purpose or activity for which a building, a structure, or a piece of land is occupied or maintained as it is enumerated in the Land Use Table (see Section 9.02).

**Utility Facility.** Any facility (not including an office building, business office, storage yard, or vehicle or equipment maintenance or repair facility) operated by an electrical utility, a telephone utility, a water district or private water company, a sanitary district, a sewer district or municipal sewer department, a cable-television supplier, or any other utility. These facilities include pumping and pressure control stations, telephone equipment huts, standpipes, reservoirs, wells and other water-storage structures, electricity-regulating substations, water treatment plants, and electrical generating plants. Utilities do not include microwave, radio, television, or other telecommunication transmitters and towers. For the purposes of this Code, there are 2 classifications of utility facilities, as follows:

**Small-scale Utility Facility.** A utility facility consisting of structures that cover no more than 250 square feet of land. Also in this classification are utility distribution lines.

**Other Utility Facility.** A utility that is larger than a “Small-scale Utility Facility.”

**Vegetation.** All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 ½ feet above ground level. [amended October 28, 2009]

**Water Body.** A river, great pond, stream, tributary stream, or wetlands, as follows: [amended October 28, 2009]

**Great pond.** Any inland body of water, which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres except for the purposes of this Code, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner. Lilly Pond is a great pond. [added October 28, 2009]

**River.** A free-flowing body of water, including its associated floodplain wetlands, from that point at which it provides drainage for a watershed of 25 square miles to its mouth. The following bodies of water are rivers: the Kennebec River and Merrymeeting Bay.

**Stream.** The free-flowing body of water from the outlet of a great pond or the confluence of 2 perennial streams, as depicted on the most recent edition of a U.S. Geological Survey 7.5-Minute Series topographic map, to the point where the body of water becomes a river or flows into another water body or wetlands within the Shoreland Zone.

**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 water body or wetland. [amended October 28, 2009]

**Wetlands, Coastal.** All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. [amended October 28, 2009]

**Wetlands, Forested.** A freshwater wetland dominated by woody vegetation that is 6 meters tall (approximately 20 feet) or taller. The Codes Enforcement Officer is responsible for the delineation of forested wetlands boundaries where they are not clearly mapped. [added October 28, 2009]

**Wetlands, Freshwater.** Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are: [amended October 28, 2009]

1. Of ten or more contiguous acres; or of less than 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 10 acres; and

2. 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.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition. The CEO is responsible for the delineation of freshwater wetlands boundaries where such are not clearly mapped.

**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 wetlands. 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. [amended October 28, 2009]

**Waterfront.** The area abutting a water body.

**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. These 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 fish-marketing facilities, waterfront dock and port facilities, shipyards and boat-building facilities, marinas, navigational aids, retaining walls, industrial uses dependent on 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 that primarily provide general-public access to coastal or inland waters.

**Woody Vegetation.** Live trees or woody, non-herbaceous shrubs. [added October 28, 2009]

**Yard Area.** That land area on the same lot as the principal or accessory building and extending along the entire length of the lot line. A yard area may not be occupied by buildings, structures, parking lots, storage or similar uses except as specifically allowed by this Code.

**Yard Area, Front.** The space extending along the front lot line for the full width of the lot, and measured perpendicular from the front lot line. Any lot fronting on 2 or more streets has a front yard area on all such streets.

**Yard Area, Rear.** The space extending along the rear lot line for the full width of the lot, and measured perpendicular from the rear lot line.

**Yard Area, Side.** The space extending along the side lot line between the front yard area and the rear yard area, and measured perpendicular from the side lot line.

**Zoning Map.** The map showing locations of the various districts and overlay zones adopted by the City Council and certified by the City Clerk as the “official” record of the zone boundary locations (see Article 7).

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## **ARTICLE 3: PERMIT ADMINISTRATION AND APPROVAL PROCESS**

### **SECTION 3.01 GENERAL**

The responsibility for regulating the use of land and buildings and for approving proposals for development or construction within the City of Bath is divided among the Planning Board, the Zoning Board of Appeals (ZBA), and the CEO. Each of these 3 entities plays a distinct role. The following sections provide a general summary of the roles for the CEO. The roles of the Planning Board and the ZBA are described in Articles 5 and 4, respectively.

### **SECTION 3.02 ROLE OF THE CODES ENFORCEMENT OFFICER**

The CEO is responsible for the day-to-day administration of this Code. The CEO is responsible for seeing that the terms and conditions of the Code are met, that approvals required by the Code are obtained, that any conditions attached to those approvals are carried out, and that this Code is enforced.

The CEO serves as the coordinator of applications that must be heard by the ZBA. In this capacity, the CEO is responsible for processing the applications.

### **SECTION 3.03 APPROVALS REQUIRED**

The following approvals or permits are required by this Code:

- A. A building permit from the CEO is required for the erection, alteration, relocation, or demolition of any building or structure.
- B. A Certificate of Occupancy from the CEO is required prior to the occupancy or change in use of any building, structure, or parcel of land.
- C. A sign permit from the CEO is required for the erection or alteration of any sign.
- D. A variance must be obtained from the ZBA before the development of any property that does not conform to the space and bulk regulations of the zoning district in which the property is located.
- E. Any division of a tract or parcel of land into a subdivision must be approved by the Planning Board.



- F. Site Plan Approval must be obtained from the Planning Board or Staff Review Committee before a building permit is issued for any development requiring Site Plan Approval, according to the Land Use Table (see Section 9.02).
- G. Historic District Approval must be obtained from the Planning Board for any of the following if located within the Historic Overlay District. For projects that require a building permit, Historic District Approval must be obtained prior to the issuance of the building permit.
  - 1. the construction of new buildings;
  - 2. any addition to a building;
  - 3. the addition, change, removal, or covering (other than with paint or stain) of any exterior architectural detail or decorative element of an existing building; or
  - 4. the demolition of any structure.

[amended October 3, 2001]

## **SECTION 3.04 BUILDING PERMITS**

### **A. Permit Required**

A building, structure, or part thereof may not be constructed, structurally altered, enlarged, moved, or demolished until a building permit for any of these actions has been issued by the CEO. The contractor, builder, or developer, as well as the property owner, are responsible for any and all permits. Site Plan Approval, in accordance with the provisions of Article 12, may be required prior to the issuance of a building permit for certain uses.

### **B. Compliance with this Code**

A building permit may not be issued until the proposed construction or alteration complies with the provisions of this Code or with a decision rendered by the ZBA and/or with any approvals of the Planning Board and until all other approvals required under this code are granted.

### **C. Applications for Permits**

All applications for building permits must be submitted in writing to the CEO on forms provided for the purpose. The application must be accompanied by the following information:

- 1. A drawing, drawn to an indicated scale, showing the location and dimensions of all buildings to be erected, the sewage disposal system, access drives and turnarounds, and abutting lot and street lines. The preconstruction drawing must accurately represent the relationship between any proposed building, structure, or addition to an existing building and all property lines to demonstrate compliance with the setback, yard-area, and lot-coverage requirements of this Code. If after

reviewing the information provided or from a site inspection the location of any property line is not obvious to the CEO; or if the CEO cannot confirm from the information provided or from inspecting the site that all setback, yard-area, or lot-coverage requirements are met; or if the setbacks or yard areas of any proposed building or structure are not at least 100 percent greater than required by this Code, the applicant must provide a boundary survey prior to the issuance of a permit.

2. Approval by the Local Plumbing Inspector of any sewage disposal system or public sewer system connection proposal for the building, together with the plans for the system or connection.
3. Information required to determine compliance with the terms and conditions for building and development in flood-hazard areas, as set forth in the City's Flood Damage Prevention Ordinance, if the building is located within a flood-hazard area.
4. Any other information the CEO may require to determine compliance with this Code and/or the building code.

#### **D. Action on Applications**

Within 7 working days of filing an application for a building permit involving a single-family residence, or 15 working days for permits involving other uses, the CEO must approve, deny, or refer such application to the appropriate review authority. The decision of the CEO must be in writing, citing provisions of this Code that apply, and communicated directly to the applicant. One copy of the decision must be maintained by the CEO. If the proposed activity requires Site Plan Review, in accordance with Article 12, the CEO must refer the application to the Planning Director.

#### **E. Sewer Permit Required**

A building permit cannot be issued for any structure or use involving the construction, installation, or alteration of plumbing facilities unless a valid sewer permit has been secured by the applicant.

#### **F. Revision of Proposed Work**

A new or revised building permit is required if any substantial changes are made in the size, use, construction, or structure of the building after issuance of the permit.

## **G. Building Permit Expiration**

A building permit secured under provisions of this Code expires if the work or change is not commenced within 6 months of the date on which the permit was granted, and if the work or change is not substantially completed within 18 months of the date on which the permit was granted. The CEO may grant a single 6-month extension of the commencement or completion dates upon written request showing reasonable cause for the extension and evidence that work has been reasonably pursued.

## **H. Required Records**

Applications for permits with their accompanying plans and building permits must be maintained as a permanent record by the CEO.

### **SECTION 3.05 CERTIFICATE OF OCCUPANCY REQUIRED**

A Certificate of Occupancy must be obtained from the CEO prior to the occupancy or use of any building, structure, or any portion thereof hereinafter erected, structurally altered, or changed in its use or structure, or with regard to the creation or change in use of any parcel of land or portion thereof currently existing or hereinafter created. The Certificate of Occupancy must be endorsed to the effect that the proposed use of the building or land conforms to requirements of this Code. A change of occupancy that maintains the same Land Use Table category does not require a Certificate of Occupancy.

An application for a Certificate of Occupancy must be made to the CEO, which may be made concurrently with the application for a building permit, if one is required. The application must clearly state the intended use of the property.

The CEO may issue the Certificate of Occupancy only after he/she has made a site inspection and has determined that all work has been completed in conformance with this Code, other City ordinances, any approved site plan, any approved subdivision plan, and any conditions of approval imposed on the project. Occupancy of a building or parcel of land without obtaining a Certificate of Occupancy in accordance with this article is a violation of this Code.

The CEO may issue a temporary Certificate of Occupancy for a period of not more than 6 months. A temporary Certificate of Occupancy may be issued only if adequate safeguards are in place to assure the timely completion of the work and the safety of the occupants the public. The CEO may require the posting of a bond or other financial guarantee to assure completion of the project as permitted. This does not allow the CEO to issue temporary Certificates of Occupancy for any project, use, or activity that received Site Plan Approval.

### **SECTION 3.06 ENFORCEMENT**

It is the duty and responsibility of the CEO to enforce the provisions of this Code together with any conditions of approval issued in conjunction with an approval issued under the Code. If the CEO finds that any provision or condition is not being met, then the CEO must notify in writing the person responsible for the violation. If the person responsible is not the owner, then the CEO must also notify in writing the owner of the property upon which the violation has occurred. The notice must specify the nature of the violation and provision of the Code or condition which has resulted in noncompliance, the nature of the action necessary to correct, abate, or mitigate the violation, and a time frame during which the corrective or mitigated action must be completed. If after such notice and expiration of the time frame in the notice, the violation has not been corrected, abated, or mitigated, the CEO must commence appropriate legal action to terminate the violation and recover all appropriate penalties. The written notice, however, does not preclude, nor is it considered a condition precedent, to the City instituting enforcement action for any violation of the provisions or conditions relating to this Code.

The CEO has all powers available to a CEO to effect enforcement of Code provisions under State Law. The CEO specifically has the right to enter property at all reasonable hours and to enter any building with the consent of the owner and/or occupant, and, if necessary, to apply for and receive administrative warrants to conduct inspections. If the condition of the nonconformity is a threat or hazard to the health and safety of the public or the occupants of a building, then the CEO has the authority to close the building or prevent access to the property in order to mitigate any potential injury to occupants or the general public. If the nonconforming condition or use has created or has the potential to create substantial environmental damage, then the CEO has the authority to terminate the activity and bar access to the site. [amended August 6, 2003]

### **SECTION 3.07 PENALTIES**

Any person, firm, or corporation who is responsible for a violation of any of the provisions of this Code or of any conditions of approval for permits issued under this Code, may be penalized in accordance with the provisions of 30-A M.R.S.A. Section 4452. Any fines or penalties resulting from proceedings arising under enforcement actions taken under this Code, together with costs and expenses as allowed under 30-A M.R.S.A. Section 4452(3)(D) must be paid to the City of Bath.

### **SECTION 3.08 INFORMAL ADJUSTMENT OF LAND USE CODE VIOLATIONS**

A. In lieu of formal prosecution of a Land Use Code violation by the City of Bath against the owner/occupant of the property, the City may enter into an informal adjustment agreement with the owner/occupant in those cases where such adjustment serves the best interests of the City of Bath and where the Code violation is on the basis of a permit or permission given by the City of Bath in the due course of business, or

represents what may be termed an "honest mistake" by the owner/occupant or contractor, or may represent circumstances beyond the control of the owner/occupant or contractor. The owner/occupant will need to demonstrate that he/she has made a good-faith effort to comply with the Code. The informal adjustment is only appropriate in those cases in which the violation does not create an unsightly condition or involve a structure that is not generally compatible with those in the neighborhood. The term *compatibility* means that the offending structure is not substantially different in style, size, or affect from those in the surrounding area.

- B. Where the violation is of a bulk or space provision of the Land Use Code, the City Manager has the authority to enter into the informal adjustment agreement on behalf of the City. In such cases, the City Council must be informed by receipt of a copy of the agreement. Where the violation is of a use provision of the Land Use Code, the City Council has the authority to enter into an informal adjustment agreement.
- C. The request for informal adjustment must be made by the violator. In the informal adjustment agreement, the violator must admit the violation. The agreement also must contain a description of the nature of the violation, and may contain any of the following:
  - 1. A fine.
  - 2. An agreement to make adjustments, repairs, renovations, or relocation of a structure; any other remedial action; or, if appropriate, no action at all.
  - 3. A statement that the City, in consideration for the informal adjustment agreement, will waive any further prosecution of the violation.
  - 4. A statement that the City will not require a fine or any remedial action.
- D. A copy of the informal adjustment agreement must be filed by the owner/occupant at the Sagadahoc County Registry of Deeds within 30 days of its issuance.
- E. For purposes of administration of this section, the structure or use that forms the basis for the violation will continue to be considered nonconforming and is subject to the provisions for nonconformity as they appear in Article 6 of this Land Use Code.
- F. Any action or failure to act by the City Manager under this section is deemed an administrative act and may be appealed under the provisions of Section 4.13 of this Code, to be handled as an administrative appeal before the Bath ZBA. Any act or failure to act by the City Council pursuant to this section may be appealed in accordance with Rule 80B of the Maine Rules of Civil Procedure by filing the appropriate complaint for relief with the Sagadahoc County Superior Court within 30 days of the notice of the City Council's action or failure to act.

### **SECTION 3.09 COORDINATION OF MULTIPLE APPROVALS**

A project may be required to obtain multiple approvals prior to the issuance of a building permit. In these situations, it is the policy of the City to allow simultaneous processing of some approvals. The following guidelines are to be used in processing applications requiring multiple local approvals:

- A. If Subdivision Approval is required in addition to other approvals, the Subdivision Approval must be obtained prior to or concurrent with Site Plan Approval and Historic District Approval.
- B. Historic District Approval must be obtained prior to or concurrent with Site Plan Approval.
- C. If a variance is required, it must be obtained before approval of a site plan, subdivision, or historic district permit.
- D. A building permit may be issued only after all other necessary approvals are obtained.

### **SECTION 3.10 COORDINATION WITH STATE AND FEDERAL APPROVALS**

In addition to the approvals required under this Code, a property owner or developer may be required to obtain approval from state or federal agencies. It is the policy of the City to coordinate the processing of any application for local approval with any other approval required. When approval of a state or federal agency is required, the City will proceed with its approvals and may issue the appropriate approvals either unconditionally or conditioned on the applicant receiving other necessary approvals.

### **SECTION 3.11 FEES**

The City Council, by Resolution, must annually set the amount of all fees required by this Code. If the City Council fails to set the fees, those established for the prior year continue in effect.

\* \* \*

## **ARTICLE 4: ZONING BOARD OF APPEALS, VARIANCES, AND APPEALS**

### **SECTION 4.01 COMPOSITION**

After the effective date of this Code, the Zoning Board of Appeals (ZBA) will consist of 7 members. Those persons who are members and associate members as of the date of adoption of this Code continue as members of the ZBA until their terms of office expire and they are replaced. This does not constitute a reestablishment of the ZBA.

### **SECTION 4.02 APPOINTMENTS**

The members of the ZBA are appointed by the City Council.

### **SECTION 4.03 QUALIFICATIONS**

All members of the ZBA must be residents of the City of Bath and must be registered voters. A City Council member, a Planning Board member, or the spouse of a City Council member or Planning Board member may not be a member of the ZBA.

### **SECTION 4.04 TERMS OF OFFICE**

Members of the ZBA serve staggered 3-year terms. If a vacancy occurs, the term of the person appointed to fill the vacancy is for the period of the unexpired term. The terms of members expire on September 1 unless a replacement has not been appointed, in which case the term of the expiring member is extended until a replacement is named.

### **SECTION 4.05 DISMISSAL OF MEMBERS**

A member of the ZBA may be dismissed for cause by the City Council. When considering removal, the member must be notified of the cause and the time and place of the City Council meeting at least 7 days prior to the meeting at which the removal is to be considered. At that meeting, the member has a right to be heard concerning the removal. Any member who does not attend 50 percent of the ZBA meetings in any 6-month period, unless otherwise excused by the Chair of the ZBA, may be removed by the City Council without notice.

## **SECTION 4.06 OFFICERS**

- A. The ZBA must annually elect a Chair, a Vice Chair, and other officers as it chooses from its membership. These officers are elected by the ZBA during its first meeting in September, provided the City Council has made its new appointments by that date. The term of office for officers is 1 year; officers may succeed themselves if so elected.
- B. The Chair is responsible for calling meetings of the ZBA, establishing agendas for the meetings, presiding at meetings, and representing the ZBA before the City Council or Planning Board.
- C. The Vice Chair is responsible for carrying out the duties of the Chair in his/her absence or incapacity.

## **SECTION 4.07 MEETINGS OF THE BOARD**

The ZBA will meet on the first Monday of each month unless that day falls on a legal holiday, in which case the meeting will be held on the following Monday. The Chair also may call other meetings as necessary, and must call a meeting upon the written request of any 3 members of the ZBA.

All meetings of the ZBA must be announced to the public at least 72 hours prior to the start of the meeting by either posting, advertising, or mailing notices. All meetings are open to the public and will be conducted in accordance with such rules of procedure as the ZBA may determine, as well as applicable state and local laws. A notice of the ZBA agenda must be published in a newspaper with local circulation at least 72 hours prior to any meeting.

## **SECTION 4.08 QUORUM**

A quorum consists of 4 members of the ZBA. No business may be conducted without a quorum; however, fewer than a quorum may decide to postpone the meeting to another date.

## **SECTION 4.09 CONFLICT OF INTEREST**

A member of the ZBA may not vote on or participate in any matter in which he/she has a direct or indirect financial or personal interest. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon will be decided by a majority vote of the members present and voting, except the member who is being challenged. A member of the ZBA may not represent any third party in matters coming before the ZBA.



## **SECTION 4.10 VOTING**

All members present and not excused must vote on each item. The votes of a majority of those members present and voting are required for the passage of any item of ZBA business.

## **SECTION 4.11 POWERS AND DUTIES**

The ZBA has the following powers and duties:

### **A. Administrative Appeals**

The ZBA will hear and decide appeals where it has been alleged that there is an error in any interpretation or determination made by the CEO in the administration of this Code on a pending application. In acting on administrative appeals, the ZBA may sustain the action of the CEO or it may modify or reverse his/her action if the ZBA decides that the CEO erred. Enforcement decisions of the CEO may not be appealed to the ZBA. All other appeals from actions or failure to act by the CEO are to the Superior Court. [amended May 16, 2001]

### **B. Variance Appeals**

The ZBA will hear and decide requests for a variance from the strict enforcement of the provisions of this Code in accordance with Section 4.12 of this Code and, as applicable, with the Flood Damage Prevention Ordinance.

### **C. Miscellaneous Appeals**

The ZBA will hear and decide such other matters as are permitted under the Code, including sign provisions, the building code, and City Manager's decisions under Section 3.08. The procedures in Section 4.13, A-G, are to be used when administering miscellaneous appeals to the ZBA. Enforcement decisions of the CEO may not be appealed to the ZBA. [amended May 16, 2001]

### **D. Establish Rules of Procedure**

The ZBA may establish Rules of Procedure that will govern the conduct of meetings and other business.

**SECTION 4.12 VARIANCES**

**A. Variance Defined**

A variance is a relaxation of the terms of this Code where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Code will result in unnecessary or undue hardship.

**B. Items for Which a Variance May be Granted**

As used in this Code, a variance is authorized only for the following items:

1. minimum lot area (may not be varied below the minimum lot area per unit for residential uses)
2. lot width
3. building height
4. lot coverage
5. setbacks (may not be varied below Yard Area requirements)
6. sign requirements
7. flood-damage-prevention requirements of the Flood Damage Prevention Ordinance

**C. Items for Which a Variance May Not be Granted**

Establishment of a use otherwise prohibited is not allowed by variance, nor may a variance be granted because of the presence of nonconformities in the particular zone or adjoining zone.

**D. Application for a Variance**

Application for a variance is made to the CEO on forms provided for that purpose. The application must be accompanied by a filing fee, as set by resolution of the City Council, to cover costs of advertising and notification. An application will not be processed unless the filing fee is paid. The application must clearly identify the location of the property, the relief sought, and the reason for requesting the variance.

## **E. Procedure**

Upon receipt of an application for variance, the CEO must place it on an agenda of the ZBA meeting to be held within 30 days of receipt of the application. The time, date, and place of the public hearing must be advertised in a newspaper with general circulation in Bath at least 7 days prior to the public hearing.

The CEO also must notify in writing by regular mail any abutting property owners of the time, date, and place of the public hearing.

The ZBA must act on the application within 30 days of the conclusion of the date of the public hearing. The ZBA must keep a written record of each case.

The applicant must be notified in writing of the action of the ZBA together with the reasons for any denial. If the application is approved subject to conditions, any violation of those conditions revokes the approval of the ZBA.

## **F. Standards for Granting a Variance**

Prior to voting to grant a variance, the ZBA must review the application and offer specific findings that the following standards have been met:

1. That the requirements of this Code will impose an undue hardship on the property owner, which means:
  - (a) the land in question cannot yield a reasonable return unless a variance is granted
  - (b) the need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood
  - (c) the granting of the variance will not alter the essential character of the locality
  - (d) the hardship is not the result of action taken by the applicant or a prior owner
2. A variance may not be granted solely on economic considerations.

## **G. Conditions of Approval**

The ZBA is empowered to impose conditions on the property owner if it finds that such conditions are necessary to protect abutting property owners or the community as a whole from adverse impacts resulting from the granting of a variance.

## **H. Set-back Variance for Single-family Dwellings**

1. The ZBA may, in accordance with 30-A M.R.S.A. Section 4353 (4-B), grant a variance to the set-back requirement of the space and bulk regulations provided all of the following criteria are met:
  - (a) The single-family dwelling is the primary year-round residence of the person seeking the variance.
  - (b) The granting of the variance will not cause the area of the dwelling to exceed the maximum permissible lot coverage according to the space and bulk regulations.
  - (c) The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.
  - (d) The granting of a variance will not alter the essential character of the locality.
  - (e) The hardship is not the result of action taken by the applicant or a prior owner.
  - (f) The granting of the variance will not substantially reduce or impair the use of abutting property.
  - (g) That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
2. A variance granted under this sub-section may not exceed 20% of the set-back requirement.

## **I. Limits on Variances**

A variance granted by the ZBA expires if the work or change involved has not commenced within 6 months of the date on which the variance was granted or if the work or change has not been substantially completed within 1 year of the date of approval, unless otherwise extended by the ZBA.

## **J. Reapplication**

If the ZBA denies a variance, a second request of a similar nature cannot be brought before the ZBA within 1 year of the date of the first request unless, in the opinion of the majority of the ZBA, substantial new evidence can be brought forward or unless the ZBA finds, in its sole and exclusive judgment, that an error of law or misunderstanding of facts has been made.

## **K. Misrepresentation**

The ZBA retains the right to rescind any approval of a variance if further information or additional investigation reveals a misrepresentation of the information presented to the ZBA.

## **L. Prior Work**

Any construction activity commenced prior to the granting of a required variance is a violation of this Code.

### **SECTION 4.13 APPEALS PROCEDURE** [Section title amended May 16, 2001]

- A. Any person aggrieved by any interpretation or determination made by the CEO in the administration of this Code by the granting or denying of an application may appeal same to the ZBA. An aggrieved person is defined as the person making the original application for determination or any abutter to the property forming the basis for the application. The standard of review applied by the ZBA is whether the action appealed conforms to the specific provisions and intent of this Code.
- B. Based on that review, the ZBA may sustain, modify, or reverse the action of the CEO.
- C. An administrative appeal must be filed with the CEO within 30 days of the CEO's action. The appeal must state the CEO's action and the reason the applicant believes it is in error.
- D. The appeal must be placed on the ZBA's agenda for public hearing within 30 days of receipt. The time, date, and place of the public hearing must be advertised in a newspaper with general circulation in Bath at least 7 days prior to the public hearing. The CEO also must send a notice by regular mail at least 7 days prior to the date of the hearing to any abutting property owners notifying them of the time, date, and place of the public hearing. [amended May 16, 2001]
- E. At any hearing, the appellant has the right to be present, to be represented, and to present all relevant information to the ZBA. The ZBA must rule on the appeal within 30 days of the date of the public hearing, unless this period is waived by the appellant.
- F. The ZBA must keep a written record of each case. [added May 16, 2001]
- G. The appellant must be notified in writing of the action of the ZBA together with the reasons for any denial. If the application is approved subject to conditions, any violation of those conditions revokes the approval of the ZBA. [added May 16, 2001]

## **SECTION 4.14 PROCEDURES WHEN PROPERTY IS IN THE SHORELAND ZONE**

[added October 28, 2009]

### **A. Variance Appeal**

A copy of each variance request, including the application and all supporting information supplied by the applicant, must be forwarded by the CEO to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the ZBA. Any comments received from the Commissioner prior to the action by the ZBA must be made part of the record and must be taken into consideration by the ZBA.

### **B. Administrative Appeals**

When the ZBA reviews a decision of the CEO the ZBA must hold a “de novo” hearing. At this time the ZBA may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the ZBA must hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

### **C. Findings of Fact and Notices Given**

The ZBA must state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the ZBA. The ZBA must cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within 7 days of the ZBA’s decision. Copies of written decisions of the ZBA must be given to the Planning Board, CEO, the City Manager, and the City Council.

\* \* \*

## **ARTICLE 5: PLANNING BOARD**

### **SECTION 5.01 PLANNING BOARD ESTABLISHED**

There is hereby created the Bath Planning Board.

### **SECTION 5.02 COMPOSITION**

After the effective date of this Code, the Planning Board will consist of 7 members. Those persons who are members and associate members as of the date of adoption of this Code will continue as members of the Planning Board until their terms of office expire and they have been reappointed or replaced.

### **SECTION 5.03 APPOINTMENTS**

The members of the Planning Board are appointed by the City Council.

### **SECTION 5.04 QUALIFICATIONS**

All members of the Planning Board must be residents of the City of Bath and must be registered voters. A City Council member, a ZBA member, or the spouse of a City Council member or Planning Board member may not be a member of the Planning Board.

### **SECTION 5.05 TERMS OF OFFICE**

Members of the Planning Board serve staggered 3-year terms. If a vacancy occurs, the term of the person appointed to fill the vacancy is for the period of the unexpired term. The terms of members expire on September 1 unless a replacement has not been appointed, in which case the term of the expiring member is extended until a replacement is named.

### **SECTION 5.06 DISMISSAL OF MEMBERS**

A member of the Planning Board may be dismissed for cause by the City Council. When considering removal, the member must be notified of the cause and the time and place of the City Council meeting at least 7 days prior to the meeting at which the removal is to be considered. At that meeting, the member has the right to be heard concerning the removal. Any member who does not attend 50 percent of the Planning Board meetings in any 6-month period, unless otherwise excused by the Chair of the Planning Board, may be removed by the City Council without notice.

## **SECTION 5.07 OFFICERS**

- A. The Planning Board must elect annually a Chair, a Vice Chair, and other officers as it chooses from its membership. These officers are elected by the Planning Board during its first meeting in September, provided the City Council has made its new appointments by that date. The term of office for officers is 1 year; officers may succeed themselves if so elected.
- B. The Chair is responsible for calling meetings of the Planning Board, working with the Planning Director to establish agendas for the meetings, presiding at meetings, and representing the Planning Board before the City Council or other groups.
- C. The Vice Chair is responsible for carrying out the duties of the Chair in his/her absence or incapacity.

## **SECTION 5.08 MEETINGS OF THE BOARD**

The Planning Board meets monthly on the first Tuesday of the month. The Chair may schedule other meetings as necessary. The Chair must call a meeting of the Planning Board within 7 days upon the written request of any 3 members of the Planning Board.

All meetings of the Planning Board must be announced to the public at least 72 hours prior to the start of the meeting by either posting, advertising, or mailing notices. All meetings are open to the public and will be conducted in accordance with such rules of procedure as the Planning Board may determine, as well as applicable state and local laws. A notice of the Planning Board agenda must be published in a newspaper with local circulation at least 72 hours prior to any meeting. All meetings of the Planning Board are open to the public, except that the Planning Board may go into executive session to meet with its attorney.

## **SECTION 5.09 QUORUM, VOTING, AND RULES OF PROCEDURE**

A quorum consists of 4 members of the Planning Board. No business may be conducted without a quorum; however, fewer than a quorum may decide to postpone the meeting to another date.

On any and all voting matters pertaining to recommended adoption of or amendments to the Comprehensive Plan or to proposed adoption of or amendment to the Land Use Code, an affirmative vote of a majority of all members of the Planning Board (i.e., 4 votes) is necessary for its passage, and only after a public hearing has been conducted on the matter. All other voting matters are decided by a majority vote of those present and voting, and require at least 3 affirmative votes.



The Planning Board has the authority to establish any rules and procedures as necessary for its efficient operation.

#### **SECTION 5.10 CONFLICT OF INTEREST**

A member of the Planning Board may not vote or participate in any matter in which he/she has a direct or indirect financial or personal interest. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon must be decided by a majority vote of the members, except the member who is being challenged. A member of the Planning Board may not represent any third party in matters coming before the Planning Board.

#### **SECTION 5.11 POWERS AND DUTIES**

The Planning Board has the following powers and duties:

- A. To advise the City Council on matters relating to land use and development within the City.
- B. To prepare a Comprehensive Plan and periodic revisions for the growth and development of the City, and to submit them to the City Council with the Planning Board's recommendation.
- C. To advise the City Council on matters relating to land-use regulations and to review or initiate requests for changes in the Land Use Code.
- D. To approve plans for the subdivision of land in accordance with the Subdivision Ordinance and 30-A M.R.S.A. Section 4401, et seq.
- E. To act on requests for Site Plan Approval in accordance with Article 12 of this Code.
- F. To act on requests for Historic District Approval in accordance with Section 8.11 of this Code.
- G. To act on requests for Mineral Extraction Operations Permits in accordance with the Mining Activity Ordinance, Article 14.
- H. To prepare a report to the City Council on development trends in the City. This report should be submitted to the City Council on or before April 1 in odd-numbered years.
- I. To handle other matters that may be referred to the Planning Board by the CEO, the City Council, or the City's staff.

\* \* \*

## **ARTICLE 6: NONCONFORMITIES**

### **SECTION 6.01 INTENT**

The intent of this Code is to promote land-use conformities; it is recognized, however, that certain nonconforming conditions are allowed to continue, subject to the provisions of this article. Except as otherwise provided in this Code, a nonconforming condition may not be permitted to become more nonconforming. [amended October 28, 2009]

### **SECTION 6.02 GENERAL PROVISIONS**

#### **A. Lawful Nonconforming Status**

Lawful nonconforming status can be applied only to a condition that, at a prior time, was legal and in conformity and meets one of the following criteria:

1. was in existence as of December 7, 1983
2. was made nonconforming by a Code change
3. is a result of a pending application that was complete and ready for review, which applied to a condition in conformity with the Code, but was made nonconforming by the enactment of a new Code or change in the Code

#### **B. Subdivision, Site Development, and/or Performance Standards**

Any condition that is nonconforming as to subdivision, site development, and/or performance standards, which meets the conditions of Item A, may continue. Any additional development, however, that involves an alteration or expansion of the condition must meet existing subdivision, site development, and/or performance standards.

#### **C. Transfer of Ownership**

Uses, lots, and structures allowed to be maintained as lawful nonconforming conditions under this article are deemed to run with the land; upon any transfer of the property, the new owner may continue the lawful nonconforming condition subject to the terms and provisions of this Code.

## **SECTION 6.03 NONCONFORMING USES** [amended October 28, 2009]

### **A. Defined**

The use of any building, structure, premises, lot, land, or parts thereof, which is not allowed in the zoning district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Code or subsequent amendments took effect. A legally nonconforming lot is one that has achieved nonconforming status in accordance with the conditions described in Section 6.02 A.

### **B. Continuation**

Any lawful nonconforming use established as defined in Section 6.02 A may be continued and used for the same nonconforming purpose regardless of its noncompliance with the use regulations of this Code.

### **C. Repair, Maintenance, Renovation, and Replacement**

Any structure, building, or site containing a lawful nonconforming use may be physically repaired, maintained, and/or renovated as long as the total area within the structure, building, or site dedicated to the nonconforming use is not changed or expanded, and as long as there is no change in the specific nature of the nonconforming use. Any building or structure containing a lawful nonconforming use that is destroyed or damaged by fire, lightning, wind, flood, or other casualty may be rebuilt within 1 year of the date of loss and the nonconforming use continued with no increase in the total area dedicated to the nonconforming use and no change in the specific nature of the use. If the building or structure itself is nonconforming with regard to bulk and space requirements, then the repair, maintenance, renovation, and/or replacement is subject to the provisions applying to such nonconforming structures.

### **D. Abandonment**

Where a lawful nonconforming use has been abandoned, it thereafter may not be resumed, and any further use or development of the property must be in compliance with the requirements of this Code. A lawful nonconforming use is deemed abandoned upon the occurrence of any of the following events:

1. the use has been discontinued for a period of 12 consecutive months
2. the use is terminated and a conforming use has been established
3. the use has been terminated and another lawful nonconforming use of a less objectionable and detrimental nature has been established

### **E. Expansion**

## **1. Normal Business Expansion**

An increase in the intensity or volume of business, where there is no increase in the amount of space dedicated to the use nor any change in the specific nature of the use, is not considered an enlargement of a lawful nonconforming use.

## **2. Expansion**

Any lawful nonconforming use may be physically enlarged with the prior approval of the ZBA. Such enlargement may not change the specific nonconforming use of the property. The total enlargement, whether occurring at one time or over a period of time, may not exceed 50 percent of the total area used as of December 7, 1983, or at such time as a use becomes nonconforming by change in the use provisions of this Code.

## **3. Code-mandated Expansion**

A limited physical expansion of the area utilized by the nonconforming use is permitted solely for the purpose of bringing the use into compliance with health, safety, or access codes, or to correct a condition that, while technically not considered a violation of Code, is determined by the ZBA to constitute a health, safety, or access problem. The expansion under such circumstances is limited to the minimum necessary to accomplish the purpose of bringing the property into compliance.

## **4. Expansion Standards**

An application for an enlargement of a lawful nonconforming use will be processed in accordance with the provisions of Item E following, and must meet those requirements.

## **F. Changes in Use**

### **1. Change to a Permitted Use**

A lawful nonconforming use may be changed at any time to a use permitted in the zone in which the activity is located.

### **2. Other Changes**

Subject to approval by the ZBA, a lawful nonconforming use may be changed to another nonconforming use that is deemed less objectionable and detrimental than the existing lawful nonconforming use. A change in use is one that results in an activity that is different in nature and purpose from the original use; results in a difference in the quality, character, degree, and kind of activity; and is different in kind in its effect on the neighborhood. *Less objectionable and detrimental* means

that the new proposed nonconforming use will have a lesser effect on the neighborhood and on the property on which the use occurs, is less noticeable than the current use, is closer in nature to the uses allowed in the zoning district, or represents a decline in the volume and intensity of the use. The ZBA will review any application for change in nonconforming use in accordance with the following standards:

- (a) The hours of operation are decreased or not increased.
- (b) Undesirable effects such as noise, glare, vibration, smoke, dust, odor, or fire hazard are decreased or not increased.
- (c) Hazardous traffic conditions are minimized or not increased and the amount of traffic is decreased or not increased.
- (d) The appearance of the property from public ways and abutting properties is improved and the value of adjacent properties will not be adversely affected.
- (e) Unsanitary conditions as a result of sewage disposal, air emissions, or other aspects of its design or operation will not be created.

## **SECTION 6.04 NONCONFORMING LOTS**

### **A. Defined**

A nonconforming lot is a lot that, in one or more respects, fails to meet applicable space and bulk regulations of this Code. A legally nonconforming lot is one that has achieved nonconforming status in accordance with the conditions described in Section 6.02 A.

### **B. Single Legally Nonconforming Lots**

A single legally nonconforming lot of record existing as of December 7, 1983, or subsequently made nonconforming by Code changes may be built upon and/or used in conformance with the provisions of the district in which it is located, even though the lot does not meet the minimum requirements for lot area, lot net area, lot area per dwelling unit (in the case of single-family dwellings), or lot-width requirements. Development of such lots, however, must comply with all other space and bulk regulations including but not limited to setback, yard area, height, lot coverage, and lot area per dwelling unit (in the case of multi-family dwellings). Failure to meet any of these other space and bulk regulations requires a variance for that nonconforming element. This section applies to any lot that remains nonconforming after having had additional land area added. [amended May 16, 2001 and August 6, 2003]

### **C. Reduction in Lot Size**

Except as expressly provided in this article or in the case of a condemnation or a conveyance in lieu thereof, a lot may not be reduced in size by conveyance of a portion thereof unless both of the following conditions are met:

1. the remaining land meets the minimum lot size, lot net area, area per dwelling unit, and lot width requirements for the district in which the lot is located
2. the land to be conveyed either meets the minimum lot size requirement or will be conveyed to the owner of an abutting lot, the City, or a conservation organization in conjunction with covenants or similar restrictions that prohibit its development

#### **D. Merger of Lots**

##### **1. Undeveloped Lots**

Notwithstanding Item B, above, contiguous undeveloped lots in the same ownership must be merged to the extent necessary to eliminate or reduce any nonconformity or to meet all applicable space and bulk regulations. [amended October 28, 2009]

##### **2. Developed Lot/Undeveloped Lot**

Notwithstanding Item B, above, where there are 2 contiguous lots of record under the same ownership, one or more of which is nonconforming and where one is developed and the other is vacant, then merger is required to the extent necessary to eliminate or reduce any nonconformity or to meet applicable space and bulk regulations. [amended October 28, 2009]

##### **3. Developed Lots**

Notwithstanding Item B, above, where there exists developed contiguous lots in the same ownership where one or more lots is nonconforming and each is occupied by a primary structure, then merger may not occur and the lots are not considered merged. [amended May 16, 2001]

##### **4. Exception**

The following conditions do not require a merger:

- (a) Lots in a subdivision that have received Planning Board approval need not be merged and may be developed in accordance with space and bulk regulations in existence at the time of the approval, with the exception of space and bulk regulations mandated by other authorities.

- (b) Subdivision lots created on subdivision plans not having received approval of the Bath Planning Board may be developed only as individual lots on the granting of appropriate variances by the ZBA.

### **E. Multiple Structures on a Legally Nonconforming Lot**

Where principal structures existed on a single lot, both of which have been established prior to December 7, 1983, and where the use in each of the primary structures is a permitted use consistent with this Code, then the property may be divided into no more than 2 lots, provided that all of the following criteria are met:

1. The original lot, prior to its division, is nonconforming in some respect relative to applicable space and bulk regulations.
2. The uses on the lot are conforming uses in accordance with applicable district regulations.
3. Only 1 division into 2 lots is permitted. If the proposal is for a division into more than 2 lots, then that division is subject to review and approval by the Planning Board, and all applicable provisions of this Code and Bath subdivision regulations must be met. Normal exemptions to proposed subdivisions, such as principal residence by the owner, do not apply to the division of a nonconforming lot and do not exempt the applicant from the review process.
4. There is no increase in the degree of nonconformity to space and bulk regulations, except that which was created by the division line.
5. There is no increase in density.
6. There are no common or shared utilities or easements, except for the access drive.
7. All parking requirements for principal uses are met on each new lot created by the division.
8. Each lot created must have a structure containing the original principal use(s).

If any of the conditions cited previously are not fully met, then the division of a nonconforming lot with multiple preexisting structures may occur only with review and approval by the Planning Board in accordance with criteria set forth in this Code and Bath subdivision regulations.

A permit for division is acquired from the CEO or, if applicable, from the Planning Board, prior to any deed transfer. The CEO has the authority to require any and all information necessary to demonstrate compliance with the criteria set forth herein, including the



right to require appropriate plans that locate property lines, structures, setbacks, and any other information necessary to demonstrate compliance with criteria in this section.

## **SECTION 6.05 NONCONFORMING STRUCTURES**

### **A. Defined**

A nonconforming structure is one that fails to meet applicable Space and Bulk Regulations, including setback, yard area, height, lot coverage, or height requirements of this Code. A legally nonconforming structure is one that fails to meet such standards but falls under the conditions of Section 6.02 A. [amended October 28, 2009]

### **B. Continuation**

A legally nonconforming structure may continue to exist and may be physically repaired, maintained, and renovated to maintain and improve the structure. In addition, other changes in a legally nonconforming structure that may be required by federal, state, or local building and/or safety codes, or are allowed by D, 1, (c), (i) through (iv), below, are permitted. [amended December 24, 2008 and October 28, 2009]

### **C. Reconstruction or Replacement** [amended October 28, 2009]

#### **1. Reconstruction or Replacement, Not in the Shoreland Zone**

A legally nonconforming structure that is damaged or destroyed by any cause or is demolished may be reconstructed or replaced, provided that a building permit is obtained within 1 year of the date of damage, destruction, or demolition. The replacement or reconstruction of any nonconforming portion of the structure must be located within the original building footprint. The replacement or reconstruction may increase or decrease the number of square feet of floor area, but may not create any additional, or expand any existing, nonconformity, except as allowed by D, 1, (c), (i) through (iv), below. [amended May 16, 2001 and December 24, 2008]

#### **2. Reconstruction or Replacement, In the Shoreland Zone**

Any nonconforming structure, which is located less than the required setback from a water body, tributary stream, or wetland and which, over less than a 2-year period, is removed, or damaged or destroyed, regardless of the cause, by more than 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 12 months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream, or wetland setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Code. In no case may 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 may not be any larger than the original structure, except as allowed pursuant to Section 6.05, D, 2. If the total amount of floor area and volume of the original structure can practically be relocated or reconstructed beyond the required setback area, as determined by the Planning Board, no portion of the relocated or reconstructed structure may 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 must be replanted in accordance with E, 2, (a) through (b).

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50 percent or less of the market value, or damaged or destroyed by 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 CEO 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 must consider, in addition to the criteria in E, 2, (a) through (b) the physical condition and type of foundation present, if any.

#### **D. Expansion** [amended October 28, 2009]

##### **1. Expansion, Not in the Shoreland Zone**

- (a) Any expansion or physical enlargement of a legally nonconforming structure is permitted to the extent that it meets all Space and Bulk Regulations in existence at the time of the proposed expansion or physical enlargement. Enlargement is not permitted on a lot that is nonconforming where it exceeds the lot coverage requirement of the Space and Bulk Regulations. Any expansion is considered an increase in nonconformity if it expands an existing nonconformity horizontally or vertically, however, the expansion of a building may take place vertically if the expansion is not above the highest existing roofline of such nonconforming building and meets the requirements in paragraph 3, below. Any dimension that is in conformity can be expanded to the extent that it does not create a new nonconformity. [amended May 16,2001 and December 24, 2008]
- (b) The provisions of Section 6.05, D, 1, (a), above do not prevent the expansion or physical enlargement of a legally nonconforming building if that expansion or physical enlargement is proposed to occur on the side of the building away from the property line where the district Minimum Setback requirement is violated, and is outside the minimum setback distance from the property line. [added May 16, 2001 and December 24, 2008]
- (c) The provisions of Section 6.05, D, 1, above, do not prevent the expansion or physical enlargement in the following situations:

- (i) The construction of a foundation under a building provided the increase in elevation does not exceed 3 feet and the height of the building does not exceed the maximum height allowed in the zone in which the building is located.
- (ii) The change of a flat roof to a pitched roof provided there is no additional living or storage space created by the enlargement and no features, such as dormers and skylights other than flush mounted skylights, constructed on or in the new roof, and the height of the building does not exceed the maximum height allowed in the zone in which the building is located.
- (iii) Where there is a survey, done by a professional land surveyor, of the lot line to which the building is nonconforming that shows the distance between the legally nonconforming structure and the lot line. This lot line must also be marked by monuments placed in the ground by the professional land surveyor who had performed the survey unless the CEO finds that adequate permanent monumentation exists.
- (iv) Where the proposed expansion or physical enlargement is closer than 6 feet to the property line, a permanent easement from the owner of the abutting property allowing the safe, unobstructed use of such abutting property for staging, ladders, or other maintenance purposes, is required. Such easement must be for a width of 8 feet from the nonconforming building, must contain a surveyed legal description, and must be recorded at the Sagadahoc County Registry of Deeds before a permit for such work is granted by the CEO.

## **2. Expansion, In the Shoreland Zone**

A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure, and is in accordance with Section 6.05, D, 2, (a), and (b), below.

- (a) Legally existing non-conforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as all other applicable standards contained in this Code are met.
  - (i) Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.

- (ii) Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement.
- (iii) For structures located less than 75 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total floor area for all portions of those structures within that 75-foot distance is 1,000 square feet, and the maximum height of any portion of a structure that is within 75 feet, horizontal distance, of a water body, tributary stream or upland edge of a wetland is 20 feet or the height of the existing structure, whichever is greater.

For the purposes of Section 6.05, D, 2, (a), (i) through (iii), a basement is not counted toward floor area.

- (b) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming 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 6.05, E, 2, (a) through (b), Relocation in the Shoreland Zone, *below*. If the completed foundation does not extend beyond the exterior dimensions of the structure and the foundation does not cause the structure to be elevated by more than 3 additional feet, as measured from the uphill side of the structure, it is not considered to be an expansion of the structure.

- (c) Special Expansion Allowance.

Existing principal and accessory structures that exceed the floor area or height limits set in Section 6.05 D, 2, (a), (iii), above, may not be expanded, except that the limits may be exceeded by not more than 500 square feet provided that all of the following requirements are met:

- (i) The principal structure is set back at least 50 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
- (ii) A well-distributed stand of trees and other natural vegetation as defined in Section 11.05 extends at least 50 feet, horizontal distance, in depth as measured from the normal high-water line or upland edge for the entire width of the property.

If a well-distributed stand of trees and other vegetation meeting the criteria in Section 11.05 is not present, the 500 square-foot Special Expansion Allowance may be permitted only upon approval by the Planning Board of a plan to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline, or tributary stream. The plan must be drawn to a scale of not less than 1 inch = 50 feet and prepared by a landscape architect registered in the State of Maine.

- (iii) Approval is granted by the Planning Board of a plan drawn to a scale of not less than 1 inch = 50 feet, prepared by a landscape architect registered in the State of Maine, that meets the following mitigation criteria for the property within the shoreland zone. The plan must be implemented and maintained.
  - Un-stabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent erosion and sedimentation to water bodies, tributary streams, and wetlands.
  - Roofs and associated drainage systems, driveways, parking areas, and other non-vegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of stormwater runoff from reaching a water body, tributary stream, or wetland. Where possible, runoff must be directed through a vegetated area or infiltrated into the soil through the use of a dry well, stone apron, or similar device.
- (iv) Any planting or re-vegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan prepared by a landscape architect registered in the State of Maine, be implemented at the time of construction, and be designed to meet the rating scores contained in Section 6.05, D, 2, (c), (ii), when the vegetation matures within the 50-foot strip. At a minimum, the plan must provide for the establishment of a well-distributed planting of saplings spaced so that there is at least one sapling per 80 square feet of newly established buffer. Planted saplings may be no less than 3 feet tall for coniferous species and no less than 6 feet tall for deciduous species. The planting plan must include a mix of at least 3 native tree species found growing in adjacent areas, with no one species making up more than 50 percent of the number of saplings planted unless otherwise approved by the Planning Board, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.
- (v) Plans required pursuant to Section 6.05, D, 2, (c), (iii), must be filed with the Sagadahoc County Registry of Deeds. A copy of all permits issued pursuant to this paragraph must be forwarded by the CEO to the DEP within 14 days of the issuance of the permit.

**E. Relocation** [amended October 28, 2009]

## **1. Relocation, Not in the Shoreland Zone**

- (a) A nonconforming 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, and provided that if the use is not connected to the public sewerage system the applicant demonstrated that the present subsurface sewage disposal system meets the requirements of State Law and the Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the State Law and Subsurface Wastewater Disposal Rules. A structure may not be relocated so as to increase its nonconformity.
- (b) In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board must 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 (if any) and other on-site soils suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the relocation.

## **2. Relocation, In the Shoreland Zone**

- (a) 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, and provided that the applicant demonstrates that the present subsurface sewage disposal system, if applicable, 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 may a structure be relocated in a manner that causes the structure to be more non-conforming.
- (b) In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board must 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 (if applicable), 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 must 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 must be required as follows:
  - (i) Trees removed in order to relocate a structure must be replanted with at least one native tree, 3 feet in height, for every tree removed. If more than

5 trees are planted, no one species of tree may make up more than 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 reestablished 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.

- (ii) Where feasible, when a structure is relocated on a parcel the original location of the structure must be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

**F. Change of Use** [amended October 28, 2009]

**1. Change of Use, Not in the Shoreland Zone**

The use of a nonconforming structure may be changed to any permitted principal use or permitted accessory use in accordance with the provisions of Section 3.03 and Article 9, and from a nonconforming principal use or nonconforming accessory use to a different nonconforming principal use or nonconforming accessory use in accordance with the provisions of Section 6.03, E, 2. [added August 6, 2003]

**2. Change of Use, In the Shoreland Zone**

The use of a non-conforming structure may not be changed to another use unless the ZBA, after receiving a written application, determines that the provisions of Section 3.03; Section 6.03, E, 2.; and Article 9 have been met and that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use. In determining that no greater adverse impact will occur, the ZBA must 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 water-dependent uses.

\* \* \*

## **ARTICLE 7: THE ESTABLISHMENT OF DISTRICTS AND THE ZONING MAP**

### **SECTION 7.01 DISTRICTS CREATED**

All land and water areas within the City of Bath are divided into zoning districts, also called *zones* or *districts*. These zoning districts are as follows:

High-density Residential District - R1  
Medium-density Residential District - R2  
Low-density Residential District - R3  
Waterfront High-density Residential District- R4  
Waterfront Activity District - R5  
Waterfront Medium-density Residential District– R6  
Downtown Commercial District - C1  
Mixed Commercial and Residential District - C2  
Neighborhood Commercial District - NC  
Business Park District- C3  
Route 1 Commercial Contract District - C4  
Marine Business District - C5  
Historic Overlay District - HO  
Special Purpose Commercial Contract Overlay District - SPCCO  
Mobile Home Park Overlay District - MHPO  
Industrial/Shipyard District - I  
Golf Course District – GC  
Plant Home District – PH  
Museum District - M  
Park and Open Space District – P&O  
Resource Protection District - RP  
Natural Resource Preservation Overlay District - NRPO  
Trufant Marsh Contract District – TMC  
Shoreland Zone

[amended May 16, 2001, February 24, 2010, May 26, 2010, August 25, 2010 and September 22, 2010]

### **SECTION 7.02 ESTABLISHMENT OF DISTRICT BOUNDARIES AND ZONING MAP**

For the purpose of this Code, the boundaries of all districts in the City of Bath are hereby established, as shown on the “Zoning Map of the City of Bath,” dated July 19, 2000 consisting of tax maps with district boundaries appended hereto, and made a part hereof. The zoning map may be referred to and is designated as the “Zoning Map of the City of Bath.” This zoning map, together with all notations, references, and other explanatory matter thereon, is deemed and declared to be part of this Code.



### **SECTION 7.03 INTERPRETATION OF DISTRICT BOUNDARY LINES**

Where uncertainty exists with respect to the location of any district boundary lines of any of the aforesaid districts shown on the zoning map, the following rules apply:

- A. Boundaries indicated as approximately following the center lines of streets, highways, or alleys are construed to follow such streets, highways, or alleys.
- B. Boundaries indicated as approximately following established lot lines are construed as following such lot lines. If a lot line moves because of land transfer, the district boundary does not move.
- C. Boundaries indicated as following municipal limits are construed as following municipal limits.
- D. Boundaries indicated as following shorelines are construed to follow such shorelines and, in the event of natural change in the shoreline, are construed as moving with the actual shoreline. Boundaries indicated as approximately following the centerline of other bodies of water are construed to follow such centerlines.
- E. Boundaries indicated as being parallel to or extensions of features indicated in Items A through D are so construed. Distances not specifically indicated on the zoning map must be determined by the scale of the map.
- F. Where physical or cultural features existing on the ground are at variance with those shown on the zoning map, or in other circumstances not covered by Items A through E, the ZBA must interpret the district boundaries.
- G. Where parcels under the ownership of one entity are divided by zoning-district boundaries in such a manner as to apparently bisect principal-use structures, the use provision of the less restrictive district applies to the whole structure.

### **SECTION 7.04 LOCATION OF DOCUMENTS**

This Code, together with all maps attached hereto, is located in the City Clerk's office and is the final authority as to the current status of the land and water areas, buildings, and other structures in the City. The zoning map and amendments thereto must be signed and attested to by the City Clerk.

### **SECTION 7.05 WATER BODIES AND WETLANDS INCORRECTLY DELINEATED**

Where the owner of any parcel of land believes that the land or any portion thereof has been designated incorrectly as a water body, coastal or freshwater wetlands, or subcomponent of such, then the owner may appeal that designation to the Planning Board. In determining the appeal and the correctness of the designation, the Planning Board must consider testimony from a registered engineer, geologist, biologist, or similar

professional acceptable to the Planning Board. If the Planning Board finds in favor of the owner, the land is to be regulated by the land-use regulations of the primary land-use district in which the lot is located.

## **SECTION 7.06 LAND WITHIN STREET LINES**

For purposes of calculating lot area and for meeting applicable Space and Bulk Regulations, land within the right-of-way of a street, or land that is within a City street whose title has been acquired by prescriptive use by the public, is not considered as part of the lot, even though title to such land may be included in the deed of an abutter. Land within the boundaries of a public street right-of-way is not subject to this Code.

## **SECTION 7.07 LOTS LOCATED IN TWO DISTRICTS**

### **A. Zone Boundary May be Moved 50 Feet.**

When a lot is divided by a zoning-district boundary, notwithstanding the boundaries of overlay districts, the use regulations of Article 9 and the Space and Bulk Regulations of Article 8 that are applicable to the larger portion of the lot may also be deemed to govern the smaller portion of the lot to a distance of up to 50 Feet beyond the zoning-district boundary. The entire lot is measured to determine lot area. [amended August 6, 2003]

### **B. Uses not Allowed by Land Use Table May be Permitted**

An existing permitted use or uses accessory to an existing permitted use, located on a lot that is divided by a zone boundary, may be located on that portion of the lot where the use or accessory use is otherwise not permitted by Section 9.02, provided the following are met:

1. The lot, which is divided by the zone boundary, existed as a single lot of record on July 19, 2000,
2. The total cumulative area of land developed after the effective date of this provision for such use and any accessory uses in that portion of the lot where the use or accessory use would otherwise not be permitted, whether being developed at one time or over a period of time, may not exceed 20 percent of the total land area of the use and accessory uses on said lot as of July 19, 2000, and
3. The principal use was in existence as of July 19, 2000, on that portion of the lot where it is a permitted use.

This provision does not allow a use or accessory use, which is not otherwise permitted by Section 9.02, to be located in any overlay district, the Resource

Protection Zone, the Shoreland Zone, the Park and Open Space Zone, or any Residential Zone. [added December 5, 2001]

### **SECTION 7.08 LOTS PARTIALLY WITHIN ANOTHER MUNICIPALITY**

When a lot is situated such that part is located in Bath and part in another municipality, the provisions of this Code apply to that portion of the lot located in Bath in the same manner as if the entire lot were located in Bath. The entire lot is measured to determine the lot's size. Space and Bulk Regulations do not apply to the municipal boundary if it is not a lot boundary.

### **SECTION 7.09 COMPLIANCE BY PRINCIPAL BUILDINGS**

Each principal building or structure must comply with the Space and Bulk Regulations of the district in which it is located, unless the building or structure is part of an approved cluster development, and the land meets cluster space and bulk regulations or meets the standards of Section 10.05.

### **SECTION 7.10 DIVISION OF A FUNCTIONALLY DIVIDED LOT.** [added March 24, 2010]

Where there exists on a single lot, multiple principal structures established prior to December 7, 1983, which are functionally independent, then the lot may be divided such that the division results in each principal structure being located on its own individual lot, without that individual lot having to meet the space and bulk requirements for the Zoning District in which it is located, provided that the following criteria are met:

- A. All uses of the principal structures are permitted uses under this Code.
- B. Each individual principal structure has been utilized on a separate basis with different occupancies.
- C. There are no common or shared utilities or easements serving the single lot and the division will not create any common or shared utilities or easements except for the access drive and/or parking.
- D. The division line(s) between structures must be drawn such that the structures meet the required space and bulk requirements of the District to the greatest extent practicable.
- E. All parking requirements for each principal structure and use must be met on each new lot created by the division or by a dedicated off-site easement for parking that will run with the land.

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## ARTICLE 8: DISTRICT REGULATIONS

### SECTION 8.01 HIGH-DENSITY RESIDENTIAL DISTRICT - R1

#### A. Purpose

The High-density Residential District provides for the maintenance and increased livability of the existing densely built-up areas of the City, and areas where a limited amount of high-density housing can be constructed. The High-density Residential District provides areas of compact development that foster cohesive neighborhoods close to community services.

#### B. Uses Allowed

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

#### C. Space and Bulk Regulations

<b>MINIMUM LOT AREA</b>	
1. Residential uses . . . . .	6,000 square feet
2. Nonresidential uses . . . . .	10,000 square feet
3. Mixed or multiple uses . . . . .	minimum lot area for each use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. All uses . . . . .	6,000 square feet
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	60 feet
<b>MINIMUM SETBACKS FOR SINGLE AND 2-FAMILY RESIDENTIAL USES</b>	
1. Front . . . . .	10 feet
2. Side. . . . .	10 feet
3. From the common lot line that separates the separately owned 2-family dwellings . . . . .	0 feet
4. Rear . . . . .	10 feet [amended May 16, 2001]
5. From waterbodies . . . . .	25 feet
<b>C. MINIMUM SETBACKS FOR SMALL<sup>(1)</sup> STORAGE BUILDINGS ACCESSORY TO RESIDENTIAL USES</b> [added December 24, 2008]	
1. Front . . . . .	10 feet
2. Side. . . . .	5 feet
3. Rear. . . . .	5 feet
4. From waterbodies. . . . .	25 feet
<b>MINIMUM SETBACKS FOR ALL OTHER BUILDINGS ACCESSORY TO RESIDENTIAL USES</b> [added December 24, 2008]	
1. Front. . . . .	10 feet
2. Side. . . . .	10 feet
3. Rear. . . . .	10 feet
4. From waterbodies. . . . .	25 feet

<b>MINIMUM SETBACKS FOR ALL OTHER USES</b>	
1. Front .....	20 feet
2. Side .....	20 feet
3. Rear .....	20 feet
4. From waterbodies .....	25 feet
<b>MINIMUM SETBACKS FOR OTHER THAN SINGLE AND 2-FAMILY RESIDENTIAL USES, WITH AN APPROVED R1 SETBACK REDUCTION PLAN</b>	
1. Front .....	10 feet
2. Side .....	10 feet
3. Rear .....	10 feet [amended December 1, 2004]
4. From waterbodies .....	25 feet
<b>MINIMUM YARD AREAS FOR SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL USES</b>	
1. Front .....	10 feet
2. Side .....	5 feet
3. From the common lot line that separates the separately owned 2-family dwellings .....	0 feet
4. Rear .....	5 feet
5. From waterbodies .....	25 feet
<b>MINIMUM YARD AREAS FOR ALL OTHER USES</b>	
1. Front .....	10 feet
2. Side .....	15 feet
3. Rear .....	15 feet
4. From waterbodies .....	25 feet
<b>MINIMUM YARD AREAS FOR OTHER THAN SINGLE AND 2-FAMILY RESIDENTIAL USES, WITH AN APPROVED R1 SETBACK REDUCTION PLAN</b>	
1. Front .....	10 feet
2. Side .....	5 feet
3. Rear .....	5 feet [amended December 1, 2004]
4. From waterbodies .....	25 feet
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses .....	40 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses .....	45 feet

<sup>(1)</sup>Small storage buildings are those buildings that are used only for storage, with a height no greater than 8 feet, with any side that is closer than 10 feet to a rear or side lot line no greater than 12 feet measured in a horizontal direction, and a total square footage no greater than 144 square feet. [added December 24, 2008]

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## SECTION 8.02 MEDIUM-DENSITY RESIDENTIAL DISTRICT - R2

### A. Purpose

The Medium-density Residential District is that part of the City that does not now but could in the future have municipal facilities such as public sewers and public water. It is also a residential area that is designed to encourage densities that are lower than the High-density Residential District. This is the transition area between the High-density Residential District and the Low-density Residential District. With the exception of mineral extraction, most other uses similar to the Low-density Residential District are allowed. Two sets of density standards are used in this district. Where there is no public sewer service, the densities are the same as the Low-density Residential District. A higher density is allowed where sewer lines service the site.

### B. Uses Allowed

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

### C. Space and Bulk Regulations

<b>MINIMUM LOT AREA, LOTS NOT SERVED BY PUBLIC SEWER</b>	
1. All single uses . . . . .	60,000 square feet
2. Mixed or multiple uses . . . . .	60,000 square feet for the first use, plus 45,000 square feet for the second use, plus 30,000 square feet for each additional use
<b>MINIMUM LOT AREA, LOTS SERVED BY PUBLIC SEWER</b>	
1. All single uses . . . . .	12,000 square feet
2. Mixed or multiple uses . . . . .	minimum lot area for each use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. Lots served by public sewer . . . . .	9,000 square feet
2. Lots not served by public sewer . . . . .	60,000 square feet
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. Lots served by public sewer . . . . .	80 feet
2. Lots not served by public sewer . . . . .	200 feet

**MINIMUM SETBACKS FOR SINGLE-FAMILY AND 2-FAMILY RESIDENTIAL USES CONNECTED TO THE PUBLIC SEWER**

1. Front .....	10 feet
2. Side .....	10 feet
3. From the common lot line that separates the separately owned 2-family dwellings .....	0 feet
4. Rear .....	15 feet [amended May 16, 2001]
5. From waterbodies .....	25 feet

**MINIMUM SETBACKS FOR ALL OTHER USES CONNECTED TO THE PUBLIC SEWER**

1. Front .....	20 feet
2. Side .....	20 feet
3. Rear .....	20 feet
4. From waterbodies .....	25 feet

**MINIMUM YARD AREAS FOR SINGLE-FAMILY AND 2-FAMILY RESIDENTIAL USES CONNECTED TO THE PUBLIC SEWER**

1. Front .....	10 feet
2. Side .....	5 feet
3. From the common lot line that separates the separately owned 2-family dwellings .....	0 feet
4. Rear .....	5 feet
5. From waterbodies .....	25 feet

**MINIMUM YARD AREAS FOR ALL OTHER USES CONNECTED TO THE PUBLIC SEWER**

1. Front .....	10 feet
2. Side .....	15 feet
3. Rear .....	15 feet
4. From waterbodies .....	25 feet

**MINIMUM SETBACKS FOR SINGLE-FAMILY AND 2-FAMILY RESIDENTIAL USES NOT CONNECTED TO THE PUBLIC SEWER**

1. Front .....	20 feet
2. Side .....	20 feet
3. Rear .....	20 feet
4. From waterbodies .....	25 feet

**MINIMUM SETBACKS FOR ALL OTHER USES NOT CONNECTED TO THE PUBLIC SEWER**

1. Front .....	25 feet
2. Side .....	25 feet
3. Rear .....	25 feet
4. From waterbodies .....	25 feet

**MINIMUM YARD AREAS FOR SINGLE-FAMILY AND 2-FAMILY RESIDENTIAL USES NOT CONNECTED TO THE PUBLIC SEWER**

1. Front .....	20 feet
2. Side .....	10 feet
3. Rear .....	10 feet
4. From waterbodies .....	25 feet

**MINIMUM YARD AREAS FOR ALL OTHER USES NOT CONNECTED TO THE PUBLIC SEWER**

1. Front .....	10 feet
2. Side .....	15 feet
3. Rear .....	15 feet
4. From waterbodies .....	25 feet

**MAXIMUM LOT COVERAGE**

1. All uses connected to the public sewer...	40 percent
2. All uses not connected to the public sewer .....	20 percent

**MAXIMUM BUILDING HEIGHT**

1. All uses .....	40 feet
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\* \*



**SECTION 8.03 LOW-DENSITY RESIDENTIAL DISTRICT - R3**

**A. Purpose**

This district is the last country setting in Bath. It is geographically located next to many of the most important natural-resource areas that should be protected by the City. As a result, this district will permit rural residential activity as well as resource-use activities consistent with rural living, including light mineral extraction and farming. Low-intensity development of this district is allowed for residential and home-based businesses that are compatible with the physical capability of the land.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. Single-family dwelling, not part of a subdivision.....	60,000 square feet
2. Single-family dwelling, part of a non-clustered subdivision.....	60,000 square feet of net lot area
3. Single-family dwelling, part of a clustered subdivision.....	60,000 square feet
4. Other single uses.....	60,000 square feet
5. Mixed or multiple uses.....	60,000 square feet for the first use, plus 45,000 square feet for the second use, plus 30,000 square feet for each additional use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. All uses . . . . .	Same as Minimum Lot Area
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	200 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	25 feet
Side . . . . .	25 feet
2. Rear . . . . .	25 feet
3. From waterbody . . . . .	75 feet [amended May 16, 2001]

<b>MINIMUM YARD WIDTHS</b>	
1. Front . . . . .	25 feet
2. Side . . . . .	25 feet
3. Rear . . . . .	25 feet
4. From waterbodies . . . . .	75 feet [amended May 16, 2001]
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	20 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	40 feet

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**SECTION 8.04 WATERFRONT HIGH-DENSITY RESIDENTIAL DISTRICT - R4**

[title of section amended May 16, 2001]

**A. Purpose**

The purpose of the Waterfront High-density Residential District is to allow appropriate use, maintenance, and redevelopment of this built-up residential neighborhood that sits along the Kennebec River, while at the same time protecting the integrity and natural qualities of this area. [amended May 16, 2001]

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**D. Space and Bulk Regulations**

<b>MINIMUM LOT AREA, LOTS NOT SERVED BY PUBLIC SEWER</b>	
1. All single uses . . . . .	20,000 square feet
2. Mixed or multiple uses . . . . .	minimum lot area for each use
<b>MINIMUM LOT AREA, LOTS SERVED BY PUBLIC SEWER</b>	
1. Residential uses . . . . .	12,000 square feet
2. Nonresidential uses . . . . .	10,000 square feet
3. Mixed or multiple uses . . . . .	minimum lot area for each use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. Lots served by public sewer . . . . .	7,500 square feet
2. Lots not served by public sewer . . . . .	20,000 square feet
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. Lots served by public sewer . . . . .	80 feet
2. Lots not served by public sewer . . . . .	125 feet
<b>MINIMUM SETBACKS FOR SINGLE AND 2-FAMILY RESIDENTIAL USES</b>	
1. Front . . . . .	10 feet
2. Side . . . . .	10 feet
3. Rear . . . . .	10 feet
4. From a waterbody . . . . .	25 feet
5. From a waterbody for wharf, piers, docks, and structures for water dependent uses. . . . .	None
<b>MINIMUM SETBACKS FOR ALL OTHER USES</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From waterbodies . . . . .	25 feet

<b>MINIMUM YARD AREAS FOR SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL USES</b>	
1. Front . . . . .	5 feet
2. Side . . . . .	5 feet
3. Rear . . . . .	5 feet
4. From waterbodies . . . . .	25 feet
5. From waterbodies for wharf, piers, docks, and structures for water-dependent uses.	None
<b>MINIMUM YARD AREAS FOR ALL OTHER USES</b>	
1. Front . . . . .	10 feet
2. Side . . . . .	15 feet
3. Rear . . . . .	15 feet
4. From waterbodies . . . . .	25 feet
5. From waterbodies for wharf, piers, docks, and structures for water-dependent uses.	None
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	40 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	40 feet

\* \*

**SECTION 8.05 WATERFRONT ACTIVITY DISTRICT - R5**

**A. Purpose**

The Waterfront Activity District is a residential district along the Kennebec River that is designed to protect the shore front resource and the neighboring high-density residential neighborhoods while at the same time allowing small-scale commercial operations that are water-dependent.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. Residential uses . . . . .	6,000 square feet
2. Nonresidential uses . . . . .	10,000 square feet
3. Mixed or multiple uses . . . . .	minimum lot area for each use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. All uses . . . . .	6,000 square feet
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	60 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	15 feet
2. Side . . . . .	15 feet
3. Rear . . . . .	15 feet
4. From waterbodies for non-water-dependent uses . . . . .	25 feet
5. From waterbodies for water-dependent uses . . . . .	None
<b>MINIMUM YARD WIDTHS</b>	
1. Front . . . . .	10 feet
2. Side . . . . .	5 feet
3. Rear . . . . .	5 feet
4. From waterbodies for non-water-dependent uses . . . . .	15 feet
5. From the waterbodies for water-dependent uses . . . . .	None
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	40 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	45 feet

\* \*

## SECTION 8.06 WATERFRONT MEDIUM-DENSITY RESIDENTIAL DISTRICT – R6

### A. Purpose

The purpose of the Waterfront Medium-density Residential District is to conserve the integrity and natural qualities of the southern Kennebec River shorefront while allowing for medium density development compatible with the physical capability of the land.

### B. Uses Allowed

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

### C. Space and Bulk Regulations

<b>MINIMUM LOT AREA, LOTS NOT SERVED BY PUBLIC SEWER</b>	
1. All single uses . . . . .	20,000 square feet
2. Mixed or multiple uses . . . . .	minimum lot area for each use
<b>MINIMUM LOT AREA, LOTS SERVED BY PUBLIC SEWER</b>	
1. Residential uses . . . . .	12,000 square feet
2. Nonresidential uses . . . . .	10,000 square feet
3. Mixed or multiple uses . . . . .	minimum lot area for each use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. Lots served by public sewer . . . . .	7,500 square feet
2. Lots not served by public sewer . . . . .	20,000 square feet
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. Lots served by public sewer . . . . .	80 feet
2. Lots not served by public sewer . . . . .	125 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From a waterbody . . . . .	75 feet
5. From a waterbody for wharf, piers, docks, and structures for water dependent uses. . . . .	None
<b>MINIMUM YARD AREAS</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From a waterbody . . . . .	75 feet
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	40 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	40 feet

[entire Section added May 16, 2001]

\*\*

**SECTION 8.07 DOWNTOWN COMMERCIAL DISTRICT - C1** [Section number amended May 16, 2001]

**A. Purpose**

The Downtown Commercial District provides a location for the retail-, business-, and tourist-oriented activities of Bath and the Bath Region. The Downtown Commercial District will continue to be the year-round retail and business center of the City. The Downtown Commercial District also is the location of residential activity that is historically typical of urban centers' downtowns.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. All uses . . . . .	None
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. All residential . . . . .	None
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	0 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	0 feet
2. Side . . . . .	0 feet
3. Rear . . . . .	0 feet
4. From the Kennebec River . . . . .	None
<b>MINIMUM YARD AREAS</b>	
1. Front . . . . .	0 feet
2. Side . . . . .	0 feet
3. Rear . . . . .	0 feet
4. From the Kennebec River . . . . .	None
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	100 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. On locations which are east of Commercial Street, south of Oak Street and a line due east of the center line of Oak Street to the Kennebec River, and north of Route One . . . . .	35 feet
2. All other locations . . . . .	No maximum height restriction

<b>MAXIMUM FLOOR AREA RATIO</b>	
1. Without an approved viewshed protection plan.....	5
2. With an approved viewshed protection plan.....	7 <sup>1</sup>

<sup>1</sup> Any buildings, which are no taller than 1 floor over mean grade level, the roofs of which are landscaped as open space and are usable by the public, do not count toward the gross floor area in calculating floor area ratio

**D. Contract Rezoning** [amended June 21, 2006]

Contract rezoning is allowed in the C1 District (see section 8.20)

\* \*



**SECTION 8.08 MIXED COMMERCIAL AND RESIDENTIAL DISTRICT - C2** [Section number amended May 16, 2001]

**A. Purpose**

The Mixed Commercial and Residential District is a mix of high-density residential and small-scale business activities that are oriented primarily to neighborhood goods and services. The intent is that this district accommodate a mix of uses, both residential and commercial, at a neighborhood scale.

**A. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**A. Space and Bulk Regulations** [amended September 22, 2010]

<b>MINIMUM LOT AREA</b>	
1. All single uses . . . . .	6,000 square feet
2. Mixed or multiple uses . . . . .	6,000 square feet for each use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. All uses . . . . .	6,000 square feet
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	60 feet
<b>MINIMUM SETBACK</b>	
1. Front . . . . .	15 feet
2. Side . . . . .	10 feet
3. Rear . . . . .	15 feet
4. From waterbodies . . . . .	25 feet
<b>MINIMUM YARD AREAS</b>	
1. Front . . . . .	6 feet
2. Side . . . . .	6 feet
3. Rear . . . . .	6 feet
4. From waterbodies . . . . .	25 feet
<b>MAXIMUM LOT COVERAGE</b>	
All uses	60 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	40 feet

**D. Contract Rezoning** [added August 26, 2015]

Contract rezoning is allowed in the C2 District (see section 8.20)

\* \*

**SECTION 8.09 BUSINESS PARK DISTRICT - C3** [Section number amended May 16, 2001]

**A. Purpose**

The Business Park District provides an area that will encourage office, warehousing, high technology, communication, light industrial, research and development, marine-related construction, communications, and similar land uses. The purpose of this district is to develop high-quality jobs with reasonable salaries and help diversify the City's economic base.

**E. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations** [amended September 22, 2010]

<b>MINIMUM LOT AREA</b>	
1. All uses . . . . .	20,000 square feet per use
<b>MINIMUM LOT WIDTH PER LOT</b>	
2. All uses . . . . .	100 feet
<b>MINIMUM SETBACKS ALL USES</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From waterbodies . . . . .	25 feet
<b>MINIMUM YARD AREAS</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From waterbodies . . . . .	25 feet
<b>MAXIMUM LOT COVERAGE</b>	
All uses	60 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	75 feet

\* \*

**SECTION 8.10 ROUTE 1 COMMERCIAL CONTRACT DISTRICT - C4** [Section number amended May 16, 2001]

**A. Purpose**

The Route 1 Commercial Contract District provides a location for the highway-oriented businesses needed by residents of the City, the region, and the traveling public. The goal of this district is to encourage better appearances and improved highway safety.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. All uses . . . . .	12,000 square feet per use
<b>MINIMUM LOT WIDTH PER LOT</b>	
2. All uses . . . . .	125 feet
<b>MINIMUM SETBACKS ALL USES</b>	
1. Front . . . . .	50 feet
2. Side . . . . .	30 feet
3. Rear . . . . .	30 feet
4. From a lot line abutting a residential zone . . . . .	50 feet
5. From waterbodies . . . . .	25 feet
<b>MINIMUM YARD AREAS ALL USES</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From a lot line abutting a residential zone . . . . .	35 feet
5. From waterbodies . . . . .	25 feet
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	25 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	40 feet

**D. Contract Rezoning**

Contract rezoning is allowed in the C4 District (see Section 8.20). [amended May 16, 2001]

\* \*

**SECTION 8.11 MARINE BUSINESS DISTRICT - C5** [Section number amended May 16, 2001]

**A. Purpose**

The Marine Business District will provide a location for medium- to high-intensity marine-related industrial and commercial activities that are water-related or water-dependent.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. All uses . . . . .	20,000 square feet per use
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	100 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From waterbodies . . . . .	25 feet, except none for wharves, piers, docks, and buildings and structures that are for water-dependent uses
<b>MINIMUM YARD AREA</b>	
1. Front . . . . .	10 feet
2. Side . . . . .	5 feet
1. Rear . . . . .	5 feet
2. From any lot line abutting a residential zone . . . . .	20 feet
3. From waterbodies . . . . .	20 feet, except none for wharves, piers, docks, and buildings and structures that are for water-dependent uses
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	50 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	40 feet

**D. Contract Rezoning** [added January 8, 2003]

Contract rezoning is allowed in the MM District (see section 8.20).

\* \*

**SECTION 8.12 HISTORIC OVERLAY DISTRICT – HO** [Section number amended May 16, 2001]

**A. Purpose**

It is the purpose of the Historic Overlay District to provide for the review of certain activities within this historic part of the City in order to prevent inappropriate alterations to buildings of historic or architectural value, to preserve the essential character of historic neighborhoods, and to ensure that new buildings or structures constructed in areas of architectural or historical significance are designed and built in a manner compatible with the character of the neighborhood.

**B. Uses Allowed**

Those of the underlying zone apply.

**C. Space and Bulk Regulations** [amended February 23, 2005 and December 24, 2008]

Those of the underlying zone apply.

**D. Approval Required** [amended February 7, 2007]

1. Historic District Approval must be obtained from the Historic District Approval Authority, which may be the Historic District Committee or the Planning Board as herein designated, for any of the following if located within the Historic Overlay District. For projects that require a building permit, Historic District Approval must be obtained prior to the issuance of the building permit.
  - (a) the construction of new buildings;
  - (b) any addition to a building;
  - (c) the addition, change, removal, or covering (other than with paint or stain) of any exterior architectural detail or decorative element of an existing building;  
or
  - (d) the demolition of any structure.

A building permit may not be issued until the plans and related documents have been reviewed and approved by the Historic District Approval Authority in accordance with the procedures and standards of this section. Buildings or structures deemed unsafe by the CEO may be demolished without approval from the Historic District Approval Authority. [amended May 16, 2001, October 3, 2001, May 5, 2004 and February 7, 2007]

2. The Historic District Approval Authority is the Historic District Committee except when the construction, addition, change, removal, covering, or demolition being applied for is deemed by any member of the Committee to have a significant impact to a historic structure or a significant impact on the Historic Overlay District or when the project also requires Site Plan Approval according to Section 12.02, A through E. In such cases the Historic District Approval Authority is the Planning Board. Projects that have a significant impact include, but are not limited to, the

construction of a new building except the construction of an accessory building of less than 100 square feet, a building addition larger than 200 square feet, or the demolition of all or a portion of a building that is older than 25 years. An approval by the Historic District Committee must be unanimous. Any member of the Committee may require that the application be placed on the next available agenda for Planning Board review.

3. Any decision of the Historic District Committee may be appealed to the Planning Board by either the applicant or by any person owning property within 200 feet of the applicant's property, by filing a written notice with the Planning Director within the time allowed for appeals of building permits.

**E. Development in Accordance with an Approved Plan** [amended February 7, 2007]

All construction must be carried out in compliance with the plans and other documents approved under this Section. Any substantial revision of the approved plan may occur only with the approval of the Historic District Approval Authority.

**F. Administration** [amended February 7, 2007]

1. If the decision of the Historic District Committee is not unanimous or if the decision of the Historic District Committee is appealed to the Planning Board within the required time, the application will be placed on the next available agenda of the Planning Board for its review and the processing, notification, and review procedures for Historic District Reviews are the same as those for Site Plan Reviews.
2. The approval of an application becomes void if substantial construction is not commenced within 6 months and substantial completion achieved within 1 year of the date of such approval, unless the time limit is extended by the Historic District Approval Authority.
3. Records of the actions of the Historic District Committee must be kept in the Planning Office and copies must be sent to the Planning Board.

**G. Submission Requirements** [amended February 7, 2007]

When the owner of the property or his/her authorized agent makes formal application for Historic District Review, the application must contain at least the following exhibits and information:

1. A fully executed application for Historic District Review signed by the applicant
2. 12 copies of plans or sketches of the building improvements, including the elevation drawing of any façade. The Planning Director may require fewer copies if the application is to be acted on by the Historic District Committee.
3. Photographs or sketches of the existing structure.

4. Other information and documentation as may be required by the Planning Board.

The Historic District Approval Authority under Subsection C, paragraph 2, above, may waive any of these requirements, upon written request from the applicant, when it determines that the scale of the project is of such limited size or the project is of a nature so as to make the information unnecessary.

#### **H. Approval Criteria** [amended February 7, 2007]

Prior to approving any application for Historic District Review, the Historic District Approval Authority must find that the following criteria have been met:

1. The construction of the new building or the addition or change to the existing building is generally of such design, form, proportion, mass, configuration, building material, texture, color, and location on the lot as to be compatible with other buildings in the Historic Overlay District and with streets and open spaces to which it is visually related.
2. The construction of the new building or the addition or change to the existing building is visually related to the surrounding area in terms of the following factors. New buildings may vary from neighboring properties in architectural treatment, but the relative proportions should match those of surrounding properties.
  - (a) Height: The height of the proposed building is consistent with the Comprehensive Plan or supporting documents pertinent to the Plan.
  - (b) Width: The width of the proposed building is compatible with adjacent buildings and reflects the characteristic rhythm of facades along the street. If the site is large, the mass of the facade can be broken into a number of smaller bays.
  - (c) Window Proportions: The window proportions, height versus width, are visually compatible with those of other windows in the same building and in other adjacent historic buildings of the same period. In the case of large plate-glass "display windows" on the ground floor, the large surface of glass can be divided into a number of smaller "panes" consistent with shop-front windows of the historic period that the building represents or, in the case of new buildings, compatible with the window size of adjacent historic buildings, where appropriate. Also, the ratio of window area to solid wall should be similar to surrounding facades.
  - (d) Roof Forms: The roof pitch employed on new buildings is similar to those found on the adjacent buildings. If it is a gable-type roof, its orientation to the street should be the same as in neighboring buildings. Roofing materials should be harmonious with existing roofing material in the Historic Overlay District and roof colors should not dominate; dark, neutral colors and materials are best.

(e) Alternate-energy Devices: Wind generators, solar collectors, and similar alternate-energy devices may be utilized only if they can be installed in a manner in which they are not visible from a public way.

3. Before a structure may be removed or demolished or any exterior architectural detail or decorative element of an existing building may be removed or covered the applicant must demonstrate that the structure or exterior architectural detail or decorative element is not historically significant or that there is no alternative method of preserving the structure or the exterior architectural detail or decorative element.

4. It is the applicant's burden to prove that these criteria are met.

I. [added November 5, 2003 and deleted December 24, 2008]

\* \*



**SECTION 8.13 SPECIAL PURPOSE COMMERCIAL CONTRACT OVERLAY DISTRICT – SPCCO** [Section number amended May 16, 2001]

**A. Purpose**

The purpose of this district is to preserve certain buildings in residential districts that are important to the fabric of the community, do not lend themselves to residential use, and are not allowed a wide-enough range of commercial uses by their current residential zoning regulations to make them economically viable. The Special Purpose Commercial Contract Overlay District allows a wide range of commercial uses to occur in these important buildings.

**B. Uses Allowed**

1. The uses allowed, according to the Land Use Table, in the underlying residential district (see Section 9.02), and
2. The uses allowed, according to the Land Use Table, in the C1 District. However, the number and type of C1 District uses may be limited by the contract rezoning procedure (see Section 8.20). [amended May 16, 2001]

**C. Space and Bulk Regulations** [amended February 23, 2005]

The space and bulk regulations of the C1 District apply; however, these regulations may be modified through the Contract Rezoning process. The underlying minimum lot area per dwelling unit requirements for residential uses may not be modified.

**D. Additional Requirements**

1. No additional buildings may be constructed or located on the lot unless they are allowed through the Contract Rezoning procedure contained in Section 8.20. [amended June 19, 2002]
2. If the building is ever removed or destroyed by action of the owner or agent, the Special Purpose Commercial Contract Overlay will cease, the lot will return to its underlying residential district classification, and any use not allowed by the underlying residential district must cease. If the building is ever damaged by more than 50 percent of market value by any cause other than that of the owner or agent, a building may be rebuilt within the predestruction or predamaged dimensions, within 1 year. Any other replacement, reconstruction, or relocation of the building(s) must be in compliance with the space and bulk regulations of the underlying residential district.
3. Additions to the building(s) may be allowed only for compliance with the Life Safety Code and the Americans with Disabilities Act, and then only after Site Plan Approval from the Planning Board in accordance with the standards of Article 12, unless they are allowed through the Contract Rezoning procedure contained in Section 8.20. [amended June 19, 2002]

4. Parking must meet the standards of Article 10.
5. Any additional lighting beyond that which exists on the building and/or lot on the date of adoption of this standard may be allowed only after approval by the Planning Board in accordance with the requirements and procedures for Site Plan Review, Article 12.
6. Signage must meet the standards for signs in the underlying residential district, unless, the square footage and the number of signs is increased by the contract rezoning procedure (see Section 8.20). [amended February 6, 2002]

#### **E. Rezoning Procedure**

Rezoning in the Special Purpose Commercial Contract Overlay District must be according to the applicable provisions of Sections 1.07 and 8.20) [amended May 16, 2001]

#### **F. Contract Rezoning**

Contract rezoning is allowed in the SPCCO District. (see Section 8.20) [amended May 16, 2001]

\* \*

**SECTION 8.14 INDUSTRIAL/SHIPYARD DISTRICT - I** [Section number amended May 16, 2001]

**G. Purpose**

The Industrial/Shipyard District provides the location for the main facilities of the Bath Iron Works (BIW) and for certain support facilities. This is an industrial district that must serve industrial needs, while also controlling impacts on surrounding residential and commercial neighborhoods.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. All uses . . . . .	None
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	None
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	50 feet
2. Side . . . . .	25 feet
3. Rear . . . . .	25 feet
4. From waterbodies . . . . .	25 feet, except none for buildings and structures for water-dependent uses
<b>MINIMUM YARD AREAS</b>	
1. Front . . . . .	25 feet
2. Side . . . . .	5 feet
3. Rear . . . . .	5 feet
4. From waterbodies . . . . .	5 feet, except none for buildings and structures for water-dependent uses
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	75 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	75 feet

**D. Contract Rezoning**

Contract rezoning is allowed in the I District (see Section 8.20). [amended May 16, 2001]

\* \*

**SECTION 8.15 GOLF COURSE DISTRICT – GC** [Section number amended May 16, 2001]

**F. Purpose**

This district is designed to maintain the Bath Country Club Golf Course operation. It will protect the golf course from incompatible neighboring land uses and protect the surrounding Low-density Residential District from encroachment by incompatible uses at the golf course. This district allows the golf course to expand and allows accessory facilities at the golf course.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT NET AREA</b>	
1. Single-family dwelling, not part of a subdivision . . . . .	60,000 square feet
2. Single-family dwelling, part of a non-clustered subdivision . . . . .	60,000 square feet of net lot area
3. Single-family dwelling, part of a clustered subdivision . . . . .	60,000 square feet
4. Other single uses . . . . .	60,000 square feet
5. Mixed or multiple uses . . . . .	60,000 square feet for the first use, plus 45,000 square feet for the second use, plus 30,000 square feet for each additional use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. All uses . . . . .	same as Minimum Lot Area
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	200 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	35 feet
2. Side . . . . .	25 feet
3. Rear . . . . .	25 feet
4. From waterbodies . . . . .	75 feet [amended May 16, 2001]
<b>MINIMUM YARD WIDTHS</b>	
1. Front . . . . .	25 feet
2. Side . . . . .	25 feet
3. Rear . . . . .	25 feet
4. From waterbodies . . . . .	75 feet [amended May 16, 2001]
<b>MAXIMUM LOT COVERAGE</b>	
1. All Uses . . . . .	20 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All Uses . . . . .	40 feet

**SECTION 8.16 PARK AND OPEN SPACE DISTRICT – P & O** [Section number amended May 16, 2001]

**A. Purpose**

The Park and Open Space District is established to preserve parks, park land, and open space land. Such zoning will protect the public and private interests in these areas by limiting the uses to those intended in the owner's adopted management plan. Only lands that are publicly owned, owned by a non-profit land trust, or lands the development rights of which are owned by a public entity or a non-profit land trust may be included in this district.

**B. Uses Allowed**

The district will only allow parks and other open space areas. Only buildings and other structures that are compatible with the natural surroundings and used for educational or scientific purposes are allowed, and only after Site Plan Approval.

**C. Space and Bulk Regulations**

Structures may not be built within 150 feet of any waterbody. Parking lots must be set back at least 150 feet from any waterbody and are allowed only after Site Plan Approval.

\*\*

**SECTION 8.17 RESOURCE PROTECTION DISTRICT – RP** [Section number amended May 16, 2001]

**A. Purpose**

The Resource Protection District will protect the environmental integrity of those areas of the City of Bath that have severe physical-development limitations or that have extremely high natural-resource value. Within the Resource Protection District, development or use of the land is restricted. Only activities that do not adversely affect the environment or natural-resource value are allowed.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA PER USE</b>	
1. All uses . . . . .	1 acre, or the largest minimum lot area of the abutting district, whichever is larger
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	200 feet
<b>MINIMUM WATER-BODY FRONTAGE</b>	
1. All uses . . . . .	200 feet
<b>MINIMUM SETBACKS</b>	
<b>ALL USES</b>	
1. Front . . . . .	50 feet
2. Side . . . . .	25 feet
3. Rear . . . . .	25 feet
4. From water bodies . . . . .	100 feet
<b>MINIMUM YARD AREAS</b>	
<b>ALL USES</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From water bodies, and wetlands indicated on MDIFW maps dated 1983 or any revisions thereof . . . . .	75 feet
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	20 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	35 feet

\* \*

**SECTION 8.18 NATURAL RESOURCE PRESERVATION OVERLAY DISTRICT-NRPO**  
 [Section number amended May 16, 2001]

**A. Purpose**

The Natural Resource Preservation Overlay District permits limited residential development while protecting fragile shoreline ecological systems that, if developed, would adversely affect water quality, wildlife and aquatic habitat and biotic systems, or ecological relationships. This overlay area is established along natural corridors and boundary areas associated with water bodies, wetlands, significant wildlife habitat, and unique natural and environmentally sensitive features.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. Single-family dwelling, not part of a subdivision . . . . .	2 acres per use
2. Single-family dwelling, part of a non-clustered subdivision . . . . .	2 acres of net lot area per use
3. Single-family dwelling, part of a clustered subdivision . . . . .	2 acres per use
4. All other uses . . . . .	2 acres of net lot area per use
<b>MINIMUM LOT WIDTH PER LOT</b>	
All uses . . . . .	200 feet
<b>MINIMUM FRONTAGE ON A WATER BODY</b>	
All uses . . . . .	100 feet
<b>MINIMUM SETBACKS ALL USES</b>	
<b>Without a Waterfront Setback Reduction Plan<sup>1</sup></b>	
1. Front . . . . .	50 feet
2. Side . . . . .	25 feet
3. Rear . . . . .	25 feet
4. From water bodies, critical natural areas, and significant wildlife habitat . . .	150 feet
<b>With an Approved Waterfront Setback Reduction Plan<sup>1</sup></b>	
1. Front . . . . .	Underlying zone
2. Side . . . . .	Underlying zone
3. Rear . . . . .	Underlying zone
4. From water bodies, critical natural areas, and significant wildlife habitat . . .	75 feet

<b>MINIMUM YARD AREAS ALL USES</b>	
<b>Without a Waterfront Setback Reduction Plan<sup>1</sup></b>	
1. Front .....	35 feet
2. Side .....	25 feet
3. Rear .....	25 feet
4. From water bodies, critical natural areas, and significant wildlife habitat . . .	100 feet
<b>With an Approved Waterfront Setback Reduction Plan<sup>1</sup></b>	
1. Front .....	Underlying zone
2. Side .....	Underlying zone
3. Rear .....	Underlying zone
4. From water bodies, critical natural areas, and significant wildlife habitat . . .	Not less than 75 feet
<b>MAXIMUM LOT COVERAGE ALL USES</b>	
1. Without a Waterfront Setback Reduction Plan <sup>1</sup> .....	10 percent
2. With a Waterfront Setback Reduction Plan <sup>1</sup> .....	Underlying zone
<b>MAXIMUM BUILDING HEIGHT ALL USES</b>	
1. Without a Waterfront Setback Reduction Plan <sup>1</sup> .....	35 feet
2. With a Waterfront Setback Reduction Plan <sup>1</sup> .....	Underlying zone

**D. <sup>1</sup>Waterfront Setback Reduction Plan**

**1. Applicability**

With respect to new single-family dwellings, additions to single family-dwellings, and structures accessory to such dwellings, the Planning Board has the authority to reduce the Setback and Yard Area requirements in Item C regarding water-body setbacks but to not less than 75 feet. The Planning Board will determine whether a reduction is appropriate in accordance with the following criteria. The burden of proof is with the party requesting the reduction. Adequate information must be provided that will allow the Planning Board to offer findings of fact supporting the conclusion that all applicable criteria have been met.

The Planning Board may waive the necessity for any of the Minimal Submission Requirements provided the applicant requests the waiver, in writing, and the Planning Board finds that the criteria in Section 8.18, D, 2 have been met. [amended August 6, 2003]



## 2. Criteria

- (a) The proposed development will not adversely impact the natural features of the landscape, and does not occur within or cause harm to any land that is not suitable for development.
- (b) The proposed development will not adversely affect any water body or its shoreline when the property is located in part or in whole in the water body's watershed. The proposed development will not adversely affect the water quality of Merrymeeting Bay, the Kennebec River, or their tributaries.
- (c) The proposed development activity will not occur within a floodplain.
- (d) The proposed development will satisfy the recommended stormwater quality standards described in *Stormwater Management for Maine: Best Management Practices*, published by the MEDEP (November 1995), as amended.
- (e) The proposed development will not alone or in conjunction with existing activities adversely affect the quality or quantity of groundwater.
- (f) The proposed development will be constructed in accordance with Best Management Practices and will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy situation results.
- (g) The proposed development either will be served by municipal sewer or, where on-site disposal is proposed, designed and constructed in accordance with all applicable local, state, and federal requirements.
- (h) The proposed development will not have an adverse effect on the scenic or natural beauty of the area, historic sites, significant wildlife habitat identified by the MEDEP or the City of Bath, or rare and irreplaceable natural areas.

## 3. Minimal Submission Requirements

Where a reduction is requested, the minimal submission requirements are as follows:

- (a) A map of slopes greater than 25 percent, wetlands, water courses and water bodies, and significant wildlife habitats; a plan to protect these features
- (b) Reports from a hydrogeologist, the MEDEP, the Maine Department of Marine Resources, and/or other qualified persons deemed appropriate by the Planning Board

- (c) A report or statement from a licensed surveyor indicating that the development will not occur in a flood-hazard area
- (d) A statement by a registered professional civil engineer ensuring that the development will be built in accordance with *Stormwater Management for Maine: Best Management Practices* (November 1995)
- (e) A hydrogeologic evaluation conducted by a hydrogeologist certified in the state of Maine
- (f) An erosion and sedimentation control plan developed by a registered professional civil engineer in accordance with the *Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices*, published by the Cumberland County Soil and Water Conservation District and the MEDEP (March 1991), as amended
- (g) Connection to the municipal sewage system or an on-site subsurface wastewater disposal system approved by the Local Plumbing Inspector
- (h) Plans or reports prepared by qualified individuals indicating that:
  - (i) The building location may not be in open fields, and may be located only within forested portions of the lot. When the lot contains no forest or insufficient forested portions to include all buildings, the development must be designed to minimize the appearance of buildings when viewed from the water.
  - (ii) The proposed development will not affect any historic or prehistoric site, as determined by the Maine Historic Preservation Commission.
  - (iii) Within the Shoreland Zone, there will be no cutting of vegetation for any purpose other than the principal and accessory structures, driveways, and sewage-disposal areas, or for safety purposes.
  - (iv) All proposed restrictions placed on the land to protect important wildlife habitat identified by the MDIFW or rare or irreplaceable habitat identified by the Maine Natural Areas Program must be reviewed by either MDIFW or the Maine Natural Areas Program, with their comments presented in writing to the Planning Board.

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**SECTION 8.19 TRUFANT MARSH CONTRACT DISTRICT – TMC** [Section number amended May 16, 2001]

**A. Purpose**

The Trufant Marsh Contract District addresses uncertainties related to any expansion of BIW and the potential need to use the Trufant Marsh for additional space. Resource Protection is the designation of this district until any rezoning by the City Council. This rezoning process will allow open dialogue among the City, neighbors, and BIW on what might happen to Trufant Marsh in the future. If rezoned from the Resource Protection District, this district will allow only water-dependent uses for an expansion of industrial uses on the adjacent property.

**B. Uses Allowed**

Prior to any rezoning, uses allowed as indicated in the Land Use Table for the Trufant Marsh District. After any rezoning uses allowed as indicated for the Industrial/Ship Yard District. (see Section 9.02).

**C. Space and Bulk Regulations**

Prior to any rezoning, the space and bulk regulations of the Resource Protection District apply. After any rezoning, the space and bulk regulations of the contract, apply.

**D. Contract Rezoning**

Contract rezoning is allowed in the TMC District (see Section 8.20). [amended May 16, 2001]

\* \*

## **SECTION 8.20 CONTRACT REZONING** [Section number amended May 16, 2001]

### **A. Authority and Purpose** [amended June 21, 2006]

Pursuant to the authority delegated to municipalities under 30-A M.R.S.A. Section 4352(8), contract rezoning is hereby authorized to permit rezoning of the property defined in Item B following, when projects can better meet certain community objectives contained in the Comprehensive Plan due to additional flexibility being allowed, to encourage innovative design, or where it has been determined that there exists an unusual nature, condition, or location relative to the property being considered for rezoning. In these circumstances, the City Council may find it necessary and appropriate to impose, by agreement with the applicant, certain conditions or restrictions relating to the physical development and/or operation of the property that are generally not applicable under conventional zoning regulations.

### **B. Description of Property**

This Section applies only to properties located in the following Zoning Districts: [amended December 24, 2008]

1. Route 1 Commercial Contract District,
2. Special Purpose Commercial Contract Overlay District,
3. Industrial/Shipyard District,
4. Downtown Commercial District, and [added June 21, 2006]
5. Trufant Marsh Contract District,
6. Marine Business District, and [added January 8, 2003]
7. Museum District [added September 22, 2010]
8. Plant Home Zone [added December 28, 2011]
9. Mixed Commercial and Residential District [added August 26, 2015]

### **C. Contract Rezoning Process** [amended June 21, 2006 and June 22, 2016]

#### **1. Application**

An application for contract rezoning must be submitted to the Bath Planning Office on forms provided for that purpose. The application must be reviewed by the Planning Board in accordance with the provisions for Site Plan Review and other sections of this Code as may be applicable to the proposed development. An application is deemed formally approved upon completion of the following:

- (a) a public hearing is held by the Planning Board
- (b) Historic District, Site Plan, or Subdivision approval, as applicable, by the Planning Board with or without conditions.

- (c) the applicant accepts conditions of approval imposed by the Planning Board in accordance with the Discretionary Conditions, as in Item D (2), following, and with the Site Plan Approval criteria of this Code, and other review criteria as may be found applicable to the proposed development
- (d) the Discretionary Conditions contained in D, 2, following, are approved by the Bath City Council, and
- (e) evidence of the approval is recorded in the Sagadahoc County Registry of Deeds prior to the issuance of any building permit by the code enforcement officer, on forms adopted by the Planning Board for that purpose. The responsibility for recording evidence of the approval is on the applicant. No recordation of evidence of the approval is required for contract zoning approvals granted by the Bath City Council prior to July 1, 2016.

## **2. Administration** [amended June 21, 2006]

The public hearing posting and notification requirements for contract rezoning, as well as the Planning Board Action requirements and the City Council Action requirements, are the same as those for zoning amendments defined in Section 1.07. The time period at the end of which a Site Plan Approval is considered void according to Section 12.07 begins 21 days following final approval of the contract rezoning by the City Council.

### **D. Conditions for Granting Contract Rezoning Approval**

#### **1. Mandatory Conditions**

All rezoning under this Section must:

- (a) be consistent with the Comprehensive Plan of the City of Bath and any other supporting documents pertinent to the Plan
- (b) includes only conditions and/or restrictions that relate to the physical development or operation of the property

#### **2. Discretionary Conditions**

The approval by the Planning Board may include conditions affecting all or any of the following:

- (a) the number and type of authorized uses of the property
- (b) the space and bulk regulations of any structure or structures built on the property
- (c) the installation, operation, and maintenance of physical improvements relating to pedestrian and vehicular access for the convenience and safety of the

general public, including but not limited to off-street parking lots, traffic control devices, ingress and egress, and impact on off-site traffic directly attributable to the contract rezoning proposal

- (d) limitations on the number of ingress and/or egress points
- (e) the implementation of a landscaping plan designed to improve or protect the neighborhood by improving aesthetics or providing a buffer from surrounding properties
- (f) the location and buffering of exterior storage, parking, and loading areas
- (g) limitations on the type and style of lighting
- (h) requirements for the installation of underground utilities
- (i) innovative design for new construction, alterations, or expansions that provide a smooth transition between streetscape, the Route 1 corridor (if applicable), the Downtown (if applicable), driveway entrances, and structures (Height, scale, and treatment of new and altered structures must endeavor to assist in buffering Route 1 traffic (if applicable) from residential neighborhoods and to provide an attractive gateway to the City and an attractive Downtown.)
- (j) the design and facade treatment of any new building, additions, or existing structures
- (k) the dedication or conveyance of property for public purposes, including but not limited to streets, scenic and conservation easements, and utility systems

**E. Planning Board Recommendation to the City Council and Findings of Fact**  
[amended June 21, 2006]

In recommending contract rezoning approval to the City Council, the Planning Board must make findings of fact consistent with Site Plan, Historic District, and Subdivision Approval criteria of this Code, as applicable, and that the following criteria are met:

1. The approval is consistent with the mandatory conditions set forth in Paragraph D 1 herein above.
2. The applicant is willing to meet certain community objectives contained in the Comprehensive Plan due to additional flexibility being allowed, the applicant has employed innovative design, or that there exists an unusual nature, condition, or location relative to the property being considered for rezoning.
3. In addition to compatibility with the neighborhood, the building must be consistent in terms of colors, materials, and other design items with the Gateway or Downtown goals of the City, if applicable.

4. In the C1 District the Discretionary Conditions must meet one or more of the following downtown goals: to encourage additional people to be downtown and downtown in the evening, to advance the pedestrian-friendliness of the downtown, to add public parking, or to promote the City's history and maritime heritage.

**F. City Council Approval of Contract Rezoning** [amended June 21, 2006]

1. The scope of the review by the City Council in granting contract rezoning is limited to the Conditions contained in D, herein above, and only if these conditions are not otherwise required for Historic District Approval, Site Plan Approval, or Subdivision Approval.
2. If the City Council votes to recommend modifying any of the Discretionary Conditions in D, 2, herein above, and if any of these recommended modifications affect the Historic District, Site Plan, or Subdivision approvals granted by the Planning Board, the modifications to the Discretionary Conditions must be referred back to the Planning Board for its review and approval prior to final approval of the contract rezoning being granted by the City Council.

**G. Costs**

Any administrative costs incurred by the City for drafting the contract-rezoning provisions will be paid for by the applicant whether or not the project/conditions of approval are approved by City Council.

**H. Amendments**

Any site plan and conditions, which have been approved by the City Council by means of the Contract Rezoning process, may be amended. An amendment to the site plan that qualifies to be approved according to Section 12.13, B, 1 through 6, may be approved per that minor revision process. All other amendments require approval by the Planning Board. If an amendment proposes to alter any of the Conditions for Granting Contract Rezoning Approval contained in item D, above, the amendment requires approval from the Planning Board and the City Council as per Section 8.20, C through G, above. [added May 16, 2001] [amended October 28, 2009]

\* \* \*

## **SECTION 8.21 SHORELAND ZONE** [entire section added May 16, 2001]

### **A. Lot Coverage**

In addition to other lot coverage requirements of this Article, lot coverage may not exceed 20 percent of the lot or portion thereof, located within the Shoreland Zone, including land area previously developed, except when the underlying district is the R4, R5, C1, C5, M, or I District, where lot coverage may not exceed 70 percent and the percent of the lot covered by buildings may not exceed that of the underlying zone. [amended October 28, 2009 and August 25, 2010]

### **B. Structure Height**

In addition to other building or structure height requirements of this Article, structure height may not exceed 35 feet for any portion of a structure located within the Shoreland Zone, except when the underlying district is the R4, R5, C1, C5, M, or I District, where structure height may not exceed the building height requirement of the underlying district. [amended August 25, 2010]

### **C. Minimum Shore Frontage**

Except when the underlying district is the R4, R5, C1, C5, M, or I District, minimum shore frontage is 200 feet per dwelling unit on non-tidal areas, 150 feet per dwelling unit on tidal areas, and 200 feet per lot for non-residential uses. [amended August 25, 2010]

### **D. Minimum Setback** [added October 28, 2009]

For principal structures, water body setback measurements must be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the CEO are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the decision of the CEO to the ZBA.

In the Resource Protection Zone the minimum setback from any waterbody is 250 feet, horizontal distance, except for structures, roads, parking spaces, or other regulated objects specifically allowed in that zone in which case the minimum setback from any waterbody is 75 feet, horizontal distance.

### **E. Minimum Lot Standard** [added October 28, 2009]

If more than one dwelling unit, principal structure, or use, or combination thereof, is constructed or established on a single lot, all dimensional requirements must be met



for each additional dwelling unit, principal structure, or use. The provisions contained in Section 10.05 do not apply in the Shoreland Zone.

\*\*\*

**SECTION 8.22 PLANT HOME ZONE – PH** [entire section added February 24, 2010]

**A. Purpose**

The Plant Home District is designed to protect and maintain the Plant Memorial Home by allowing the existing Assisted Residential facility and associated accessory uses, to permit reasonable expansions, to protect the abutting Kennebec River resource, to mitigate traffic impacts on Washington Street, and to protect the neighboring medium-density residential areas. Residential uses similar to those of the abutting residential area will also be allowed.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. Residential uses . . . . .	12,000 square feet
2. Nonresidential uses . . . . .	20,000 square feet
3. Mixed or multiple uses . . . . .	minimum lot area for each use
<b>MINIMUM LOT AREA PER DWELLING UNIT</b>	
1. All uses . . . . .	9,000 square feet
<b>MINIMUM LOT AREA PER ASSISTED RESIDENTIAL UNIT</b>	
1. All uses . . . . .	4,500 square feet
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	100 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From waterbodies . . . . .	75 feet
<b>MINIMUM YARD WIDTHS</b>	
1. Front . . . . .	20 feet
2. Side . . . . .	20 feet
3. Rear . . . . .	20 feet
4. From waterbodies . . . . .	75 feet
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	20 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	35 feet

<b>BUILDING APPEARANCE</b>	
1. All uses . . . . .	To reduce the apparent size and scale of the building, a building constructed after the effective date of this Section must be constructed so that any façade with a horizontal measurement greater than 50 feet employs actual protrusions or recesses with a depth of at least 6 feet at least every 50 feet.
<b>VIEWSHED PROTECTION</b>	
1. All uses . . . . .	To prevent the neighborhood's loss of visual connection to the Kennebec River, a building constructed, and any landscaping planted, after the effective date of this Section must be oriented or planted on the lot such that a view is maintained to the Kennebec River corridor from Washington Street.

**D. Contract Rezoning** [added December 28, 2011]

Contract rezoning is allowed in the PH District (see Section 8.20).

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**SECTION 8.23 NEIGHBORHOOD COMMERCIAL ZONE – NC** [entire section added May 26, 2010]

**A. Purpose**

The purpose of the Neighborhood Commercial District is to allow commercial uses in close proximity to high-density residential neighborhoods in order to meet the shopping needs of residential neighborhoods. This district is not intended to serve regional shopping needs, or even city-wide shopping needs, therefore, stores will be small scale. Parking must be set behind the building and well screened and appropriate performance standards employed so as to prevent the commercial uses from negatively impacting the residential qualities of the neighborhood.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
All uses . . . . .	6,000 square feet per use
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	60 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	10 feet
2. Side . . . . .	10 feet
3. Rear . . . . .	10 feet
4. From waterbodies . . . . .	25 feet
<b>MINIMUM YARD AREA</b>	
1. Front . . . . .	10 feet
2. Side . . . . .	10 feet
3. Rear . . . . .	10 feet
4. From waterbodies . . . . .	25 feet
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses.....	60 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	40 feet

**D. Performance Standards**

1. Hours of Operation  
No business located in the NC Zone may be open to the public before 6:00 A.M. or later than 10:00 P.M.

\*\*\*

**SECTION 8.24 MUSEUM DISTRICT – M** [entire section added August 25, 2010]

**A. Purpose**

The Museum District is designed to protect and maintain the Maine Maritime Museum by allowing the existing facility, associated accessory uses, and compatible marine uses; to permit reasonable expansions, to protect the abutting Kennebec River resource; to mitigate traffic impacts on Washington Street; and to protect the neighboring medium-density residential areas.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
5. All uses . . . . .	20,000 square feet per use
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	100 feet
<b>MINIMUM SETBACKS</b>	
1. Front . . . . .	20 feet
6. Side . . . . .	20 feet
7. Rear . . . . .	20 feet
8. From waterbodies . . . . .	25 feet, except none for wharves, piers, docks, and buildings and structures that are for water-dependent uses
<b>MINIMUM YARD AREA</b>	
1. Front . . . . .	10 feet
2. Side . . . . .	5 feet
3. Rear . . . . .	5 feet
4. From any lot line abutting a residential zone . . . . .	20 feet
9. From waterbodies . . . . .	20 feet, except none for wharves, piers, docks, and buildings and structures that are for water-dependent uses
<b>MAXIMUM LOT COVERAGE</b>	
1. All uses . . . . .	50 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
1. All uses . . . . .	40 feet

**D. Contract Rezoning**

Contract rezoning is allowed in the M District (see Section 8.20).

\*\*\*

**SECTION 8.25 SCHOOL DISTRICT - S** [entire section added May 24, 2017]

**A. Purpose**

The School District provides for the location and establishment of public and private school facilities and their ancillary needs.

**B. Uses Allowed**

Uses allowed are as indicated in the Land Use Table (see Section 9.02).

**C. Space and Bulk Regulations**

<b>MINIMUM LOT AREA</b>	
1. All single uses . . . . .	6,000 square feet
2. Mixed or multiple uses . . . . .	6,000 square feet for each use
<b>MINIMUM LOT WIDTH PER LOT</b>	
1. All uses . . . . .	60 feet
<b>MINIMUM SETBACK</b>	
1. Front . . . . .	10 feet
2. Side . . . . .	10 feet
3. Rear . . . . .	15 feet
4. From waterbodies . . . . .	25 feet
<b>MINIMUM YARD AREAS</b>	
1. Front . . . . .	6 feet
2. Side . . . . .	6 feet
3. Rear . . . . .	6 feet
4. From waterbodies . . . . .	25 feet
<b>MAXIMUM LOT COVERAGE</b>	
All uses	80 percent
<b>MAXIMUM BUILDING HEIGHT</b>	
2. All uses . . . . .	75 feet

\*\*\*

## ARTICLE 9: USES

### SECTION 9.01 COMPLIANCE REQUIRED

All land and water areas, structures, and buildings in the City of Bath must be used in accordance with the standards set forth for the zoning district in which the land or water area, structure, or building is located.

Uses in all districts must conform to all applicable requirements and performance standards of this Code. A building permit, plumbing permit, or Certificate of Occupancy also may be required.

### SECTION 9.02 LAND USE TABLE

The following Land Use Table indicates which uses of land or structures are allowed with no review, allowed with review by only the CEO, allowed after Site Plan Approval, or not allowed in the various zones. The most specific land use category always controls. It is the responsibility of the CEO to determine the land use category of any new or existing use.

#### KEY:

**R1 - High-density Residential District**

**R2 - Medium-density Residential District**

**R3 - Low-density Residential District**

**R4 - Waterfront High-density Residential District** [amended May 16, 2001]

**R5 - Waterfront Activity District**

**R6 – Waterfront Medium-density Residential District** [added May 16, 2001]

**C1 - Downtown Commercial District**

**C2 - Mixed Commercial and Residential District** [amended September 22, 2010]

**Neighborhood Commercial District – NC** [added May 26, 2010]

**C3 - Business Park District**

**C4 - Route 1 Commercial Contract District**

**C5 - Marine Business District**

**I - Industrial/Shipyard District**

**GC - Golf Course District**

**PH – Plant Home District** [added March 24, 2010]

**M – Museum District** [added August 25, 2010]

**RP - Resource Protection District**

**NRPO - Natural Resource Preservation Overlay District**

**TMC - Trufant Marsh Contract District**

**S – School District** [added May 24, 2017]

**“A” = the use is allowed with no review**

**“C” = the use is allowed with review by and approval from the CEO**

**“S” = the use may require Site Plan Approval. See Article 12.**

**“N” = the use is not permitted; therefore, prohibited in that zone**

ZONING DISTRICTS																				
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>1.0 Residential</b>																				
1.1 Single-family dwelling																				
1.1.1 Site-built	C	C	C	C	C	C <sup>1</sup>	C	N	N	N	C <sup>1</sup>	N	N	C	N	S <sup>2</sup>	C	N	N	
1.1.2 Mobile home on individual lot	N	N	C	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
1.2 Two-family dwelling	C	C	C	C	C	C <sup>1</sup>	C	N	N	N	C <sup>1</sup>	N	N	C	N	N	C	N	N	
1.3 Multi-family dwelling	S	S	N	N	S	S	S	N	S	N	N	N	S	S	N	N	N	N	N	
1.4 Cluster development	S	S	S	S	S	N	S	N	N	N	N	N	S	S	N	N	S	N	N	
1.5 In-home lodging	A	A	A	A	A	N	A	N	N	N	N	N	N	A	N	N	A	N	N	
1.6 Home occupations																				
1.6.1 Home occupation-A	C	C	C	C	C	C	C	N	N	N	N	N	N	C	N	N	C	N	N	
1.6.2 Home occupation-B	S	S	S	S	S	N	S	N	N	N	N	N	N	S	N	N	N	N	N	
1.7 Garage and yard sales	A	A	A	A	A	N	A	N	A	A	N	N	A	A	N	N	A	N	N	
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	



LAND USE CATEGORY	ZONING DISTRICTS																			
	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>2.0 Sales or Rental of Goods, Merchandise, or Equipment</b>																				
2.1 No storage and only incidental display of goods outside fully enclosed building																				
2.1.1 High-volume traffic generation, no drive-up window																				
2.1.1.1 Miscellaneous																				
2.1.1.1.1 With less than 5,000 square feet of gross floor area																				
2.1.1.2 With 5,000 square feet or more of gross floor area																				
2.1.1.2 Convenience store																				
2.1.2 High-volume traffic generation, with drive-up window																				
2.1.3 Low-volume traffic generation																				
2.1.3.1 With less than 5,000 square feet of gross floor area																				
2.1.3.2 With 5,000 square feet or more of gross floor area																				
2.2 With storage and display outside fully enclosed building																				
<b>LAND USE CATEGORY</b>	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	

LAND USE CATEGORY	ZONING DISTRICTS													S					
	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC		PH	M	RP	NRPO	TMC
<b>3.0 Office, Clerical, Research, or Services</b>																			
3.1 All operations conducted entirely within fully enclosed building	N	N	N	N	N	S	S	N	S	N	S	S	N	N	N	N	N	N	N
3.1.1 Operations designed to attract and serve numerous customers or clients on the premises, such as the offices of attorneys, physicians, dentists, other professions, travel agents, banks, or government office buildings	N	N	N	N	N	S	S	N	S	N	S	S	N	N	N	N	N	N	N
3.1.2 Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use	N	N	N	N	N	S	S	N	S	N	S	S	N	N	N	N	N	N	N
3.2 Operations such as banks with drive-up windows	N	N	N	N	N	S	S	N	S	N	S	S	N	N	N	N	N	N	N
<b>4.0 Manufacturing, Processing, Creating, Repairing, Renovating, or Assembling of Goods, Merchandise, or Equipment</b>																			
4.1 All operations conducted entirely within fully enclosed building	N	N	N	N	N	S <sup>3</sup>	N	S	S	S	N	S	N	N	N	N	N	N	N
4.2 Operations conducted within or outside fully enclosed building	N	N	N	N	N	N	N	N	N	S	N	S	N	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>

LAND USE CATEGORY	ZONING DISTRICTS													S					
	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC		PH	M	RP	NRPO	TMC
<b>5.0 Painting or Cleaning of Goods, Merchandise, or Equipment</b>																			
5.1 All operations conducted entirely within fully enclosed building	N	N	N	N	N	N	S	S	S	N	N	S	N	N	N	N	N	N	N
5.2 Operations conducted within or outside fully enclosed building	N	N	N	N	N	N	S	N	N	N	N	S	N	N	N	N	N	N	N
<b>6.0 Educational, and Cultural Use</b>																			
6.1 Schools																			
6.1.1 Public or private elementary or secondary schools	S	S	N	N	N	S	S	N	N	N	N	N	N	S	N	N	N	N	N
6.1.2 Public or private post-secondary schools	S	S	N	N	N	S	S	N	N	N	N	N	N	S	N	N	N	N	N
6.1.3 Special-purpose schools	N	N	N	N	N	S	S	S	S	N	N	S	N	N	S	N	N	N	N
6.1.4 Special education schools	N	S	N	N	N	S	S	N	N	N	N	N	N	S	N	N	N	N	N
6.2 Libraries and museums, including associated educational and instructional activities	S	N	N	N	N	S	S	N	N	S	N	S	N	S	S	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>

ZONING DISTRICTS																				
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>7.0 Assembly or Meeting Facility</b>																				
7.1 Private meeting facility	N	N	N	N	N	S	S	N	S	N	N	S	N	N	N	N	N	N	N	N
7.2 Function or assembly facility	N	N	N	N	N	S	S	N	S	N	N	N	N	N	S	N	N	N	N	N
7.3 Community activity center	S	S	S	N	N	S	S	N	N	N	N	N	N	N	S	N	N	N	N	N
<b>7.4 Place of Assembly</b>																				
7.4.1 With seating for fewer than 200 persons	S	S	S	N	N	S	S	N	N	N	N	N	N	S	S	N	N	N	N	N
7.4.2 With seating for 200 or more persons	N	N	S	N	N	S	N	S	N	N	N	N	N	N	S	N	N	N	N	N
7.5 Soup kitchen	N	N	N	N	N	S	S	N	N	N	S	N	N	N	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	

LAND USE CATEGORY	ZONING DISTRICTS																			
	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>8.0 Recreation, Amusement, Entertainment</b>																				
8.1 Activity conducted entirely within building or roofed structure	N	N	N	N	N	S	S	S	S	N	S	N	N	N	N	N	N	N	N	N
8.1.1 Bowling alleys; indoor skating rink, swimming pool, or tennis court; billiard and pool halls; athletic and exercise facilities; and similar uses	N	N	N	N	N	S	S	S	S	N	S	N	N	N	N	N	N	N	N	N
8.1.2 Movie theater or live performance hall	N	N	N	N	N	S	N	N	S	N	N	N	N	N	N	N	N	N	N	N
<b>8.2 Activity conducted primarily outside enclosed buildings or roofed structures</b>																				
8.2.1 Facilities such as athletic fields, golf courses, tennis courts, and swimming pools.	N	N	S	N	N	N	S	N	N	N	N	N	S	N	N	N	N	N	N	N
8.2.2 Golf driving ranges not accessory to golf courses, par 3 golf courses, miniature-golf courses, waterslides, and similar uses	N	N	S	N	N	N	N	N	S	N	N	N	S	N	N	N	N	N	N	N
8.2.3 Nonmotorized mountain bike, paint-ball course, ski area, or similar facility.	N	N	S	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N
8.2.4 Horseback-riding ring or stables, including the boarding or breeding of horses.	N	N	S	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N
8.2.5 Automobile or motorcycle racing tracks	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	

ZONING DISTRICTS																				
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>9.0 Institutional Residence, Care, Confinement Facilities</b>																				
9.1 Hospitals	N	S	N	N	N	N	S	N	S	N	N	N	N	N	N	N	N	N	N	N
9.2 Nursing home, child-care facility, or assisted residential facility	S	N	N	N	N	S	S	N	S	N	N	N	N	S	N	N	N	N	N	N
9.3 Correctional facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
<b>10.0 Restaurants</b>																				
10.1 Carry-out, delivery service, and consumption outside fully enclosed structure allowed. Service to customers remaining in vehicles not allowed.	N	N	N	N	N	S	S	N	S	N	S	S	S	N	N	N	N	N	N	N
10.2 Carry-out, delivery service, to customers remaining in vehicles, and consumption outside fully enclosed structure allowed.	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
10.3 A restaurant whose principal business is the sale of beverages, including liquor, at counters or tables and where food may or may not be served, and there is no carry-out or delivery service, no service to customers remaining in vehicles, no consumption outside fully enclosed structure	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	

ZONING DISTRICTS																				
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>11.0 Accommodations</b>																				
11.1 Hotel, motel, inn, tourist cabins, or similar business providing overnight accommodations	N	N	N	N	N	S	N	N	S	N	N	N	S	N	N	N	N	N	N	N
11.1.1 Those businesses that may include accessory uses such as a restaurant, meeting facilities, a swimming pool, or exercise facilities; or have more than 40 rental rooms.	N	N	N	N	N	S	N	N	S	N	N	N	S	N	N	N	N	N	N	N
11.1.2 Those businesses that do not include accessory uses that serve customers who are not also renting a room and have no more than 40 rental rooms.	N	N	S	N	S	S	S	N	S	N	N	N	S	N	N	N	N	N	N	N
11.3 Rooming house	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
11.4 Bed and Breakfast	S	S	S	S	S	N	S	N	N	N	N	N	N	S	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	

LAND USE CATEGORY	ZONING DISTRICTS																			
	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>12.0 Motor Vehicle-related Sales and Service Operations</b>																				
12.1 Motor vehicle, snow-mobile, or mobile home sales and service, including motor vehicle or snowmobile repair and fuel sales as accessory uses.	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
12.2 Motor vehicle or snowmobile repair facility	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
12.3 Motor vehicle fuel sales	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
12.4 Car wash	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
12.5 Sales and installation of motor vehicle parts, such as mufflers, tires, or brakes	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
12.6 Sale of motor scooters or small ATVs	N	N	N	N	N	S	N	N	S	N	N	N	N	N	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	



ZONING DISTRICTS																				
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>13.0 Storage and Parking</b>																				
13.1 Automobile parking lot not located on a lot on which there is another principal use to which the parking is accessory <sup>4</sup>	N	N	N	N	N	S	N	N	N	N	N	S	N	N	N	N	N	N	N	N
13.2 Parking garage not located on a lot on which there is another principal use to which the parking is accessory	N	N	N	N	N	S	S	N	N	N	N	S	N	N	N	N	N	N	N	N
13.3 Shared Parking	N	N	N	N	N	S	S	S	S	S	S	S	N	N	S	N	N	N	N	S
13.4 Storage: in a fully enclosed building of goods not related to sale or use of those goods on the same lot where they are stored	N	N	N	N	N	N	N	S	N	N	N	S	N	N	N	N	N	N	N	N
13.5 Storage: in a fully enclosed building or outdoors of goods not related to sale or use of those goods on the same lot where they are stored	N	N	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N
13.6 Storage combined with wholesale items	N	N	N	N	N	N	N	S	N	N	N	S	N	N	N	N	N	N	N	N
<b>14.0 Scrap Materials Storage, Salvage yards, Junkyards, or Automobile Graveyards</b>																				
<b>15.0 Service and Businesses Related to Animals</b>																				
15.1 Animal-care facility	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
15.2 Kennel	N	N	S	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	

LAND USE CATEGORY	ZONING DISTRICTS														S					
	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH		M	RP	NRPO	TMC	
<b>16.0 Agriculture, Livestock, Forestry, Mining</b>																				
16.1 Agricultural operations and farming	N	S	A	N	N	N	N	N	N	N	N	N	N	N	N	N	N	C	N	N
16.2 Timber-harvesting	N	S	A	N	N	N	N	N	N	N	N	N	N	N	N	A	N	N	N	N
16.3 Mineral extraction, with or without on-site sales of products	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
16.4 Sawmill	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
16.5 Farmstand	N	C	C	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N
16.6 Community Garden	C	C	A	C	C	C	N	N	N	N	N	N	C	C	N	N	C	N	N	C
16.7 Livestock	N	N	A	N	N	N	N	N	N	N	N	N	N	N	N	N	N	C <sup>5</sup>	N	N
16.8 Small-Scale Chicken Flock	A	A	A	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
<b>17.0 Transportation and Safety Facilities</b>																				
17.1 Airport	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
17.2 Public works facilities	N	S	N	N	N	N	N	S	N	N	N	N	S	N	N	N	N	N	N	N
17.3 Public safety facilities	S	S	N	N	N	S	S	S	S	S	S	S	S	S	N	N	N	N	N	N
17.4 Transportation terminal	N	N	N	N	N	S	N	S	S	S	S	S	S	N	N	N	N	N	N	N
17.5 Truck Terminal	N	N	N	N	N	N	N	S	N	N	N	N	S	N	N	N	N	N	N	N
<b>18.0 Dry Cleaner, Laundromat</b>																				
18.0 Dry Cleaner, Laundromat	N	N	N	N	N	S	S	N	S	N	S	N	S	N	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	

ZONING DISTRICTS																				
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
<b>19.0 Utility Facilities</b>																				
19.1 Other than the collection or treatment of sewage, or recycling or waste-transfer station	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	N	C	N	N	C
19.1.1 Small-scale utility facility																				
19.1.2 Other utility facilities	N	N	N	N	N	N	N	N	S	S	N	S	N	N	N	N	N	N	N	N
19.2 Public sewage treatment facility	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N
19.3 Recycling or waste-transfer station, sanitary land fill	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
<b>20.0 Towers</b>																				
20.1 Towers less than 50 feet tall	C	C	C	N	N	C	C	C	C	C	C	C	C	N	C	N	N	N	N	N
20.2 Towers 50 feet tall and taller	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
20.3 WCFs, as defined in Article 17	N	S	S	N	N	S	S	S	N	N	N	S	S	S(*)	S(*)	N	N	N	N	N
<b>21.0 Open-air Market</b>																				
21.1 Craft and flea markets	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21.2 Craft and flea markets operated for not more than 3 consecutive days by a non-profit organization	C	C	C	N	N	C	C	N	N	C	N	N	N	N	N	N	N	N	N	A
21.3 Farmers' markets	N	N	N	N	N	C	N	N	C	N	N	N	N	N	N	N	N	N	N	N
<b>LAND USE CATEGORY</b>	<b>R1</b>	<b>R2</b>	<b>R3</b>	<b>R4 &amp; R6</b>	<b>R5</b>	<b>C1</b>	<b>C2</b>	<b>C3</b>	<b>C4</b>	<b>C5</b>	<b>NC</b>	<b>I</b>	<b>GC</b>	<b>PH</b>	<b>M</b>	<b>RP</b>	<b>NRPO</b>	<b>TMC</b>	<b>S</b>	

LAND USE CATEGORY	ZONING DISTRICTS																			
	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	
22.0 Funeral Home	N	N	N	N	N	N	S	N	S	N	N	N	N	N	N	N	N	N	N	N
23.0 Cemetery and Crematorium																				
23.1 Public cemetery	N	S	S	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N
23.2 Family cemetery	N	N	C	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
23.3 Crematorium	N	N	N	N	N	N	S	N	S	N	N	N	N	N	N	N	N	N	N	N
24.0 Day-care Uses																				
24.1 Day-care home	C	C	C	C	N	N	C	N	N	N	N	N	N	C	N	N	N	N	N	N
24.2 Day-care facility	S	S	S	S	N	S	S	S	S	S	S	N	N	S	S	N	N	N	N	N
25.0 Temporary Uses	C	C	C	C	C	C	C	C	C	C	C	C	C	S	C	N	C	N	C	C
26.0 Commercial Greenhouse Operations																				
26.1 No on-premises sales	N	S	C	N	N	N	N	N	S	N	N	N	N	N	N	N	N	N	N	N
26.2 With on-premises sales	N	N	S	N	N	N	N	N	S	N	S	N	N	N	N	N	N	N	N	N
27.0 Camping Areas																				
27.1 Campgrounds	N	N	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
27.2 Individual private camp sites	N	N	C	N	N	N	N	N	N	N	N	N	N	N	N	C	C	N	N	N
28.0 ATM, Not Attached to a Bank or Other Building	N	N	N	N	N	N	N	N	S	N	N	S	N	N	N	N	N	N	N	N
29.0 Marina	N	N	N	N	S	S	N	N	N	S	N	S	N	N	S	N	N	N	N	N
30.0 Art Studio	C	C	C	C	C	C	C	C	C	N	C	N	N	C	N	N	N	N	N	N
31.0 City Park	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
LAND USE CATEGORY	R1	R2	R3	R4 & R6	R5	C1	C2	C3	C4	C5	NC	I	GC	PH	M	RP	NRPO	TMC	S	

<sup>1</sup> Allowed with permit from the CEO as part of a mixed-use development.

<sup>2</sup> See performance standard in Section 11.27.

<sup>3</sup> See performance standard in Section 11.36.

<sup>4</sup> Lot must have been vacant for 10 years prior to construction of the parking lot.

(\*) must be placed within an existing or proposed non-tower structure

<sup>5</sup> Only of allowed in the underlying district.

[Land Use Table amended May 5, 2004, February 24, 2010, August 25, 2010, February 22, 2012, September 25, 2013, June 22, 2016 and May 24, 2017]

### **SECTION 9.03 MOBILE HOME PARK**

Mobile home parks are allowed only in the Mobile Home Park Overlay District. (See Section 11.20.)

### **SECTION 9.04 USES ALLOWED IN THE PARK AND OPEN SPACE DISTRICT**

The uses allowed in the Park and Open Space District are those described in Section 8.16. [amended May 16, 2001]

### **SECTION 9.05 PROVISIONAL USE PERMITS**

The City Council has the authority to issue Provisional Use Permits (see Section 11.24).

### **SECTION 9.06 PROHIBITED USES**

Uses that are not included in the Land Use Table or in Sections 9.03, 9.04, or 9.05 are prohibited.

\* \* \*

## **ARTICLE 10: GENERAL PERFORMANCE STANDARDS**

### **SECTION 10.01 APPLICABILITY AND PURPOSE**

These standards apply to all new or expanded uses of land and structures (unless otherwise specified) whether or not specific approval or a permit is required; in some cases, they apply to existing uses. The purposes of these standards are to help implement the Comprehensive Plan; to balance the rights of landowners to use their land with the rights of abutting landowners; and to protect the public's health, safety, and general welfare. If a landowner or applicant can meet the intent and purpose of the performance standard by an equivalent method, that equivalent method may be approved. The burden of proof as to whether the performance standard and the intent and purpose of the performance standard is met is that of the applicant or landowner. The Review Authority may waive the requirement to meet a standard if the applicant or landowner requests the waiver, in writing, and the Review Authority finds that, due to special circumstances, meeting the standard is not required in the interest of public health, safety, and general welfare, or is inappropriate. Waivers may be granted only in writing with written findings of facts and conclusions, and may be subject to conditions. Where the Section calls for review by, or allows a waiver by, the Planning Board such review or waiver may be by the Staff Review Committee if the Staff Review Committee is allowed to act on the application.

### **PART A PUBLIC FACILITY AND SAFETY PROTECTION**

#### **SECTION 10.02 ACCESS CONTROL AND TRAFFIC IMPACTS**

Except as otherwise noted, this section applies to new or expanded non-residential, Home occupation-B, and multi-family uses. The purpose of this section is to limit the number of conflict points that a vehicle may experience in its travel, separate conflict points as much as possible and remove slower turning vehicles which require access to the adjacent sites from the through-traffic lanes as efficiently as possible. [amended May 16, 2001 and August 6, 2003]

- A. Any lot shown on property tax maps of the City of Bath as of the date of the adoption of this section is permitted 1 access drive to any adjacent public street, notwithstanding other provisions of this section. This applies to all uses. [amended August 6, 2003]
- B. Access to lots is limited to 1 access drive for lots with less than 100 feet of frontage. Lots with more than 100 feet of frontage are limited to 1 access drive for each 250 feet of frontage or fraction thereof, and the access drives must be separated by at least 75 feet. This applies to all uses. [amended August 6, 2003]

- C. Access to parking spaces must be internal only. Other than the access drive all other areas must be closed off from potential access with curbing or similar materials. No access drive may be wider than 30 feet at the point of intersection of the street.
- D. The development must ensure safe interior circulation within its site by separating pedestrian and vehicular traffic and by providing parking and loading areas required in this Code.
- E. Unless otherwise approved by the Planning Board, if a lot has frontage on more than 1 street, the access drive must be located on the street that has the least potential for traffic congestion and for hazards to traffic and pedestrians. This applies to all uses. [amended August 6, 2003]
- F. Unless there is no other feasible means of access, an access drive may not be located in a residential district to provide access to uses other than those permitted in that residential district.
- G. The street to which an access drive connects and the streets that are expected to carry traffic to the use served by the access drive must have traffic-carrying capacity and be suitably improved to accommodate the amounts and types of traffic generated by the proposed use. A development may not reduce any street's or intersection's Level of Service to "E" or below.
- H. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provisions must be made for turning lanes, traffic directional islands, frontage streets, and traffic controls within the public streets.
- I. Access drives must be designed with enough on-site vehicular-stacking capacity so as to prevent queuing of entering vehicles on any street.
- J. Where topographic and other conditions allow, provisions must be made for circulation connections to adjoining lots of similar existing or potential use when such connections will enable the public to travel between 2 existing or potential uses without need to travel onto a street, and when such circulation connections are in the best interest of public safety. Such connections must be privately owned and maintained.
- K. Where an access drive meets a street it must be designed in profile and grading, and located, so as to provide 10 feet of sight distance for every mile per hour (mph) of posted speed. If the street is not posted, the posted maximum speed is assumed to be 25 mph. The measurement must be from the driver's seat of a vehicle standing on that portion of the driveway, with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3½ feet above the ground to the top of an object 4¼ feet above the pavement.

- L. Unless there is no other feasible means of access, an access drive may not be located less than 50 feet from the point of tangency of streets at an unsignalized intersection and less than 100 feet from the point of tangency of streets at any signalized intersection. This applies to all uses. [amended August 6, 2003]

### **SECTION 10.03 ACCESS DRIVE CONSTRUCTION**

- A. Except as otherwise noted this section applies to all new or expanded uses.
- B. Access drives that connect to public streets must be approved by the Public Works Director, the Fire Chief, and the Police Chief. Access drives must provide for safe vehicle, including emergency vehicle, access. The Public Works Director, the Fire Chief, and the Police Chief may approve an access drive with conditions attached to the construction of any buildings served by the access drive if such conditions are needed to provide for fire safety.
- C. Access drives must be designed and constructed so that stormwater drains to either side of the drive and not into the street nor down the drive from the street. Installation of a culvert may be required to carry stormwater from one side of the access drive to the other side. The size and location of the culvert must be approved by the Public Works Director.
- D. An access drive must be paved within the street right-of-way with at least 2 inches of bituminous concrete pavement over a gravel subbase at least 6 inches thick. An access drive serving a multi-family or non-residential use, regardless of access drive volume, must be paved with bituminous concrete pavement over a gravel subbase at least 6 inches thick within the street right-of-way and for a distance of 30 feet from the paved portion of the street right-of-way.
- E. For multi-family and non-residential uses the slope of an access drive may not exceed 3 percent for a distance of 40 feet from the point of intersection of a street, and may not have a slope in excess of 10 percent for the entire length.
- F. The angle of intersection between the access drive and the street must be as close to 90 degrees as possible. The radius for curbs into and out of the lot must be as close to 30 feet as possible.
- G. Additional Requirements in the Shoreland Zone.** [added October 28, 2009]
  - 1. Access drives must be set back at least 75 feet, horizontal distance, from the normal high-water line of rivers, 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 access drive setback requirement may be no less than 50 feet, horizontal distance, upon clear



showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, 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 water body, tributary stream, or wetland.

On slopes of greater than 20 percent the access drive setback must be increased 10 feet, horizontal distance, for each 5 percent increase in slope above 20 percent.

Section 10.03, G, does not apply to approaches to water crossings or to access drives that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Access drives providing access to permitted structures within the setback area must comply fully with the requirements of Section 10.03, G, except for that portion of the access drive necessary for direct access to the structure and necessary to meet the American's with Disabilities Act.

2. New access drives are prohibited in a Resource Protection Zone except that the Planning Board may grant a permit to construct an access drive to provide access to permitted uses within the zone. An access drive may also be approved by the Planning Board in a Resource Protection Zone, upon a finding that no reasonable alternative route or location is available outside the zone. When an access drive is permitted in a Resource Protection District the access drive must be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.
3. Access drive side slopes may be no steeper than a slope of 2 horizontal to 1 vertical, and must be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 10.14.
4. Access drive grades may be no greater than 10 percent except for segments of less than 200 feet.
5. In order to prevent access drive surface drainage from directly entering water bodies, access drives must be designed, constructed, and maintained to empty onto an un-scarified buffer strip at least 50 feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage that is directed to an un-scarified buffer strip must be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
6. Ditch relief (cross drainage) culverts, drainage dips, and water turnouts must 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 access drive or ditch. To accomplish this, the following criteria must be met:

(a) Ditch relief culverts, drainage dips, and associated water turnouts must be spaced along the access drive 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

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

(c) On sections having slopes greater than 10 percent, ditch relief culverts must be placed at approximately a 30 degree angle down slope from a line perpendicular to the centerline of the access drive.

(d) Ditch relief culverts must be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends must be stabilized with appropriate materials.

7. Ditches, culverts, bridges, dips, water turnouts, and other storm water runoff control installations associated with access drive must be maintained on a regular basis to assure effective functioning.

## SECTION 10.04 CORNER CLEARANCES

This Section applies to existing as well as new or expanded uses.

On a corner lot in any district, no building or structure may be erected, and no fence, wall, hedge, or other planting other than shade trees may be erected, placed, or maintained above a height of 3 feet above the street surface within the three-sided area formed by the intersecting street lines and a line joining them at points that lie 20 feet distant from the point of intersection, measured at the edge of the street's pavement.



## SECTION 10.05 MULTIPLE PRINCIPAL BUILDINGS ON A LOT

This Section applies to all new or expanded uses.

Where a parcel of land will be occupied by more than 1 principal building, each principal building must be located so that each can meet the space and bulk regulations of the district in which it is located if the lot is ever divided, or the overall plan for the layout and development must receive Site Plan Approval from the Planning Board with a condition of approval being that the lot may not be divided in the future unless the space and bulk regulations of the district in which the lot is located are met. [amended August 6, 2003]

## SECTION 10.06 PARKING AND LOADING

### A. Off-street Parking, Number of Spaces Required

This Section applies to new or expanded uses.

1. Land may not be used and buildings and structures may not be erected, enlarged, or used unless the requirements of this section are met. Parking spaces can be provided by means of parking lot spaces or parking garage spaces.
2. The requirement to provide off-street parking does not apply in the C1 District.

3. Uses required to provide more than 100 parking spaces may request a reduction in the parking requirement if evidence is presented that programs such as car-pooling, van-pooling, bus service provided by the user, or similar activities result in a reduced demand for parking. The Planning Board may grant such a reduction but may require that land be reserved to provide additional parking, if experience shows that it is necessary.
  
4. The following minimum off-street parking must be provided and maintained in cases of new construction, expansions, or changes in use. In computing the number of spaces required, lots with 2 or more principal uses must meet the combined requirement of the different uses. Where the applicant or Planning Board finds that the following table is not appropriate for the proposed use, the applicant may provide the Planning Board with an analysis of parking consistent with recognized, appropriate methodology. Such an analysis should include, at a minimum, occupancy demand, duration and turnover, possibility of sharing parking with other land uses that have different time-of-day parking demand, and assessment of alternative uses. The Planning Board is not bound by the findings of an applicant's study and may provide its own evidence to the contrary.

LAND USE CATEGORY	PARKING REQUIREMENT
<b>1.0 Residential</b>	
1.1 Single-family dwelling	
1.1.1 Site-built	2 spaces per dwelling unit
1.1.2 Mobile home on individual lot	2 spaces per dwelling unit
1.2 Two-family dwelling	2 spaces per dwelling unit
1.3 Multi-family dwelling	1.75 spaces per dwelling unit
1.4 Cluster development	2 spaces per dwelling unit
1.5 In-home lodging	1 space per room rented
1.6 Home occupations	
1.6.1 Home occupation-A	No additional parking spaces required
1.6.2 Home occupation-B	the spaces for the dwelling unit plus 2 spaces, plus 1 space for each employee not living in the dwelling unit
<b>2.0 Sales or Rental of Goods, Merchandise, or Equipment</b>	
2.1 No storage and only incidental display of goods outside fully enclosed building	
2.1.1 High-volume traffic generation, no drive-up window	
2.1.1.1 Miscellaneous	
2.1.1.1.1 With less than 5,000 square feet of gross floor area	1 space per 200 square feet of building gross floor area
2.1.1.1.2 With 5,000 square feet or more of gross floor area	1 space per 300 square feet of building gross floor area
2.1.1.2 Convenience store	1 space per 100 square feet of building gross floor area
2.1.2 High-volume traffic generation, with drive-up window	1 space per 200 square feet of building gross floor area, plus queuing space for 5 cars per window or station
2.1.3 Low-volume traffic generation	1 space per 500 square feet of building gross floor area

2.2 With storage and display outside fully enclosed building	1 space per 250 square feet of building gross floor area
<b>3.0 Office, Clerical, Research, or Services</b>	
3.1 All operations conducted entirely within fully enclosed building	
3.1.1 Operations designed to attract and serve numerous customers or clients on the premises, such as the offices of attorneys, physicians, dentists, other professions, travel agents, banks, or government office buildings	1 space per 250 square feet of building gross floor area
3.1.2 Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use	1 space per 400 square feet of building gross floor area
3.2 Operations such as banks with drive-up windows	1 space per 200 square feet of building gross floor area, plus queuing space for 6 cars per window or station
<b>4.0 Manufacturing, Processing, Creating, Repairing, Renovating, or Assembling of Goods, Merchandise, or Equipment</b>	
4.1 All operations conducted entirely within fully enclosed building	1 space per 300 square feet of building gross floor area
4.2 Operations conducted within or outside fully enclosed building	1 space per 400 square feet of building gross floor area
<b>5.0 Painting or Cleaning of Goods, Merchandise, or Equipment</b>	1 space per 400 square feet of building gross floor area
<b>6.0 Educational and Cultural Use</b>	
6.1 Schools	
6.1.1 Public or private elementary or secondary schools	1.75 spaces per classroom for elementary schools; 5 spaces per classroom for secondary schools
6.1.2 Public or private post-secondary schools	5 spaces per classroom
6.1.3 Special-purpose schools	1 space per 2 students, based on maximum capacity
6.2 Libraries and museums, including associated educational and instructional activities	1 space per 300 square feet of building gross floor area
<b>7.0 Assembly or Meeting Facility</b>	
7.1 Private meeting facility	1 space per 400 square feet of building gross floor area
7.2 Function or assembly facility	1 space per 200 square feet of building gross floor area
7.3 Community activity center	1 space per 300 square feet of building gross floor area
7.5 Soup kitchen	1 space per 600 square feet of building gross floor area

<b>8.0 Recreation, Amusement, Entertainment</b>	
8.1 Activity conducted entirely within building or roofed structure	
8.1.1 Bowling alleys; indoor skating rink, swimming pool, or tennis court; billiard and pool halls; athletic and exercise facilities; and similar uses	1 space for every 3 persons that the facility is designed to accommodate when fully utilized, plus 1 space per 200 square feet of gross floor area used in a manner not subject to such calculation
8.1.2 Movie theater or live performance hall	1 space per 4 seats, based on maximum occupancy
8.2 Activity conducted primarily outside enclosed buildings or roofed structures	
8.2.1 Facilities such as athletic fields, golf courses, tennis courts, and swimming pools, not accessory to another use such as a school or residential use	1 space for every 3 persons that the facility is designed to accommodate when fully utilized, plus 1 space per 200 square feet of gross floor area used in a manner not subject to such calculation
8.2.2 Golf driving ranges not accessory to golf courses, par 3 golf courses, miniature-golf courses, waterslides, and similar uses	Miniature-golf course, waterslide, and similar uses: 1 space per 300 square feet of area, plus 1 space per 250 square feet of building gross floor area; driving range: 1 space per tee, plus 1 space per 250 square feet of building gross floor area; par 3 golf course: 2 spaces per golf hole, plus 1 space per 250 square feet of building gross floor area
8.2.3 Nonmotorized mountain bike, paint-ball course, ski area, or similar facility, operated as a business	1 space for every 3 persons that the facility is designed to accommodate when fully utilized, plus 1 space per 250 square feet of building gross floor area
8.2.4 Horseback-riding ring or stables, including the boarding or breeding of horses, operated as a business	1 space for every 3 persons that the facility is designed to accommodate when fully utilized, plus 1 space per 200 square feet of building gross floor area
<b>9.0 Institutional Residence, Care, Confinement Facilities</b>	
9.1 Hospitals	2 spaces per bed or 1 space per 150 square feet of gross floor area, whichever is greater
9.2 Nursing home, child-care facility, or assisted residential facility	For nursing home and child-care facility - 3 spaces for every 5 beds. For assisted residential facility – 1 space per employee on the largest shift, plus 1 space per 4 assisted residential units.
<b>10.0 Restaurants</b>	
10.1 Carry-out, delivery service, and consumption outside fully enclosed structure allowed. Service to customers remaining in vehicles not allowed.	1 space per 100 square feet of building gross floor area, plus 1 space for every 4 outside tables if applicable
10.2 Carry-out, delivery service, service to customers remaining in vehicles, and consumption outside fully enclosed structure allowed.	1 space per 100 square feet of building gross floor area, plus queuing space for 8 cars per drive-up window or station
10.3 A restaurant whose principal business is the sale of beverages, including liquor, at counters or tables and where food may or may not be served, and there is no carry-out or delivery service, no service to customers remaining in vehicles, no consumption outside fully enclosed structure	1 space per 100 square feet of building gross floor area

<b>11.0 Accommodations</b>	
11.1 Hotel, motel, inn, tourist cabins, or similar business providing overnight accommodations	
11.1.1 Those businesses that: may include accessory uses such as a restaurant, meeting facilities, a swimming pool, or exercise facilities; or have more than 40 rental rooms.	1.25 spaces for every room to be rented, plus spaces required for restaurant facilities as required in this table
11.1.2 Those businesses that do not include accessory uses that serve customers who are not also renting a room and have no more than 40 rental rooms.	1.2 spaces for every room to be rented.
11.4 Bed and Breakfast	1 space per rental bedroom, plus 2 spaces for the owner's dwelling unit
<b>12.0 Motor Vehicle-related Sales and Service Operations</b>	1 space per 250 square feet of building gross floor area, 1 space for every 3 employees on the maximum shift, queuing for 5 cars per washing operation, queuing space for 3 cars per pump
<b>13.0 Storage and Parking</b>	1 space for every 2 employees on the maximum shift
<b>15.0 Service and Businesses Related to Animals</b>	1 space per 200 square feet of building gross floor area
<b>16.0 Agriculture, Forestry, Mining</b>	
16.1 Agricultural operations and farming	1 space for every employee on the maximum shift
16.2 Timber-harvesting	1 space for every employee on the maximum shift
16.3 Mineral extraction, with or without on-site sales of products	1 space for every employee on the maximum shift
16.4 Sawmill	1 space for every employee on the maximum shift
16.5 Farmstand	1 space per 100 square feet of building gross floor area
<b>17.0 Transportation and Safety Facilities</b>	
17.1 Airport	1 space per 250 square feet of building gross floor area
17.2 Public works facilities	1 space for every employee on the maximum shift
17.3 Public safety facilities	1 space for every employee on the maximum shift
17.4 Transportation terminal	1 space per 400 square feet of building gross floor area
17.5 Truck terminal	1 space per 400 square feet of building gross floor area
<b>18.0 Dry Cleaner, Laundromat</b>	1 space per 250 square feet of building gross floor area
<b>19.0 Utility Facilities</b>	
19.2 Public sewage treatment facility	1 space for every employee on the maximum shift
19.3 Recycling or waste-transfer station, sanitary land fill	1 space for every employee on the maximum shift
<b>21.0 Open-air Market</b>	1 space per 500 square feet of area used for storage, display, or sales
<b>22.0 Funeral Home</b>	1 space per 100 square feet of building gross floor area

<b>23.0 Cemetery and Crematorium</b>	
23.3 Crematorium	0.25 space per seat of chapel capacity, plus 0.33 space per employee
<b>24.0 Day-care Uses</b>	1 space per 300 square feet of building gross floor area devoted to the day-care use
<b>25.0 Temporary Uses</b>	Spaces as required by the Reviewing Authority or CEO
<b>26.0 Commercial Greenhouse Operations</b>	
26.1 No on-premises sales	1 space per employee
26.2 With on-premises sales	1 space per 200 square feet of building gross floor area
<b>27.0 Camping Areas</b>	1 space per campsite, plus 1 space for every employee on the maximum shift
<b>28.0 ATM, Not Attached to a Bank or Other Building</b>	Queuing space for 8 cars per drive-up station
<b>29.0 Marina</b>	1 space per 2 boat slips or moorings, plus 1 space per 250 square feet of building gross floor area
<b>30.0 Art Studio</b>	2 spaces
<b>31.0 City Park</b>	As determined by the Planning Board based on need and intended use.

(Note: Where these calculations result in fractions of a space, the required number of spaces is the next higher whole number.)

[Off-street Parking, Number of Spaces Required Table amended May 16, 2001, September 22, 2010 and September 25, 2013]

## **B. Parking Lot Construction and Layout**

Unless specified otherwise below, this Section applies to new or expanded non-residential and multi-family uses. Parking lots must conform to the following standards: [amended May 16, 2001]

1. Appropriate access drives from streets, as well as maneuvering areas, must be provided.
2. The surface of access drives, maneuvering areas, and parking areas must be uniformly graded, with a subgrade consisting of well-compacted gravel or equivalent materials at least 6 inches deep.
3. The access drive, maneuvering areas, and parking areas must be paved with at least 2 inches of bituminous concrete.
4. Where the Planning Board deems it necessary, a stormwater management plan for parking areas must be submitted. The plan must utilize TR55 or a similar analytical process and must plan for the 2- and 25-year storm events, establish



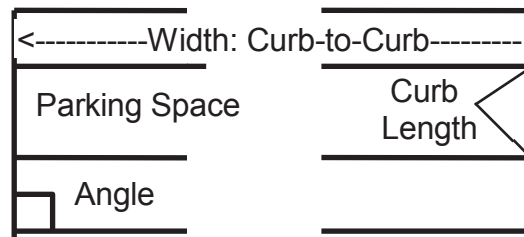
whether there is capacity in area drainage systems, establish whether the stormwater requires treatment for contaminants.

5. The parking lot is required to have minimum slopes of 1 percent for all surfaces.
6. The Planning Board may waive the requirement of Items 1 through 5 for accessory parking lots of 5 or fewer vehicles.
7. No new parking space, lot, or area may be located in a Yard Area or buffer zone required by this Code, except that parking for a single- or 2-family dwelling may be located in an access drive in a front Yard Area. This applies to all new or expanded uses. [amended May 16, 2001]
8. Except in the C4, C5, I, and GC districts, and as allowed in 7, above, parking spaces may not be located closer to any street on which the lot has frontage than any portion of the principal building. This applies to all new or expanded uses. [amended May 16, 2001, and August 6, 2003]
9. Parking-lot spaces and parking-lot aisle layout for all new or expanded uses must conform to the following curb length and curb-to-curb width standards: [amended May 16, 2001, and August 6, 2003]

LAYOUT	PARKING ANGLE	CURB LENGTH	WIDTH, CURB-TO-CURB
one-/two-way, double-loaded aisles	90 degrees	9.00 feet	60.00 feet
one-/two-way, single-loaded aisles	90 degrees	9.00 feet	42.00 feet
two-way, double-loaded aisles	60 degrees	10.50 feet	59.00 feet
two-way, single-loaded aisles	60 degrees	10.50 feet	40.00 feet
One-way, double-loaded aisles	60 degrees	10.50 feet	53.50 feet
one-way, single-loaded aisles	60 degrees	10.50 feet	34.50 feet
two-way, double-loaded aisles	45 degrees	12.75 feet	56.50 feet
two-way, single-loaded aisles	45 degrees	12.75 feet	38.50 feet
one-way, double-loaded aisles	45 degrees	12.75 feet	48.50 feet

one-way, single-loaded aisles	45 degrees	12.75 feet	30.00 feet
two-way, double-loaded aisles	30 degrees	15.00 feet	51.00 feet
two-way, single-loaded aisles	30 degrees	15.00 feet	35.50 feet
one-way, double-loaded aisles	30 degrees	15.00 feet	43.00 feet
one-way, single-loaded aisles	30 degrees	15.00 feet	27.50 feet

Diagram of Terms Used in Item 9



10. Access drives are permitted to cross Yard Areas only to provide access to parking areas. Internal circulation within a parking area may not be located in a Yard Area. This applies to all new or expanded uses. [amended May 16, 2001]
11. There must be adequate queuing distance between the City street and any parking lot such that vehicles can enter the parking lot quickly and efficiently without creating a point of conflict within the parking lot or on the street.
12. Acceleration and/or deceleration lanes are required on a street that provides access to a parking lot if, in the judgment of the Planning Board, the volume and speed of the traffic on that street require such lanes for highway safety.
13. The Planning Board, where safety requires, may require shared access with neighboring properties.
14. To provide for safe movement of vehicles as well as pedestrians, islands and landscaped median strips are required for any parking lot with 25 or more spaces.
15. The parking-lot layout and management plan must provide for storage of snow plowed from the lot. This may be accomplished by a storage location either on-site or off-site. Plowed-snow must be stored so that it does not damage the parking-lot landscaping, buffering, or screening. The parking-lot stormwater management plan must consider stored-snow melt water.

### **C. Parking Lot Landscaping**

This Section applies to new or expanded non-residential and multi-family uses.

1. Islands and landscaped median strips are required to provide for clear traffic movement and to break up parking areas in any parking lot with more than 25 spaces. The median strip must have plantings of sufficient density and volume to provide a filtered screening effect. [amended August 6, 2003]
2. Parking lots with 5 or more spaces must be screened from any abutting residential use or residential zone and from the public streets. Screening may be accomplished by evergreen shrubs, fences, earthen berms, or a combination of these. The purpose of the screening is to soften the view of the parked vehicles, not necessarily to totally eliminate any view of the vehicles.

### **D. Off-street Loading Standards**

This Section applies to new or expanded non-residential uses. It does not apply in the C1 Zone.

1. The following minimum off-street loading bays or berths must be provided and maintained in the case of new construction, alterations, and changes of use:
  - (a) Land Use Categories 3.0 and 11.1 with a gross floor area of more than 100,000 square feet: 1 bay
  - (b) Land Use Categories 2.0 and 4.0 with a gross floor area of more than 5,000 square feet:
    - 5,001 to 40,000 square feet: 1 bay
    - 40,001 to 100,000 square feet: 2 bays
    - 100,001 to 160,000 square feet: 3 bays
    - 160,001 to 240,000 square feet: 4 bays
    - 240,001 to 320,000 square feet: 5 bays
    - 320,001 to 400,000 square feet: 6 bays
2. Each loading bay must have minimum dimensions of 70 by 14 feet and may be located either within a building or outside and adjoining an opening in the building. Every part of the loading bay must be located completely off the street. In the event that trucks, trailers, or other motor vehicles larger than the dimensions of the minimum loading bay usually serve the building, additional space must be provided so that these vehicles may park or stand completely off the street.
3. The provisions of this section for off-street loading are not to be construed as prohibiting incidental curbside business deliveries, dispatches, or services,

provided they are in compliance with all applicable state and local traffic regulations.

**E. Additional Requirements in the Shoreland Zone.** [added October 28, 2009]

1. Parking areas must meet the shoreline and tributary stream setback requirements for buildings for the district in which such areas are located, except that in the C5 and I Zones parking areas must be set back at least 25 feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in zones other than C5, C1, and I Zones may be no less than 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.
2. Parking areas must be designed to prevent stormwater runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.

**SECTION 10.07 PEDESTRIAN CIRCULATION**

This Section applies to new or expanded non-residential and multi-family uses.

A site plan must provide for a system of pedestrian walkways within the development appropriate to the type and scale of development. This system must connect the major building entrances and exits with parking areas and with existing or planned sidewalks in the vicinity of the development. The pedestrian walkway network may be located either in or outside the street right-of-way. The system must be designed to link the use with residential, recreational, and commercial facilities; schools; bus stops; and sidewalks in the neighborhood.

**SECTION 10.08 SETBACKS FROM FUTURE STREETS**

This Section applies to new or expanded uses.

When the City or state has identified the need for a new road to serve existing or future vehicular movement and the location of the proposed right-of-way has been established and can be located on the ground, development that encroaches on the proposed right-of-way will not be permitted unless:

- A. The development is set back from the proposed right-of-way as if it were an established public street; or
- B. The City or State is offered the opportunity to purchase the right-of-way and declines to purchase the right-of-way. The offer to sell must provide the City or state with at

least 60 days to accept or reject the offer. If the City or state does not purchase the land, the development may be located within the proposed right-of-way.

Nothing in this Section diminishes the power of the City or State to exercise its right of eminent domain.

## **SECTIONS 10.09-10.13 RESERVED**

## **PART B ENVIRONMENTAL AND HEALTH PROTECTION**

### **SECTION 10.14 EROSION AND SEDIMENTATION CONTROL**

This section applies to existing as well as new or expanded non-residential and multi-family uses in non-Shoreland Zone areas, and to all existing as well as new or expanded uses in the Shoreland Zone. [amended May 16, 2001]

- A. A person may not perform any act or use any land in a manner that would cause substantial or avoidable erosion or create a public nuisance.
- B. All activities that require a permit and involve filling, grading, excavation, or other similar activities that result in unstabilized soil conditions require a written soil erosion and sedimentation control plan. The plan must be submitted as part of a Site Plan Review application and must include, where applicable, provisions for the following:
  - 1. mulching and revegetation 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
- C. To create the least potential for erosion, development must be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be necessary are to be avoided. Natural contours should be followed as closely as possible, except where site conditions require and no alternative sites are possible.
- D. Erosion and sedimentation measures must be in operation during all stages of the activity. The amount of exposed soil at every phase of construction must be minimized to reduce the potential for erosion.
- E. Any exposed ground area must be temporarily or permanently stabilized within 1 week from the time it was actively worked by use of riprap, sod, seed, mulch, or other

effective measures. In all cases, permanent stabilization must occur within 9 months of the initial date of exposure. In addition, the following requirements apply:

1. Where mulch is used, it must be applied at a rate of 1 bale per 500 square feet and must be maintained until a catch vegetation is established.
  2. Anchoring the mulch with netting, peg and twine, or another suitable method may be required to maintain the mulch cover.
  3. Additional measures may be taken where necessary to avoid siltation into any water body, including the use of staked hay bales and/or a silt fence.
- F. Natural and manmade drainageways and drainage outlets must be protected from erosion caused by water flowing through them. Drainageways must be designed and constructed to carry water from a 25-year storm or greater, and must be stabilized with vegetation or lined with riprap.

## **SECTION 10.15 HAZARDOUS OR DANGEROUS WASTES AND MATERIALS**

This Section applies to existing as well as new or expanded non-residential uses.

The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special, or radioactive must comply with the standards of those agencies. Flammable or explosive liquids, solids, or gases may not be stored in bulk within 75 feet of any lot line if stored aboveground, nor within 40 feet of any lot line if stored underground. All materials must be stored in a manner and location that are in compliance with applicable rules and regulations of the Maine Department of Public Safety and any other appropriate federal, state, and local regulations.

All solid waste must be disposed of at a licensed disposal facility with adequate capacity to accept the development's wastes.

## **SECTION 10.16 REFUSE DISPOSAL**

This Section applies to new or expanded non-residential and multi-family uses.

Owners or occupants must provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. Dumpsters may not be located in Yard Areas or parking spaces and must be screened from abutting properties, public streets, and the Kennebec River. The Planning Board must consider the impact of particular industrial or chemical wastes or byproducts on the City's facilities in terms of volume, flammability, and/or toxicity, and may require the applicant to dispose of such wastes elsewhere. The Planning Board may require the applicant to specify the amount

and exact nature of all industrial or chemical wastes to be generated by the proposed operation. The Planning Board may require the applicant to institute a recycling plan.

### **SECTION 10.17 SEWAGE DISPOSAL**

This Section applies to existing as well as new or expanded uses. Any building or structure that generates sewage waste must be connected to an approved sewage-disposal system in accordance with provisions of the Maine State Plumbing Code.

### **SECTION 10.18 STORMWATER MANAGEMENT**

This Section applies to new or expanded non-residential and multi-family uses in non-Shoreland Zone areas, and to all existing as well as new or expanded uses in the Shoreland Zone. Adequate provisions must be made for the collection and disposal of all stormwater that runs off driveways, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan. The stormwater drainage system and maintenance plan must prevent adverse impacts on abutting or downstream properties, and the City's stormwater or sanitary sewer system. [amended May 16, 2001]

- A. To the extent possible, the development must retain stormwater on-site using natural features of the site.
- B. Unless the discharge is directly to the Kennebec River, stormwater-runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.
- C. The applicant must demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, or that the applicant will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.
- D. All natural drainage-ways must be preserved at their natural gradients and may not be filled or converted to a closed system unless approved as part of the Site Plan Review.
- E. The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
- F. The design of the stormwater drainage system must take into account the upstream runoff that must pass over or through the site to be developed and must provide for this movement.

- G. The biological and chemical properties of the receiving waters may not be degraded by stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required.

## **SECTION 10.19 WATER QUALITY PROTECTION**

This Section applies to existing as well as new or expanded non-residential and multi-family uses in non-Shoreland Zone areas, and to all existing as well as new or expanded uses in the Shoreland Zone. [amended May 16, 2001]

- A. A person or activity may not locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into surface water or groundwater 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.
- B. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials must meet the standards of the MEDEP and the State Fire Marshall's Office.
- C. No activity may 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 water body. [added October 28, 2009]

## **SECTION 10.20 ADEQUATE WATER SUPPLY**

This Section applies to existing as well as new or expanded uses. There must be an adequate water supply available for the use.

## **SECTIONS 10.21-10.25 RESERVED**

## **PART C NEIGHBORHOOD PROTECTION**

### **SECTION 10.26 ACCESS TO BACK LOTS** [entire Section amended May 16, 2001]

- A. Except as otherwise noted this section applies to all new or expanded uses.



- B. A single lot of record legally existing as of August 9, 2000, may be used for uses allowed in the district, whether or not the lot has frontage on a street, or whether or not it has the district required lot width as measured along a street, provided that:
1. The lot is connected to a street by an access drive.
  2. The access drive is either over a portion of the lot or is over a right-of-way serving the lot.
  3. If over a right-of-way, the right-of-way is a permanent easement to the lot served by the access drive.
  4. The land encumbered by the right-of-way is not used to meet the minimum lot area of the lot served by the access drive nor the lot encumbered by the right-of-way.
  5. The access drive is constructed so that it is passable by City of Bath emergency vehicles and is approved by the Director of Public Works Department and the Fire Chief.
- C. Any single lot of record legally existing as of August 9, 2000, any portion of which is in the R3 district, may be divided once and the new lots need not have frontage on a street and need not have frontage that is equal to the R3 lot width as measured along a street, provided that: [amended August 6, 2003]
1. The lot has a length and width large enough to allow a rectangle to be placed inside the boundaries of the lot, one side of the rectangle being equal to the minimum lot width in the R3 District and the other side of the rectangle being equal to the minimum area of the R3 District divided by the minimum lot width of the R3 District. [Amended October 3, 2001]
  2. The lot is connected to a street by an access drive.
  3. The access drive is over a portion of the lot or is over a right-of-way serving the lot, which is at least 20 feet wide.
  4. If the access drive is over a right-of-way, the right-of-way is a permanent easement to the lot served by the access drive. [amended August 6, 2003]
  5. The land encumbered by the right-of-way is not used to meet the minimum lot area of the lot served by the access drive nor the lot encumbered by the right-of-way.
  6. The access drive is constructed so that it is passable by City of Bath emergency vehicles, has an adequate turn-around, and is approved by the Director of Public Works Department and the Fire Chief.

If an additional lot is created from either of the lots existing after the first division, the access drive must meet the street standards of Article 13, regardless of when said additional lot is created.

- D. In all districts other than the R3 District, lots that are created after August 9, 2000, must have frontage, which is equal to the lot width requirement of the district, on a street.

## **SECTION 10.27 EXTERIOR LIGHTING**

- A. This Section applies to new or expanded non-residential and multi-family uses.
- B. Any land use may have adequate exterior lighting to provide for safety during nighttime hours. Lighting may be used that serves security, safety, and operational needs but that would not directly or indirectly affect abutting properties or that would impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures must be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or adjacent dwellings, and so that they do not unnecessarily light the night sky. Direct or indirect illumination may not exceed 0.2 foot-candles at the lot line.
- C. All exterior lighting, except security lighting, must be turned off between 11 p.m. and 6 a.m. unless located on the site of a non-residential use that is open for business during that time frame.
- D. Wiring to light poles must be underground unless site conditions make it impractical.

## **SECTION 10.28 HISTORIC AND ARCHEOLOGICAL RESOURCES**

This Section applies to new or expanded non-residential and multi-family uses.

If any portion of a site being proposed for development has been identified as potentially containing historic or archeological resources, the applicant must notify the Maine Historic Preservation Commission. The development must include appropriate measures for protecting these resources, including but not limited to modifying the proposed design of the site, timing of construction, and limiting the extent of excavation.

## **SECTION 10.29 LANDSCAPING AND SCREENING** [entire Section amended May 26, 2010]

### **A. Applicability**

This Section applies to new or expanded multi-family and non-residential uses.

## **B. When Required**

1. Landscaping must be provided and maintained for all uses that require Site Plan Review. The landscaping must be part of an overall design of the site, integrating the various elements of site design, and preserving and enhancing the identity of the site. The landscaping must be located on the lot requiring Site Plan Review. Landscaping may include plant materials such as trees, shrubs, ground covers, perennials and annuals, and other materials such as rocks, water, sculpture, art, walls, and fences. Landscaping along public ways must be kept trimmed so as to not interfere with pedestrian or motor vehicle travel, safety, or snowplowing. Landscaping must not interfere with above- or below-ground utilities. A landscaping plan prepared by a landscape architect licensed in the State of Maine must be submitted as part of the Site Plan Review application. The plan must identify existing and proposed landscaping features, where they are or will be located, and the species, and size of plant materials at planting and at maturity. Functional maturity of plant materials must be achieved within 3 years. The plan also must include proposed methods of protecting existing landscaping during construction and long-term care of both existing and proposed landscaping, including care during snowplowing. The plan must also comply, if applicable, with the Bath Street Tree Ordinance.
2. The type of screening depends on the land use for which a parcel is intended, and its impact on adjacent properties and their uses. A screening plan prepared by a landscape architect licensed in the State of Maine must be submitted as part of the Site Plan Review application. The plan must identify existing and proposed screening elements, where they are or will be located, and the species, and size of plant materials at planting and at maturity. Functional maturity of plant materials must be achieved within 3 years. The plan also must include proposed methods of protecting existing plant materials during construction and long-term care of both existing and proposed plantings, including care during snowplowing. Screening must not interfere with above- or below-ground utilities. The plan must comply, if applicable, with the Bath Street Tree Ordinance. One or more of the following types of screening will be required.

## **C. Full Screen Landscaping.**

1. The purpose of Full Screen Landscaping is to act as a visual barrier.
2. Full Screen Landscaping is required between non-residential uses and residential uses or lots zoned for residential use.
3. Full Screen Landscaping must consist of the following:
  - (a) A solid wooden fence at least 6 feet in height; and/or

- (b) A mix of primarily evergreen trees and shrubs interspersed throughout the landscape strip, spaced to form a continuous screen;
- (c) At least 90 percent of this landscaping must consist of a mix of evergreen trees planted at the rate of one tree per ten-linear-feet of landscape strip; and
- (d) Evergreen shrubs provided at the rate of one shrub per four-linear-feet of landscape strip.
- (e) Or the screening plan must explain how other materials can be used as outlined in B, 1, above, to provide the same degree of screening and how such materials will be maintained.

#### **D. Filtered Screen Landscaping**

1. The purpose of Filtered Screen Landscaping is to provide a visual separator.
2. Filtered Screen Landscaping is required between multi-family residential uses and two- or single-family residential uses; and between any public street and loading bays, product or equipment outdoor storage areas including propane tanks, or waste storage areas.
3. Filtered Screen Landscaping must consist of the following:
  - (a) A mix of evergreen and deciduous trees and shrubs interspersed throughout the landscape strip and spaced to create a filtered screen;
  - (b) At least 70 percent of this landscaping must consist of evergreen trees planted at the rate of one tree per 20 linear-feet of landscape strip; and
  - (b) Shrubs provided at the rate of one shrub per four-linear-feet of landscape strip.
  - (c) Or the screening plan must explain how other materials can be used as outlined in B, 1, above, to provide the same degree of screening and how such materials will be maintained.
  - (d) Or the screening plan must explain how other materials can be used as outlined in B, 1, above, to provide the same degree of screening and how such materials will be maintained.

#### **E. See-through Screen Landscaping**

1. The purpose of See-through Screen Landscaping is to provide a partial visual separator and to soften the appearance building elevations.

2. See-through Screen Landscaping is required along street frontages and side and rear property lines of multi-family residential developments and non-residential developments, and between any public street and parking lots with 5 or more parking spaces.
3. See-through Screen Landscaping must consist of the following:
  - (a) A mix of evergreen and deciduous trees and shrubs interspersed throughout the landscape strip and spaced to create a continuous canopy;
  - (b) At least 70 percent of this landscaping must consist of evergreen trees planted at the rate of one tree per 25 linear-feet of landscape strip; and
  - (c) Shrubs provided at the rate of one shrub per four-linear-feet of landscape strip.
  - (d) Or the screening plan must explain how other materials can be used as outlined in B, 1, above, to provide the same degree of screening and how such materials will be maintained.

#### **F. Surface Parking Area Landscaping.**

1. Surface parking lots with 5 or more parking spaces require Surface Parking Area Landscaping to provide shade and to diminish the visual effect of large paved areas. Non-residential uses must be provided with Surface Parking Area Landscaping at the rate of 20 square feet of landscaping per parking space. Such planting areas must have a minimum of 20 cubic feet of root space, at least 24 inches deep.
2. Trees are required and must be distributed throughout the parking area at the following rate:
  - (a) For parking lots accessory to residential uses, one tree for every ten parking spaces;
  - (b) For parking lots accessory to non-residential uses, one tree for every five parking spaces.
  - (c) In addition to the requirements in (a) and (b), above, the maximum distance between any parking space and landscaping may be no more than 100 feet. Permanent curbs or structural barriers are required to protect the plantings from vehicles.
  - (d) The types and dimensions of required landscaping are as follows:
    - (i) Canopy-type deciduous trees, evergreen trees, evergreen shrubs, and ground covers planted in islands or strips are required;

- (ii) At least 70 percent of the trees must be deciduous;
  - (iii) At planting, evergreen trees must be at least 10 feet tall and deciduous trees must be at least 2-inch caliper.
  - (iv) Shrubs may not exceed a height of 36 inches at maturity;
  - (v) Planting islands or strips are required in areas of at least 100 square feet each, with dimensions of no less than five feet; and
  - (vi) Planting beds must be constructed with an underground piping system for plant watering and aeration.
- (e) Or the screening plan must explain how other materials can be used as outlined in B, 1, above, to provide the same degree of screening and how such materials will be maintained.

**SECTION 10.30 NOISE**

This Section applies to new or expanded non-residential uses.

A. The maximum permissible sound-pressure level of any continuous, regular, or frequent source of sound produced by any activity must be limited by the period listed as follows. Sound levels will be measured at least 4 feet aboveground at the lot line of the noise source.

	<b>7 a.m. - 8 p.m.</b>	<b>8 p.m. - 7 a.m.</b>
Sound-pressure-level Limits (measured in dB [a] scale)	60	50

B. The levels specified may be exceeded by 10 dBA for a single 15-minute period per day. Noise will be measured by a meter set on the A-weighted response scale, fast response. The meter must meet the American National Standards Institute’s (ANSI S1.4-1961) *American Standards Specifications for General Purpose Sound Level Meters*.

C. The following uses and activities are exempt from this sound-pressure-level regulation:

1. noise created by building or facility construction, forestry, agricultural, and temporary maintenance activities between 7:00 a.m. and 8:00 p.m.
2. the noises of safety signals, warning devices, emergency pressure-relief valves, and any other emergency activity

3. traffic noises on public streets

### **SECTION 10.31 SETBACK REDUCTION PLAN**

- A. Applies to new and expanded uses in C2 and C3 districts.
- B. The purpose of the Setback Reduction Plan is to allow the Setback and Yard Area to be reduced if a plan for establishing a landscaped buffer is agreed to by the applicant and approved by the Planning Board.
- C. The landscaped buffer must meet the following criteria:
  1. The plan must be prepared by a landscape architect registered in the state of Maine.
  2. The buffer may include plant materials such as trees or shrubs, walls or fences, and earthen berms, or a combination thereof.
  3. The buffer must be sufficient in density and height so as to screen noise, vibration, light, or other visual nuisances in a manner exceeding that of the Setback or Yard Area required without a Setback Reduction Plan.
  4. The buffer must be visually pleasing and effective year-round.
  5. The buffer must be maintained.
  6. The burden of proving that these criteria are met is that of the applicant.
- D. The Setback Reduction Plan will be reviewed by the Planning Board as part of the Site Plan Review.

### **SECTION 10.32 EXCEPTION TO SPACE AND BULK REGULATIONS**

#### **A. Applicability**

These exceptions apply to new or expanded uses and structures.

#### **B. Height Exception**

Maximum building height of the space and bulk regulations does not apply to any flagpole, domestic television-receiving antenna, domestic radio receiving or transmitting antenna, spire or cupola, chimney, elevator or stair bulkhead, parapet, railing, or any similar structure, provided that the structure is firmly attached to the roof or side of a

building and covers no more than 10 percent of the roof area. This provision does not allow satellite dishes that are more than 3 feet in diameter.

### **C. Setback Exception**

The following may encroach from the side of a building into a Setback: air-conditioning unit; stairs; uncovered stoop or porch that leads from a doorway to stairs, provided the stoop or porch is no larger than 16 square feet in area; fire escape; chimney; awning; home-use fuel tank; and ramp to accommodate a disabled person.

### **D. Yard Area Exceptions**

Notwithstanding other requirements of the Code, shared parking lots, which are accessory to the uses on the abutting lots, may abut the common property line. If at anytime the parking lot is no longer shared by the uses on the abutting lots, the parking lot must meet the Space and Bulk Regulations of the Code. [Amended October 3, 2001]

## **SECTION 10.33 VIEWSHED PROTECTION PLAN**

- A. Applies to new or expanded uses in the C1 district.
- B. The purpose of the Viewshed Protection Plan is to allow the Floor Area Ratio in the C1 District to be increased if a plan for protecting views of the Kennebec River from public buildings and public parks is agreed to by the applicant and is approved by the Planning Board.
- C. The Viewshed Protection Plan must be designed to mitigate the encroachment of all buildings, structures, landscaping, and other site features on views of the Kennebec River.

## **SECTION 10.34 R1 SETBACK PLAN** [Section added December 1, 2004]

- A. This Section applies to new or expanded uses, other than single- and two-family uses, in the R1 Zone.
- B. The purpose of the R1 Setback Reduction Plan is to allow certain uses to be built or expanded closer to a property line if certain standards are met or certain conditions are agreed to by the applicant/landowner and said R1 Setback Reduction Plan is approved by the Planning Board.
- C. The R1 Setback Reduction Plan for the Setback dimension must meet the following criteria as determined by the Planning Board:



1. Any new building or addition to an existing building must be less than 30 feet in height and have siding such as clapboards, shingles, shakes or brick, including synthetic or metal siding manufactured to closely resemble clapboards, shingles, or shakes; and a pitched, shingled or metal roof.
  2. The relationship of solid wall to voids—windows and doors—in the façade of any new building or addition to an existing building must be compatible in design with that of buildings to which the new building or addition are visually related.
  3. No new building or addition to an existing building may block any vehicular sight distance associated with any access drive or public or private way.
  4. The distance between the façade of any new building or addition to an existing building and the property line must be similar with those of buildings to which the new building or addition are visually related. However, in no case may this distance be less than 10 feet.
- D. The R1 Setback Reduction Plan for the Yard Area dimension must meet the following criteria as determined by the Planning Board:
1. In the reduced Yard Area the applicant must construct a landscaped buffer that will mitigate any noise and visual nuisance between the lot of the applicant seeking the setback reduction and the abutting property.
  2. The buffering must be accomplished by plant materials such as trees or shrubs. The Board may also require walls, fences, or earthen berms if such measures are needed to accommodate the planting and to assist in mitigating noise and visual nuisances.
  3. If the use on the lot of the applicant seeking the setback reduction is accessory parking, the trees used as part of the landscaped buffer must be both dense and high enough to soften and make less visible the view not only from the first floor of adjacent buildings but also from the second floor of adjacent buildings, of any vehicles parked within 15 feet of the property line.
  4. If walls, fences, or earthen berms are used there must be plant materials including shade trees and evergreen shrubs planted between the wall, fence, or earthen berm and the abutting property line.
  5. The amount of planting must be such that 50% screening coverage is achieved in 5 years, based on crown spreads predicted in accepted reference manuals such as the *Manual of Woody Landscape Plants: Their Identification, Ornamental Characteristics, Culture, Propagation, and Uses*, by Michael A. Dirr; or *Forest Trees of Maine*, Maine Forest Service.

6. The buffer must include existing, natural vegetation insofar as feasible if this vegetation meets the requirements of the criteria herein, except if the existing, natural vegetation is comprised of species designated by the USDA as non-native invasive.
7. The landscape plan must be prepared by a landscape architect registered in the State of Maine.
8. In reviewing the R1 Setback Reduction Plan for the Yard Area the Board must take into consideration the buffer's width, density, and height; the selection of plant materials; and the type and height of fences, walls, or berms.
9. The plan must include a plan for the establishment of new plant materials as well as the preservation of existing, natural vegetation if it is being maintained together with a written plan for the continued maintenance, repair, and replacement of all buffer materials. This plan must be recorded at the Sagadahoc County Registry of Deeds as a covenant running with the land for the use for which the setback reduction is approved. The covenant must also include the obligation of the applicant and successors and/or assigns to submit, on an annual basis, proof that the buffer plan and any buffer materials are in compliance with the approval granted by the Board hereunder.
10. This buffer area may not be used for the storage of plowed snow.

**SECTIONS 10.35-10.38 RESERVED**

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**ARTICLE 11: PERFORMANCE STANDARDS,  
SPECIFIC ACTIVITIES AND LAND USES**

**SECTION 11.01 APPLICABILITY**

- A. The following performance standards apply to the following specific activities and land uses. New activities or land uses are not permitted if the applicable performance standards in this article are not met.
- B. If an applicant can meet the intent and purpose of the performance standard by an equivalent method, that equivalent method may be approved. The burden of proof as to whether the performance standard, and the intent and purpose of the performance standard, is met is that of the applicant. The Review Authority may waive the requirement to meet a standard if the applicant or landowner requests the waiver, in writing, and the Review Authority finds that, due to special circumstances, meeting the standard is not required in the interest of public health, safety, and general welfare, or is inappropriate. Waivers may be granted only in writing with written findings of facts and conclusions, and may be subject to conditions.
- C. The general performance standards in Article 10 that may be applicable to the specific activities or land uses contained in this article also apply.
- D. Where the Section calls for review by, or allows a waiver by, the Planning Board such review or waiver may be by the Staff Review Committee if the Staff Review Committee is allowed to act on the application.

**SECTION 11.02 AGRICULTURAL PRACTICES IN THE SHORELAND ZONE** [Entire Section amended May 16,2001] [amended October 28, 2009]

Except for existing agricultural operations:

- A. All spreading of manure must 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 (7 M.R.S.A. sections 4201-4209).
- B. Manure may not be stored or stockpiled within 75 feet, horizontal distance, of any river, 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.
- C. Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area within the Shoreland Zone are required to file a Conservation Plan with

the Planning Board. Non-conformance with the provisions of said plan is considered a violation of this Ordinance.

- E. There may be no new tilling of soil within 75 feet, horizontal distance, from any river or coastal wetlands; nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on May 16, 2001, and not in conformance with this provision may be maintained.
- F. Newly established livestock grazing areas may not be permitted within 75 feet, horizontal distance, of any river or coastal wetlands, nor; within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with these setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

### **SECTION 11.03 THE KEEPING OF ANIMALS**

This standard does apply to agriculture—land use category 16.1—but does not apply to kennels, which are regulated by Section 11.16. [amended August 6, 2003]

- A. Without Planning Board approval, as allowed in Item C following, animals other than typical household pets may be kept only on a lot of at least 2 acres, and all pens, stables, barns, or other shelters for animals must be set back at least 100 feet from any lot line, other than the front lot line. In the case of the front lot line all pens, stables, barns, or other shelters for animals must meet the front setback requirement of the Space and Bulk Regulations of the zone in which it is located.
- B. Without Planning Board approval, as allowed in Item C following, manure may not be stored within 100 feet of the normal high watermark of any water body, watercourse, or potable water supply.
- C. If the property on which the animals are to be kept is less than 2 acres and/or the applicant cannot feasibly or would rather not meet the setbacks in Items A and B, a permit for keeping animals may be authorized by the Planning Board if the following standards are met:
  - 1. All pens, stables, barns, or other shelters for animals are set back at least 100 feet from the nearest dwelling other than the applicant's.
  - 2. All manure is stored in a covered structure and at least 100 feet from the nearest dwelling, other than the applicant's, at least 100 feet from the nearest potable water supply, and at least 100 feet from the normal high watermark of any water body, or watercourse.
  - 3. All structures are set back the required number of feet, as defined in this Code.

4. Manure-storage structures are constructed according to plans approved by the Androscoggin Valley Soil and Water Conservation District.
5. All feed and grain are stored in rodent-proof containers.
6. All paddocks, pastures, or other similar areas are adequately fenced to contain the animals.
7. The limit on the number and species of animals set by the Planning Board is complied with. In determining these limits, the Planning Board must consider the size and layout of the lot; the amount of waste produced by the animals; the size of adjacent lots; the presence of vegetative screening and buffer strips; and the potential for noise, odor, and vermin problems.

#### **SECTION 11.04 CAMPGROUNDS**

Campgrounds must conform to the minimum requirements imposed under state licensing procedures and the following:

- A. Campgrounds must contain at least 5,000 square feet of buildable land per recreational vehicle site or shelter area site, not including roads and driveways. Wetlands and land below the normal high watermark of a water body are not included in calculating land area per site.
- B. The area intended for placement of the recreational vehicle, tent, or shelter, and utility and service buildings, must be set back at least 75 feet, horizontal distance, from the normal high waterline of any water body, and must be set back at least 100 feet from the exterior lot lines of the campground. Every waterfront site must have at least 50 feet of frontage on the water. [amended October 28, 2009]
- C. At least 200 square feet of off-street parking, plus maneuvering space, must be provided for each recreational vehicle, tent, or shelter site.
- D. All campgrounds must be screened from adjacent land areas by a continuous landscaped area not less than 25 feet in width containing evergreen shrubs, trees, fences, walls, or any combination that forms a visual barrier of not less than 6 feet high.

**SECTION 11.05 CLEARING OR REMOVAL OF VEGETATION FOR ACTIVITIES OTHER THAN TIMBER HARVESTING IN THE SHORELAND ZONE**

[Entire Section amended May 16, 2001] [amended October 28, 2009]

- A. In a Resource Protection District of the Shoreland Zone the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in that district.
  
- B. Except in Resource Protection District of the Shoreland Zone and except to allow for the development of permitted uses, within a strip of land extending 75 feet, horizontal distance, inland from the normal high-water line of any river, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation must be preserved as follows:
  - 1. There may be no cleared opening greater than 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 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.
  
  - 2. 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 the purposes of this requirement a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area as determined by the following rating system and criteria (a) through (e).

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2 - < 4 in.	1
4 – <8 in.	2
8-< 12 in.	4
12 in. or greater	8

- (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 may not overlap a previous plot;
- (c) Any plot not containing the required points may have no vegetation removed except as otherwise allowed by this Code;
- (d) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Code;
- (e) Where conditions permit, no more than 50 percent of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of these requirements “other natural vegetation” is defined as retaining existing vegetation under 3 feet in height and other ground cover and retaining at least 5 saplings less than 2 inches in diameter at 4½ feet above ground level for each 25-foot by 50-foot rectangle area. If 5 saplings do not exist, no woody stems less than 2 inches in diameter may be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40 percent of the total volume of trees 4 inches or more in diameter, measured at 4½ feet above ground level may be removed in any 10-year period.

3. In order to protect water quality and wildlife habitat, existing vegetation under 3 feet in height and other ground cover, including leaf litter and the forest duff layer, may not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Subsections B and B, 1, above.
  4. Pruning of tree branches, on the bottom one third of the tree is allowed.
  5. 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 must be replanted with native tree species unless existing new tree growth is present.
- C. At distances greater than 75 feet, horizontal distance, from the normal high-water line of any river, tributary stream, or the upland edge of a wetland, there may be selective cutting of not more than 40 percent of the volume of trees 4 inches or more in diameter, measured 4 ½ feet above ground level, in 10-year period. Tree removal in conjunction with the development of permitted uses must be included in such 40-percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event may cleared openings for any purpose, including but not limited to, principal and accessory structures, access drives, lawns, and sewage disposal areas, exceed in the aggregate, 25 percent of the lot area within the Shoreland Zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision does not apply to the C1, C5, or I Zones.

- D. Legally existing nonconforming cleared openings may be maintained, but may not be enlarged, except as allowed by this Code.
- E. Fields and other cleared openings that have reverted to primarily shrubs, trees, or other woody vegetation must be regulated under the provisions of this Section.

## SECTION 11.06 CLUSTER DEVELOPMENTS

### A. Purpose

The purpose of these provisions is to encourage the preservation of the rural character of the Rural Residential District by preserving undeveloped land, including farmland, forestland, and other undeveloped lands, and to allow innovative development layout in all zoning districts. This is accomplished by allowing an innovative type of development that permits homes to be built on lots that are smaller than normally allowed, but requires undeveloped land to be preserved. In a cluster development, streets and utility lines are usually shorter, thus allowing development at a lower initial construction cost and lower future maintenance costs.

### B. Basic Requirements for Cluster Developments

1. Cluster developments must meet all requirements for a subdivision, the street acceptance requirements, and all other applicable codes and ordinances, including the applicable performance standards of this Code.
2. Each lot and building must be an element of an overall plan for site development. The applicant must specify the placement of buildings and the treatment of spaces, paths, roads, utility service, and parking, and, in so doing, must consider all requirements of this section and other relevant sections of this Code.
3. A high-intensity soil survey must be submitted. Buildings must not be constructed on soil classified as poorly drained.
4. Except for in-ground homes, buildings may not be located or constructed on slopes steeper than 25 percent.
5. The total area of undeveloped land within the development must equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required in the district in which the development is located.
6. Cluster Space and Bulk Regulations:

DISTRICT	MINIMUM LOT WIDTH	MINIMUM LOT AREA	MINIMUM LOT AREA PER DWELLING UNIT	MINIMUM SETBACK	MINIMUM YARD AREAS
<b>R3, R2, R6, GC, and NRPO Without Public Sewer</b>	150 feet	20,000 square feet	20,000 square feet	25 feet front 20 feet side 20 feet rear	20 feet front 10 feet side 10 feet rear
<b>R2, R4, and</b>	60 feet	5,000	5,000 square feet	10 feet front	10 feet front



<b>R6; With Public Sewer</b>		square feet		10 feet side 10 feet rear	5 feet side 5 feet rear
<b>R1, R5, and C2; With Public Sewer</b>	50 feet	3,500 square feet	3,500 square feet	10 feet front 10 feet side 10 feet rear	10 feet front 5 feet side 5 feet rear

[Table amended October 3, 2001]

7. Maximum building height, maximum lot coverage, and waterbody setback regulations are those of the zoning district in which the development is located. [amended October 3, 2001]
8. Individual lots or dwelling units may not have direct vehicular access onto a public street that exists prior to the development.
9. Where a cluster development abuts a body of water, a usable portion of the shoreline, as well as access to it, must be part of the undeveloped land.
10. Buildings must be oriented with respect to scenic vistas, natural landscape features, topography, solar energy, and natural drainage areas.
11. Unless the development will be served by public water, the applicant must demonstrate the availability of water adequate for domestic purposes as well as for fire safety. The Planning Board may require the construction of storage ponds and dry hydrants or require homes to have sprinkler systems. The location of all wells must be shown on the site plan.
12. Unless the development will be served by the public sewer system, the location of subsurface wastewater disposal systems and an equivalent reserve area for replacement systems must be shown on the site plan. This reserve area must be restricted so as not to be built upon. The report of a licensed Site Evaluator must accompany the plan. If the subsurface disposal system is an engineered system, approval from the Maine Department of Human Services, Division of Health Engineering, must be obtained prior to Planning Board approval.
13. Utilities must be installed underground wherever possible. Transformer boxes, pumping stations, and meters must be located so as not to be unsightly or hazardous to the public.

**C. Dedication and Maintenance of the Undeveloped Land and Any Common Facilities**

1. The undeveloped land is that area not included in the residential lots that equals at least the total area by which all of the lots in the cluster development are reduced below the normal minimum lot size in the district. There may be no further

subdivision of the undeveloped land. This undeveloped land may be used only for agriculture, forestry, conservation, or noncommercial recreation. However, easements for public utilities or structures accessory for noncommercial recreation, agriculture, or conservation may be approved by the Planning Board.

2. The undeveloped land must be shown on the site plan and with appropriate notation on the face thereof to indicate the following:
  - (a) that the undeveloped land may not be used for future building lots; and
  - (b) the final disposition of the undeveloped land, which may be one of the following:
    - (i) dedicated to the City for acceptance
    - (ii) deeded to a land trust
    - (iii) retained by the applicant
    - (iv) reserved for ownership by a formal organization composed of the lot owners in the cluster development
3. If any or all of the undeveloped land is to be reserved for use by the residents as in Item 2.(b)(iv), then:
  - (a) A formal organization must be formed and its bylaws must specify maintenance responsibilities. The bylaws must be submitted to the Planning Board for its approval along with approval of the site plan.
  - (b) Covenants for mandatory membership in the association, setting forth the owners' rights, interest, and privileges in the association and the undeveloped land, must be reviewed by the Planning Board and included in the deed for each lot.
  - (c) The homeowners' association is responsible for maintaining the undeveloped land and any common facilities unless accepted by the City.
  - (d) The association must levy annual charges against all property owners to defray the expenses connected with maintenance of the undeveloped land, other common and recreational facilities, and City assessments.
  - (e) The developer must maintain control of the undeveloped land and be responsible for its maintenance until development sufficient to support the association has occurred. Such determination is made by the Planning Board upon request of the homeowners' association or the developer.

4. If the undeveloped land is retained by the applicant, as in Item 2(b)(iii), then:
  - (a) The land may be used only for active agriculture or forestry. The conditions of this use must be approved by the Planning Board and indicated on the site plan.
  - (b) The development rights of the undeveloped land must be deeded to either the City or another entity approved by the Planning Board and may not be deeded to any other person for development purposes.
  - (c) An area suitable for the noncommercial recreational use of the lot owners in the cluster development and of an appropriate size must be reserved. This area must be either dedicated to the City or reserved for a homeowners' association as in Item 3.
5. If the undeveloped land is deeded to a land trust, as in Item 2(b)(ii), the Planning Board must approve the land trust and the conditions of the deed.
6. If the undeveloped land is dedicated to the City, as in Item 2(b)(i), the Planning Board must review the language of the dedication and the uses allowed in the undeveloped land and make a recommendation to City Council as to their adequacy and whether the land should be accepted by the City.

#### **D. Buffering**

That portion of the cluster development that abuts a public street not in the cluster development and along the exterior boundaries of the cluster development must be designed as a continuous landscaped buffer area not less than 50 feet wide. This buffer area may not contain structures or streets other than the streets providing access to the cluster development. The first 25 feet of the buffer strip, as measured from the exterior boundaries of the development, must contain natural vegetation if such exists.

#### **SECTION 11.07 COMMERCIAL-VEHICLE PARKING**

The parking of a motor vehicle that is registered as a commercial vehicle and is over 1-ton capacity based upon the manufacturer's rating is not considered an accessory use to a residential use except in the R3 zone. The parking of any motor vehicle which is used for a Transportation Terminal use or Truck Terminal use is not considered an accessory use to any residential use.

#### **SECTION 11.08 ASSISTED RESIDENTIAL FACILITY** [amended February 24, 2010]

- A. An assisted residential facility must be certified or licensed by the State of Maine Department of Human Services.
- B. An assisted residential facility may include the following as accessory uses: personal services for the residents of the facility, the office of a doctor who serves the medical needs of the residents, and/or the sale or rental of goods, merchandise, or equipment for the residents.
- C. Overnight guests are allowed to stay with residents but for no more than 8 nights during any one 30-day period, except as allowed in Item D, following.
- D. An assisted residential facility may not be converted to another use without meeting the space and bulk regulations and the Land Use Table requirements of the zone in which it is located.
- E. The minimum age of the residents of an assisted residential facility is 18 years.
- F. Before an Assisted Residential Facility is changed to any other use, or before any accessory use is added to an Assisted Residential Facility, Site Plan Approval from the Planning Board is required.

**SECTION 11.09 DAY-CARE HOMES AND DAY-CARE FACILITIES FOR CHILDREN OR ADULTS** [amended June 30, 2010]

In addition to all other requirements of the Code, day-care homes and day-care facilities are subject to the following standards.

**A. Approval of Day-care Homes**

A day-care home is allowed, as per the Land Use Table in Section 9.02, only if it has received a permit in accordance with requirements of this section. Upon receipt of a permit application, the CEO must notify by regular mail the abutters of the subject parcel of the pending application. The notice must advise the abutters that the permit will be issued if the application conforms to the standards in Item C following, and that the abutter can provide written information as to the conformance of the request with these standards within 30 days of mailing the notice. If the CEO finds that the application conforms to the standards and no information to the contrary is received during the 30-day period, the permit is to be issued.

- 1. If the CEO receives information that the application may not conform to the standards, the CEO will:
  - (a) notify the applicant
  - (b) refer the applicant to the Planning Board for consideration

(c) notify the parties providing the information of the referral

2. The Planning Board must hold a meeting in accordance with Site Plan Review requirements to consider the application for a day-care home within 45 days of the referral from the CEO. The Planning Board must determine if the applicant meets the requirements of Item C following. If the Planning Board finds that the application does meet the requirements, it will direct the CEO to issue the permit.

## **B. Approval of Day-care Facilities**

A day-care facility is allowed only after Site Plan Approval from the Planning Board, and it must meet the requirements in Item C following.

## **C. Requirements for Day-care Homes and Day-care Facilities**

All day-care homes and day-care facilities must conform to the following requirements:

1. A fenced outdoor play area must be provided with a minimum of 75 square feet per child. The fence must be at least 4 feet in height.
2. Outside play may not be allowed before 9 a.m. or after 8 p.m. on Saturdays, Sundays, and holidays and before 7 a.m. or after 8 p.m. other days.
3. Adequate lighting must be provided. If the day-care home or day-care facility is in or abuts a residential zone, security lighting must be turned off when the day-care home or day-care facility is not operating.
4. Hazardous traffic conditions may not be created when the day-care facility traffic is added to existing and foreseeable future traffic in its vicinity.
5. An adequate drop-off and pick-up site must be established for a day-care facility.
6. The design and external appearance of any building must constitute a compatible addition to its neighborhood, although it need not have a similar design, appearance, or architecture.

## **D. Denial of Application**

If the CEO finds that the application for a day-care home does not conform to the standards, the application must be denied and the applicant notified in writing of the reasons for the denial. If the Planning Board finds that the application referred to it for a day-care home or a day-care facility does not conform to the standards, it must be denied and the applicant notified in writing of the reasons for the denial.

## **E. Minimum Lot Size Requirement**

If located in a single-family dwelling, a day-care home is not required to meet the minimum lot size for both the day-care home and the single-family dwelling, only for the latter. A day-care home in a 2-family or multi-family dwelling, or a day-care facility located in a single-family dwelling, must meet the minimum lot area for both the day-care home or facility and the dwelling unit.

## **SECTION 11.10 FARMSTAND**

The operator of a farmstand must provide adequate off-street parking for customers, which may be located in a Front Yard Area. If a farmstand building is less than 200 square feet in size, it may be located within the normal Front Setback Area and Yard Area, but in no case may a farmstand building be less than 15 feet from a street right-of-way.

## **SECTION 11.11 FENCES AND WALLS**

- A. Yard Area requirements do not apply to fences and walls, however, corner clearance requirements do apply and all fences and walls must be located so as to not cause vehicular or pedestrian safety hazards.
- B. Where feasible fences and walls must be set back an adequate distance from a property line to allow for maintenance.
- C. If a retaining wall is taller than 5 feet it must be set back from a property line at least a distance equal to the height of the wall, unless the wall has been approved by a registered professional engineer.
- D. Additional Requirements in the Shoreland Zone [added October 28, 2009]

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

1. The site has been previously altered and an effective vegetated buffer does not exist;
2. The wall is at least 25 feet, horizontal distance, from the normal high-water line of a waterbody;
3. 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;
4. The total height of the wall is no more than 24 inches;
5. Retaining walls are located outside of the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record;

6. The area behind (uphill of) 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
7. A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body when a natural buffer area does not exist. The buffer area must meet the following characteristics:
  - (a) 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;
  - (b) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
  - (c) Only native species may be used to establish the buffer area;
  - (d) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
  - (e) A footpath not to exceed the standards in Section 11.05, B, 1, may traverse the buffer.

#### **SECTION 11.12 GARAGE AND YARD SALES**

- A. Such sales may be held on a property only if the owner or occupant of that property has items for sale in the garage and yard sale.
- B. Garage and yard sales are permitted no more frequently than twice annually and for periods not to exceed 3 days.
- C. Sales conducted more frequently or for longer periods are classified as “Sales or Rental of Goods, Merchandise, or Equipment” in the Land Use Table. These uses require additional permits, may be located only in zoning districts where the use is allowed, and must meet applicable performance standards.
- D. Signs for garage and yard sales must meet the requirements of the Sign Ordinance.

#### **SECTION 11.13 HOME OCCUPATIONS**

Home occupations are uses that are clearly accessory, incidental, and secondary to the residential use of the dwelling unit. They are only allowed in single- and 2-family dwelling units. However, a Home Occupation - A is allowed in a multi-family dwelling. Only 1 Home Occupation – B is allowed per dwelling unit or building accessory to a dwelling unit. More than 1 Home Occupation – A is allowed per dwelling unit, including a dwelling unit that has a Home Occupation – B, provided that in total the home occupations associated with any dwelling unit do not exceed the criteria listed in the definitions contained in this Code and the standards in A through K, following. Home occupations must meet the

applicable criteria listed in the definitions contained in this Code, and must meet the following standards: [amended August 6, 2003]

- A. The home occupation may not produce any odors, fumes, dust, smoke, vibrations, glare, noise, or electrical interference in excess of that produced by normal residential use; it may not create a nuisance.
- B. There may be no external alteration of the building or site that changes its residential character.
- C. No more than 30 percent of the gross floor area of the dwelling structure may be utilized in the home occupation.
- D. The maximum number of employees on-site at any one time, other than family members who reside in the home in or at which the home occupation is located, is zero for a Home Occupation - A, and 8 for a Home Occupation - B.
- E. The home occupation must be conducted wholly within the principal building or within a building accessory to the principal building. Any accessory building that houses a home occupation may be no larger than 600 square feet in gross floor area, must meet the principal building-setback requirement of the Space and Bulk Regulations of the zone, and must be residential in appearance. However, any accessory building in existence on July 19, 2000, may be used for a home occupation provided that no more than 600 square feet of said building is used for a home occupation. [amended August 6, 2003]
- F. A home occupation may not be located in a dwelling unit that contains in-home lodging.
- G. The sale of items manufactured or produced on-site is allowed on-site, except that the sale of food items manufactured on-site is not allowed on-site.
- H. Only incidental sales of items not manufactured or produced on-site is allowed on-site.
- I. There may be no outdoor storage or display of equipment, materials, or items for sale, and no repairing of motor vehicles, recreational camping vehicles, or snowmobiles.
- J. Deliveries by trucks of a size larger than the single-unit trucks such as those used by Federal Express or United Parcel Service are only allowed once per month.
- K. To the extent necessary the Planning Board has the right to impose restrictions on maintenance activities and operations of a Home Occupation - B where such restrictions are necessary or appropriate to prevent or mitigate the impact of the use on abutting or neighboring properties. Restrictions may include, for example, limitation on the hours of winter snow removal or plowing, time of deliveries and office



hours, and the amount and location of on-street and off-street parking. [amended May 16, 2001]

#### **SECTION 11.14 IN-HOME LODGING**

The owner-occupant of a single-family home may rent lodging accommodations to up to but not more than 3 persons. Cooking facilities are not allowed in the bedrooms of the lodgers. However, the lodgers may have use of the kitchen facilities in the home.

#### **SECTION 11.15 INDIVIDUAL PRIVATE CAMPSITES** [amended October 28, 2009]

Individual private campsites not associated with campgrounds are permitted, provided that the following conditions are met:

- A. One campsite per lot existing on the effective date of this Ordinance, or 30,000 square feet of lot area within the shoreland zone, whichever is less, may be permitted.
- B. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, must be set back 75 feet, horizontal distance, from the normal high-water line of rivers, tributary streams, or the upland edge of a wetland.
- C. Only one recreational vehicle may be allowed on a campsite. The recreational vehicle may not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy may be attached to the recreational vehicle.
- D. The clearing of vegetation for the siting of the recreational vehicle, tent, or similar shelter in a Resource Protection Zone is limited to 1000 square feet.
- E. A written sewage disposal plan, approved by the Local Plumbing Inspector, describing the proposed method and location of sewage disposal is required for each campsite. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- F. When a recreational vehicle, tent, or similar shelter is placed on a site for more than 120 days in any one calendar year, all requirements for residential structures must be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

#### **SECTION 11.16 KENNELS** [amended February 27, 2008]

- A. Structures or pens for housing or containing animals must be located at least 200 feet from the nearest lot line, except that in the R3 Zone the structures or pens for housing or containing animals may be less than 200 feet from the nearest property line provided that the owner of the kennel resides on the premises.
- B. All pens, runs, kennels, and other facilities must be designed, constructed, and located on the site in a manner that minimizes adverse effects on surrounding properties. The applicant must demonstrate to the Board that the facility will not be a nuisance and that the facility will comply with the noise requirements in Section 10.30. The applicant may be required to employ all or a combination of the following, along with other techniques, to assure the Board that the animals will not be a nuisance to the general public: separating the structures and pens that house and contain the animals an adequate distance from property lines and other dwellings, existing changes in topography, the construction of berms, natural and planted evergreen hedges, fences, soundproofing, and locating the buildings and the openings of outdoor runs so as to shield neighboring properties.
- C. The owner or operator of a kennel must maintain the premises in a clean, orderly, and sanitary condition at all times. Garbage, offal, feces, or other waste material may not be allowed to accumulate on the premises. The premises must be maintained in a manner so as to not provide a breeding place for insects, vermin, or rodents.
- D. Temporary storage containers for any kennel wastes containing or including animal excrement must be kept tightly covered at all times, and emptied at least once every 3 days. Containers must be made of steel or plastic to facilitate cleaning and must be located as per Section 11.16, A and B, above.
- E. If outdoor runs are provided, they must be completely fenced in and must be paved with cement, asphalt, or a suitable material to provide for cleanliness and ease of maintenance.
- F. Any incineration device for burning excrement-soaked waste papers and/or animal organs or remains must be located at least 400 feet from the nearest residence other than the applicant's and must have a chimney vent at least 35 feet above the average ground elevation. The applicant also must provide evidence that approval from the MEDEP has been obtained for the proposed incinerator and that it meets state standards for particulate emissions, flue-gas temperature, and duration of required flue temperatures.

**SECTION 11.17 LIFE-CARE FACILITIES** [section deleted February 24, 2010]

**SECTION 11.18 MANUFACTURED HOUSING AND MOBILE HOMES**

- A. Single-unit manufactured housing and mobile homes, whether single- or double-wide, must meet all of the following requirements:
  - 1. the dimensional and density requirements of the zoning district in which it is located for single-family dwellings
  - 2. placement on a permanent foundation, frost wall, grade beam, or floating slab, and skirting made of permanent material that blocks the view of the underside of the unit and is rodent- and weather-proof.
  - 3. a 3:12 or steeper pitched roof of wood, asphalt, or fiberglass composite shingles
  - 4. exterior siding that is residential in appearance
- B. A unit that does not meet these standards cannot be replaced by a unit that does not meet these standards.
- C. Multi-unit modular housing must meet the same standards and requirements as site-built homes. If the unit has a tongue, wheels, or axle, they must be removed prior to occupancy. The space between the unit and the ground must be fully enclosed by a material that blocks the view to the underside of the unit and is rodent- and weather-proof.
- D. A unit built as a mobile home and meeting the definition in this Code of *manufactured housing* may not be used for a nonresidential use except in a zoning district that allows single-unit mobile homes.
- E. A mobile home or manufactured housing unit that does not meet the definition of *manufactured housing* in this Code may not be used for any use, except as a temporary construction office.

## **SECTION 11.19 MINOR EARTHMOVING ACTIVITIES**

The following minor earthmoving activities do not require a permit:

- A. The removal or filling of less than 50 cubic yards of material from or onto any lot in any 1 year, unless located in the Shoreland Zone.
- B. The removal or filling of less than 10 cubic yards of material from or onto any lot in any 1 year, if any part of the lot is in the Shoreland Zone. [amended August 6, 2003]
- C. The removal or filling of material incidental to construction, alteration, or repair of a structure, or in the grading and landscaping incidental thereto, unless it exceeds 500 cubic yards. [amended August 6, 2003]

Other earthmoving, processing, and storage in any district requires Site Plan Review from the Planning Board.

## **SECTION 11.20 MOBILE HOME PARKS**

### **A. General Requirements**

Except as stipulated herein, mobile-home parks must meet all the requirements for a residential subdivision, are only allowed in the Mobile Home Park Overlay District, and must conform to all applicable state laws and local ordinances or regulations. Where the provisions of this section conflict with specific provisions of the subdivision regulations, the provisions of this section prevail.

### **B. Lot-area and Lot-width Requirements**

Notwithstanding the district dimensional requirements contained in this Code, lots in a mobile-home park must meet the following lot-area and lot-width requirements:

1. Lots served by individual subsurface wastewater disposal systems:
  - (a) Minimum lot area: 20,000 square feet
  - (b) Minimum lot width: 100 feet
2. Lots served by a central, on-site subsurface wastewater disposal system approved by the Maine Department of Human Services:
  - (a) Minimum lot area: 12,000 square feet
  - (b) Minimum lot width: 75 feet
  - (c) The overall maximum: 1 dwelling unit per 20,000 square feet of total park area.
3. Lots served by public sewer:
  - (a) Minimum lot area: 6,000 square feet
  - (b) Minimum lot width: 65 feet
4. Lots located within the Shoreland Zone must meet the Space and Bulk Regulations for the district in which they are located.

### **C. Unit Setback Requirements**

Unit Setback requirements are as follows:

1. Structures may not be located less than 15 feet from any boundary lines of an individual lot.
2. On lots that abut a public way either within or adjacent to the park, or on lots that are located within the Shoreland Zone, structures must meet the Front Setback requirements found in the district dimensional requirements of this Code.

#### **D. Buffering**

1. A 50 foot wide buffer strip must be provided along all property boundaries that:
  - (a) abut the park, or
  - (b) abut residential land that is zoned at a density of less than half of that proposed in the park.

Further, no structures, streets or utilities may be placed in the buffer strip except that they may cross a buffer strip to provide services to the park.

2. Within 25 feet of any property line and within the buffer strip, visual screening or landscaping must be provided and maintained. The visual screening may consist of fences, berms, landscaping (such as shrubs and trees) and/or natural existing vegetation. This screening must effectively screen at least 80 percent of the homes from view from the adjacent property.

#### **E. Road Design, Circulation, and Traffic Impacts**

The following requirements apply:

1. Streets within a park must be designed by a professional engineer registered in the State of Maine.
2. Streets that the applicant proposes to be dedicated as public ways must be designed and constructed in accordance with the standards for streets in the City of Bath.
3. Streets that the applicant proposes to remain as private ways must meet the following minimum geometric design standards:
  - (a) Minimum width of right-of-way: 23 feet
  - (b) Minimum width of traveled way: 20 feet

4. On-street parking must be prohibited unless an 8 foot parking lane is provided, in which case on-street parking may be permitted on the side of the road where the parking lane is located.
5. Any mobile-home park expected to generate average daily traffic of 200 trips per day or more must have at least 2 street connections with existing public streets. Any street within a park with an average daily traffic of 200 trips per day or more must have at least 2 street connections leading to existing public streets, other streets within the park, or other streets shown on an approved subdivision plan.
6. No individual lot within a park may have direct vehicular access onto an existing public street.
7. The intersection of any street within a park and an existing public street must meet the following standards:

**(a) Angle of Intersection**

The minimum angle of intersection is 75 degrees.

**(b) Maximum Grade Within 75 Feet of Intersection**

The maximum permissible grade within 75 feet of the intersection is 2 degrees.

**(c) Minimum Site Distance**

A minimum sight distance of 10 feet for every miles per hour of legal speed limit on the existing road must be provided. Sight distance is measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of the shoulder line, with the height of the eye 3½ feet above the pavement and the height of the object 4¼ feet.

**(d) Distance from Other Intersections**

The centerline of any street within a park intersecting an existing public street must be no less than 125 feet from the centerline of any other street intersecting that public street.

8. The application must contain an estimate of the average daily traffic projected to be generated by the park. Estimates of traffic generation must be based on the *Trip Generation Manual, 1991 Edition*, published by The Institute of Transportation Engineers. If the park is projected to generate more than 400 vehicle trip ends per day, the applicant also must include a traffic-impact analysis by a Registered Professional Engineer with experience in transportation engineering.

**F. Groundwater Impacts**

## **1. Assessment Submitted**

Accompanying the application for approval of any mobile-home park that is not served by public sewer must be an analysis of the impact of the proposed mobile-home park on groundwater quality. The hydrogeologic assessment must be prepared by a Certified Geologist or Registered Professional Engineer experienced in hydrogeology and must contain at least the following information:

- (a) a map showing the basic soil types
- (b) the depth to the water table at representative points throughout the mobile-home park
- (c) drainage conditions throughout the mobile-home park
- (d) data on the existing groundwater quality, from either test wells in the mobile-home park or existing wells on neighboring properties
- (e) an analysis and evaluation of the effect of the mobile-home park on groundwater resources; the evaluation must, at a minimum, include a projection of post-development nitrate-nitrogen concentrations at any wells within the mobile-home-park boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is the shorter distance
- (f) a map showing any subsurface wastewater-disposal systems and drinking-water wells within the mobile-home park and within 200 feet of the mobile-home-park boundaries

## **2. Standards for Acceptable Groundwater Impact**

- (a) Projections of groundwater quality must be based on the assumption of drought conditions, assuming 60 percent of annual average precipitation.
- (b) A mobile-home park may not increase any contaminant concentration in the groundwater to more than half of the Primary Drinking Water Standards. A mobile-home park may not increase any contaminant concentration in the groundwater to more than the Secondary Drinking Water Standards.
- (c) If groundwater contains contaminants in excess of the primary standards and the mobile-home park is to be served by on-site groundwater supplies, the applicant must demonstrate how water quality will be improved or treated.
- (d) If the groundwater contains contaminants in excess of the secondary standards, the mobile-home park may not cause the concentration of the parameters in question to exceed 150 percent of the ambient concentration.

### **3. Subsurface Wastewater Disposal Systems and Drinking-water Wells**

These must 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 must be included as a note on the plan.

#### **G. Sidewalks/Walkways**

The mobile home park must contain pedestrian walkways that link all units and all services and recreation facilities. Such walkways must be adequately surfaced and lit. A portion of the road surface may be reserved for walkways provided the roadway width is increased accordingly. Walkways must be a minimum width of 3 feet.

#### **H. Lighting**

Outdoor lighting must be provided to adequately illuminate internal streets and pedestrian walkways. Lights must be sized and directed to avoid adverse impact on adjacent properties.

#### **I. Storage**

At least 300 cubic feet of enclosed tenant storage facilities must be conveniently provided on or near each mobile home lot for the storage of materials and equipment.

#### **J. Storm Drainage**

A storm drainage plan must be prepared by a Registered Professional Engineer showing ditching, culverts, storm drains, easements, and other proposed improvements sufficient to accommodate a 25-year storm.

#### **K. Conversion to Other Use**

A development or subdivision that is approved under this section as a mobile-home park may not be converted to another use without approval of the Planning Board and without meeting the space and bulk regulations applicable to the new use and other requirements of this Code. The mobile-home-park plan must be recorded at the Sagadahoc County Registry of Deeds and filed with the City, and must include the following restrictions, as well as any other notes or conditions of approval:

1. The land within the park must remain in a unified ownership and the fee-simple title to individual lots or portions of lots may not be transferred.
2. A dwelling unit other than a manufactured housing unit may not be located within the park.



## **SECTION 11.21 PARABOLIC DISH ANTENNAS**

Parabolic dish antennas are allowed as accessory uses in all zoning districts. Antennas 3 feet and larger in diameter are not allowed in a required Yard Area, and are not allowed in a Front Setback Area unless the landowner can demonstrate to the CEO that there is no other location on the lot where the antenna will receive signals adequately.

## **SECTION 11.22 PARKING AND USE OF MOTOR VEHICLES AND TRAILERS**

- A. The use of a lot to park or store an unregistered motor vehicle or trailer or a motor vehicle that does not have a valid Maine motor vehicle inspection certificate or is unable in its present condition to pass the Maine motor vehicle inspection test, and is not intact, is not permitted if such motor vehicle or trailer is visible from an abutting property, a public way, or any waterbody. A motor vehicle or trailer may be considered *visible* if only covered by a tarpaulin. *Not intact* means without any of the following: windows, windshield, doors, hood, trunk lid, fenders, roof, wheels, or inflated tires. However, a motor vehicle or trailer may be “up on-blocks” with wheels removed and still be considered *intact*. To be *intact* the motor vehicle must be right-side up, without broken glass, without broken light lenses, without a torn or ripped convertible top, and without excessive rust. This Section does not apply to a motor vehicle that is actively being restored or reconditioned provided the motor vehicle is right-side up and has no broken glass.
- B. The use of a lot to park or store 3 or more unregistered motor vehicles that are not capable of passing the Maine motor vehicle inspection test is not permitted.
- C. The use of a lot that does not meet the standards in items A and B, above, does not acquire legal nonconforming status
- D. The use of a motor vehicle, shipping container, or trailer or semitrailer as defined in 29-A M.R.S.A. section 101, or anything manufactured as a motor vehicle, shipping container, or trailer or semitrailer as defined in 29-A M.R.S.A. section 101, to house a principal or accessory use is not permitted in any district, except as allowed by Section 11.31. Any motor vehicle, shipping container, or trailer or semitrailer as defined in 29-A M.R.S.A. section 101, or anything manufactured as a motor vehicle, shipping container, or trailer or semitrailer as defined in 29-A M.R.S.A. section 101, which was used to house a principal or accessory use as of August 9, 2000, may remain in place on a lot and is considered a legally nonconforming structure, however, it may not be relocated on the lot and if removed from the lot it may only be replaced with a conforming building. [amended May 16, 2001]

## **SECTION 11.23 PIERS, DOCKS, AND OTHER MARINE STRUCTURES** [Entire Section amended May 16, 2001] [amended October 28, 2009]

- A. Access from shore must be developed on soils appropriate for such use and constructed so as to control erosion.
- B. The location must not interfere with existing developed or natural beach areas.
- C. The facility must be located so as to minimize adverse effects on fisheries.
- D. The facility may be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and use of the area. A temporary pier, dock, or wharf in non-tidal waters may be no wider than 6 feet.
- E. No new structure may be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- F. New permanent piers and docks on non-tidal waters may 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 Department of Environmental Protection, pursuant to the Natural Resources Protection Act.
- G. No existing structure built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland may be converted to residential dwelling units in any district.
- H. Except in the C1, C5, and I Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland may not exceed 20 feet in height above the pier, wharf, dock or other structure.
- I. New permanent structures, and expansions thereof, projecting into or over water bodies require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A., Section 430-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

## **SECTION 11.24 PROVISIONAL USE PERMITS**

The City Council has the authority to issue Provisional Use Permits in those cases where it is satisfied that the use requested is appropriate for a temporary period of time, does not create a nuisance, and there is a hardship on the applicant that causes the request to be made. Any such permit must be for a specified period not exceeding 1 year and the Council may allow 6-month extensions for valid reasons. At the end of the specified period, and any extensions, the permit expires and the use must be discontinued.

## **SECTION 11.25 RECREATIONAL FACILITY**

Recreational facilities in Land Use Category 8.2 must meet following the standards:

- A. Containers and facilities for rubbish collection and removal must be provided.
- B. Adequate screening, buffers, or landscape must be built, planted, or maintained to protect any adjacent residential areas from adverse noise, light, dust, smoke, and visual impact.

## **SECTION 11.26 SEASONAL SALE OF HOME PRODUCE**

The seasonal outdoor display and sale of fresh fruits, vegetables, and nursery plants raised on the premises are permitted, provided that such display and sales are limited to the growing season and sufficient parking facilities for customers are available. No structures are allowed unless as permitted in Section 11.10 - FARMSTAND.

## **SECTION 11.27 SINGLE-FAMILY DWELLING IN RESOURCE PROTECTION DISTRICT** [amended October 28, 2009]

The Planning Board may allow a single-family dwelling in the Resource Protection District, provided the applicant demonstrates that all of the following conditions are met:

- A. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- B. The lot on which the structure is proposed is undeveloped and was established and recorded in the Sagadahoc County Registry of Deeds before adoption of the Resource Protection District.
- C. The proposed buildings, sewage-disposal systems, and other improvements are:
  - 1. located on natural ground slopes of less than 20 percent; and
  - 2. located outside the floodway of the 100-year floodplain, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least 1 foot above the 100-year floodplain elevation; and the development is otherwise in compliance with any applicable municipal floodplain ordinance.
- D. The total ground-floor area of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation may not be altered by variance.

- E. All structures, except functionally water-dependent structures, are set back from the normal high watermark or upland edge of a wetlands to the greatest practical extent, but not less than 75 feet. In determining the greatest practical extent, the Planning Board must consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the floodplain, and its proximity to moderate-value and high-value wetlands.
- F. The use will:
  - 1. maintain safe and healthful conditions
  - 2. not result in water pollution, erosion, or sedimentation to surface water
  - 3. adequately provide for the disposal of all wastewater
  - 4. not have an adverse impact on spawning grounds, fish, aquatic life, bird, or other wildlife habitat
  - 5. conserve shore cover and visual as well as actual points of access to inland and coastal waters
  - 6. protect archeological and historical resources as designated in the Comprehensive Plan
- G. Applications for single-family dwellings in the Resource Protection District are processed as a Site Plan Review under this Code.

**SECTION 11.28 SMALL-SCALE UTILITY FACILITIES** [Title amended August 6, 2003]

- A. Small-scale utility facilities, as defined in this Code, are permitted in all zoning districts. They are exempt from space and bulk regulations, and they must meet the following: [amended August 6, 2003]
  - 1. A sketch plan showing the location and elevation view of the small utility structure and any screening as may be required by Item 2 must be approved by the Director of Public Works, the CEO, the Planning Board Chair or another Planning Board member designated by the Chair, and the Planning Director.
  - 2. If in or abutting any residential district, or the NRPO, GC, P&O, or RP district the small-scale utility facility must be screened by evergreen shrubs, fencing, a landscaped earthen berm, or a combination thereof. The purpose of the screening is to soften and compliment the appearance of the facility from neighboring properties and public ways, and to mitigate impacts from noise and glare. The

owner of the small-scale utility facility is responsible for maintaining the screening.  
[amended August 6, 2003]

- B. The entity siting a small-scale utility facility must have a legal interest in the land on which the facility is located. [amended August 6, 2003]

### **SECTION 11.29 STORAGE OF BOATS**

- A. To be considered an accessory use the storage of a boat may be done only on the lot owned or occupied by the owner of the boat. Boats must be stored so as to meet the Yard Area requirement of the space and bulk regulations of the district in which it is located. If the boat is longer than 25 feet, it must meet district Setback requirements.  
[amended May 16, 2001]
- B. Notwithstanding A, above, a boat, regardless of size, may be stored for a temporary period of time between September 1<sup>st</sup> of one year and June 15<sup>th</sup> of the following year provided it meets the Yard Area requirement of the space and bulk regulations of the district in which it is located. [added May 16, 2001]

### **SECTION 11.30 TRANSIT SHELTERS**

The Front Yard Area and Front Setback provisions of the district need not be met by a shelter for persons waiting for transportation, if the following criteria are met:

- A. The structure is no more than 10 by 10 feet in horizontal dimension and not more than 8 feet tall.
- B. Except of shelters for public transit, the structure is not located within the street right-of-way.
- C. The structure is no closer than 15 feet to the edge of the pavement.

### **SECTION 11.31 TEMPORARY USES**

#### **A. Special Events Such as Carnivals, Circuses, and Tent Sales**

1. The maximum length of time that such a special event is allowed is 3 days in any one location per year if operated in a residential zone, and 10 days if operated in any other zone.
2. The operator of a special event must provide adequate and appropriate parking, litter control and removal, restroom facilities, traffic control, and emergency-vehicle access.

3. The CEO may approve an application for a special event only after the application has received Site Plan Approval from the Staff Review Committee.

#### **B. Contractor's Office, and Construction Equipment-sheds and Equipment-trailers**

1. The use must be incidental to a construction project in Bath.
2. May not contain sleeping or cooking accommodations.
3. Must be removed upon completion of the construction project.

#### **C. Christmas Tree Sales**

1. The maximum length of display and sales is 45 days.

#### **D. Portable Class Rooms**

1. Allowed for Planning Board-approved school renovations and to relieve overcrowding.

### **SECTION 11.32 TIMBER HARVESTING** [Entire Section amended May 16, 2001]

#### **A. Timber harvesting in the Shoreland Zone must conform with the following provisions:**

1. Selective cutting of no more than 40 percent of the total volume of trees 4 inches or more in diameter measured at 4 ½ feet above ground level on any lot in any 10 year period is permitted. In addition:
  - a. Within 75 feet, horizontal distance, of the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland, there may be no clearcut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, must be maintained.
  - b. At distances greater than 75 feet, horizontal distance of the normal high-water line of water bodies or the upland edge of a wetland, harvesting operations may not create single clearcut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they must be at least 100 feet apart. Such clearcut openings must be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.
2. Timber harvesting operations exceeding the 40 percent limitation in item 1, above, may be allowed by the ZBA 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 purposes of this Code. The ZBA must notify the Commissioner of the Department of Environmental Protection of each exception allowed, within 14 days of the ZBA's decision.

3. No accumulation of slash may be left within 50 feet of the normal high-water line of a water body. In all other areas slash must either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than 4 feet above the ground. Any debris that falls below the normal high-water line of a water body must be removed.
  4. Timber harvesting equipment may 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 require a bridge or culvert, except in areas low with 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 must be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts must be removed and areas of exposed soil revegetated.
  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 must be located such that an unscarified strip of vegetation of at least 75 feet in width for slopes up to 10 percent must be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each 10 percent increase in slope, the unscarified strip must be increased by 20 feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face may be closer than 25 feet from the normal high-water line of a water body or upland edge of a wetland.
- B. All other timber harvesting must conform to the requirements of 12 M.R.S.A. sections 8867-8869 and the rules adopted by the Commissioner of the Department of Conservation to implement said sections.
- C. The local regulation of timber harvesting activities in the Shoreland Zone is repealed on the statutory date established under 38 M.R.S.A. section 438-B(5), at which time the State of Maine Department of Conservation's Bureau of Forestry will administer timber harvesting standards in the shoreland zone. [added October 28, 2009]

### **SECTION 11.33 USE OF RECREATIONAL CAMPING VEHICLES AND TENTS**

- A. The use of a recreational camping vehicle or tent as a temporary or permanent dwelling unit is not permitted.
- B. A recreational camping vehicle or tent may be used on an occasional basis for temporary occupancy by residents of the dwelling unit on the property or by guests, and only on the lot owned or occupied by the owner of the recreational vehicle. For the purpose of this section, *occasional basis* means occupancy on not more than 14 nights in any 30-day period.
- C. Unoccupied recreational camping vehicles or tents may be parked or stored on a lot in any district, provided the lot is owned by the owner of the unit, but they must be parked or stored so as to meet the Yard Area requirements of the Space and Bulk Regulations of the district in which it is located. If the unit is longer than 25 feet, it must meet the Setback requirements of the district.

### **SECTION 11.34 SHARED PARKING**

Shared parking must be:

- A. Only for motor vehicles. [amended August 6, 2003]
- B. Within 200 feet of one of the principal uses using the parking. [amended August 6, 2003]
- C. With written permission of the owner of the parking lot.
- D. Only used at a time of day when parking spaces are not needed by the primary uses of the lot.

### **SECTION 11.35 ACCESSORY USES NOT ON THE SAME LOT AS THE PRINCIPAL BUILDING OR USE**

- A. May only be allowed after Site Plan Approval.
- B. Must be located in a district that allows the accessory use as a Permitted Use or in a district that allows the principal use to which the accessory use is accessory as a Permitted Use.
- C. Must be within 200 feet of the principal building or use served.



**SECTION 11.36 MANUFACTURING, PROCESSING, CREATING, RENOVATING, OR ASSEMBLING OF GOODS, MERCHANDISE, OR EQUIPMENT IN THE DOWNTOWN COMMERCIAL DISTRICT**

This Standard applies to Land Use category 4.1 if located in the C1 zoning district.

- A. May not be located on the ground floor unless on the ground floor at least 30 percent of the gross floor area of the use is devoted to, available to, and physically arranged to accommodate walk-in, retail sales of the product of the business.
- B. Notwithstanding A, above, a Category 4.1 use may be located on the ground floor of a mixed use building, which must include a Category 2 use, a Category 3 use, or a Category 10.1 use, provided the Category 4.1 use occupies no more than 50% of the ground floor and does not occupy more of the storefront than is necessary for safe personal egress. The *storefront* means that portion of the building that abuts a street, a City owned parking lot, or the Kennebec River and is at least 15 feet in depth from that street, City owned parking lot, or Kennebec River. [amended May 4, 2005]
- C. The non-Category 4.1 use of the building must be physically separated from the Category 4.1 use of the building. [amended May 4, 2005]
- D. May only be conducted in a building, which existed on July 19, 2000. amended May 4, 2005]

**SECTION 11.37 THE SALE OF MOTOR SCOOTERS AND SMALL ATVS** [Entire Section added March 11, 2009]

This Standard applies to Land Use category 12.6.

- A. Outdoor display or storage of motor scooters or small ATVs is not allowed overnight or during times when the business is not open to the public.
- B. The repair and/or service of motor scooters or small ATVs may not take place outside of an enclosed building.
- C. No more than 5 motor scooters and/or small ATVs may be displayed out of doors at any one time.

**SECTION 11.38 ESSENTIAL SERVICES IN THE SHORELAND ZONE** [added October 28, 2009]

- A. Where feasible, the installation of essential services must be limited to existing public ways and existing service corridors.
- B. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection Zone, except to provide services to a permitted

use within said zone, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities must 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.

**SECTION 11.39 SEPTIC WASTE DISPOSAL IN THE SHORELAND ZONE** [added October 28, 2009]

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

- A. clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, may not extend closer than 75 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland;
- B. a holding tank is not allowed for a first-time residential use in the shoreland zone; and
- C. any new system, excluding fill extensions, may not be constructed less than 100 feet, horizontal distance, from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

\* \* \*

## ARTICLE 12: SITE PLAN REVIEW

### SECTION 12.01 PURPOSE

The Site Plan Review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, preserve the environment, and minimize the improvements that must be paid for by the City's taxpayers by ensuring that nonresidential, multi-family residential, and similar facilities are designed and developed in a manner that ensures that adequate provisions are made for traffic safety and access; emergency access; pedestrian access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment; minimizing the adverse impact on adjacent properties; and fitting the project harmoniously into the fabric of the community.

### SECTION 12.02 APPLICABILITY [amended October 28, 2009]

Site Plan Approval from the appropriate Review Authority must be obtained prior to undertaking any alteration or improvement of the site, including grubbing or grading, cutting of trees, obtaining construction permits for the activities, and commencing any activity that requires Site Plan Approval. Site Plan Approval is required for:

- A. the construction of any building or building addition for a use designated by the Land Use Table (see Section 9.02) as one requiring Site Plan Approval
- B. changes of use from a use not requiring Site Plan Approval to a use designated by the Land Use Table (see Section 9.02) as one requiring Site Plan Approval
- C. any change of a use designated by the Land Use Table (see Section 9.02) as one requiring Site Plan Approval if that change requires changes to the site, such as additional parking or loading spaces, or screening
- D. any change to or site development on the site of a use designated by the Land Use Table (see Section 9.02) as one requiring Site Plan Approval, such as a change to or the addition of parking; access drive(s); drainage; stormwater management; erosion or sedimentation control; exterior lighting; outdoor storage or display; pedestrian walkway; exterior lighting; a drive-up or walk-up service window; or motor vehicle fuel pumps
- E. additions to any structure, change to the site, or change of any condition of approval of any project that previously received Conditional Use or Site Plan Approval
- F. the expansion of a nonconforming use

G. any other activity or use requiring Planning Board review by this Code

The change from one use to another Permitted Use does not require Site Plan Approval unless required in items A-G, above.

### **SECTION 12.03 REVIEW AND APPROVAL AUTHORITY**

- A. The Staff Review Committee is authorized and required to review and act on all site plans for development if the proposal will result in less than 500 square feet of new or additional gross floor area or less than 1,000 square feet of new or additional impervious surface.
- B. The Planning Board is authorized and required to review and act on all other site plans for development requiring Site Plan Review.
- C. The applicable Review Authority is required to review the site plan and must approve, approve with conditions, approve subject to additional information, or deny the application based on the application's and site plan's compliance with the standards in Section 12.09, and any other applicable standards.

### **SECTION 12.04 PRE-REVIEW PROCEDURES**

#### **A. Application**

Application for Site Plan Approval must be made at the City Planning Office. The application must include the following:

1. 15 copies of the site plan and all supporting information (See Section 12.08)
2. the application fee
3. a list of owners of contiguous properties, property directly across the street, and property within 100 feet of the applicant's property

The City Planning Office will give the applicant a dated receipt for the application if it includes these items.

## **B. CEO Review**

As soon as practical, the Planning Director must forward the application to the CEO, who must review the application to determine whether:

1. the use proposed is allowed in the zone, or is part of an application for a zoning-map amendment in accordance with an architect's plan, as allowed in Section 1.07, G
2. the Space and Bulk Regulations of the zone are met
3. the site plan must be reviewed by the Staff Review Committee or the Planning Board

The CEO must report his/her determination in writing to the Planning Director as soon as practical. If the CEO finds that Item 1 or 2, above, has not been met, the applicant also must be notified in writing, and processing of the site plan application will stop.

## **C. Planning Director's Review** [amended February 23, 2005]

1. Once the CEO has reported his/her determination to the Planning Director, the Planning Director must begin review of the site plan and supporting information. If the Planning Director makes a preliminary determination that the application is complete and it is a site plan that must be reviewed by the Planning Board, it is placed on the agenda of the next available Planning Board meeting. If the Planning Director makes a preliminary determination that the application is not complete, he/she must notify the applicant in writing and must list the materials or information that must be submitted to complete the application. The applicant may appeal the Planning Director's determination in writing; the application then will be placed on the agenda of the next available Planning Board meeting.
2. Action taken by the Planning Director with respect to reviewing a site-plan application does not result in an application being deemed pending for the purposes of 1 M.R.S.A. Section 302.
3. The Planning Director may, if the City's staff are not available or qualified, because of the complexity or magnitude of the proposed development, to review the plans and supporting materials, and after notification to and at the expense of the applicant, employ 1 or more independent consultants to review the plans and supporting materials. The estimated costs of such consultant must be deposited with the City Treasurer prior to employing the independent consultant. If the cost of the review exceeds the amount deposited, the applicant must deposit additional funds with the City Treasurer before Site Plan Approval may be granted. Any money not spent must be reimbursed to the applicant.

## **D. Notification of Abutters**

At least 7 days prior to the date when the Review Authority is to review a site plan, the Planning Office must send notice by first-class mail of the Review Authority meeting to owners of contiguous properties, property directly across the street, and property within 100 feet of the applicant's property, as shown by the most recent tax record of the City. Notice must indicate the time, date, and location of the Review Authority meeting. The Planning Office must maintain a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed, and from what location it was mailed. Failure to notify as required herein does not invalidate any action of the Review Authority, nor does it require the Review Authority to reconsider the application, unless a property owner can demonstrate to the ZBA that he/she was materially prejudiced by the lack of knowledge of the Review Authority meeting. Such appeal must be processed as an Administrative Appeal.

## **SECTION 12.05 PLANNING BOARD REVIEW**

### **A. Pre-application Workshop**

Prior to submitting a formal application, the applicant may schedule a pre-application workshop with the Planning Board. The pre-application workshop is informal and informational in nature and does not result in any formal action. There is no fee for a pre-application review, and it does not cause the plan to be a pending application. No decision on the substance of the plan may be made at the pre-application workshop. The applicant is encouraged to meet informally with the Planning Director prior to the workshop.

#### **1. Purpose**

The purposes of the pre-application workshop are to:

- (a) allow the Planning Board to understand the nature of the proposed development and the issues involved in the proposal
- (b) identify issues that need to be addressed in future submissions

#### **2. Information Required**

There are no formal submission requirements for a pre-application workshop. However, the applicant should be prepared to discuss the following items with the Planning Board:

- (a) the proposed site, including its location, size, and general characteristics

- (b) the natural characteristics of the site that may limit its use and development
- (c) the nature of the proposed use and development, including a conceptual site plan
- (d) any issues or questions about existing municipal regulations and their applicability to the project
- (e) any requests for waivers from the submission requirements

## **B. Determination of Completeness**

1. The Planning Board must begin review of the site plan by determining if the application is complete according to the submission requirements (See Section 12.08). The Planning Board has 35 days to determine if the application is complete; this time may be extended by mutual agreement of the Planning Board and the applicant.
2. If the application is not complete, the Planning Board may not continue its review and must notify the applicant in writing of the information that is missing.
3. If the Planning Board determines that the application is complete, it must begin reviewing the application to determine if it conforms to the approval criteria.

## **C. Procedure**

The Planning Board must use the following procedure when reviewing the application to determine whether it conforms to the approval criteria:

1. The applicant or his/her duly authorized agent or representative presents the application and explains how the proposed development will conform to all application provisions of this Code.
2. Questions and comments from those present, including Planning Board members, the public, the City staff, may be made through the Planning Board Chair.
3. The Planning Board will review the information presented and determine if the proposed development will conform to all applicable provisions of this Code. If the Planning Board determines that the application conforms to the approval criteria, the Planning Board must grant Site Plan Approval. If the Planning Board determines that the application does not conform to the approval criteria, it must deny Site Plan Approval and state in writing the reasons for the denial.

4. If the Planning Board needs more time to review the application and the information presented, or if the applicant needs more time to present additional information to show that the application meets the approval criteria, the Planning Board may vote to continue review of the application to another Planning Board meeting that is to be held within 35 days. This time may be extended by mutual agreement of the applicant and the Planning Board. The motion to continue must state the reason for the continuation of and the date, time, and location of the meeting to which it is continued.

#### **D. Independent Consultants**

If the Planning Board cannot judge that the proposed development will conform to all applicable provisions of this Code, the Planning Board, after notification to and at the expense of the applicant, may employ 1 or more independent consultants. The estimated costs of such consultants must be deposited with the City Treasurer prior to employing the independent consultant. Any money not spent must be reimbursed to the applicant. If the cost of the review exceeds the amount deposited, the applicant must deposit additional funds with the City Treasurer before Site Plan Approval may be granted.

### **SECTION 12.06 STAFF REVIEW COMMITTEE REVIEW**

#### **A. Determination of Completeness**

The Staff Review Committee must begin review of the site plan by determining if the application is complete according to the submission requirements (see Section 12.08). The Staff Review Committee has 14 days to verify the Planning Director's determination of completeness; this time may be extended by mutual agreement of the Staff Review Committee and the applicant. If the application is not complete, the Staff Review Committee may not continue its review and must notify the applicant in writing of the information that is missing. If the Staff Review Committee determines that the application is complete, it must begin reviewing the application to determine if it conforms to the approval criteria.

#### **B. Review Procedure**

1. The applicant or his duly authorized agent or representative presents the application and explains how the proposed development will conform to all application provisions of this Code.
2. Questions and comments from those present, including Staff Review Committee Board members, the public, the City staff, may be made through the Staff Review Committee Chair.



3. The Staff Review Committee will review the information presented and determine if the proposed development will conform to all applicable provisions of this Code. If the Staff Review Committee determines that the application conforms to the approval criteria, it must grant Site Plan Approval. If the Staff Review Committee determines that the application does not conform to the approval criteria, it must deny Site Plan Approval and state in writing the reasons for the denial.
4. If the Staff Review Committee needs more time to review the application and the information presented, or if the applicant needs more time to present additional information to show that the application meets the approval criteria, it may vote to continue review of the application to another Staff Review Committee meeting that is to be held within 14 days. This time may be extended by mutual agreement of the applicant and the Staff Review Committee. The motion to continue must state the reason for the continuation of and the date, time, and location of the meeting to which it is continued.

### **C. Independent Consultants**

If the Staff Review Committee cannot judge that the proposed development will conform to all applicable provisions of this Code, it may, after notification to and at the expense of the applicant, employ 1 or more independent consultants. The estimated costs of such consultants must be deposited with the City Treasurer prior to employing the independent consultant. Any money not spent must be reimbursed to the applicant. If the cost of the review exceeds the amount deposited, the applicant must deposit additional funds with the City Treasurer before Site Plan Approval may be granted.

### **SECTION 12.07 APPROVAL VOID** [amended June 21, 2006]

Site Plan Approval is void 6 months from the date of the Review Authority approval if a building permit for the project has not been issued by the CEO. If the Site Plan Approval is contingent upon a rezoning by the City Council, the 6-month period begins 21 days following final City Council approval of such rezoning. Prior to expiration of the Site Plan Approval, the applicant may request an extension of up to 6 months from the Review Authority. Site Plan Approval remains valid if a building permit has been issued for the project prior to the expiration date. Expiration of the building permit prior to completion of the project renders the Site Plan Approval null and void. Failure to comply with conditions placed on Site Plan Approval or to comply with any other permitting process, renders the approval null and void, unless an extension is granted by the Review Authority.

## SECTION 12.08 SUBMISSION REQUIREMENTS

The applicant must submit 15 copies of site plans (drawn to a scale of not less than 1 inch = 50 feet) and supporting information. Building elevations and other exterior building details may be required by the Planning Board for applications such as those for Historic District Approval, Setback Reduction in the NRPO district, and Contract Rezoning. The site plan and supporting submissions must include the following information: [amended August 6, 2003]

- A. the proposed use according to the Land Use Table
- B. evidence of right, title, or interest in the site of the proposed project
- C. a location map of the site with reference to surrounding areas and existing street locations
- D. the name and address of the owner and site-plan applicant, together with the names of the owners of all contiguous properties, and property directly across the street, as shown by the most recent tax records of all municipalities in which such properties lie [amended August 6, 2003]
- E. lot lines, including courses and distances, and existing monuments. [amended August 6, 2003]
- F. locations of all existing buildings and structures, streets, easements, driveways, entrances, and exits on the site and within 100 feet thereof
- G. locations and dimensions of proposed buildings and structures, roads, access drives, parking areas, and other improvements
- H. lines on the site plan indicating Setbacks and Yard Areas [amended August 6, 2003]
- I. all existing physical features on the site, including streams, watercourses, existing vegetated areas and an indication whether the vegetation will be removed or preserved, soil conditions (e.g., wetlands, rock ledge, and areas of high water table) as reflected by a medium-intensity survey also must be shown (the Review Authority may require a high-intensity soils survey where it deems necessary) [amended August 6, 2003]
- J. topography showing existing and proposed contours at 5-foot intervals for slopes averaging 5 percent or greater and at 2-foot intervals for land of lesser slope. A reference benchmark must be clearly designated. Where variations in the topography may affect the layout of buildings and roads or stormwater flow, the Review Authority may require that the topographic maps be based on an on-site survey.

- K. parking, loading, and unloading areas must be indicated with dimensions, traffic patterns, and curb radii
- L. improvements such as roads, curbs, bumpers, and sidewalks with cross sections, design details, and dimensions
- M. locations and designs of existing and proposed stormwater systems, sanitary waste-disposal systems, potable water supplies, and methods of solid-waste storage and disposal
- N. landscaping and buffering showing what will remain and what will be planted, and indicating botanical and common names of plants and trees, dimensions, approximate time of planting, and maintenance plans
- O. lighting details indicating type of standards, location, direction, wattage, radius of light, and intensity
- P. location, dimensions, and details of signs
- Q. demonstration of technical and financial capability to complete the project; sensitive, financial, and technical information may be submitted on a proprietary basis and will not be treated as public information
- R. evidence in site-plan, text, or report form explaining how the development meets the applicable general performance standards of Article 10 and applicable performance standards, specific activities and land uses, of Article 11
- S. where the applicant requests in writing and the Review Authority finds that due to special circumstances of a particular plan the submission of any information listed in this section is not required in the interest of public health, safety, and general welfare, or is inappropriate because of the nature of the proposed development, the Review Authority may waive such requirements, subject to appropriate conditions

## **SECTION 12.09 APPROVAL CRITERIA**

The application must be approved and Site Plan Approval granted if the Review Authority determines that the applicant has demonstrated that the applicable general performance standards of Article 10 and the applicable performance standards, specific activities and land uses, of Article 11 are or will be met.

## **SECTION 12.10 SITE PLAN APPROVAL WITH CONDITIONS**

The Review Authority may attach reasonable conditions to their Site Plan Approval if it determines that such conditions are necessary to carry out the purpose of this Code.

## **SECTION 12.11 APPROVAL SUBJECT TO ADDITIONAL INFORMATION**

The Review Authority may grant Site Plan Approval subject to additional information. The applicant must provide that information and receive Site Plan Approval from the Review Authority or the Planning Director if so designated by the Review Authority in its motion to grant the Approval Subject to Additional Information within 35 days of said approval, or that approval is void.

## **SECTION 12.12 CHANGE IN OWNERSHIP**

A change in the ownership of property does not affect the requirements of this section, including but not limited to requirements related to receiving Site Plan Approval and implementing a final construction schedule.

## **SECTION 12.13 AMENDMENTS**

- A. Any alteration to a site that is inconsistent with the approved site plan requires an amendment to the site plan.
- B. Minor revisions to approved site plans may be permitted by the following procedure:
  - 1. Five copies of the plan showing the proposed revision must be submitted to the CEO.
  - 2. If the CEO determines that the revision does not violate applicable codes, the plan will be referred to the Planning Office for review by the Public Works Director, the Director of Planning and Development, and the Chair of the Planning Board.
  - 3. The Public Works Director, the Planning and Development Director, and the Chair of the Planning Board must agree that the proposed change is a minor revision and that it does not materially change a site plan approved by the Planning Board.
  - 4. If any of the 3 reviewers identified in Item 3 requests it, the proposed site-plan revision will be placed on the agenda of the next Planning Board meeting for the Planning Board's review.

5. Minor revisions to site plans may be approved, provided that such minor revisions will not materially alter the layout or scale of the development nor its impact on its surroundings, nor will it specifically:
    - (a) expand the size of a project by increasing the number of lots or dwelling units; by increasing the gross floor area of a primary-use structure; or by adding an accessory structure containing more than 200 square feet of gross floor area to the site
    - (b) violate the provisions of any City ordinance
    - (c) reduce the effectiveness of landscaping, screening, or buffering elements
    - (d) change the number of vehicular access points to the public street system or significantly alter the location of such access points
    - (e) reduce the number of parking spaces or significantly alter on-site vehicular circulation
    - (f) significantly alter drainage patterns
  6. If the minor revision is not approved, the site-plan revision will be placed on the agenda of the next Planning Board meeting for the Planning Board's review.
- C. Any amendments to the design of an approved project, where specific design approval was part of the initial application, must include as part of the submission requirements for possible amendment, a copy of the original approved design as well as the proposed design. [amended September 24, 2008]

#### **SECTION 12.14 CONDITIONAL CERTIFICATE OF OCCUPANCY FOR ANY USE THAT HAS RECEIVED SITE PLAN APPROVAL**

- A. Any project, use, or activity that received Site Plan Approval must be completed according to the approved or amended site plan before a Certificate of Occupancy may be issued, except if a performance guarantee is provided by the applicant.
- B. The purpose of a performance guarantee is to ensure that the site plan, including all of the improvements proposed in the application, whether in narrative, report, or site-plan form, are completed as approved.
- C. A person requesting a Conditional Certificate of Occupancy covered by this section must apply to the Review Authority that granted approval by filing an application with the Planning Director. The Review Authority that granted approval will determine if circumstances (e.g., weather conditions) do not permit the completion of all

improvements of the approved site plan. The Review Authority also will determine the cost to complete the project according to the approved site plan. The Review Authority will require a report from the CEO regarding the safety of occupants and the public if the Certificate of Occupancy is granted before all improvements are completed. The Review Authority may not approve a conditional certificate of occupancy if the CEO reports that there may be a safety hazard to occupants or the public. [amended August 6, 2003]

- D. The performance guarantee may be a certified check payable to the City, an irrevocable letter of credit from a lending institution, or a passbook savings account in the name of the City. The performance guarantee must be in an amount adequate to cover the total costs of all required but not completed improvements, considering the time-span of the guarantee and the effects of inflation on costs.
- E. Prior to the release of any part of or the entire performance guarantee, the Review Authority must determine to its satisfaction that the improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested. Any money plus any interest accumulated on any escrow account must be returned to the applicant after it has been determined that the proposed improvements meet all design and construction requirements.
- F. If the development is not completed within the time allowed by the Review Authority or is not completed according to the approved site plan, the Review Authority is authorized to use the funds in the performance guarantee to have the project completed in a reasonable and commercially viable manner.

## **SECTION 12.15 APPEALS**

Appeal of an action taken by the Staff Review Committee is made to the Planning Board, it is processed as a Site Plan Review, and it must be filed within 30 days of the final action by the Staff Review Committee. Appeal of a final action by the Planning Board regarding Site Plan review is made to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

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## **ARTICLE 13 SUBDIVISIONS**

[NEW ARTICLE JUNE 15, 2005]

### **SECTION 13.01 TITLE**

This Article may be cited as the “City of Bath Subdivision Ordinance” and referred to herein as the “Ordinance.”

### **SECTION 13.02 AUTHORITY AND PURPOSE**

This Ordinance has been adopted in accordance with the provisions of 30-A M.R.S.A. § 4403, and sets forth regulations by which the Bath Planning Board will review Applications for Subdivision Approval and amendments to subdivisions. The purpose of the Ordinance is:

- A. To provide for an expeditious and efficient process for the review of Applications for Subdivision Approval and Applications for Subdivision Amendment Approval;
- B. To provide specific standards of approval for the State Subdivision Review Criteria, found in 30-A M.R.S.A. § 4404;
- C. To assure that new development in the City of Bath meets the goals and conforms to the policies of the Comprehensive Plan. Compliance with ordinances based on the Comprehensive Plan constitutes a presumption that the provisions of the Comprehensive Plan have been met;
- D. To assure the comfort, convenience, safety, health, and general welfare of the inhabitants of the City of Bath;
- E. To protect the environment and conserve the natural and cultural resources identified as pertinent in the Comprehensive Plan;
- F. To assure that services and facilities are available to residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures;
- G. To minimize the potential impacts from new subdivisions; and
- H. To promote the development of an economically sound and stable community.

### **SECTION 13.03 NOTICES**

When applicable, at least 7 days prior to the date when the Board is to review the Application, the Planning Office must send notices of the Board meeting by first-class mail to owners of contiguous properties, properties directly across the street, and properties within 200 feet of the applicant’s property, as shown by the most recent tax records of the City. Notices must indicate the time, date, and location of the Board meeting. The Planning Office must maintain a written certificate indicating those persons to whom notices were mailed, to what addresses, when mailed, by whom mailed, and from what location mailed. Failure to notify as required herein does not invalidate any action of the Board. Any appeal must be processed as an Administrative Appeal according to Section 4.13, C through G. A party is

required to demonstrate that he/she was materially prejudiced by the lack of knowledge of the Board meeting before the Zoning Board of Appeals may require reconsideration.

#### **SECTION 13.04 ADMINISTRATION AND ENFORCEMENT PRIOR TO APPROVAL**

- A. The Planning Board of the City of Bath, hereinafter referred to as “the Board,” is authorized to administer this Ordinance.
- B. The provisions of this Ordinance pertain to all land and buildings proposed for subdivision within the boundaries of the City of Bath.
- C. The grading or construction of streets, grading of land or lots, the clearing of land, or the construction of buildings in a subdivision is prohibited until such time as the Board has granted Subdivision Approval and the original copy of the Subdivision Plan so approved and endorsed has been duly recorded in the Sagadahoc County Registry of Deeds.
- D. No public utility, water district, or any utility of any kind may serve any lot in a subdivision where the Board has not granted Subdivision Approval and the approved Plan has not been recorded at the Sagadahoc County Registry of Deeds.
- E. No subdivision plan within the City of Bath may be recorded in the Sagadahoc County Registry of Deeds unless the Subdivision Plan meets the requirements of this Ordinance and is approved by the Board.
- F. No person may sell, lease, develop, build upon, convey, offer or agree to sell, lease, develop, or build upon any land or dwelling unit in a subdivision that has not been approved by the Board and the approved Plan has not been recorded at the Sagadahoc County Registry of Deeds.
- G. Any person who sells, leases, develops, builds on, conveys, offers or agrees to sell, lease, develop, or build on any land or dwelling unit in a subdivision that has not been approved as required by this Article is subject to the provisions of 30-A M.R.S.A. § 4452.

#### **SECTION 13.05 DEVELOPMENTAL SUBDIVISION**

##### **A. Definition**

A developmental subdivision is a development that meets the definition of subdivision in 30-A M.R.S.A. § 4401(4), but is on a single, undivided lot. Such development(s) include the construction or placement of 3 or more dwelling units on a single lot within a 5-year period and the division of an existing structure previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

##### **B. Review procedure and approval criteria**

An application for approval of a developmental subdivision may be processed and reviewed concurrently with an application for Site Plan Approval. As applicable, approval criteria are those in Article 10; Article 11; Section 13.13; and Section 13.14. Sketch plan review may be conducted concurrently with the site plan preapplication workshop. Subdivision review may be conducted concurrently with site plan review. Procedures for



notification, public hearing, and decision time limits contained herein must be met, as applicable.

## **SECTION 13.06 PRE-APPLICATION WORKSHOP**

Prior to submitting a formal application, a developer may schedule a pre-application workshop with the Board. The pre-application workshop is informal and informational in nature and does not result in any formal action. There is no fee for a pre-application review, and the plan is not considered a pending application. No decision on the substance of the plan may be made at the pre-application workshop. The applicant is encouraged to meet informally with the Planning Director prior to the workshop. Notification must be done pursuant to Section 13.03.

## **SECTION 13.07 SKETCH PLAN REVIEW**

### **A. Purpose**

The purpose of Sketch Plan Review is for the applicant to present to the Board general information regarding the proposed subdivision and receive the Board's comments on the preparation of the complete Application for Subdivision.

### **B. Procedure**

The applicant must submit a signed Application for Sketch Plan Review, the processing fee payable in a form acceptable to the City of Bath in an amount set by the City Council, 17 copies of the Sketch Plan and any supporting materials to the Planning Office 3 weeks prior to the Sketch Plan Review. At the Sketch Plan Review meeting, the applicant is to present the Plan and allow the Board to ask questions and make suggestions to be incorporated by the applicant into the application. The Board may not take any action on the plan, but may schedule a site inspection.

### **C. Notification to Owners of Property Near the Proposed Subdivision**

Notification must be done pursuant to Section 13.03.

### **D. Submission Requirements**

The Sketch Plan and/or the supporting materials must show, on a topographic map, the proposed layout of streets, lots, buildings, and other features in relation to existing conditions. The Sketch Plan should be supplemented with information to describe the existing conditions of the site and the proposed development. Existing site conditions such as steep slopes, wet areas, important or unique natural areas, significant trees and vegetative cover, rock outcrops, and stone walls must be identified in a general manner. It is recommended that the Sketch Plan be superimposed on, or accompanied by, a copy of the Tax Map(s) on which the land is located. The Sketch Plan must include the boundaries of the proposed subdivision and a general location of proposed utilities, a general description of any proposed covenants, and be accompanied by a copy of that portion of the county soil survey or other equivalent soils information covering the proposed subdivision.

### **E. Site Inspection**

If the Board schedules a site inspection, it must be held within 30 days of the Sketch Plan Review meeting, unless circumstances, such as deep snow, render the site's conditions

unobservable. If the site conditions are unobservable, the site inspection must be postponed until such time the site's conditions are observable. Prior to site inspection, the applicant must place "flagging" at the centerline of any proposed streets and emergency roads, at the approximate intersections of the street centerlines, and at lot and any common area corners. The provisions of 1 M.R.S.A. §401, *et seq.*, apply to site inspections.

**F. Rights not Vested.**

The submittal of the Sketch Plan, the meeting to review the Sketch Plan, and/or the site inspection are not considered substantive reviews under 1 M.R.S.A. § 302.

**SECTION 13.08 SUBMISSION OF APPLICATIONS FOR SUBDIVISION APPROVAL**

- A. Within 6 months of the Sketch Plan Review meeting, the applicant must submit an Application for Subdivision Approval to the City of Bath Planning Office. Failure to do so within the 6 months may require resubmission of the Sketch Plan to the Board. Changes in development or public utilities in the area that may affect the proposed subdivision may require resubmission of the Sketch Plan.
- B. In order to establish an orderly, equitable, and expeditious procedure for reviewing subdivisions and to avoid unnecessary delays in processing of Applications for Subdivision Approval, Applications for Subdivision Approval must be received by the Planning Office 4 weeks prior to the meeting at which the Board is to review the application, or at such time set by the Board at Sketch Plan Review.
- C. The Subdivision Plan must generally conform to the layout shown on the Sketch Plan and must include any recommendations made by the Board.
- D. All Applications for Subdivision Approval must be accompanied by a processing fee payable in a form acceptable to the City of Bath, in an amount set by the City Council.

**SECTION 13.09 PLANNING OFFICE PROCESSING OF APPLICATIONS FOR SUBDIVISION APPROVAL**

- A. Upon receipt of an Application for Subdivision Approval the Planning Office:
  - 1. Must issue a dated receipt to the applicant.
  - 2. Must notify in writing owners of property within 200 feet of the applicant's property that an Application for Subdivision Approval has been submitted, specifying the location of the subdivision and including a general description of the project.
  - 3. Must notify the clerk and the review authority of the neighboring municipalities if any portion of the subdivision abuts or crosses the municipal boundary.
  - 4. May, if City staff is not available or qualified to review the plans and supporting materials, and after notification to, and at the expense of, the applicant, employ 1 or more independent consultants to review the plans and supporting materials. The estimated costs of such consultants must be deposited with the City Treasurer prior to employing the independent consultant. Any amount not

spent must be returned to the applicant. If the cost of the review exceeds the amount deposited, the applicant must deposit additional funds with the City Treasurer before processing of the Application by the Planning Board may continue.

**B. Code Enforcement Officer's Review**

The Planning Office must forward the application to the Code Enforcement Officer (hereinafter "CEO"), who must review the application to determine whether the Space and Bulk Regulations of the zone are met. The CEO must report his/her determination in writing to the Planning Director. If the CEO finds that the Space and Bulk Regulations of the zone have not been met, the applicant must be notified in writing, and processing of the Application for Subdivision Approval will cease, unless the space and bulk nonconformancy is the subject matter of a Contract Rezoning amendment.

**C. Planning Director's Review**

Once the CEO has reported his/her determination to the Planning Director, the Planning Director must review the Application for Subdivision Approval and the supporting information. The Planning Director must send copies of the plans and supporting materials to appropriate City staff for review. If the Planning Director makes a preliminary determination that the application is complete, in accordance with the requirements of Section 13.11, the application must be placed on the agenda of the next available Board meeting. If the Planning Director makes a preliminary determination that the application is not complete, the applicant must be notified in writing and advised of the materials or information necessary to complete the application. The applicant may appeal the Planning Director's preliminary determination, in writing, to the Board. If appealed, the application will be placed on the agenda of the next available Board meeting. The Planning Director's review is not considered a substantive review process under 1 M.R.S.A. § 302.

**SECTION 13.10 PLANNING BOARD'S PROCESSING OF APPLICATIONS FOR SUBDIVISION APPROVAL**

- A. The meeting at which the Board considers the Application may not be combined with the Sketch Plan Review meeting for the same development.
- B. The Board must issue a dated receipt to the applicant for the Application at its first meeting for consideration of the Application.
- C. Within 30 days of the receipt of the Application, the Board must determine whether the application is complete pursuant to the provisions of Section 13.11, and, must notify the applicant in writing of its determination. If the application is not complete, the Board must cease review of the Application and notify the applicant in writing of the necessary material needed to complete the application.
- D. Upon a determination that the Application is complete, the Board must determine whether to hold a public hearing on the application. If the Board decides to hold a public hearing, it must hold the hearing within 30 days of determining that it has received a complete application, and must publish a notice of the date, time, and place of the hearing in a newspaper of general circulation in Bath at least 2 times, the date of

the first publication to be at least 7 days prior to the hearing. A copy of the notice must be mailed to the applicant and to owners of property near the proposed subdivision pursuant to Section 13.03.

**E. Notification to Owners of Property Near the Proposed Subdivision**

Notification must be pursuant to Section 13.03.

**F. Review Procedure**

The Board must use the following procedure when reviewing the Application to determine whether or not the Application meets the standards of this Ordinance and the provisions of 30-A M.R.S.A. § 4404, and as amended.

1. The applicant or his/her duly authorized agent or representative must present the application and demonstrate how the subdivision will conform to all applicable provisions of this Ordinance and the provisions of 30-A M.R.S.A. § 4404, and as amended.
2. Questions and comments from those present, including the Board members, the public, and the City staff, must be made through the Board Chair.
3. If the Board needs more time to review the application and the information presented, or if the applicant needs more time to present additional information to demonstrate that the application meets the standards of this Ordinance and the provisions of 30-A M.R.S.A. § 4404, and as amended, the Board may vote to continue review of the application to another Board meeting, to be held within 30 days of the public hearing, or within 60 days of determining a complete application has been received by the Board, if no public hearing is held. The Board and the applicant may mutually agree upon such other time as appropriate. The party requesting the continuance must state the reason for such continuance.
4. If necessary to determine that the subdivision will conform to applicable provisions of this Ordinance and the provisions of 30-A M.R.S.A. § 4404, the Board, after notification to, and at the expense of, the applicant may employ 1 or more independent consultants. The estimated costs of such consultants must be deposited with the City Treasurer prior to employing the independent consultant. Any funds not spent must be returned to the applicant. If the cost of the review exceeds the amount deposited, the applicant must deposit additional funds with the City Treasurer before review of the Application may continue.

**G. Decision**

Within 30 days of conclusion of a public hearing, or, if no public hearing is held, within 60 days of determining a complete application has been received by the Board, or such other time as may be mutually agreed upon by the Board and the applicant, the Board must make findings of fact and conclusions as to whether or not the application meets the provisions of 30-A M.R.S.A. § 4404, as amended, and the standards of Section 13.13. If the provisions of 30-A M.R.S.A. § 4404, as amended, and the standards of Section 13.13 have been met, Subdivision Approval must be granted. If any of the provisions of 30-A M.R.S.A. § 4404, as amended, or the standards of Section 13.13 have not been met, the Board must either deny the Application, or approve the Application with conditions to

ensure all of the provisions and standards will be met. The Board must issue a written notice of its decision to the applicant, including its findings of fact and conclusions.

### **SECTION 13.11 SUBMISSION REQUIREMENTS FOR APPLICATIONS FOR SUBDIVISION APPROVAL**

The Application for Subdivision Approval must contain the following:

- A. A completed Application Form, signed by the applicant, along with the processing fee payable in a form acceptable to the City of Bath, in an amount set by the City Council.
- B. Seventeen (17) copies of a Location Map, drawn at a size adequate to show the relationship of the subdivision to the adjacent properties, and to allow the Board to locate the subdivision within the City. The location map must show:
  - 1. Locations and names of existing and proposed streets.
  - 2. Boundaries and designations of zoning districts.
  - 3. An outline of the subdivision and any remaining portion of the owner's property if the Subdivision Plan submitted covers only a portion of the owner's entire contiguous holding.
- C. Three (3) copies of the subdivision plan drawn to a scale of not more than 100 feet to the inch. Fourteen (14) copies of the plan reduced to a size of 11 inches by 17 inches. Except for the reduced copies of the plan, plans for subdivisions containing more than 100 acres may be drawn at a scale of not more than 200 feet to the inch provided all necessary detail can easily be read. The full sized plans may be no larger than 24 inches by 36 inches in size, and must have a margin of 2 inches outside of the borderlines on the left side for binding and a 1-inch margin outside the border along the remaining sides. Space must be provided for endorsement by the 7 Board members.
- D. Two (2) full sized subdivision plans, on reproducible, stable-based transparent material, one to be recorded at the Sagadahoc Registry of Deeds, one to remain in the City files. The reproducible transparencies must be embossed with the seal of the individual responsible for preparation of the plan. This submission item is a necessary prerequisite to final approval and signing of the plan.
- E. The Application for Subdivision Approval must also include the following information, either on the plan(s) or in other written form. If the Board finds it necessary, in order to determine whether the provisions of 30-A M.R.S.A. § 4404 and the standards in this Ordinance are met, it may require additional information be submitted.
  - 1. Proposed name of the subdivision, or identifying title, the name of the municipality in which it is located, and the Tax Map and Lot numbers.
  - 2. Evidence of right, title, or interest in the property.
  - 3. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, made and certified by a registered land surveyor. The corners of the parcel must be located on the ground and marked by

- monuments. The plan must indicate the type of monument found or to be set at each lot corner, pursuant to Section 13.14(I).
4. A copy of the most recently recorded deed for the subdivision property A copy of any and all deed restrictions, easements, rights-of-way, or other prior encumbrances affecting the property.
  5. A copy of any and all deed restrictions intended to cover all or any part of the lots or dwellings in the subdivision.
  6. The type of sewage disposal to be used in the subdivision.
  7. If sewage disposal is to be accomplished by subsurface wastewater disposal systems, test pit analyses, prepared by a Licensed Site Evaluator and a map showing the location of all test pits dug on the site.
  8. The type of water supply system(s) to be used in the subdivision.
  9. If water is to be supplied by private well, a well driller or a hydrogeologist familiar with the area must provide evidence of adequate groundwater supply and quality.
  10. The date the plan was prepared, north arrow, and graphic map scale.
  11. The names and addresses of the record owner, applicant, and individual or company who prepared the plan.
  12. The names of abutting property owners, shown on the plan(s).
  13. A high intensity soil survey by a Certified Soil Scientist. Wetland areas must be identified on the survey, regardless of size.
  14. The number of acres within the proposed subdivision, location of property lines, existing buildings, vegetative cover type, significant trees and other vegetation including trees 18 inches or more at the base, and other essential existing physical features. On wooded sites, the plan must indicate the area where clearing for lawns and structures is proposed and/or any restrictions to be placed on clearing existing vegetation and the method of protecting the trees and other vegetation proposed to remain.
  15. The location of all rivers, streams, and brooks, as defined by 38 M.R.S.A. § 480-B(9), and as amended, within or abutting the proposed subdivision.
  16. Contour lines at a 2-foot interval, showing elevations in relation to mean sea level.
  17. The zoning district in which the proposed subdivision is located and the location of any zoning boundaries affecting the subdivision.
  18. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.
  19. The location, names, and present widths of existing streets, existing and proposed easements, building lines, parks, and other open spaces on or adjacent to the subdivision. The plan must contain sufficient data to allow the

location, bearing and length of every street line, lot line, and boundary line to be readily determined and able to be reproduced on the ground. These lines must be tied to reference points previously established.

20. The width and location of any streets, public improvements, or open space within the subdivision shown upon the Official Map, if any, or the Comprehensive Plan.
21. Proposed street plan meeting the requirements of Section 13.14.
22. The location of any open space to be preserved and a description of proposed improvements and management.
23. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to public open spaces to the City of Bath must be shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the lot owners are to be maintained must also be submitted.
24. If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the City's Flood Boundary and Floodway Maps and Flood Insurance Rate Map.
25. A hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer experienced in hydrogeology, when the subdivision is not served by public sewer and:
  - (a). Any part of the subdivision is located over a sand and gravel aquifer, as shown on the map entitled "Hydrogeologic Data for Significant Sand and Gravel Aquifers," by the Maine Geological Survey, 1985, Map No. 1, or latest edition and/or as amended; or
  - (b). The subdivision has an average density of more than one dwelling unit per 100,000 square feet.

The Board may require a hydrogeologic assessment in cases where site considerations or development design indicate greater potential for adverse impacts on groundwater quality. These cases include, but are not limited to, extensive areas of shallow to bedrock soils, cluster developments in which the average density is less than 1 dwelling unit per 100,000 square feet but the density of the developed portion is in excess of 1 dwelling unit per 80,000 square feet, or proposed use of shared or common subsurface waste water disposal systems. The hydrogeologic assessment must be conducted in accordance with the provisions of Section 13.13(L)(1)(a).

26. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used must be taken from *Trip Generation Manual*, 1991 edition, published by the Institute of Transportation Engineers, or latest edition, and/or as amended. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.

27. For subdivisions serving non-residential uses that will contain 20 or more parking spaces for residential subdivisions projected to generate 200 or more vehicle trips per day, and for other subdivisions as required by the Board, a traffic impact analysis, must be prepared by a Registered Professional Engineer with experience in traffic engineering. The analysis must indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets that may be affected, and recommended improvements to maintain the desired level of service on the affected streets.
28. A stormwater management plan, prepared by a registered professional engineer in accordance with the *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection (1995), or latest edition, and/or as amended. The Board may only waive submission of the stormwater management plan if the subdivision will not involve grading that changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the total area of the subdivision.
29. An erosion and sedimentation control plan prepared in accordance with the *Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices*, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, March 1991, or latest recent edition, and/or as amended. The Board may only waive submission of the erosion and sedimentation control plan if the subdivision will not involve grading that changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the total area of the subdivision.
30. Areas within or adjacent to the subdivision that have been identified as high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or by the Comprehensive Plan. If any portion of the subdivision is located within an area designated as a critical natural area by the Comprehensive Plan, or the Maine Natural Areas Program, the plan must indicate appropriate measures for the preservation of the values, which qualify the site for such designation.
31. All areas within or abutting the subdivision that are either listed on, or eligible to be listed on, the National Register of Historic Places, or have been identified in the Comprehensive Plan as important historic or pre-historic sites.
32. The location and method of disposal for land clearing and construction debris.
33. An infrastructure construction plan including a blasting plan, an estimate of material to be removed or filled, routes for trucking of material, times of trucking, and duration of the construction activity.
34. A list of construction items, with cost estimates, that will be completed by the applicant prior to the sale of lots, and evidence that the applicant has financial commitments or resources to cover these costs.



35. A written request for any waivers from the Submission Requirements of Section 13.11, the Performance Standards of Section 13.13, or the Design and Construction Standards of Section 13.14, as allowed by Section 13.18.
36. A written report explaining how the plan and the supporting materials demonstrate that the provisions of 30-A M.R.S.A. § 4404 and the standards of Section 13.13 of this Ordinance have been, or will be, met.

## **SECTION 13.12 APPROVAL AND FILING**

- A. No Application for Subdivision Approval may be approved by the Board if the applicant is in violation of the provisions of a previously approved Subdivision Plan or Site Plan within the City of Bath.
- B. Prior to the recording of the approved plan, where applicable, and as a condition of any Board approval, the following approvals must be obtained in writing:
  1. Maine Department of Environmental Protection, under the Site Location of Development Act.
  2. Maine Department of Environmental Protection, under the Natural Resources Protection Act or if a stormwater management permit or a wastewater discharge license is needed.
  3. Maine Department of Human Services, if the applicant proposes to provide a community water system.
  4. Maine Department of Human Services, if an engineered subsurface wastewater disposal system(s) is to be utilized.
  5. Maine Department of Transportation, if a Traffic Movement Permit is required.
  6. U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required.
  7. Any and all other State or Federal permit(s) that may be required.
- C. If the provisions of 30-A M.R.S.A. § 4404 and the standards in this Ordinance have been met, the Board must vote to approve the application and sign the plan. If the Board finds that any provisions of 30-A M.R.S.A. § 4404, and/or the standards of this Ordinance have not been met, the Board must deny the application, unless the Board determines that the provisions and the standards would be met with appropriate conditions. The Board's findings of fact must be in writing. The subdivision plan must be recorded in the Sagadahoc County Registry of Deeds within 90 days of the date upon which the plan is approved and signed or the approval becomes void.
- D. At the time the Board grants Subdivision Approval, it may permit the development to be divided into 2 or more sections or phases subject to any conditions the Board deems appropriate in order to ensure the orderly development of the subdivision. If the City or the Bath Water District does not have adequate capital facilities to service the subdivision, the Board may require the development to be divided into 2 or more sections subject to any conditions the Board deems necessary in order to allow the orderly planning, financing, and provision of public services to the subdivision. If the

Superintendent of Schools indicates that there is less than 20% excess classroom capacity existing in the school that will serve the subdivision, considering previously approved but undeveloped subdivisions, the Board may require the development to be divided into sections to prevent classroom overcrowding. If the expansion, addition, or purchase of the needed facilities is included in the City's capital improvements program, the time period of the phasing may be no longer than the time period contained in the capital improvements program for the expansion, addition, or purchase.

- E. No changes, erasures, modifications, or revisions may be made to any Subdivision Plan after approval has been granted by the Board and endorsed in writing on the Plan, unless a revised Subdivision Plan is approved in accordance with this Ordinance. In the event that a Plan is recorded without complying with this requirement, Subdivision Approval must be terminated, and the Board must institute proceedings to have the plan stricken from the records of the Sagadahoc County Registry of Deeds, which proceedings the applicant must bear any and all costs of, including reasonable attorney's fees.
- F. Subdivision approval by the Board does not constitute acceptance by the City of Bath of any street, easement, park, playground, or other recreation or open space shown on any plan. Plans must contain appropriate notes to this effect. The Board may also require a written agreement between the applicant and the City with regard to any dedication, provisions for the cost of grading, development, equipment, and maintenance of any such dedicated area.
- G. Failure to substantially complete construction of the improvements for the subdivision within 5 years of the date of approval and signing of the plan terminates the Subdivision Approval. If a Subdivision Approval has been terminated, the Board must have a notice placed in the Registry of Deeds to this effect at the expense of the applicant. A phased development plan is not subject to this paragraph.
- H. Prior to recording of the approved plan, the applicant must provide the City with recorded electronic media, in a format approved by the Planning Director, containing the information shown on the plan to be recorded.

## **SECTION 13.13 PERFORMANCE STANDARDS**

### **A. Applicability and Purpose**

The performance standards in this Section are intended to clarify and provide specific standards of approval for the provisions of 30-A M.R.S.A. § 4404, and as amended. Any performance standard that is applicable during the construction of the subdivision infrastructure, including construction of the streets, stormwater management facilities, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures, or during the construction of any buildings, must be met during construction. The Board must review the application for conformance with the Performance Standards, below, and make findings that each has been met prior to granting Subdivision Approval. If the applicant meets the intent and purpose of a performance standard by an equivalent method, that equivalent method may be approved. The applicant bears the burden of proof as to whether or not the intent and

purpose of the performance standard is met. The Board may waive the requirement to meet a standard if the applicant requests a waiver in writing and the Board finds that, due to special circumstances, meeting the standard is not required in the best interests of the public health, including safety, and general welfare, or is otherwise inappropriate. Waivers must be granted in writing with written findings of facts and conclusions of law, and may be subject to conditions.

**B. Pollution**

The applicant must demonstrate that the subdivision will not result in undue water or air pollution.

To meet this requirement the following standards must be met:

1. The proposed subdivision must not discharge wastewater to a water body without a license from the Maine Department of Environmental Protection.
2. The proposed subdivision must have erosion and sedimentation control so that stormwater is treated to remove oil, grease, and sediment prior to discharge into surface waterbodies.

**C. Sufficient Water.**

The applicant must demonstrate that the proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision. To meet this requirement the following standards must be met:

1. Water Supply.
  - (a) All subdivisions, except those in the R3 or GC zones and those in the R2 zone that are more than 1,000 feet from existing public water line, must be served by the public water system.
  - (b) When a subdivision is to be served by a public water system, the complete supply system within the subdivision including fire hydrants must be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections must be reviewed and approved in writing by the Bath Water District and the Bath Fire Chief.
  - (c) The subdivision must not cause an unreasonable burden on an existing water supply system of the Bath Water District, including the source, treatment facilities, or distribution system, beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision. Unless paid for by the City or the Bath Water District, the applicant is responsible for paying the costs of system improvements to the District's system as necessary to alleviate deficiencies.
  - (d) When a subdivision is not served by public water supply service, water supply may be from individual, drilled wells or a private community water system.

- (i) Individual wells must be sited and constructed to prevent infiltration of surface water, and contamination from subsurface wastewater disposal systems and other sources of potential contamination.
- (ii) Lot design must allow for placement of wells, subsurface wastewater disposal areas, and reserve sites for subsurface wastewater disposal areas in compliance with the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules, and as amended.
- (iii) If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system must conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231), and as amended.
- (iv) If the Bath Fire Chief determines that there is need for additional water storage capacity for fire fighting purposes, the applicant must provide adequate water storage facilities. Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the Bath Fire Chief. Where necessary, an easement must be granted to the City granting access to, and maintenance of, dry hydrants or reservoirs. The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the subdivision will not permit construction or installation and that the Bath Fire Chief has indicated in writing that alternate methods of fire protection are available.
- (v). In areas where the subdivision is not served by public water supply, buildings must have sprinkler systems approved by the CEO and the Bath Fire Chief.

2. Water Quality

Water supplies must meet the primary drinking water standards contained in the Maine Rules Relating to Drinking Water, and as amended. If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact must be noted on the Plan that is to be recorded in the Sagadahoc County Registry of Deeds.

**D. Soil Erosion.**

The proposed subdivision must not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results. To meet this requirement the following standards must be met:

- 1. The subdivision must be designed so as to prevent soil erosion from entering waterbodies, wetlands, and adjacent properties.
- 2. The procedures outlined in the erosion and sedimentation control plan must be implemented during the site preparation, infrastructure construction, building construction, and clean-up stages, and must continue in effect.

3. Topsoil is considered part of the subdivision and must not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations, or as required by the Maine Department of Environmental Protection.

**E. Traffic Conditions.**

The subdivision must not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed. To meet this requirement the following standards must be met:

1. Access and circulation:
  - (a) The vehicular access to the subdivision must be arranged to discourage through-traffic use of the proposed streets.
  - (b) The street giving access to the subdivision and neighboring streets and intersections that can be expected to carry traffic generated by the subdivision must have the capacity or be suitably improved to provide capacity so that the subdivision does not reduce the Level of Service of the street giving access to the subdivision and neighboring streets and intersections to "E" or below, unless the Comprehensive Plan has indicated that Levels of Service "E" or "F" are acceptable for that street or intersection.
  - (c) To safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision must be made for turning lanes, traffic directional islands, frontage roads, sidewalks, bicycle ways, and traffic controls within existing public streets.
  - (d) Access drives to non-residential subdivisions or to multifamily developments must be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity must be provided to meet anticipated demand. An analysis to determine the need for a left-turn storage lane may be required by the Board.
  - (e) Where topographic and other site conditions allow, provision must be made for access to adjoining lots of similar existing or potential use, when such access will:
    - (i) Facilitate fire protection services as required by the Bath Fire Chief;
    - (ii) Enable the public to travel between existing or potential uses, generally open to the public, without need to travel upon an existing public street;
    - (iii) Allow for proper urban growth patterns.
    - (iv) Will reduce the number of intersections with existing streets.
  - (f) Where a subdivision abuts or contains an existing or proposed arterial street (as defined by the Comprehensive Plan), no residential lot may have vehicular access directly onto that arterial street. This requirement

must be noted on the Subdivision Plan and in the deed of any lot with frontage on the arterial street.

- (g). Where a lot has frontage on 2 or more existing streets, the access to the lot must be provided to the lot across the frontage and to the street with less potential for traffic congestion and for hazards to traffic and pedestrians. This restriction must appear as a note on the Plan and as a deed restriction to the affected lots.
  - (h). Where a lot has frontage on an existing street and a proposed street, the lot must access only the proposed street. This restriction must appear as a note on the Plan and as a deed restriction to the affected lots.
2. Streets must be designed and constructed in accordance with the Design and Construction Requirements of Section 13.14.
  3. The applicant must demonstrate that the public streets used by construction equipment, including those used to transport material to or from the site of the subdivision, are safe and adequate to accommodate the size, weight, and number of vehicles to be used during construction of the subdivision infrastructure as well as the construction of any buildings in the subdivision. If the public streets are not safe and adequate to accommodate such construction vehicles, the applicant must repair or rebuild such public streets and provide such safety measures as required by the Police Chief so that such streets are able to accommodate such construction vehicles. The Board may also require the applicant to post a bond for the repair of any damage done to public streets by construction vehicles.

#### **F. Sewage Disposal.**

The proposed subdivision must provide for adequate sewage waste disposal and must not cause an unreasonable burden on the City's sewage collection or treatment services, if utilized. To meet this requirement the following standards must be met:

1. Public System.
  - (a) A subdivision, except in the R3 or GC zones, or if located within the area designated in the Comprehensive Plan for no future public sewerage service, must be connected to the public sewerage system.
  - (b) When a subdivision is proposed to be served by the public sewerage system, the complete collection system within the subdivision, including manholes and pump stations, must be installed at the expense of the applicant.
  - (c) The Public Works Director and the Superintendent of the Wastewater Treatment Plant must certify that providing service to the subdivision is within the capacity of the system's existing collection and treatment system, or improvements planned to be completed, prior to the construction of the subdivision.

- (d) The Public Works Director must review and approve the construction drawings for the sewerage system, including the size and location of laterals, collectors, manholes, and pumps.
- (e) When a subdivision is proposed to be served by the public sewerage system, and when any portion of the public sewerage system that would serve the subdivision has combined sewer overflows, the applicant must pay the impact fee as required by the City's Sewer Ordinance. If the City's Sewer Ordinance does not require an impact fee, the applicant must pay a fee to the City equal to the cost to remove an amount of stormwater from the City's sewerage system based upon the estimated sewage generated by the subdivision plus the estimated amount of potential future infiltration into the sanitary sewer pipes within the subdivision.

2. Private Systems.

- (a) When a subdivision is not proposed to be serviced by the public sewage disposal system, sewage disposal must be by private subsurface wastewater disposal systems or a private treatment facility with surface discharge.
- (b) The applicant must submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator, and in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules.
  - (i) The site evaluator must certify in writing that all test pits that meet the requirements for a new system represent an area large enough for a disposal area on soils that meet the Disposal Rules.
  - (ii) On lots where the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils must be shown as a reserve area for future replacement of the disposal area. The reserve area must be shown on the subdivision plan and must not be built upon.
  - (iii) A disposal area must not be on a site that requires a New System Variance from the Subsurface Wastewater Disposal Rules.

**G. Solid Waste**

The subdivision must not cause an unreasonable burden on the City's ability to dispose of solid waste. If the additional solid waste from the subdivision will exceed the capacity of the Solid Waste Facility, or detrimentally affect the Facility's State or Federal licensure, or will cause the City to exceed any contract with a solid waste facility, the applicant must make alternate arrangements for the disposal of solid waste. The alternate arrangements must be at a licensed disposal facility that is in compliance with its license.

**H. Impact on Natural Beauty, Aesthetics, Historic Sites, Wildlife Habitat, Rare Natural Areas or Public Access to the Shoreline**

The proposed subdivision must not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the City, rare and irreplaceable natural areas, or any public rights for access to the shoreline. To meet this requirement the following standards must be met:

1. Preservation of Natural Beauty and Aesthetics.
  - (a) The plan must, by notes on the plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.
  - (b) The applicant must, by notes on the plan and a report written by a Licensed Maine Arborist, Certified Forester, or other duly qualified professional, describe the preservation and protection of significant trees and other vegetation, including, but not limited to, trees 18 inches or more in diameter at the base and rare or endangered plants. The plan and report must also describe the replacement of trees and vegetation. The limits of clearing must be shown on the plan, marked on site, and field checked with the City Arborist.
  - (c) In the R3 or GC zones the subdivision must be designed to minimize the visibility of buildings from existing public streets.
  - (d) When a proposed subdivision street traverses open fields, the plans must include the planting of street trees.

2. Protection of Historic, or Prehistoric Features.

If any portion of the subdivision is designated a site of historic or prehistoric significance by the Comprehensive Plan or the Maine Historic Preservation Commission, appropriate measures for the protection of the historic or prehistoric resources must be included in the plan.

3. Protection of Unique Natural Areas and Sites.

If any portion of the subdivision is located within an area designated as a unique natural area by the Comprehensive Plan, the Maine Natural Areas Program, or by the Department of Inland Fisheries and Wildlife, appropriate measures must be taken for the preservation of the values that qualify the site for such designation.

4. Preservation of Open Space and the Creation of Recreation Areas

- (a) If the average (mean) lot size in the proposed subdivision is less than 12,000 square feet, the applicant must reserve sufficient undeveloped land to provide for the recreational and/or open space needs of the subdivision residents. The amount of recreation or open space land to be reserved must be determined by the Comprehensive Plan's identified needs in the portion of the City in which the subdivision is located, the Community Recreation Standard established by the Comprehensive Plan, the proposed lot sizes within the subdivision, the expected demographic makeup of the residents of the subdivision, and the specific



site characteristics. The recreational and/or open space must be shown on the Subdivision Plan. In the absence of the Comprehensive Plan's identification of need and creation of the Community Recreation Standard, the Board must base the amount of recreational and/or open space land on the proposed lot sizes within the subdivision, the expected demographic makeup of the residents of the subdivision, and the specific site characteristics, but may not require more than 5% of the total area of the subdivision or, if there is a payment in lieu of dedication of land as allowed in Section 13.13(H)(4)(b), the payment may not be more than 5% of the of the projected market value of the developed land at the time of the subdivision, as determined by the City's Tax Assessor. The reserved land must be of a character, configuration, and location suitable for the particular use intended. The land used for recreation or open space may be dedicated to the City, deeded to a land trust, reserved for ownership by a formal organization composed of the owners of lots in the subdivision, deeded to some other entity, or maintained by the developer, as approved by the Board. Further subdivision of the recreation or open space land and its use for other than non-commercial recreation, gardening, or conservation purposes, except for easements for underground utilities, is prohibited. Structures or buildings accessory to non-commercial recreational, gardening, or conservation uses may be erected. [Explanatory note: The "Community Recreation Standard" in the Comprehensive Plan includes all recreation and open space in Bath to which there is legal access for Bath residents divided by the population of Bath according to the most recent US Census. This inventory of available recreation and open space areas includes land owned by the City, land owned by a land trust, land to which the City has a permanent easement, and land that is programmed in the Capital Improvements Plan to be purchased and developed as recreation and/or open space in the next 6 years.]

- (b) Where land within the subdivision is not appropriate for recreation or open space land because of topographic or other site conditions, where the applicant prefers, or where suggested by the Comprehensive Plan, a payment in lieu of dedication may be substituted for some or the entire recreation or open space land requirement. Payments in lieu of dedication must be determined by the amount of land that the Community Recreation Standard would require in the subdivision pursuant to the estimated population of the subdivision, and the City Tax Assessor's determination of that percentage of the projected market value of the developed land at the time of the subdivision. The payment in lieu of dedication must be deposited into a Bath Open Space or Outdoor Recreation Facility Acquisition or Capital Improvement Fund and must be expended for recreation and/or open space land acquisition or capital improvements in the City of Bath within 6 years, or be returned to the applicant.

- 5. Protection of Significant Wildlife Habitat.  
If any portion of a proposed subdivision lies within:

- (a) Two Hundred Fifty (250) feet of the areas identified and mapped by the Department of Inland Fisheries and Wildlife or the Comprehensive Plan as:
  - (i) Habitat for species appearing on the official state or federal lists of endangered or threatened species;
  - (ii) High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
  - (iii) Shorebird nesting, feeding, staging areas, and seabird nesting islands; or
  - (iv) Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; or
- (b) One Thousand Three Hundred Twenty (1,320) feet of an area identified and mapped by the Department of Inland Fisheries and Wildlife as a high or moderate value deer wintering area or travel corridor;
- (c) Or other important habitat areas identified in the Comprehensive Plan including coastal wildlife concentration areas,

the applicant must demonstrate that there will be no adverse impacts on the habitat and species it supports. A report prepared by a wildlife biologist certified by the Wildlife Society with demonstrated experience with the wildlife resource being impacted must be submitted. This report must assess the potential impact of the subdivision on the significant habitat and adjacent areas that are important to the maintenance of the affected species and must describe appropriate mitigation measures to ensure that the subdivision will have no adverse impacts on the habitat and the species it supports.

## 6. Rights to Shoreline

Any existing public rights of access to the shoreline of a water body must be maintained, or must be included in the reserved open space with provisions made for continued public access. The applicant must identify any views or view corridors identified by the Comprehensive Plan and take measures to protect such views or view corridors, or demonstrate how such measures are not practical for the applicant.

### I. **Conformance with Ordinances and Plans.**

The proposed subdivision must conform to this Ordinance, the Comprehensive Plan, and the Land Use Code. To meet this requirement the following standards must be met:

1. All lots must meet the Space and Bulk Regulations of the Land Use Code for the zoning district, including any overlay or Contract Zone, in which they are located.
2. If the proposed subdivision is required to have Site Plan Approval, the proposed subdivision must meet all applicable Performance Standards and design criteria of the Land Use Code.

**J. Financial and Technical Capacity.**

The applicant must have adequate financial and technical capacity to meet the provisions of 30-A M.R.S.A. § 4404, and as amended, and the standards of this Ordinance. To meet this requirement the following standards must be met:

1. Financial Capacity.

The applicant must have adequate financial resources to construct the proposed improvements and meet the provisions of 30-A M.R.S.A. § 4404 and the standards of this Ordinance. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant must have adequate financial resources to construct the total development. In making the above determinations the Board must consider the proposed time frame for construction and the effects of inflation.

2. Technical Ability.

- (a) The applicant must retain qualified contractors and consultants to supervise and construct the required improvements in the subdivision.
- (b) In determining the applicant's technical ability the Board must consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of any violations of previous approvals granted to the applicant.

**K. Impact on Water Quality or Shoreline**

Whenever situated entirely or partially within 250 feet of any wetland or river as defined in 38 M.R.S.A. § 435, *et seq.*, the proposed subdivision must not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water. To meet this requirement the following standards must be met:

1. Within a strip of land extending 75 feet from any river, stream or brook as defined in 38 M.R.S.A § 435, *et seq.*, or the upland edge of a wetland, a buffer strip of vegetation must be preserved. Deeds to any lot(s) that include any such land must contain the following restrictions:

- (a) There must be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed 10 feet in width as measured between tree trunks is permitted, provided that a cleared line of sight to the water through the buffer strip is not created.
- (b) Selective cutting of trees within the buffer strip is permitted, provided that a well-distributed stand of trees and other vegetation is maintained. No more than 40% of the total volume of trees 4 inches or more in diameter, measured at 4.5 feet above ground level may be removed in any 10-year period. Pruning of tree branches, on the bottom third of the tree, is permitted.
- (c) Cutting or removal of vegetation along waterbodies is not allowed if such cutting or removal increases water temperature, or results in shoreline erosion or sedimentation of waterbodies.

2. The proposed subdivision must not lower the quality of the water in the Kennebec River or Merrymeeting Bay to below the Water Quality Classification provisions of 38 M.R.S.A. § 464, *et seq.*

**L. Impact on Groundwater Quality or Quantity**

The proposed subdivision must not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water. To meet this requirement the following standards must be met:

1. Groundwater Quality.
  - (a) When a hydrogeologic assessment is required pursuant to Section 13.11(E)(25), the assessment must contain at least the following information:
    - (i) A map showing the basic soils types.
    - (ii) The depth to the water table at representative points throughout the subdivision.
    - (iii) Drainage conditions throughout the subdivision.
    - (iv) Data on the existing groundwater quality, either from test wells in the subdivision or from existing wells on neighboring properties.
    - (v) An analysis and evaluation of the effect of the subdivision on groundwater resources. In the case of residential development(s), the evaluation must, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, at the subdivision boundaries, or at a distance of 1,000 feet from potential contamination sources, whichever is the shortest distance.
    - (vi) A map showing the location of any subsurface wastewater disposal systems and drinking water wells within the subdivision, and within 200 feet of the subdivision boundaries.
  - (b) Projections of groundwater quality must be based on the assumption of drought conditions (assuming 60% of annual average precipitation).
  - (c) The subdivision must not increase any contaminant concentration in the groundwater to more than one half of the Primary Drinking Water Standards. The subdivision must not increase any contaminant concentration in the groundwater to more than the Secondary Drinking Water Standards.
  - (d) If groundwater contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site groundwater supplies, the applicant must demonstrate how the water will be treated so that the primary standards are met.

- (e) If groundwater contains contaminants in excess of the secondary standards, the subdivision must not cause the concentration of the contaminants in question to exceed 150% of the ambient concentration.
  - (f) Subsurface wastewater disposal systems and drinking water wells must be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce groundwater contamination and protect drinking water supplies are recommended in the assessment, those standards must be included as a note on the plan, and as restrictions in the deeds to the affected lots.
2. Groundwater Quantity.
- (a) Groundwater withdrawals by wells in the subdivision must not lower the water table beyond the boundaries of the subdivision.
  - (b) The subdivision must not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation.

**M. Floodplain Management.**

If the proposed subdivision is in an area of special flood hazard as defined in Article 15, Section 15.14, the following standards must be met:

1. Plan must indicate the 100-year flood elevation and flood hazard boundaries within the subdivision.
2. The plan must include a note requiring that principal structures in the subdivision be constructed with their lowest floor, including the basement, at least 1 foot above the 100-year flood elevation. Such a restriction must be included in any deed, lease, purchase and sale agreement, or any document intending to transfer any interest in real estate or structure(s).
3. All public utilities and facilities, such as sewer, gas, electrical, and water systems must be located and constructed to minimize or eliminate flood damages.
4. Adequate stormwater management must be provided so as to reduce exposure to flood hazards.

**N. Identification of Freshwater Wetlands**

Freshwater wetlands must be identified on the Plan in accordance with the *1987 Corps of Engineers Wetland Delineation Manual*, published by the United States Army Corps of Engineers, or latest editions, and/or as amended.

**O. Stormwater Management.**

The proposed subdivision must provide for adequate stormwater management. To meet this requirement the following standards must be met:

1. Adequate provision must be made for the management of the quantity and quality of all stormwater generated within the subdivision and any drained groundwater, during construction of the subdivision infrastructure and any

buildings, and continue after construction, through a system of swales, culverts, under drains, storm drains, and best management practices equivalent to those described in *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection, 1995, or latest edition, and/or as amended. The stormwater management system must be designed to meet the following standards:

(a) Quantity.

Peak discharge rates must be limited to the predevelopment levels for the 2-year, 10-year, and 25-year frequency, 24-hour duration storm unless stormwater from the subdivision will drain directly into the Kennebec River or Merrymeeting Bay.

(b) Quality.

Stormwater run-off must be treated by the use of best management practices equivalent to those described in the *Stormwater Management for Maine: Best Management Practices*, published by the Maine Department of Environmental Protection, 1995, or latest edition, and/or as amended, to achieve, by design, 40% reduction in total suspended solids.

2. If necessary to achieve the above standards, easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over other properties must be provided. If the storm drainage system is not within the right-of-way of a public street, there must be restrictions, by means of notes on the plan and deed restrictions, to prohibit the filling of such drainage areas, and perpetual easements must be granted to the City allowing maintenance and improvement of the system.

**P. Spaghetti-lots Prohibited**

If any lots in the subdivision have shore frontage on a river, stream, brook, or coastal wetland, as these features are defined pursuant to 38 M.R.S.A. § 480-B, and as amended, none of the lots created within the subdivision may have a lot depth to shore frontage ratio greater than 5 to 1.

**Q. Impact on Adjoining Municipalities**

For any subdivision that crosses municipal boundaries, the subdivision must not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in any adjoining municipality.

## **SECTION 13.14 DESIGN AND CONSTRUCTION REQUIREMENTS**

**A. Applicability**

The Board must review an Application for Subdivision Approval to ascertain compliance with the requirements of this Section, and must issue findings that the requirements have been met prior to granting Subdivision Approval. If the applicant is able to demonstrate and meet the intent and purpose of these requirements by an equivalent method, that equivalent method may be approved. The applicant bears the

burden of proof as to whether or not the requirements and the intent and purposes of the requirements are met. The Board may waive a requirement if the applicant requests a waiver, in writing, and the Board finds that, due to special circumstances, meeting the requirement is not in the best interests of public health, safety, and general welfare, or is inappropriate. Waivers may be granted only in writing with written findings of facts and conclusions of law, and may be subject to conditions.

## **B. Street Design Criteria**

### 1. General Requirements.

- (a) The Board must not approve the Subdivision Plan if the proposed streets are not designed in accordance with the provisions of this Ordinance. Board approval of a Subdivision Plan does not constitute, nor is evidence of, acceptance by the City of Bath of any street or easement.
- (b) Applicants must submit to the Board, as part of the Application for Subdivision Approval, detailed construction drawings showing a plan view, profile, and typical cross-section of proposed streets, including a plan showing existing streets and underground utilities within 300 feet of any proposed intersections. The plan view of the proposed streets must be at a scale of 1-inch equals no more than 50 feet. The vertical scale of the profile of the proposed streets must be 1-inch equals no more than 5 feet. The plans of the proposed streets must include the following information:
  - (i) Date, scale, and north arrow, indicating magnetic or true north.
  - (ii) Intersections of proposed street(s) with existing streets.
  - (iii) Street and right-of-way limits, including edge of pavement, edge of shoulder, sidewalks, and curbs.
  - (iv) Kind, size, location, material, profile, and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways.
  - (v) Complete curve data for all horizontal and vertical curves.
  - (vi) Turning radii at all intersections.
  - (vii) Centerline gradients.
  - (viii) Size, type, and locations of all existing and proposed overhead and underground utilities, to include, but not be limited to, water, sewer, electricity, telephone, lighting, and cable television.
- (c) If the applicant proposes improvements within existing public streets, the proposed design and construction details must be approved in writing by the Public Works Director and/or the Maine Department of Transportation, as appropriate.

- (d) The applicant must dig test pits prior to construction to confirm the location and elevations of existing underground utilities.

## 2. Specific Design Requirements

- (a) These design requirements control the street, shoulders, curbs, drainage systems, culverts, and other appurtenances associated with the street, and all streets within a subdivision must comply with these design requirements.
- (b) If a subdivision proposed for industrial, commercial, or multi-family use borders an existing narrow street (not meeting the width requirements of Major Streets in this Section), or where a change of zoning to a zone that permits industrial, commercial, or multi-family use is contemplated, the street right-of-way and/or pavement width must be increased on each side by half of the amount necessary to bring the street into compliance with the standards for Major Streets in these regulations.
- (c) If a subdivision borders an existing narrow street (not meeting the width requirements of the standards for streets in this Section) the plan must indicate reserved areas for widening or realigning the street marked “Reserved for Street Realignment (Widening) Purposes.” Land reserved for such purposes must not be included in computing lot area or setback requirements of Article 8. When such widening or realignment is included in the City’s Capital Improvements Plan, the reserve area must not be included in any lot, but must be reserved to be transferred to the City or State, as appropriate.
- (d) **Connectivity**  
Connectivity is provided by a system of streets with multiple routes and connections serving the same origin and destination, and not having street bottle-necks. Subdivisions on dead-end street systems should be avoided whenever possible. Connecting new subdivision streets to existing public streets in multiple locations and designing new subdivision street systems with multiple intersections—creating blocks—will have numerous efficiency, service delivery, and safety benefits to the residents of the new development as well as to the general public. These benefits include: decreased traffic on existing collector and arterial streets; continuous and more direct routes that facilitate walking and bicycle travel, and more efficient delivery of public services such as school busing and trash collection; greater emergency vehicle access, reduced emergency vehicle response time, and multiple evacuation routes for residents; and improved quality of the public water supply service. The longer the dead-end street system and the more dwelling units or non-residential buildings served solely by this dead-end street system, the greater the inconvenience and costs for deliveries, school busing, and trash collections, and the greater the chance for public safety crises caused by a single emergency-vehicle access and a single evacuation route. It is the intent of these regulations, therefore, to



require street connectivity whenever possible, while discouraging unnecessary through-traffic.

- (i) The applicant must demonstrate to the Board how the design of the subdivision has achieved connectivity, if feasible.
- (ii) When connectivity is not feasible, to reduce the risk to public safety, the Board, must require at least one or more of the following measures be incorporated into the design of the subdivision: Notwithstanding the requirements of Section 13.14 (B)(2)(e), the grade of the street bottle-neck must be 5% or less; the new buildings in the subdivision must have sprinkler systems approved by the Fire Chief and the CEO; the street bottle-neck must be built with 2 travel lanes separated by a median strip at least 10 feet wide, and parking must be prohibited on such travel-lane-separated street bottle-neck; or the subdivision served by the dead-end street system must not generate average daily traffic of 100 trips or more.
- (iii) The Board, based upon the recommendation from the Bath Water District, may require the water supply line to be looped, preventing dead-end water supply lines.
- (iv) If the proposed subdivision abuts an existing subdivision street, connections from one to the other must be made.
- (v) Reserve strips controlling access to streets are prohibited, except where such control is with the City.
- (vi) Dead-end street systems must have an easement of a width appropriate to the size of the potential future street, as indicated in the table in Section 13.14(B)(2)(e), in line with the proposed street to provide the possibility of connecting the street to the abutting property.

(e) Streets in the subdivision must meet the following standards:

<u>Design Element</u>	<u>Type of Street</u>			
	<u>Major</u> <sup>1</sup>	<u>Residential</u>		
		<u>High Volume</u> <sup>2</sup>	<u>Medium Volume</u> <sup>3</sup>	<u>Low Volume</u> <sup>4</sup>
Minimum right-of-way width	62'	50'	45'	38'
Minimum traveled way width	30'	24'	20'	18'
Minimum right-of-way width for travel-lane-separated street bottle-necks	72'	60'	55'	48'
Minimum traveled way width, each lane, for travel-lane- separated street bottle- necks	15"	12'	12'	12'
Minimum width of shoulders <sup>5</sup>				

(each side)	5'	3'	3'	3'
Sidewalk width	5'	5'	5'	5'
Minimum grade	.5%	.5%	.5%	.5%
Maximum grade	5%	6%	8%	8%
Minimum centerline radius without superelevation	400'	280'	280'	175'
with superelevation	350'	175'	175'	110'
Street crown <sup>6,7</sup>	.25"/ft	.25"/ft	.25"/ft.	.25"/ft.
Minimum angle of street intersections <sup>8</sup>	90°	90°	75°	75°
Maximum grade within 50 ft. of intersection	3%	3%	3%	3%
Minimum curb radii at intersections <sup>9</sup>	30'	25'	20'	20'
Minimum r/o/w radii at intersections	20'	10'	10'	10'

<sup>1</sup>Major Street is a street that will serve travel through the City, travel to industrial or commercial land uses, or a residential street that is expected to serve 1,500 or more vehicle trips per day.

<sup>2</sup> Residential High Volume Street is a street that is expected to serve 500 but fewer than 1,500 vehicle trips per day.

<sup>3</sup> Residential Medium Volume Street is a street that is expected to serve more than 200 but fewer than 500 vehicle trips per day.

<sup>4</sup> Residential Low Volume Street is a street that is expected to carry 200 or fewer vehicle trips per day, and has no on-street parking.

<sup>5</sup> For non-curbed streets.

<sup>6</sup> Street crown is per foot of lane width.

<sup>7</sup> Gravel surfaces must have a minimum crown of  $\frac{3}{4}$  inch per foot of lane width.

<sup>8</sup> Street intersection angles must be as close to 90° as feasible but no less than the listed angle.

<sup>9</sup> Should be based on turning radii of expected commercial vehicles, but no less than 30 feet.

(f) Except to avoid topographical or other site conditions, the centerline of the street must be the centerline of the right-of-way.

(g) Dead End Streets.

In addition to the standards above, dead-end streets must be constructed to provide a circular turn-around with the following radii dimensions: Property line = 60 feet; outer edge of pavement = 50 feet; inner edge of pavement = 30 feet; or such smaller dimensions as required by the Fire Chief and the Public Works Director. A stand of trees must be maintained or planted in the center of the turn-around.

(h) Intersections and Sight Distances.

- (i) All changes in grade must be connected by vertical curves in order to provide the following minimum stopping sight distances based on the street design speed, as follows:

Design Speed (mph)	<u>15</u>	<u>20</u>	<u>25</u>	<u>30</u>	<u>35</u>
Stopping Sight Distance (ft.)	80	115	155	200	250

Stopping sight distance is calculated with a height of eye at 3.5 feet above the pavement and the height of object at 0.5 feet above the pavement.

- (ii) Where new street intersections or access drives are proposed, sight distances, as measured along the street onto which traffic will be turning, must be provided based upon the posted speed limit and must conform to the table below. Sight distance is measured from the driver's seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb-line or edge of shoulder, with the height of the eye 3.5 feet, to the top of an object 4.25 feet above the pavement.

Posted Speed Limit(mph)	<u>15</u>	<u>20</u>	<u>25</u>	<u>30</u>	<u>35</u>	<u>40</u>	<u>45</u>
Sight Distance (ft.)	80	115	250	300	350	400	450

Where necessary, corner lots must be cleared of all growth and sight obstructions, including ground excavation, to achieve the required visibility.

- (iii) Cross-street (4-cornered) intersections must be avoided insofar as possible, except at important traffic intersections. A minimum distance of 125 feet must be maintained between centerlines of minor streets and 200 feet between collectors or a collector and minor street.

**C. Street Construction Criteria.**

1. Preparation.

- (a) To facilitate inspection by the City, before any clearing has started on a right-of-way, the centerline and sidelines of the new street must be staked or flagged at 50-foot intervals and the trees and other vegetation to be removed must be flagged or blazed.
- (b) Before grading, the entire area within the right-of-way necessary for traveled way, shoulders, sidewalks, drainage-ways, and utilities must be cleared of all stumps, roots, brush, and any other objectionable material. All shallow ledge, large boulders and tree stumps must be removed from the cleared area.
- (c) All organic materials or other deleterious material must be removed to a depth of 2 feet below the sub-grade of the street. Rocks and boulders must also be removed to a depth of 2 feet below the sub-grade of the street. If the Public Works Director identifies soils not suitable for street

construction, either the subsoil must be removed from the street site to a depth of 2 feet below the sub-grade and replaced with material meeting the specifications for gravel aggregate contained in the *Bath Public Works Department Street Handbook*, and as amended, or a Maine Department of Transportation approved stabilization geotextile must be used.

- (d) Except in a ledge cut, side slopes must not be steeper than a slope of 3 feet horizontal to 1 foot vertical, and must be graded, loamed, limed, fertilized, and seeded according to the specifications of the erosion and sedimentation control plan. Where a cut results in exposed ledge a side slope must not be steeper than 1 foot horizontal to 4 feet vertical.
- (e) All utilities including water, sewer, electricity, telephone, and cable television must be installed underground and must be installed prior to paving to avoid cuts in the pavement. Service connections for buildings must be installed to the edge of the right-of-way prior to paving.

2. Street Bases and Pavement.

- (a) The street base and sub-base must meet the specifications in the *Bath Public Works Department Street Handbook*, and as amended.
- (b) Where pavement joins existing pavement, the existing pavement must be cut along a smooth line and form a neat, even, and vertical joint.
- (c) The pavement must meet the specifications in the *Bath Public Works Department Street Handbook*, and as amended.

3. Curbing

Granite curbs must be installed in all subdivisions unless the Public Works Director allows non-curbed streets for proper stormwater management. Curbing must be installed on a thoroughly compacted gravel base of 6-inch minimum thickness. The required traveled way width is measured between the curbs.

4. Clean-up

Following street construction, the applicant is responsible for the thorough clean up of any and all stumps and debris from the entire street right-of-way. If on-site disposal of stumps and debris is proposed, the site and method must be shown on the Subdivision Plan, and, if buried, be suitably covered with fill and topsoil, limed, fertilized, and seeded.

**D. Lot Numbering**

The lots must be numbered pursuant to the City's street numbering system, and must be approved by the City's Addressing Officer.

**E. Street Names**

Streets that join and are in alignment with streets of abutting or neighboring properties must have the same name. Names of new streets must not duplicate, nor have phonetic resemblance to, the names of existing streets in the City, and are subject to the approval of the Board and the City's Addressing Officer.

**F. Street Signs**

The developer must install street name, traffic safety, and control signs meeting the City's specifications, or reimburse the City for the costs of such installation.

**G. Street Lighting**

Street lighting must be installed as approved by the Board.

**H. Sidewalks**

Sidewalks must be installed in all subdivisions in commercial or industrial zones and all other zones if the subdivision is expected to generate average daily traffic of 200 trips or more, and if the proposed street intersects with an existing street that has a sidewalk. Where installed, sidewalks must meet these minimum requirements:

1. Location.  
Sidewalks may be located adjacent to the curb or shoulder, although it is recommended sidewalks be located a minimum of 2.5 feet from the curb facing, or edge of shoulder if the street is not curbed.
2. Sidewalks, whether bituminous or Portland cement concrete, must be constructed according to the *Bath Public Works Department Street Handbook*, and as amended.
3. Sidewalks must be designed to accommodate the planting of street trees.
4. If the Board, in their sole discretion, waives the requirement for the installation of sidewalks, the subdivision must be designed to accommodate the construction of sidewalks in the future, and the applicant must have the sidewalk engineered and the construction drawings and specifications must be a part of the application submission.

**I. Monumentation**

The purpose of requiring monuments is to ensure that lot lines and corners are, and remain, known. Monuments are also necessary to define the edge of the right-of-way when streets are built. Monuments must be permanent. The type(s) of monument(s) must be appropriate for the setting.

1. Granite or concrete monuments must be set at all street intersections and at points of curvature, but no further than 750 feet apart along street lines without curves or intersections.
2. Monuments must be set at all corners and angle points of the subdivision boundaries, and at all lot corners and angle points. In non-wooded locations, where lawns are anticipated, these monuments must be granite or concrete. In wooded locations, where lawns are not anticipated, these monuments may be granite, concrete, or an iron pin.
3. The granite or concrete monuments must be a minimum of 4 inches square at the top and 4 feet in length, and set in the ground at final grade level. After being set, a drill hole 2 inches deep must be made to locate the point or points described above.

4. A drill hole in ledge, with iron pin, may be substituted for the monuments required in 1 and 2, above, where appropriate.

## **SECTION 13.15 AMENDMENTS TO APPROVED PLANS**

### **A. Procedure**

Subdivision Amendment Approval is required before any and all changes, at any time, are made to the approved plan. Changes include: modifications to lot lines; easements; road layout and other infrastructure such as stormwater and erosion and sedimentation control facilities, except as allowed in Section 13.17(B)(3); conditions of approval; and landscaping and planting. An applicant for an amendment to a previously approved plan must, at least 3 weeks prior to the meeting at which the application is to be reviewed by the Board, submit an application for Subdivision Amendment Approval to the Planning Office. If the amendment involves the creation of additional lots or dwelling units, the procedures for Subdivision Approval must be followed. If the amendment involves only modifications of the approved Plan, without the creation of additional lots or dwelling units, the procedures for Subdivision Amendment Approval must be as follows:

### **B. Submissions**

The applicant must submit a copy of the approved plan and 12 copies of the proposed amendment(s). The application must also include adequate supporting information to allow the Board to make a determination that the proposed amendment(s) meet the standards of this Ordinance and the provisions of 30-A, M.R.S.A. § 4404. The amended plan must indicate that it is the amendment to a previously approved and recorded plan and show the title of the subdivision and the book and page, or cabinet and sheet, on which the original plan is recorded at the Sagadahoc County Registry of Deeds.

### **C. Scope of Review**

The Board's scope of review is limited to only those portions of the plan that are proposed to be changed.

## **SECTION 13.16 PERFORMANCE GUARANTEES**

### **A. Types of Guarantees**

Upon submittal of an Application for Subdivision Approval, or as a condition of approval, the applicant must provide one of the following performance guarantees in an amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

1. A certified check payable to the City or an escrow account in the form of a savings account or certificate of deposit, naming the City of Bath as owner;
2. An irrevocable letter of credit in a form provided by the City from a financial institution establishing funding for the construction of the subdivision, from which the City may draw if construction is inadequate or incomplete, approved by the City Solicitor; or
3. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.

The form, conditions, and amount of the performance guarantee must be approved by the Board with the advice of the Public Works Director, City Solicitor, and Planning Director.

**B. Contents of Guarantee**

The performance guarantee must contain a construction schedule, cost estimates for each major phase of construction, taking into account inflation, provisions for inspections of each phase of construction, provisions for the release of part or all of the performance guarantee to the applicant, and a date after which the applicant will be in default and the City will have permission to enter the site, access the funds, and finish construction.

**C. Interest from the Escrow Account**

Any interest earned on the escrow account must be returned to the applicant, unless necessary to fund required improvements.

**D. Letter of Credit**

An irrevocable letter of credit from a bank or other lending institution must indicate that funds have been set aside for the construction of the subdivision and must not be used for any other project or loan.

**E. Conditional Agreement**

The Board, in its sole discretion, may provide for the applicant to enter into a binding agreement with the City in lieu of the other financial performance guarantees. Such an agreement must provide for approval of the Subdivision Plan on the condition that no lots may be sold, or built upon, until either:

- (1) The Board certifies that all of the required improvements have been installed in accordance with these regulations and the regulations of the appropriate utilities; or
- (2) A performance guarantee, acceptable to the Board, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed.

Notice of the agreement and any conditions must be on the Subdivision Plan to be recorded at the Sagadahoc County Registry of Deeds. Release from the agreement must comply with the procedures for release of performance guarantees contained in Paragraph G, below.

**F. Phasing of Development**

The Board may approve plans to develop a subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street that is covered by a performance guarantee. When development is phased, street construction must commence from an existing public way. Final approval of lots in subsequent phases must be given only upon satisfactory completion of all requirements pertaining to previous phase(s).

**G. Release of Guarantee**

Prior to the release of the performance guarantee, or any part thereof, the Board must determine, based in part upon the report of the Public Works Director and Planning Director or other qualified individual who may be retained by the City, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.

**H. Default**

If the Public Works Director finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he/she must so report in writing to the CEO, the Planning Director, the Board, and the applicant. The City must take any steps necessary to preserve the City's rights.

**SECTION 13.17 INSPECTIONS AND ENFORCEMENT**

**A. Improvements Guaranteed**

Performance guarantees must cover all improvements required to meet the standards of these regulations and for the construction of the streets, stormwater management facilities, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.

**B. Inspection of Required Improvements**

1. At least 5 days prior to commencing construction of required improvements, the applicant must:
  - (a) Notify the Planning Office in writing the time when he/she proposes to commence construction of improvements so that the City can arrange for inspections to assure that all requirements, and conditions of approval, are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board.
  - (b) Deposit with the City Treasurer funds equal to 2% of the estimated required improvement costs to pay an inspector to be hired by the City. If, upon satisfactory completion of construction and cleanup, there are funds remaining, the surplus funds must be refunded to the applicant. If the inspection account is drawn down by 90%, the applicant must deposit an additional 1% of the estimated required improvement costs.
2. If upon inspection it is found that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the applicant, the inspector must so report in writing to the Planning Director, the Public Works Director, the Board, and the applicant. The City may take any steps necessary to assure compliance with the approved plans.
3. If at any time it appears necessary to modify the required improvements before or during construction of the required improvements, approval must be granted by both the Public Works Director and Planning Director, but only for any minor modifications due to unforeseen circumstances, such as encountering hidden outcrops of bedrock or natural springs. The Planning Director and Public Works



Director must issue any approval under this section in writing and a copy must be maintained in the Planning Office. Revised plans must be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the applicant must obtain approval from the Board pursuant to Section 13.15.

4. At the end of each summer construction season the City must, at the expense of the applicant, have the site inspected by the Public Works Director or an individual designated by the Public Works Director. If construction was done on the site, by October 1 of each year, the inspector must submit a report to the Planning Director and the Public Works Director based on the site inspection, addressing whether stormwater and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report must also include discussion and recommendations on any problems encountered.
5. Prior to the sale of any lot, the applicant must provide the Planning Director, CEO, and Public Works Director with a letter from a Registered Land Surveyor, stating that all of the monuments on the plan have been installed.
6. Upon completion of street construction, and prior to a vote by the City Council to accept the street, the applicant must submit a written certification to the Public Works Director, signed by a professional engineer, certifying that the street meets or exceeds all of the design and construction requirements of this Ordinance. Any utility providing service must certify in writing that they have been installed in a manner acceptable to the utility. "As-built" plans must be submitted to the Public Works Director and the Planning Director.
7. The applicant is required to maintain all improvements, provide for trash collection, and provide for snow removal on streets and sidewalks until such time the street is accepted by the City or control is transferred to a lot owners' or homeowners' association.

### **C. Violations and Enforcement**

1. No land in an approved subdivision may be sold, leased, or otherwise transferred or encumbered if it is not shown on the approved Subdivision Plan as a conveyable lot.
2. The CEO must not issue a building permit, nor approve any use of land, on a lot in a subdivision that has not been approved by the Board and which plan has not been recorded at the Sagadahoc County Registry of Deeds.
3. No unit in a multi-family development may be occupied before the street upon which the unit is accessed is completed in accordance with this Ordinance.
4. Violation(s) of this Section are deemed a nuisance and may be subject to the provisions of 30-A M.R.S.A. § 4452.

## **SECTION 13.18 WAIVERS**

### **A. Waivers Authorized**

If the applicant is able to demonstrate that the intent and purpose of a submission requirement, performance standard, or design and construction requirement is met by an equivalent method, that equivalent method may be approved. The applicant bears the burden of proof as to whether the submission requirement, performance standard, or design and construction requirement is met. The Board may waive a standard or requirement if the applicant requests the waiver in writing, and the Board finds that, due to special circumstances, or inappropriateness, meeting the standard or requirement is not required in the best interest of the public health, safety, and general welfare. Waivers must be granted only in writing with written findings of facts and conclusions, and may be subject to conditions. Waivers must not nullify the intent and purpose of the Comprehensive Plan, the Land Use Code, or this Ordinance. The Board may set any necessary conditions to insure that the purposes of this Ordinance are met. The Board must not allow any bulk or space requirement or any other requirement, the waiver of which should be considered a variance, except under Contract Rezoning authority in Article 8, Section 8.20.

### **B. Waivers to be shown on Subdivision Plan**

If the Board grants a waiver under this Ordinance, the Subdivision Plan to be recorded at the Sagadahoc County Registry of Deeds must indicate the waiver(s) granted and the date granted.

## **SECTION 13.19 APPEALS**

An aggrieved party may appeal any decision of the Board under this Ordinance to Sagadahoc County Superior Court within 30 days of the date the Board issues a written decision.

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## **ARTICLE 14: MINING ACTIVITY**

### **SECTION 14.01 DERIVATION AND FINDINGS**

This Article is based on a report entitled “Mineral Extraction and Topsoil Removal Ordinance Study” conducted by Land Use Consultants for the City of Bath (April, 1994), the response to that report and subsequent recommendations by the Natural Resource Committee of the Bath Comprehensive Plan CORE Committee. The report and Committee findings are incorporated as part of the Bath Comprehensive Plan of 1983, and will be incorporated into the new Comprehensive Plan, now under development.

This Article is designed to develop a strategy for responsible management of mining activities in the City of Bath. The necessity for this Article is reflected in the change in State Statute and Department of Environmental Protection Rules that reduce the review responsibility of the Department in the area of mining activities. This Article reflects the concern that the mining of mineral resources within the City is inherently incompatible with, and must be balanced against, other more appropriate uses of scarce land, acknowledging that the City of Bath's future development is severely restricted by its configuration and geography.

As a precursor to the implementation of a balanced management strategy, the following findings are made:

- A. That there are a series of threshold issues that are critical to Bath's future development, including, loss of developable land, impact on existing neighborhoods and their environs, impact on the natural ecosystem (i.e. water quality, groundwater supply, wildlife, visual qualities) and impact on the man-made environment, especially the traffic corridors and supporting road systems.
- B. That based on changes in State Statute and regulation, there is a need to expand the Ordinance definitions and meanings applicable to mining activities.
- C. That there do exist pockets of clay and silt resources scattered primarily throughout the north Bath area that are important as resources for public and private sector development.
- D. That mining activities, particularly in an urban community like Bath, present particular impact issues for the community and environment, some of which can have severe and long-lasting detrimental impacts. Hence, there is a need for sound performance standards that lead to responsible management of these activities, mitigating short and long term impact and balance the interests of the community at large.

## **SECTION 14.02 PURPOSE**

The purpose of this Article is to define the scope of mining activities and to provide standards and procedures for a fair and equitable review of those activities in the City of Bath. This Article is enacted on the basis that the activity regulated by this Article constitutes a public nuisance and that this regulation is primarily for the purpose of protecting the public health, safety, and welfare of the inhabitants and for the purpose of protecting the City's environment. This Article is enacted pursuant to Home Rule Powers under the Constitution and Laws of the State of Maine. The specific purposes and policies of this ordinance are as follows:

- A. To provide for the protection of groundwater, surface water, and air quality in the City of Bath;
- B. To conserve and protect the City's natural resources, to preserve property values, recreational opportunities, and the quality of life of the inhabitants of the City;
- C. To provide for the protection of public and private drinking water sources within the City;
- D. To provide water quality which will enhance the propagation of fish and wildlife;
- E. To insure that mining activities are compatible with other land and water uses within the City;
- F. To insure that mining operators and not the taxpayers of the City of Bath bear the expenses associated with protecting human health and the environment from the adverse effects of mining activities; and
- G. To control and monitor through a permitting and licensing system the environmental impact of mining activities, to conduct necessary oversight activities, and to provide enforcement authority to insure compliance with all permits and licenses and all applicable standards.

## **SECTION 14.03 SITE PLAN APPROVAL REQUIRED**

No mining activity may be commenced or continue without a site plan approval granted by the Planning Board of the City of Bath. Upon application by the operator, the Planning Board must act to approve, deny, or approve with conditions in accordance with the procedures of site plan review (Article 12 of this Ordinance), and must in addition to the standards outlined in Article 12, also meet the requirements and standards outlined in this Article. With the submission of an application for approval, the applicant must submit a fee of \$500.00. Any permit issued by the Planning Board is limited to no more than 10 years of

operation or any mining activity beyond that period requires a new application and permitting procedure.

## **SECTION 14.04 REQUIREMENTS AND LIMITATIONS FOR MINING ACTIVITY**

Operators must conduct all mining activities in accordance with the following specific requirements:

### **A. Setbacks**

The following setbacks for mining activity must be applied:

1. 200 feet from any waterbody, stream or wetland;
2. 200 feet from any public right-of-way, private property boundary line or private right-of-way;
3. 200 feet from a private water supply; and
4. 300 feet from a public water supply.

### **B. Excavation to Seasonal Watertable**

No mining activity may excavate within 5 feet or less of the seasonal high water table.

### **C. Natural Vegetation**

Where natural vegetation exists within a buffer area, no more than 40% of the existing vegetation may be removed.

### **D. Reclamation**

With the exception of changes in topography associated with the removal of mining resources, the site, for reclamation purposes, must be returned to its original condition, including topsoil conditions, unless the Planning Board approves an alternative future land use scheme. The following requirements apply:

1. The development of retention ponds or other water bodies are restricted to 10% of the total land area of the property mining activity.
2. If the re-use plan provides for open space, whether as an original condition or a new condition, no other such use may be permitted for 20 years after the reclamation is deemed approved by the CEO, said condition to be enforced by recorded deed restriction running with the land.

3. Where future use is proposed to be residential, the reclamation use plan must show capacity for subsurface waste disposal, including proposed loading and generalized layout.

#### **E. Routes For Removing Mining Resources**

Proposed routes for removing mining resources, subject to the review standards in Section 14.05(B), are restricted to the following routes:

1. Congress Avenue;
2. Oak Grove Road;
3. Whiskeag Road;
4. Ridge Road; and
5. North Bath Road

No activity may exceed the posted weight limits of appropriate crossings; however, an applicant may be permitted to improve those crossings for the purpose of allowing heavier loads.

#### **F. Slope**

All excavated areas must be improved to no steeper than a 4:1 slope.

#### **G. Monitoring**

Monitoring may be required to assure that there is no impact on any water supplies in the area, public or private. Because of ledge and clay configurations, there is no limit in distance when examining potential impact.

#### **H. Soil Sediments**

No soil sediments may leave the area of active excavation.

### **SECTION 14.05 REVIEW STANDARDS**

#### **A. Natural Buffers and Visual Assessment**

The applicant must submit to the Planning Board a plan for the management and maintenance of natural buffers. Should the mining activity impact a street or neighboring property from a visual assessment, then the Planning Board may require a

visual assessment plan of how the project impact will be mitigated. This plan must include:

1. Topography and elevation of mining excavation;
2. Existing natural vegetation in terms of type and location, and common cycles typical to the site in question; and
3. Other resources on site that may be used for buffer management.

The use and maintenance of natural vegetation is encouraged.

## **B. Traffic Impact**

The mining activity scale must be considered in relationship to the capacity of the proposed routes for removal of mining resources. The applicant must provide information on vehicle use, frequency of trips and proposed routes in allowing the Board to assess what improvements may need to be made to the existing road network system. Road improvements decisions must be based on the following related factors:

Rural roads throughout the City of Bath are considered to be adequate for rural traffic with little truck traffic (source: "Geometric Design" from *Transportation and Traffic Engineering Handbook*, Institute of Transportation Engineers, Prentice Hall, 1982). With the introduction of truck traffic associated with Mineral Excavation, road geometric design improvements must be made or provided as follows:

Roadway Width	20-24 feet
Gravel Shoulders	4-8 feet
Border Areas (Beyond Shoulders)	10-20 feet
Slope of Border Areas	4:1 or flatter
Road Base	
Pavement Coarse B	3 inches
Base Crushed Gravel	6 inches
Sub-Base	18 inches
Stopping Sight Distance	*See Below
Decision Sight Distance	*See Below
Corner Sight Distance	*See Below

\*Consistent with standards set out in "Geometric Design," pp. 590-592, *Transportation and Traffic Engineering Handbook* as is currently constituted and as may be from time to time amended.

The Planning Board must utilize the analysis conducted by the applicant to apply the above standards. The application must take into consideration the proposed route, weight of the vehicles, number of trips per day, speed limit and any other unusual site

circumstances. The Board may waive any of these requirements, but may do so only within the following parameters:

1. The applicant must demonstrate, through appropriate engineering standards that are consistent with Institute for Transportation Engineers publications, Federal Highway publications, Maine Department of Transportation or the Asphalt Institute, as appropriate, that the proposed engineering alternative is acceptable.
2. Require that the applicant post a bond for all potential road repairs, establish weight limits in conjunction with the Public Works Department and continue to meet various site distance requirements.

As a condition of approval prior to the start of operation, where the proposed route is insufficient to handle the proposed traffic activity, the applicant must be required to bring the proposed route up to a condition which is sufficient to handle the proposed traffic impact. In addition, and not being limited by the foregoing, the applicant may also be required to post a surety bond, or other acceptable surety instrument acceptable to the Board, to cover damages during and after operation.

### **C. Noise and Vibrations Impact**

Noise and vibration for on site activities must be of ambient quality at the lot lines. The applicant is required to demonstrate how this will be achieved using natural contours and vegetation of the property, or other temporary means during operation.

### **D. Dust and Mud Impact**

The applicant must provide a plan for how dust, mud, and similar nuisances will be confined to the site. Applicant must demonstrate how dust and mud will be prevented from entering onto any public way.

### **E. Hours of Operation**

Based on the neighborhood, topographical conditions, selected travel routes, vegetative buffers and other applicable factors, the Board may elect to restrict the hours of operation of this activity in order to avoid impact on surrounding properties along the site and the proposed route. In considering such a restriction, the Board must consider the impact of the operation on residential neighborhoods, area businesses and other neighborhood uses, insuring that these uses are not negatively impacted.

### **F. Water Quality Impact**



The applicant must demonstrate that the project will not affect the quality and/or quantity of area groundwater both adjacent to the site and hydrogeologically connected. The applicant must establish the seasonal high water mark and describe how to maintain excavations above the 5 foot seasonal high-water level. In order to establish the level, the Planning Board may require the applicant to provide an analysis of groundwater conditions related to -the particular site in question, to be conducted by a registered engineer with a specialty in the area of hydrogeologic assessments.

### **G. Erosion and Sedimentation**

All plans must be accompanied by an erosion and sedimentation plan consistent with the standards laid out by the Department of Environmental Protection, best management practices and the most recent Soil Conservation Service directives. Such plans must be made a part of the application and must be developed by a registered engineer. Particular attention will be focused on the spill associated with clay and silt sediment in order to demonstrate that such particles must be confined to the site and not be allowed to enter any surrounding water bodies or groundwater.

### **H. Stormwater Management Plan**

The applicant must provide a stormwater management plan, consistent with Department of Environmental Protection standards, that includes a design for 2, 10 and 100 year storms. The design must describe measures taken to mitigate the impacts of each event and must relate that mitigation to the erosion and sedimentation plan.

### **I. Reclamation Plan**

Every application must include a reclamation plan tied to the phasing of the mineral activity project. That reclamation plan must be tied to the future use of the property, including insuring that the materials and design are sufficient to allow that future use to occur. In developing the plan, the applicant must address the following factors:

1. The applicant must describe whether the plan will call for new open space, a return to the original condition, or be developed for residential or other permitted uses.
2. Where an open space plan is proposed, the reclamation plan should demonstrate how vegetation, topographical shaping and other natural considerations consistent with the site's location will be utilized. For clay and silt and sand and gravel pits, at least 4 inches of topsoil must be retained to help reestablish the original conditions.
3. Where residential uses or other permitted uses are proposed, the plan must insure that remaining land is capable of supporting the proposed use in terms of water

supply, septic disposal, infrastructure development and other standards addressed in the subdivision, or site plan review ordinances of the City of Bath.

4. The reclamation plan must demonstrate each stage consistent with the annual 1 acre limit on mining activity and must demonstrate the degree of reclamation necessary to reach the point where the site becomes self sustaining.
5. All other aspects of the reclamation plan must be consistent with the specifications and best management practices developed by the Soil Conservation Service and the Department of Environmental Protection.
6. In the case of clay and silt mining activities, the reclamation plan must demonstrate how vegetation and topsoil are to be stabilized on clay and silt surfaces. Programs for soil development, erosion control and vegetative development must be clear so that the CEO, during the licensing process, can determine whether the reclamation is succeeding and becoming self sustaining.

#### **J. Environmental Impact Report**

Where deemed necessary due to the scope of the activity, site conditions, location, or any other relevant factor, the Planning Board may require the applicant to submit an environmental impact report.

#### **SECTION 14.06 MINING ACTIVITY PHASING**

All mining activity permitted under this Article is limited to a 10 year period. The activity must be phased so that no more than 1 acre of mining activity per year will be permitted within the site. No activity may be allowed for additional 1 acre sites or expansion beyond the original 1 acre site where the reclamation plan has not been implemented. For purposes of application of this Section, no property may be divided for the purposes of defeating the phasing definition above where 10 acres of mining activity must be applied to the original lot of record, irrespective of its size at the time of the original adoption of this Article. Any division of the property within 10 years of the date of application, may not be recognized in terms of the phasing activity.

#### **SECTION 14.07 MINING ACTIVITY LICENSE**

Subsequent to the granting of a site review permit under the terms and conditions of this Article, the applicant must annually, during the month of April, but not later than April 30th of each year submit an application for re licensing to the CEO. This license must request a continuation of the mining activity which was approved and the site review permit issued in

accordance with this Article. The CEO must inspect the mining activity, where applicable with the assistance of the Soil Conservation Service and such other experts as may be necessary in order to conduct an appropriate review of the mining activity and implementation of the reclamation plan. The applicants must demonstrate that they are in full compliance with the approved plan and that the reclamation plan to the extent required in the approval has been implemented. The license application and inspection must continue for each mining operation annually until it has been shown that the mining activity has ceased, the reclamation plan fully implemented, and the site has become self sustaining. Each application shall be accompanied by a fee of \$250.00.

#### **SECTION 14.08 NON-TRANSFER OF PERMIT**

The permits issued by the Planning Board under this Article and the yearly licenses issued by the CEO, are site specific and inure to the benefit of the owner/operator of the property and no other. The permit/licenses are not transferable and do not run with the land and any subsequent owner or operator will be required to re permit the site.

#### **SECTION 14.09 EXPERTS**

To the extent deemed necessary and appropriate, the Planning Board in reviewing an initial application for a mining activity permit, and the CEO in consideration of the annual licensing of the operation, has the authority to employ, at the applicant's expense, such experts as they deem necessary and advisable in order to assure full and complete compliance with all standards and requirements of this Article or any other applicable rules, laws or standards. The total amount of such expert assistance may not exceed \$2,500.00 for the initial application or \$1,500.00 for the re-licensing process.

## **SECTION 14.10 FINANCIAL FEASIBILITY-ESCROW**

Each applicant must demonstrate to the satisfaction of the Planning Board in the initial permitting process, and to the satisfaction of the CEO upon yearly re licensing, that the applicant/operator has and has maintained sufficient financial assets to support the operation and the full implementation and completion of the reclamation plan. Where full financial feasibility has not been demonstrated, the Board may refuse to issue the permit, the CEO may refuse to re-license the operation, or require that an escrow fund in an amount adequate to support the reclamation effort be established or if necessary enhanced.

## **SECTION 14.11 FAILURE TO RECLAIM**

Where an operator has failed to conduct appropriate reclamation activities, in addition to nonrenewal of the annual license or revocation of an existing license, the City has the right to exercise any or all of the following options:

- A. Seek injunctive relief before a court of competent jurisdiction requiring the operator to come into compliance with the approved reclamation plan.
- B. If escrow funds exist, to cause the reclamation work to be accomplished, to be paid for out of escrowed monies.
- C. Where escrowed funds are insufficient, to cause the reclamation to occur, the City of Bath has the right to conduct the reclamation activities and enforce the costs as a lien against the property in favor of the City of Bath to recover all expenses involved in reclamation, including all City costs, administrative time, contractor's fees, legal expenses and court costs.

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## **ARTICLE 15 FLOODPLAIN MANAGEMENT ORDINANCE**

[NEW ARTICLE JULY 16, 2015]

### **SECTION 15.01 PURPOSE AND ESTABLISHMENT**

Certain areas of the City of Bath, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the City of Bath, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the City of Bath, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The City of Bath has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the City of Bath having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the City of Bath, Maine.

The areas of special flood hazard, Zones A and AE, for the City of Bath, Sagadahoc County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Sagadahoc County, Maine," dated July 16, 2015 with accompanying "Flood Insurance Rate Map" dated July 16, 2015 with panels: 201F, 202F, 203F, 204F, 208F, 211F, 212F, 214F, 216F, 218F, 277F derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Sagadahoc County, Maine," are hereby adopted by reference and declared to be a part of this Ordinance.

### **SECTION 15.02 PERMIT REQUIRED**

Before any construction or other development (as defined in Section 15.04), including the placement of manufactured homes, begins within any areas of special flood hazard established in Section 15.01, a Flood Hazard Development Permit must be obtained except as provided in Section 15.07. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the City of Bath, Maine.

## SECTION 15.03 APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted and must include:

- A. The name, address and phone number of the applicant, owner, and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.2 apply only to new construction and substantial improvements.]

H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or to a locally established datum in Zone A only, of the:

- 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
  - a. in Zones AE from data contained in the "Flood Insurance Study - Sagadahoc County, Maine," as described in Section 15.01; or,
  - b. in Zone A:
    - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model), including information obtained pursuant to Section 15.06.K. and Section 15.09.D.;
    - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
    - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.

2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  3. lowest floor, including basement; and whether or not such structures contain a basement; and,
  4. level, in the case of non-residential structures only, to which the structure will be floodproofed;
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Section 15.06;
  - J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
  - K. The following certifications as required in Section 15.06 by a registered professional engineer or architect:
    1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Section 15.03.H.4.; Section 15.06.G.; and other applicable standards in Section 15.06;
    2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section 15.06.L.2.a.;
    3. a certified statement that bridges will meet the standards of Section 15.06.M.;
    4. a certified statement that containment walls will meet the standards of Section 15.06.N.;
  - L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
  - M. A statement of construction plans describing in detail how each applicable development standard in Section 15.06 will be met.

#### **SECTION 15.04 APPLICATION FEE AND EXPERT'S FEE**

A non-refundable application fee, as may be set forth by the City Council in the Permit Fee Schedule, must be paid with the permit application.

The Zoning Board of Appeals (ZBA) may, if the City's staff is not available or qualified, because of the complexity or magnitude of the proposed development, to review the plans and supporting materials, and after notification to and at the expense of the applicant, employ 1 or more independent consultants to review the plans and supporting materials. The estimated costs of such consultant must be deposited with the City Treasurer prior to employing the independent consultant. If the cost of the review

exceeds the amount deposited, the applicant must deposit additional funds with the City Treasurer before approval may be granted. Any money not spent must be reimbursed to the applicant.

An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the ZBA.

## **SECTION 15.05 REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The CEO shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Section 15.06 (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
  1. the base flood and floodway data contained in the "Flood Insurance Study - Sagadahoc County, Maine," as described in Section 15.01;
  2. in special flood hazard areas where base flood elevation and floodway data are not provided, the CEO must obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Section 15.03.H.1.b.; Section 15.06.K.; and Section 15.09.D., in order to administer Section 15.06 of this Ordinance; and,
  3. when the community establishes a base flood elevation in a Zone A by methods outlined in Section 15.03.H.1.b., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section 15.01 of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:



1. A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction , “as built”, for verifying compliance with the elevation requirements of Section 15.06, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Section 15.06.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Section 15.06.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Section 15.07.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Section 15.09 of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Section 15.03, 15.06, and Section 15.08 of this Ordinance.

## **SECTION 15.06 DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the following applicable standards:

- A. **All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  2. use construction materials that are resistant to flood damage;
  3. use construction methods and practices that will minimize flood damage; and,
  4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** - On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Residential** - New construction or substantial improvement of any residential structure located within:
1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
  2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 15.03.H.1.b.; Section 15.05.B; or Section 15.09.D.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:
1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 15.03.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Section 15.03.H.1.b.; Section 15.05.B; or Section 15.09.D., or
- a. together with attendant utility and sanitary facilities meet the floodproofing standards of Section 15.06.G.1.

**H. Manufactured Homes** - New or substantially improved manufactured homes located within:

1. Zones AE shall:
- a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
  - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
  - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
    - (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
    - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
    - (3) all components of the anchoring system described in Section 15.06.H.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.
2. Zone A shall:

- a. be elevated on a permanent foundation, as described in Section 15.06.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Section 15.03.H.1.b.; Section 15.05.B; or Section 15.09.D.; and
- b. meet the anchoring requirements of Section 15.06.H.1.c.

I. **Recreational Vehicles** - Recreational Vehicles located within:

1. Zones A and AE, shall either:
  - a. be on the site for fewer than 180 consecutive days,
  - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,
  - c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Section 15.06.H.1.

J. **Accessory Structures** - Accessory Structures, as defined in Section 15.14, located within Zones A and AE, shall be exempt from the elevation criteria required in Section 15.06.F. & G. above, if all other requirements of Section 15.06 and all the following requirements are met. Accessory Structures shall:

1. be 500 square feet or less and have a value less than \$3000;
2. have unfinished interiors and not be used for human habitation;
3. have hydraulic openings, as specified in Section 15.06.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. **Floodways** -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance

Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. In Zones A and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Section 15.06.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
  - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
  - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
3. In Zones A and AE riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. **Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zones A and AE that meets the development standards of Section 15.06, including the elevation requirements of Section 15.06, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in Section 15.14;
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
  - a. be engineered and certified by a registered professional engineer or architect; or,
  - b. meet or exceed the following minimum criteria:
    - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
    - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,

- (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
3. The enclosed area shall not be used for human habitation; and,
  4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. **Bridges** - New construction or substantial improvement of any bridge in Zones A and AE shall be designed such that:
1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
  2. a registered professional engineer shall certify that:
    - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Section 15.06.K.; and
    - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- N. **Containment Walls** - New construction or substantial improvement of any containment wall located within:
1. Zones A and AE shall:
    - a. have the containment wall elevated to at least one foot above the base flood elevation;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 15.03.K.
- O. **Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A and AE, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

**P. Coastal Floodplains -**

1. All new construction located within Zones A and AE shall be located landward of the reach of mean high tide except as provided in Section 15.06.P.2.
2. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Section 15.06.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Section 15.07, and if all the following requirements and those of Section 15.06.A., 15.06.K., and 15.06.L. are met:
  - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
  - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
  - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
  - d. The structure shall have unfinished interiors and shall not be used for human habitation.
  - e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
  - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

**SECTION 15.07 CONDITIONAL USE REVIEW**

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the CEO that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

A. Review Procedure for a Conditional Use Flood Hazard Development Permit

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.
3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

B. Expansion of Conditional Uses

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

**SECTION 15.08 CERTIFICATE OF COMPLIANCE**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the CEO subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the CEO an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Section 15.06, paragraphs F, G, or H.
- B. The applicant shall submit written notification to the CEO that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the CEO shall:



1. review the Elevation Certificate and the applicant's written notification; and,
2. upon determination that the development conforms with the provisions of this ordinance, shall issue a Certificate of Compliance.

### **SECTION 15.09 REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with Section 15.06 of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

### **SECTION 15.10 APPEALS AND VARIANCES**

The Board of Appeals of the City of Bath may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:

1. a showing of good and sufficient cause; and,
  2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,
  3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
  4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - 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; and,
    - 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. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
1. other criteria of Section 15.10 and Section 15.06.K. are met; and,
  2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Section 15.10, paragraphs A. through D. above; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

F. Any applicant who meets the criteria of Section 15.10, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The ZBA shall submit to the CEO a report of all variance actions, including justification for the granting of the variance and an authorization for the CEO to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

## **SECTION 15.11 ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, may submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of;
  - 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  - 2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
  - 3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
  - 4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
  - 5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

#### **SECTION 15.12 VALIDITY AND SEVERABILITY**

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

#### **SECTION 15.13 CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

#### **SECTION 15.14 DEFINITIONS**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

**Accessory Structure** - means a small detached structure that is incidental and subordinate to the principal structure.

**Adjacent Grade** - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Area of Special Flood Hazard** - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Section 15.01 of this Ordinance.

**Base Flood** - means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement** - means any area of the building having its floor subgrade (below ground level) on all sides.

**Building** - see **Structure**.

**Certificate of Compliance** - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**Code Enforcement Officer** - A person certified under Title 30-A MRSA, Section 4451 (including exceptions in subsection 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws and ordinances.

**Conditional Use** - means a use that because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Section 15.07.

**Development** - means any man made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

**Digital Flood Insurance Rate Map (FIRM)** – see **Flood Insurance Rate Map**

**Elevated Building** - means a non-basement building

- a. built, in the case of a building in Zones A or AE, to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A or AE, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Section 15.06.L..

**Elevation Certificate** - An official form (FEMA Form 81-31, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,

b. is required for purchasing flood insurance.

**Flood or Flooding** - means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters.
  2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

**Flood Elevation Study** - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map (FIRM)** - means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study** - see **Flood Elevation Study**.

**Floodplain or Flood-prone Area** - means any land area susceptible to being inundated by water from any source (see flooding).

**Floodplain Management** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations** - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing** - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

**Floodway** - see **Regulatory Floodway**.

**Floodway Encroachment Lines** - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard** - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use** - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Historic Structure** - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

**Locally Established Datum** - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Section 15.06.L. of this ordinance.

**Manufactured Home** - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**Manufactured Home Park or Subdivision** - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Minor Development** - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Section 15.06.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**National Geodetic Vertical Datum (NGVD)** - means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

**New Construction** - means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**North American Vertical Datum (NAVD)**- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

**100-year flood** - see **Base Flood**.

**Recreational Vehicle** - means a vehicle which is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and



- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory Floodway -**

- a. means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine** - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area** - see **Area of Special Flood Hazard**.

**Start of Construction** - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

**Structure** - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Damage** - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by

the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the community's Board of Appeals.

**Variance** - means a grant of relief by a community from the terms of a floodplain management regulation.

**Violation** - means the failure of a structure or development to comply with a community's floodplain management regulations.

### **SECTION 15.05 ABROGATION**

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

## **ARTICLE 16: CONTRACT ZONING DISTRICTS**

### **SECTION 16.01 CAHILL TIRE DISTRICT**

#### **A. District Designation**

The property designated for contract zoning amendment consists of the Charles H. Cahill, Jr. property located on Witch Spring Road, being identified as Lot 64, on City of Bath Tax Map 31 (also designated as Lot 55, on Tax Map 27 under the previous set of Maps in affect through 1994).

#### **B. Findings**

The City Council finds that the unusual configuration of this property together with the combination of steep slopes and its proximity to the right-of-way in connection with the location of its gas pumps, justifies the relaxation of the front yard setback requirement in order to permit construction of a canopy over existing fuel pumps. The owner has made other significant improvements on the property and the canopy, which would otherwise violate setback requirements, represents a significant betterment project.

#### **C. Zoning Provision Affected**

This contract zoning amendment is intended to relax the setback requirements pursuant to Section 8.09(D)(4) which requires a front setback in the C IV Highway Commercial District of 50 feet.

#### **D. Conditions of Approval**

1. Shrubs and tree plantings on the property's west border, the number and type dependent on the advice of a professional consultant and, if desired, the Forestry Committee;
2. That the graded portion will be seeded and stabilized;
3. That a minimum of 20 feet will be maintained for site distance at the entrance and exits and that no plantings be placed within any of the property owned by DOT;
4. Maintain identification of the work/service areas adjacent to the pumps; and
5. The lighting plan, including foot-candle spread to the property lines shall remain consistent with the design criteria.

## **SECTION 16.02 CUMBERLAND FARMS DISTRICT**

### **A. District Designation**

The property designated for contract zoning amendment consists of the Cumberland Farms property located on Leeman Highway, being identified as Lot 12, on City of Bath Tax Map 28 (also designated as Lot 207, on Tax Map 30 under the previous set of Maps in affect through 1994).

### **B. Findings**

The City Council finds the following: (1) that the property has an unusual configuration; (2) that the design of the building is consistent with existing structures around it; (3) that the project is consistent with the Comprehensive Plan and other Code issues; (4) that the screening and viewshed areas reach out 500 feet around the site; (5) that action to landscape the south and eastern borders will provide protection and transition that does not now exist; (6) that present refrigeration equipment will be moved inside; (7) that all exterior storage will now be screened; and (8) that investigation into extending the northwestern berm will, if possible, result in improved traffic safety. For all of these reasons Council feels justified in relaxing the setback requirements on the east, south and north of the property, in order to permit construction of a canopy and building expansion. The owner has made other significant improvements on the property and the canopy and building expansion, which would otherwise violate setback requirements, together with the proposed screening program, represent a significant betterment project.

### **C. Zoning Provision Affected**

This contract zoning amendment is intended to relax the setback requirements pursuant to Section 8.09(D)(4) which requires setbacks in the C IV Highway Commercial District of 50 feet for front setbacks and 25 feet for side and rear setbacks.

### **D. Conditions of Approval**

1. That arborvitae be the chosen evergreen plant to be planted as the border screen for the property, at the specification described in the plan;
2. That because the rear fill lines partially cover an existing sewer line easement, Cumberland Farms, as part of this approval, agrees to allow the City access to the lines for maintenance and repair of the lines and to hold harmless the City should it need to go in and access those lines for repair; and
3. That the City Planner is directed to investigate the possible extension of the berm at the northwest corner of up to 15 feet to control traffic flow at the corner, subject to tanker supply trucks being able to maneuver through that section, and to implement the berm extension if supply truck traffic can be accommodated.

## **SECTION 16.03 GLOBAL FILLING STATION DISTRICT**

### **A. District Designation**

The property designated for contract zoning amendment consists of the Global Filling Station lot located on the South side of Leeman Highway, being identified as Lot 48, on City of Bath Tax Map 28.

### **B. Findings**

The City Council finds the following: (1) the property is of limited size and is abutted by Quimby Street to the East of the Property; (2) the design of the building and new canopy is consistent with the existing structures in the area; (3) the project is consistent with the Comprehensive Plan and other Code issues; (4) abutters to the South are well screened; the abutter to the West, Bodwell Motors, has indicated no objection to the reduced setbacks contemplated; (5) the purpose of the canopy is to cover an existing pump island, making a safer and more attractive location; and (6) the Police Department, Fire Department and Public Works Department have indicated their appropriate approvals of the project. For all of these reasons Council feels justified in relaxing the setback requirements on the rear and side of the property to permit erection of a 24 foot by 24 foot canopy over the existing gas pump island. The canopy, which would otherwise violate setbacks requirements, for the reasons noted, represents a significant betterment of the property.

### **C. Zoning Provision Affected**

This contract zoning amendment is intended to relax the setback requirements pursuant to Section 8.09(D)(4) which requires setbacks in the C IV Highway Commercial District of 50 feet for front setbacks and 25 feet for side and rear setbacks.

### **D. Conditions of Approval**

None applied.

## **SECTION 16.04 CAHILL TIRE DISTRICT – II**

### **A. District Designation**

The property designated for contract zoning amendment consists of the Charles H. Cahill, Jr. property located on Witch Spring Road, being identified as Lot 64, on City of Bath Tax Map 31 (also designated as Lot 55, on Tax Map 27 under the previous set of Maps in affect through 1994).

### **B. Findings**

The project is consistent with the conditions of Section 8.18 of the Land Use Code. The existing structure, formerly a restaurant, is in a dilapidated condition. The project will result in facade improvement along the Route 1 corridor. The proposed use of the structure is a permitted use in the zone and is consistent with the Comprehensive Plan. The building replacement is consistent with and in addition to significant improvements made on the property by the owner. The replacement will result in a structure 4 feet wider than the original structure but away from the setback violation. The replacement, however, will cause the structure to continue to exist that is in violation of the front and side setbacks.

### **C. Zoning Provision Affected**

This contract zoning amendment is intended to relax the front and side setback requirements pursuant to Section 8.09(D)(4) which requires a front setback of 50 feet and a side setback of 25 feet, as well as side yard requirements of 15 feet, in the C IV Highway Commercial District.

### **D. Conditions of Approval**

1. That there will be no new curb cut for the property.

## **SECTION 16.05 M. W. SEWALL CO. DISTRICT**

### **A. District Designation**

The property designated for contract zoning amendment consists of the M. W. Sewall Co. property located at 135-141 Leeman Highway, being identified as Lots 53 and 54 on City of Bath Tax Map 28.

### **B. Findings**

The proposal is to remove the existing car wash and lube buildings, to construct a new car wash and lube building on the westerly end of the site. The property is in a Highway Commercial - C IV District where the types of commercial uses proposed in this project are permitted. The City Council makes the following additional specific findings:

1. The property is of limited size, is unusual in shape in being long and narrow, and is abutted on all four sides by traveled ways.
2. The design of the replacement structures and improvements to the existing structures are consistent with structures generally in the area.
3. The project is consistent with the City's Comprehensive Plan and in compliance with other Code issues. Specifically, the approval criteria under Section 12.10 of the Code have been met and site plan approval has been issued by the Planning Board. [amended May 16, 2001]
4. Existing structures on the property violate setback and lot coverage requirements of the Code for the Highway Commercial - C IV Zone.
5. The project represents a benefit to the City of Bath by reducing the number of curb cuts onto U.S. Route #1 southbound, providing for additional landscape in the area to the extent that it is possible to do so, and represents in general an upgrade of the area in terms of improved visual appearance and enhanced safety with regard to easier traffic flow.
6. The Police, Fire and Public Works Departments have indicated approval of the project.

For all these reasons, the City Council feels justified in relaxing the setback requirements with respect to proposed new structures on the property, lot coverage requirements, and parking space requirements for retail facilities.

### **C. Zoning Provisions Affected.**

This contract zoning amendment is intended to relax the setbacks requirements pursuant to Section 8.09(D)(4) which requires setbacks in the C IV Highway Commercial District of 50 feet for front setbacks and 25 feet for side and rear setbacks, and the yard requirements pursuant to Section 8.09(D)(S) which requires front yards of 20 feet and side and rear yards of 15 feet. Additionally, it is intended to relax the requirements of Section 8.09(D)(7) which limits maximum lot coverage to 25% of the total lot area, and the requirements of Section 8.09(D)(8) which limits the maximum floor area ratio to .5. This amendment is further intended to relax the requirements of Section 12.08(F)(3) requiring a parking space for every 250 square feet of gross floor area.

#### **D. Conditions of Approval.**

This contract zone is approved subject to the following specific conditions:

1. Directional arrows shall be painted and maintained on the pavement, which directs traffic to Court Street upon exiting the car wash area.
2. Stop signs shall be installed and maintained on exits from the property to Court Street and Leeman Highway.
3. The applicant is required to return to the Planning Board within eight (8) months of the date of issuance of the site plan approval for the purpose of discussing future plans for the site. If the applicant has no plans to erect additional buildings on site, then the area where the existing building is to be demolished shall be reclaimed and greened over.
4. The car pit operation will comply with all applicable fire regulations and requirements of the Bath Fire Department.
5. The owner shall be responsible for off-site removal of snow within a reasonable amount of time after any snow event, from the Court Street loading zone area.
6. All wall-mounted lights shall have cutoffs to prevent glare extending beyond the property lines.
7. The water reuse system shall have the specific written approval of the Bath Wastewater Treatment Plant Superintendent.
8. The convenience store drive through shall be subject to subsequent approval of the Planning Board. No approval of this facility is implied or granted herein.



**SECTION 16.06 FORMER BATH HOSPITAL AND 2 DAVENPORT CIRCLE** [Section amended February 6, 2002, & September 4, 2002]

**A. District Designation**

The properties designated for contract rezoning amendment are the properties located at 1356 Washington Street and the accessory parking lot located on Park Street; being identified as lots 96-00, 96-3, and 96-4 on tax map 14; and lots 93, 112, and 113 on tax map 20; tax maps dated April 1, 2001. These properties are known as the former Bath Hospital and the hospital parking lot. And the property located at 2 Davenport Circle; being identified as lots 96-1 and 96-2 on tax map 14; tax maps dated April 1, 2001.

**B. Findings**

1. The former Bath Hospital and parking lot are in the Special Purpose Commercial Contract Overlay District. The City Council makes the following additional specific findings:
  - a. The building was built as a hospital.
  - b. Midcoast Health Services no longer operates a hospital at this location.
  - c. The City Council desires to convert some or all of the building into a post-secondary education facility and to continue the existing lease to the Midcoast Medical Group.
  - d. Such office and educational uses would be appropriate in the building and would be compatible with the neighborhood.
  - e. Use of the parking lot on Park Street as an accessory use to the uses in the former hospital building would be appropriate.
  - f. All of the C1 uses allowed by the Special Commercial Contract Overlay District, however, would not be appropriate and compatible in the building or in the neighborhood.
  - g. The incidental use of accessory uses such as the school cafeteria, coffee shop, or bookstore by non-students is accessory to the educational use.
  - h. The City, as owner of the property, has voluntarily offered to limit the number and type of permitted uses of the property as allowed by Land Use Code Section 8.20, D, 2, a, and has voluntarily offered to have any changes of use in the building and on the lots, which would require Site Plan Approval, be subject to Site Plan Approval from the Planning Board.
  - i. Signs needed to identify the former hospital as a post secondary school exceed the number and area that is allowed in the underlying R2 zone.
  - j. The City is proposing to make façade improvements at what had been the back door of the hospital, creating an inviting front entrance to the school.
  - k. The City is proposing to add landscaping at the new front entrance to soften the view of the building from neighboring residential properties.
  - l. The City is proposing to make street safety improvements by eliminating the unsafe intersection of Winship and Park streets and dead-ending Winship Street.

- 2 The building at 2 Davenport Circle is in the Special Purpose Commercial Contract Overlay District. The present use of the building is medical office, which the Zoning Board of Appeals has determined is allowed as an accessory use to the Mid Coast Hospital. The City Council makes the following additional specific findings:
  - a. The building was built as a medical office building associated with the Mid Coast Hospital.
  - b. Medical office use would not be allowed if not accessory to the hospital.
  - c. The building was specifically constructed for offices and has only limited utility for uses found in the R2 Zone.
  - d. General office uses would be appropriate in the building and would be as compatible with the surrounding neighborhood as the medical office use. However, not all of the C1 uses, which would generally be allowed in the Special Purpose Commercial Overlay District, would be appropriate.
  - e. The owner of the property has voluntarily offered to limit the number and type of authorized uses of the property as allowed in Land Use Code Article 8, Section 8.20, D, 2, a.

### **C. Zoning Provisions Affected**

This contract zoning amendment is intended to limit the number and type of authorized uses of the properties as would otherwise be permitted under C1 designation under a Special Purpose Commercial Contract Overlay District, but which would be inappropriate on these sites given the residential character of the neighborhood in which they are located. And, to require that any change of use of the former Bath Hospital building or lots be subject to Site Plan Approval from the Planning Board.

### **D. Conditions of Approval**

This contract zone is approved subject to the following conditions: [amended November 28, 2012]

1. The only uses allowed are the uses presently allowed by the Land Use Code in the underlying district, plus the following C1 use categories:
  - a. 3.1.1 – Office, clerical, research, or service operations designed to attract and serve numerous clients on the premises.
  - b. 3.1.2 – Office, clerical, research, or service operations designed to attract little or no client traffic.
  - c. 6.1.1 – Public or private elementary or secondary schools.
  - d. 6.1.2 – Public or private post-secondary schools.
  - e. 6.1.3 – Special-purpose schools.
  - f. 6.3 – Libraries and museums.
  - g. 13.3 – Shared parking
2. Any change of use in the former Bath Hospital building or on the former Bath

Hospital lots, which would require Site Plan Approval, be subject to Site Plan Approval from the Planning Board in accordance with Land Use Code Article 12.

The number and area of signs allowed on the lots identified as Tax Map 14 Lots 96-00, 96-3, and 96-4 is that which is allowed in the C1 Zone.

**SECTION 16.07 BATH SHOPPING CENTER** [Section added February 7, 2001, and amended June 20, 2001]

**A. District Designation**

The property designated for this contract zoning amendment is the property located at 1 Chandler Drive being identified as lots 51 and 52 on City of Bath Tax Map 28, dated April 1, 2000.

**B. Findings**

The City Council finds that: (1) the project consists of renovating and expanding the existing Shaw's portion of the Bath Shopping Center, and the construction of a 3,250 square foot bank building and a 10,200 square foot retail building; (2) the project is consistent with the mandatory conditions set forth in Land Use Code Section 18.19 paragraph D, 1; (3) the applicant is proposing to make improvements to both Chandler Drive and Congress Avenue so that the project will not result in unreasonable traffic congestion; (4) the facades of the expanded Shaw's building, the bank building and the retail building are proposed to be red brick with white and/or tan clapboards and these improvements are compatible with the neighborhood; (5) the project will have appropriate screening and landscaping in addition to that normally required by Article 10; (6) the applicant will install decorative street lighting, like that on the Sagadahoc Bridge, along Chandler Drive; (7) the applicant will to construct a sidewalk on the north side of Chandler Drive.; and (8) the applicant will construct landscaped islands at the ends of all of the rows of parking, including those associated with that portion of the shopping center not being renovated.

**C. Zoning Provisions Affected**

This contract zoning amendment is intended to relax the setback requirement pursuant to Section 8.09 that requires a setback in the C4-Route 1 Commercial Contract District of 50 feet from a lot line abutting a residential zone, to the extent allowed in accordance with the setbacks as approved in the Site Plan Approval granted to Eastern Development, LLC by the Bath Planning Board on January 2, 2001, and as amended June 5, 2001.

**D. Conditions of Approval**

The approval is subject to all conditions of approval which are part of the Site Plan Approval, granted to Eastern Development, LLC, by the Planning Board on January 2, 2001, and as amended June 5, 2001.

**SECTION 16.08 - Plant Memorial Home** [Section added June 19, 2002]

**A. District Designation**

The property designated for contract rezoning amendment are the properties located at 1 Washington Street; being identified as a portion of lot 21 on tax map 43; tax maps dated April 1, 2001. The property is known as the Plant Home.

**B. Findings**

1. The Plant Memorial Home is located in the Special Purpose Commercial Contract Overlay District. The City Council makes the following additional specific findings:
  - a. The building was built as a home for the elderly in 1917.
  - b. The building is in a residential neighborhood and in an R6 zoning district.
  - c. The present use is classified as a Residential Care Facility.
  - d. The owners propose to expand the facility and convert it to a Congregate Care Facility.
  - e. Expanding the building, provided the expansion meets the Site Plan Approval criteria in Section 12.09 and certain additional design standards, would not be a detriment to the neighborhood.
  - f. Such Residential Care Facility and Congregate Care Facility uses would be appropriate in the building and would be compatible with the neighborhood.
  - g. Use of the parking lot that is accessory to the Plant Home could be appropriately shared with the residential uses at the adjacent garden apartments.
  - h. All of the C1 uses allowed by the Special Commercial Contract Overlay District, however, would not be appropriate and compatible in the building or in the neighborhood.
  - i. The incidental use of any Plant Home meeting facility by non-Plant Home residents is not a separate, principal use.
  - j. The owner of the Plant Home has voluntarily offered to limit the number and type of permitted uses of the property as allowed by Land Use Code Section 8.20, D, 2, a; has voluntarily offered to have any changes of use in the building be subject to Site Plan Approval from the Planning Board; and has voluntarily offered to have the construction of any new buildings or the additions to buildings subject to certain design standards.

### **C. Zoning Provisions Affected**

This contract zoning amendment is intended to limit the number and type of authorized uses of the property as would otherwise be permitted under C1 designation under a Special Purpose Commercial Contract Overlay District, but which would be inappropriate on this site given the residential character of the neighborhood in which the building is located. And, to require that any change of use of the building be subject to Site Plan Approval from the Planning Board and to require that the construction of any new buildings or the additions to buildings be subject to certain design standards.

### **D. Conditions of Approval**

This contract zone is approved subject to the following conditions:

1. The only uses allowed are the uses presently allowed by the Land Use Code in the underlying district, plus the following C1 use categories:
  - a. Use 9.2 -- Nursing home, child-care facility, or residential care facility.
  - b. Use 9.3 – Congregate-care facility.
  - c. Use 13.3 – Shared parking
  - d. Use 7.3 – Community activity center
2. Any change of use, which would require Site Plan Approval, is subject to Site Plan Approval from the Planning Board in accordance with Land Use Code Article 12.
3. The construction of any new buildings and the additions to buildings require Site Plan Approval from the Planning Board and must meet the following additional approval criteria:

The construction of any building or the addition to any building must be generally of such design, form, proportion, mass, configuration, building material, texture, color, and location on the lot so as to be compatible other buildings and with streets and open spaces to which it is visually related.

## **SECTION 16.09 - Maine Maritime Museum Contract Zone** [Section added February 19, 2003]

### **A. District Designation**

The property designated for this contract zoning amendment is the property located at 243 Washington Street being identified as lots 8, 9, 10, 11, 16, and 17 on City of Bath tax map 38, dated April 1, 2002.

### **B. Findings**

The City Council finds that: (1) the project consists of construction of a full-scale representation of the *Wyoming*, the 6-masted schooner originally constructed by the Percy and Small Shipyard on this site; (2) the project is consistent with the mandatory conditions set forth in Land Use Code Section 18.20, paragraph D, 1; (3) the applicant is proposing to make circulation and aesthetic improvements to the area between the so-called Donnell House and the Mill-Joiner Shop on the museum campus. The improvements will consist of reducing the existing parking area from 10 spaces to 4 spaces, the access drive will be relocated, and there will be more green space along Washington Street. These improvements will reduce the potential for traffic conflicts. Also, the existing stockade fence and wooden gate will be replaced with a wooden picket fence that will be more transparent, thus allowing views by the public of the *Wyoming* sculpture and the museum grounds without entering the property. And, an interpretive sign will be installed on the outside of the fence describing the shipyard, the *Wyoming* sculpture, and other information of interest to the public.

### **C. Zoning Provisions Affected**

This contract zoning amendment is intended to relax the front Yard Area requirement pursuant to Section 8.11 -- C5-Marine Business District -- that requires a 20-foot Yard Area setback from a property line abutting a residential zone, to the extent that the jib-boom of the *Wyoming* replica may be located as shown on the site plan approved by the Bath Planning Board on February 4, 2003.

### **D. Conditions of Approval**

The approval is subject to all conditions of approval that are part of the Site Plan Approval, granted to the Maine Maritime Museum, by the Planning Board on February 4, 2003. These conditions are:

1. That the Planning Office receive notification of satisfactory approval from the Maine Historic Preservation Commission relative to Land Use Code Section 10.28.
2. That the Planning Office receive a letter indicating satisfactory approval of the project from the Maine Department of Environmental Protection.

3. That the Planning Office receive a letter from the Federal Aviation Administration that aircraft warning lights are not required on the masts.
4. That the applicant submit, for the Planning Director's review and approval, an amended landscaping plan for the parking lot at the bow of the *Wyoming* sculpture.
5. That this parking lot be graded to prevent erosion and that reclaimed asphalt be used as a surface material.
6. That the additional erosion control measures outlined in the memorandum to Jim Upham from Patrick Carroll, dated January 31, 2003, be incorporated as part of the plan, and
7. That a photometrics plan be presented to the Planning Office that indicates that the lighting for the masts will have a light level at the property lines no greater than .2 footcandles.



**SECTION 16.10 C.N. BROWN – ROUTE 1 – CONTRACT ZONE** [Section added February 4, 2004]

**A. District Designation**

The property designated for this contract zoning amendment is the property located at 150 Leeman Highway (Route 1) being identified as Lots 48 and 49 on City of Bath Tax Map 28, dated April 1, 2003.

**B. Findings**

The City Council finds that: (1) the project consists of demolishing the existing building on lot 49 and removing the fuel pumps and tanks on lot 48, constructing a 5,000 square foot building for restaurant and/or retail use(s), a detached 4,050 square foot canopy with 6 fuel pump islands and 12 fueling stations, and a 1,000 square foot car wash; (2) the project is consistent with the mandatory conditions set forth in Land Use Code Section 18.20 paragraph D, 1; (3) the applicant is proposing to reduce the number of curb cuts onto Leeman Highway (Route 1) and Western Avenue so that the project will result in improved traffic safety; (4) the facades of the buildings proposed to be compatible with the neighborhood and will help to create an improved Gateway image for Bath; (5) the project will have appropriate screening and landscaping in addition to that normally required by Article 10; (6) the applicant will install decorative lighting, like that on the Sagadahoc Bridge, at the Leeman Highway edge of the site; and (7) the applicant will construct a sidewalk and grassed esplanade with street trees along a portion of Western Avenue.

**C. Zoning Provisions Affected**

This contract zoning amendment is intended to change the Setback and Yard Area requirements pursuant to Section 8.10 to the Setbacks and Yard Areas as approved in the Site Plan Approval granted to C. N. Brown, Company, by the Bath Planning Board on December 16, 2003.

**D. Conditions of Approval**

The approval is subject to all conditions of approval, which are part of the Site Plan Approval, granted to C. N. Brown, Company, by the Planning Board on December 16, 2003.

**SECTION 16.11 – TEXAS STEAMSHIP CONTRACT ZONE** [section added September 1, 2004]

**A. District Designation**

The property designated for this contract zoning amendment is the property located on Bowery and Front Streets being identified as Lot 227 on City of Bath Tax Map 21, dated April 1, 2004.

**B. Findings**

The City Council finds that: (1) The project consists of 12 dwelling units in a total of 5 residential buildings plus other accessory buildings and structures, an access drive, and parking for the residents. (2) The project is consistent with the mandatory conditions set forth in Land Use Code Section 8.20 paragraph D, 1. (3) The applicant is proposing to make design and safety improvements to the site and off-site that are not normally required by the Bath Land Use Code. These include: installation of curbing and a pedestrian walkway along that portion of the western property line along Front Street; construction of stormwater drainage improvements on portions of Bowery and Front Streets; and landscaping and hillside slope maintenance around the sides and back of the sewage pumping station on Front Street.

**C. Zoning Provisions Affected**

This contract zoning amendment is intended to change the Setback, Yard Area, and Building Height requirements pursuant to Section 8.11 to the Setbacks, Yard Areas, and Building Height as approved in the Site Plan Approval granted to SSC Ventures, Inc., by the Bath Planning Board on August 3, 2004.

**D. Conditions of Approval**

The approval is subject to all conditions of approval, which are part of the Site Plan Approval, granted to SSC Ventures, Inc., by the Planning Board on August 3, 2004.

**SECTION 16.12 – 99 COMMERCIAL STREET CONTRACT ZONE** [zone approved by City Council on May 24, 2006, then by referendum on November 7, 2006]

**A. District Designation**

The property designated for this Contract Rezoning is the property located on Commercial Street being identified as Lot 272 on City of Bath Tax Map 26, dated April 1, 2005.

**B. Findings**

The property is located in the Downtown Commercial (C1) and within the Historic Overlay districts. The City Council makes the following additional specific findings:

- The building, presently known as the BathPort, was initially constructed in 1973 for the purpose of mixed use consisting of commercial and residential uses.
- The applicant proposes to demolish the existing structure and replace it with a new structure.
- Without the creation of a contract zone, the maximum height allowed in this portion of the C1 Zone is 35 feet under the provisions of Section 8.07(C) of the Land Use Code.
- Contract Rezoning is allowed on this parcel because it is allowed in the Historic Overlay District under the provisions of Section 8.12(I) of the Land Use Code.
- The developer has offered the following voluntary conditions in exchange for the Contract Rezoning. For the Contract Rezoning the developer will:
  - Pay for the construction of a five-foot wide brick sidewalk, with granite curbing and fourteen downtown-style streetlights (including conduits and wiring) along Commercial Street from the north end of the Bathport lot to the south end of the waterfront park. (These must be to City specifications.)
  - Provide eight street trees with tree grates, as approved by the City Arborist, along Commercial Street in front of the New Bathport building.
  - Provide a public space in the lobby of the New Bathport building. The written agreement of this requirement must be acceptable to the City Solicitor as to its enforceability, and the agreement must be approved by the Planning Board. This condition must be included in the condominium declarations.
  - Pay for the removal of six utility poles from Commercial Street, the burying of the electrical and telecom wires from the north end of Bath Port lot to the south end of the water front park, and the replacement service feeds to affected buildings. Poles to be removed are numbers 5, 6, 7, 8, 9, and 10.
  - Grant an easement to the City for public use of an eight-foot wide pathway along the river (form and sufficiency of the easement must be approved by the City

Solicitor), and pay for construction of the pathway. The pathway must include pavers and 6 park-style lights (including bases, conduits, and wiring) approved by the Planning Board.

- Pay for the relocating and/or remodeling of the existing Waterfront Park restroom building (as approved by the City Council) with a budget not to exceed \$20,000.

### **C. Zoning Provisions Affected**

This Contract Rezoning is intended to only modify the maximum height allowed on this parcel, under Section 8.07(C) of the Land Use Code, by allowing the construction of the building to a height of 60 feet 9 inches with no more than a 4-foot parapet. The building that is allowed is depicted on the Site Plan approved by the Bath Planning Board on April 18, 2006.

### **D. Conditions of Approval**

This Contract Rezoning Ordinance requires full and complete compliance with all conditions of approval, which are part of the Site Plan, Historic District, and Subdivision approvals, granted to New BathPort, LLC., by the Bath Planning Board on April 18, 2006, and with the voluntary conditions listed in Section B(5) above.

**SECTION 16.13 – 1065 WASHINGTON STREET CONTRACT ZONE** [Section added April 5, 2006]

**A. District Designation**

The property designated for this contract zoning amendment is Lot 197 on City of Bath Tax Map 21, dated April 1, 2005.

**B. Findings**

The property is located in the High Density Residential (R1) District and the Historic Overlay District. The City Council makes the following additional specific findings:

- Contract Rezoning is allowed in the Historic Overlay District.
- The single-family home on the property is less than 10 feet from the north property line. Ten feet is the required Setback in the R1 Zone.
- The applicant desires to make certain improvements and expansions to the existing home consisting of a second story addition closer than 10 feet from the side property line but within the existing building footprint.
- The project is consistent with the mandatory conditions set forth in Land Use Code Section 18.20 paragraph D, 1.
- The applicant is proposing to make certain aesthetic improvements to the home, which are not normally required of the Land Use Code, but which are consistent with the purposes of the Historic Overlay District, including the following:

Removal of existing aluminum storm windows.

Removal of all vinyl siding.

Repair/replacement of clapboard siding.

Repair of railings at main entry to meet code and be as architecturally correct as possible.

Complete reconstruction of driveway.

**C. Zoning Provisions Affected**

This contract rezoning is intended to allow the modifications to the building as approved by the Planning Board on February 7, 2006, which will increase the volume area of the building, which encroaches into the existing setback area along the northerly line of the property.

**D. Conditions of Approval**

The approval is subject to all conditions of approval, which are part of the Historic District Approval, granted to Albert & Deborah Branca, by the Planning Board on February 7, 2006.

## **SECTION 16.14 – SOUTH PO2 CONTRACT ZONE** [Section added October 18, 2006]

### **A. District Designation**

The property designated for this Contract Rezoning is a portion of the property located on Washington Street being identified as a portion of Lot 142 on City of Bath Tax Map 27, dated April 1, 2005.

### **B. Findings**

The property is located in the Industrial/Shipyard District (I). The City Council makes the following additional specific findings:

- The building, presently known as the Pre-outfit 2 (PO 2) Building was constructed in 1986, underwent a major upgrade in 2004 and is used for industrial purposes.
- The applicant proposes to demolish the two southern bays of the existing building and replacing them with two wider, deeper, and higher bays.
- Without the creation of a contract zone, the maximum height allowed in the Industrial District is 75 feet under the provisions of Section 8.14(C) of the Land Use Code.
- Contract Rezoning is allowed on this parcel per Section 8.14(D) of the Land Use Code.
- The applicant has offered the following voluntary, Discretionary Conditions in exchange for the Contract Rezoning. For the Contract Rezoning the applicant will:
  - Make sidewalk improvements along the east side of Washington Street along the BIW Aluminum Shop.
  - Make enhancements on the east side of Washington Street adjacent to BIW's West Gate.
  - Make certain streetscape improvements, similar to those discussed in the Bath Southend Urban Design Plan, to the east side of Washington Street adjacent to the BIW assembly building.
  - Create a planting area at the corner of Spring and Washington streets.
  - Make pedestrian-safety and streetscape improvements to the east side of Washington Street south of BIW's South Gate.
  - Donate \$25,000 to support the public improvements scheduled for the South End Waterfront Park.
  - Make certain noise reductions to existing and proposed exhaust fans on the PO 2 building to reduce the noise levels below the level required by the Bath Land Use Code.

### **C. Zoning Provisions Affected**

This Contract Rezoning is intended to only modify the maximum height allowed, under Section 8.07(C) of the Land Use Code, by allowing the construction of the building, 106 feet in height, depicted on the Site Plan approved by the Bath Planning Board on September 19, 2006.

### **D. Conditions of Approval**

This Contract Rezoning Ordinance requires full and complete compliance with all conditions of approval, which are part of the Site Plan approval, granted to Bath Iron Works, by the Bath Planning Board on September 19, 2006, and with the Discretionary Conditions listed in Section B (5), above.

**SECTION 16.15 – 832 WASHINGTON STREET CONTRACT ZONE** [Section added September 26, 2007]

**A. District Designation**

The property designated for this contract zone is at 832 Washington Street, also designated as Lot 163 on City of Bath Tax Map 27, dated April 1, 2006.

**B. Findings**

The property is located in the Mixed Use Light Commercial (C2) District and the Historic Overlay District. The City Council makes the following additional specific findings:

- Contract Rezoning is allowed in the Historic Overlay District.
- The office building on the property is less than 10 feet from the north property line. The setback in the C2 zone is 10 feet with a Planning Board approved Setback Reduction Plan and 40 feet without one.
- The applicant desires to make certain improvements and expansions to the existing building consisting of removing an existing portion of the structure and exterior entrance down to the foundation and replacing it with an enclosed, two-story addition closer than 10 feet from the side property line but within the existing building footprint.
- The project is consistent with the mandatory conditions set forth in Land Use Code Section 18.20 paragraph D, 1.
- The applicant is proposing to make certain landscaping improvements to the property, which are not normally required of the Land Use Code, but which are consistent with the purposes of the Historic Overlay District.

**C. Zoning Provisions Affected**

This contract rezoning is intended to allow the modifications to the building as approved by the Planning Board on July 24, 2007, which will increase the volume area of the building, which encroaches into the existing setback area along the northerly line of the property.

**D. Conditions of Approval**

The approval is subject to all conditions of approval, which are part of the Historic District Approval, granted to AA Associates, LLC, by the Planning Board on July 24, 2007, including that the shrubs must be planted and maintained according to the shrubbery plan presented to the Planning Board on July 24, 2007, that the garden under the sign will be 6 feet by 3 feet, that the annuals must be planed by May 20<sup>th</sup> each year, and that the shrubbery plan must be approved by the City Arborist.



## **SECTION 16.16 – 11 ELSINORE AVENUE CONTRACT ZONE** [Section added July 9, 2008]

### **A. District Designation**

The property designated for this Contract Rezoning is the property located at 11 Elsinore Avenue being identified as Lot 32 on City of Bath Tax Map 28, dated April 1, 2007.

### **B. Findings**

The property is located in the Route 1 Commercial Contract (C4) District. The City Council makes the following additional specific findings:

- The project consists of the construction of an addition to the existing home at 11 Elsinore Avenue, changing the use of the property from residential to office use, moving the access drive approximately 50 feet to the south, constructing a parking lot, and making other site improvements.
- Without the creation of a contract zone, the Minimum Front Setback is 50 feet, the Minimum Front Yard Area is 20 feet, and the Minimum Side Yard Area is 20 feet.
- Contract Rezoning is allowed on this parcel per Section 8.10 (D) of the Land Use Code.
- The applicant has offered the following voluntary, Discretionary Conditions in exchange for the Contract Rezoning. For the Contract Rezoning the applicant will:
  - Enhance the landscaping along Route 1,
  - Relocate the access drive further away from Route 1,
  - Improve the Route 1 gateway appearance, and
  - Construct a building addition designed to balance the commercial use of the site with the adjacent residential and commercial neighborhoods.

### **C. Zoning Provisions Affected**

This Contract Rezoning is intended to only modify the minimum Setbacks and Yard Areas required under Section 8.10 (C) of the Land Use Code, by allowing the construction of the building addition and other site improvements depicted on the Site Plan approved, with conditions, by the Bath Planning Board on May 20, 2008.

### **D. Conditions of Approval**

This Contract Rezoning Ordinance requires full and complete compliance with all conditions of approval, which are part of the Site Plan approval, granted to Glen and Simone Flaming, by the Bath Planning Board on May 20, 2008, and with the Discretionary Conditions listed in Section B (4), above.

**SECTION 16.17 - 619 HIGH STREET CONTRACT ZONE** [Section added March 11, 2009]

**A. District Designation**

The property designated for contract rezoning amendment is the property located at 619 High Street; being identified as lots 118 and 118-1 on tax map 32; tax maps dated April 1, 2008. The property is known as the Captain Merritt House.

**B. Findings**

1. This lot is located in the Special Purpose Commercial Contract Overlay District. The City Council makes the following additional specific findings:
  - a. The building was built as a home for the elderly in 1917.
  - b. The building is in a neighborhood of residential and educational uses and in an R1 zoning district.
  - c. The present use is the administrative offices of The Hyde School.
  - d. The Hyde School proposes to sell the property.
  - e. The size and historic nature of the building makes redevelopment in accordance with the uses allowed in the R1 zone extremely problematic.
  - f. All of the C1 uses allowed by the Special Commercial Contract Overlay District, however, would not be appropriate and compatible in the building or in the neighborhood.
  - g. The owner of the property has voluntarily offered to limit the number and type of permitted uses of the property as allowed by Land Use Code Section 8.20, D, 2, a.

**C. Zoning Provisions Affected**

This contract zoning amendment is intended to limit the number and type of authorized uses of the property as would otherwise be permitted according to C1 designation in a Special Purpose Commercial Contract Overlay District, but which would be inappropriate on this site given the character of the neighborhood in which the building is located.

**D. Conditions of Approval**

This contract zone is approved subject to the following condition: [amended November 28, 2012]

1. The only uses allowed are the use categories:

- a. Use 1.1.1 - Site-built Single-family dwelling.
- b. Use 1.2 - Two-family dwelling
- c. Use 1.3 - Multi-family dwelling
- d. Use 1.6.1 - Home occupation - A
- e. Use 1.6.2 - Home occupation - B
- f. Use 3.1.1 - Operations designed to attract and serve numerous customers or clients on the premises, however, limited to only attorneys' offices, professional offices, and travel agent offices.
- g. Use 3.1.2 - Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use.
- h. Use 6.1.1 - Public or private elementary or secondary schools.
- i. Use 6.1.2 - Public or private or post-secondary schools.
- j. Use 6.1.3 - Special-purpose schools
- k. Use 6.2 - Libraries and museums, including associated educational and instructional activities.
- l. Use 30.0 - Art studio

**SECTION 16.18 – SOUTH PO2 CONTRACT ZONE, NUMBER 2** [Section added February 24, 2010, amended November 27, 2013]

**A. District Designation**

The property designated for this Contract Rezoning is a portion of the property located on Washington Street being identified as a portion of Lot 142 on City of Bath Tax Map 27 and a portion of Lot 165 on City of Bath Tax Map 32, dated April 1, 2013.

**B. Findings**

The property is located in the Industrial/Shipyard District (I). The City Council makes the following additional specific findings:

1. The building, presently known as the Pre-outfit 2 (PO 2) Building was constructed in 1986, underwent a major upgrade in 2004, and a 66,780 square-foot addition with a height of 106 feet in 2007. The addition in 2007 required the creation of a Contract Zone. This Contract Zone is contained in Land Use Code Section 16.14.
2. The building is used for industrial purposes.
3. The applicant now proposes to construct a 55,417 square-foot addition on the south side of the building. The addition is proposed to be 110 feet in height.
4. Without the creation of a contract zone, the maximum height allowed in the Industrial District is 75 feet under the provisions of Section 8.14(C) of the Land Use Code.
5. Contract Rezoning is allowed on this parcel per Section 8.14(D) of the Land Use Code.
6. The applicant has offered the following voluntary, Discretionary Condition in exchange for the Contract Rezoning.
  - a) The design and construction of streetscape improvements on Washington Street, from its intersection with King Street to the building addressed at 700 Washington Street, including the development of an esplanade/utility strip, relocation of curbing, widening and repaving of the sidewalk, and the installation of trees and bollards—as more particularly described in the application materials amended September 20, 2013 and submitted to the Planning Department.
  - b) The contribution of \$100,000 to the City of Bath for the purpose of enhancing the South End Park as deemed necessary by the City Council.

### **C. Zoning Provisions Affected**

This Contract Rezoning is intended to only modify the maximum height allowed, under Section 8.07(C) of the Land Use Code, by allowing the construction of the building addition 106 feet in height, depicted on the Site Plan approved by the Bath Planning Board on September 3, 2013.

### **D. Conditions of Approval**

This Contract Rezoning Ordinance requires full and complete compliance with all conditions of approval, which are part of the Site Plan approval, granted to Bath Iron Works, by the Bath Planning Board on September 3, 2013, including the following:

1. That the Conditions contained in Land Use Code Section 16.14 remain in force unless modified herein;
2. That the large doors of the Ultra Hall building be closed from sunset to sunrise;
3. That the evergreens and the white picket fence along Washington Street, between the street and Bath Iron Works' property south of the South Gate, be maintained;
4. That the approval is contingent upon approval being granted by the Maine Department of Environmental Protection and that a copy of DEP's approval be submitted to the Planning Office; and
5. The Discretionary Condition listed in Section B (6), above.

Any proposed amendment to the above cited Site Plan Approval, which meets the requirements of Section 12.13 (B) may be approved by the criteria in Section 12.13 (B).

**SECTION 16.19 – PLANT HOME CONTRACT ZONE, NUMBER 2** [Section added November 27, 2013.]

**A. District Designation**

The property designated for this Contract Rezoning is a portion of the property located on Washington Street being identified as a portion of Lot 21 on City of Bath Tax Map 43, dated April 1, 2013.

**B. Findings**

The property is located in the Plant Home Zone (PH). The City Council makes the following additional specific findings:

1. The building is used for residential purposes.
2. The applicant now proposes to construct an unattached building to the south of the existing facility.
3. Contract Rezoning is allowed on this parcel per Section 8.22(D) of the Land Use Code.
4. The building is proposed to be 52 feet in height.
5. Without the creation of a contract zone, the maximum height allowed in the Plant Home Zone is 35 feet under the provisions of Section 8.22(C) of the Land Use Code.
6. The building is proposed to be setback 3ft from the property line.
7. Without the creation of a contract zone, the required setback in the Plant Home Zone is 20 feet (front, side, and rear) and 75 feet (from a waterbody) under the provisions of Section 8.22(C) of the Land Use Code.
8. The building is proposed to be within the yard area.
9. Without the creation of a contract zone, the required yard area in the Plant Home Zone is 20 feet under the provisions of Section 8.22(C) of the Land Use Code.
10. The applicant has offered the following voluntary, Discretionary Conditions in exchange for the Contract Rezoning:
  - a) Plant Memorial Home owns and undeveloped 1.30 acre parcel of land between Wing Farm Business Park and Ranger Circle in Bath, shown as Tax Map 24, Lot on the City of Bath Tax Map dated April 1, 2013. Plant Memorial Home will convey this parcel to the City or their designee for recreational and open space purposes.

- b) Plant Memorial Home will construct a bus stop, as depicted on the approved site plan, on Washington Street.
- c) An existing driveway entrance, as depicted on the approved site plan, will be closed.
- d) Plant Memorial Home will replace existing light fixtures on the leased parcel with ordinance-compliant fixtures.

### **C. Zoning Provisions Affected**

This Contract Rezoning is intended to modify:

- 1. The maximum height allowed, under Section 8.22(C) of the Land Use Code, by allowing the construction of the building addition 52 feet in height, depicted on the Site Plan approved by the Bath Planning Board.
- 2. The minimum setbacks, under Section 8.22(C) of the Land Use Code, by allowing the construction of the building, depicted on the Site Plan approved by the Bath Planning Board.
- 3. The minimum yard area, under Section 8.22(C) of the Land Use Code, by allowing the construction of the building, depicted on the Site Plan approved by the Bath Planning Board.

### **D. Conditions of Approval**

This Contract Rezoning Ordinance requires full and complete compliance with all conditions of approval, which are part of the Site Plan approval, granted to PMH Real Estate, by the Bath Planning Board on August 20, 2013, including the following:

- 1. The Discretionary Condition listed in Section B (10), above.

Any proposed amendment to the above cited Site Plan Approval, which meets the requirements of Section 12.13 (B) may be approved by the criteria in Section 12.13 (B).

**SECTION 16.20 - WINNEGANCE STORE CONTRACT ZONE** [Section added December 25, 2013.]

**A. District Designation**

The property designated for contract rezoning amendment is the property located at 36 High Street; being identified as lot 20 on tax map 45 as shown on the tax maps dated April 1, 2013, additionally modified by the transfer of adjacent property recorded in September of 2013. The property is known as the Winnegance Store.

**B. Findings**

1. This property is located in the Special Purpose Commercial Contract Overlay District. The City Council makes the following additional specific findings:
  - a. The building was built as a neighborhood store in 1902.
  - b. The building is in a neighborhood of residential uses and in the R2 zoning district.
  - c. The property is currently vacant; it last operated as a store in 2009 as a non-conforming use.
  - d. The size and historic nature of the building make redevelopment in accordance with the uses allowed in the R2 zone problematic.
  - e. In order for the store to return to its historic use, the breadth of uses and reductions in space and bulk standards of the C1 zoning district should be applied to the property.
  - f. All of the C1 uses allowed by the Special Commercial Contract Overlay District, however, would not be appropriate and compatible in the building or in the neighborhood.
  - g. The owner of the property has voluntarily offered to limit the number and type of permitted uses of the property as allowed by Land Use Code Section 8.20, D, 2, a.

**C. Zoning Provisions Affected**

This contract zoning amendment is intended to limit the number and type of authorized uses of the property as would otherwise be permitted according to C1 designation in a Special Purpose Commercial Contract Overlay District, but which would be inappropriate on this site given the character of the neighborhood in which the building is located.



## **D. Conditions of Approval**

This contract zone is approved subject to the following condition:

1. The only uses allowed are the use categories:
  - a. Use 2.1.1.1.1 – Sales or rental of goods, merchandise or equipment with less than 5,000 square feet of floor area.
  - b. Use 2.1.1.2 - Convenience store
  - c. Use 2.1.3.1 – Low volume traffic generation with less than 5,000 square feet of gross floor area
  - d. Use 3.1.1 - Operations designed to attract and serve numerous customers or clients on the premises, however, limited to only attorneys' offices, professional offices, and travel agent offices.
  - e. Use 4.1 – Manufacturing, processing, creating, repairing, renovating or assembling of goods, merchandise, or equipment.
  - f. Use 10.1 – Restaurant with carry out, delivery service and consumption outside fully enclosed structure allowed. Service to customers remaining in vehicles not allowed.
  - g. Use 10.2 – Restaurant, carry out, delivery, and consumption outside fully enclosed structure.
  - h. Uses 11.1.1 & 11.4 – Overnight accommodations, including bed and breakfast.
  - i. Use 21.3 – Farmer's market.
  - j. Use 15.0 – temporary uses.

## **SECTION 16.21 - RESIDENCE INN DISTRICT** [Section added June 25, 2014]

### **A. District Designation**

The property designated for contract rezoning is the property located at 139 Richardson Street; being identified as lot 68 on tax map 31 on the tax maps dated April 1, 2013. The property is known as the former Holiday Inn site.

### **B. Findings**

Bathres, LLC proposes to demolish the extant structures located at 139 Richardson Street and construct a four-story, 103 room long-term stay hotel (“Residence Inn”) and supporting infrastructure. The City Council makes the following additional specific findings:

1. The building is adjacent to Route 1 and is located within the Route 1 Commercial Contract Zoning District (C-4). The purpose of the Route 1 Commercial Contract District is to provide a location for the highway-oriented businesses needed by residents of the City, the region, and the traveling public. The goal of the district is to encourage better appearances and improved highway safety.
2. The proposed use is classified as a ‘Hotel, Motel, Inn, tourist cabins, or similar business providing overnight accommodations.’ The use is allowable within the C-4 zoning district with site plan approval.
3. Contract zoning is enabled in the C-4 zoning district, as identified in §8.20B1 of the Land Use Code.
4. The rezoning is consistent with the Comprehensive Plan of the City of Bath.

### **C. Zoning Provisions Affected**

This contract zone is intended to relax the following space and bulk standards of the Route 1 Commercial Contract Zoning District (C-4):

1. Minimum Front Setback (Reduce the requirement from 50 feet to 27 feet, as depicted on the approved site plan)
2. Minimum Front Yard Area (Reduce the requirement from 20 feet to 12 feet, as depicted on the approved site plan)
3. Maximum Building Height (Increase the maximum height from 40 feet to 55 feet, as depicted on the approved site plan)

## **D. Conditions of Approval**

This contract zone is approved subject to the following conditions:

1. This contract zone is subject to all conditions of approval that are part of the Site Plan approval, granted to the applicant, by the Planning Board on May 20, 2014.
2. The applicant has offered the following voluntary and discretionary conditions in exchange for the contract rezoning:
  - a. A perpetual restriction of signage size and location on the property, so that signage on the site shall be as shown on the revised signage plan, dated May 14, 2014 on file in the Bath Planning Office.
  - b. The design and construction of a sidewalk and esplanade along the Route 1 frontage of the property, as indicated on the approved site plan. Completion of the sidewalk and the granting of a public access easement to the City shall be completed prior to the issuance of a certificate of occupancy by the Code Enforcement Officer.
  - c. The design and construction of a sidewalk and associated improvements along Redlon Road, as indicated on the approved site plan. Completion of the sidewalk shall be completed prior to the issuance of a certificate of occupancy by the Code Enforcement Officer.
  - d. The contribution of \$65,000 to the City of Bath for the purpose of improving the Route 1 Corridor. Payment is to be made prior to the issuance of building permits by the Code Enforcement Officer.

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## **SECTION 16.22 - CVS PHARMACY CONTRACT ZONE** [Section added November 26, 2014]

### **A. District Regulations**

The property designated for this Contract Rezoning is an approximately 1.8-acre site comprised of four parcels located at 127 & 131 Court Street and 82 & 86 Floral Street (Tax Map 28, Lots 81, 82, 153 & 154, dated April 1, 2013), hereafter collectively referred to as the "Property."

### **B. Findings**

The property identified as Map 28, Lot 153 is currently designated as Residential (R-1); the property identified as Map 28, Lots 81, 82, and 154 is currently designated as C2 Mixed Use Light Commercial District. There is currently a proposal before Council requested by the Developer to change the zoning designation of these four lots to the Route 1 Commercial Contract District (C4). The City Council makes the following additional specific findings:

1. The Property is currently improved with three structures: (1) 1657 square foot restaurant with takeout window service and outside seasonal seating; (2) Single family residential dwelling; (3) 3-unit mixed residential/commercial structure; and, vacant land with asphalt parking area that is accessory to an existing commercial use.
2. The applicant proposes to demolish and remove the existing structures, replacing them with a new, free-standing approximately 13,225 square-foot CVS Pharmacy with drive-through window.
3. Without the creation of the Contract Zone, the proposed site improvements would be unable to meet all of the minimum setback and yard area requirements for the C4 District.
4. Contract Zoning is allowed on the Property per Section 8.10(D) of the Land Use Code.
5. The applicant has offered the following voluntary Discretionary Conditions in exchange for the Contract Rezoning:
  - a. Site Lighting – In addition to following the applicable Zoning Requirements, the applicant will incorporate restricted pole heights and decorative fixtures to enhance the site, while reducing light levels on the abutting property.
  - b. Retaining Wall/Fencing – The applicant will provide a natural stone facing for the wall adjacent to the sidewalk along Court Street, with a

decorative black rail fence along the top of the wall.

- c. Building Facade – The applicant will provide an enhanced color scheme and appearance, and will further augment the structure with windows or faux windows along the southern and western sides of building.
- d. Equipment Screening - The applicant will provide enhanced screening along the roofline.
- e. Traffic Study – The applicant expanded the scope of the required traffic study to analyze additional items as requested by the City. These items included a Speed Data Collection of the existing traffic along Court Street and Floral Street, an evaluation of the impacts of the closing of Quimby Street, and an analysis of deceleration lane warrants for the Route 1 access to the Shopping Center. If requested, the Application is willing to provide a standalone document summarizing the results of these items for the City's reference to assist in future Route 1 Corridor Improvements planning efforts.
- f. Public Benefit Project - The applicant will contribute \$70,000 towards the cost of the "Installation of Decelartion/Turn Lane" to the Chandler Drive/Route 1 Intersection identified as a Potential Public Benefit Project, or other projects identified as projects beneficial to the advancement of the Route 1 Corridor Plan. Payment of the \$70,000 shall be made to the City after the Project receives all approvals, and prior to the issuance of a building permit.

### **C. Zoning Provisions Affected**

This Contract Rezoning is intended to reduce only the following minimum setbacks and yard area requirements under Section 8.1O(C) of the Land Use Code: (a) building setback from the residential zone from 50 feet to approximately 34 feet; (b) front yard area setback from 20 feet to approximately 2 feet; (c) side/rear yard setback from 20 feet to approximately 10 feet; and (d) yard area abutting a residential zone from 35 feet to approximately 13 feet. All other space and bulk regulations under Section 8.1O(C) remain in effect.

### **D. Conditions of Approval**

This Contract Rezoning Ordinance requires full and complete compliance with all conditions of approval, which are part of the Site Plan approval, granted to the

applicant, T.M. Crowley & Associates for the CVS Pharmacy project, by the Bath Planning Board on October 7, 2014, including the following:

1. Site Plan approval is granted conditionally upon the approval of the land use code map amendment request and the contract zoning request.
2. Site Plan Approval is granted conditionally upon the approval of the storm water management system to the satisfaction of the Public Works Director.
3. The Discretionary Conditions listed in Section B(5), above.
4. The screening at the property line of the Mead property, as approved, as part of the Site Plan Review approval shall be reviewed by the developer, the abutter and the City Staff. Any material changes to the Plan shall be referred to the City Staff Review Process or the Planning Board Process for approval.

Any proposed amendment to the above cited Site Plan Approval, which meets the requirements of Section 12.13(B) may be approved by the criteria in section 12.13(B).

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## **SECTION 16.23 - SEWALL RETAIL DISTRICT** [Section added August 26, 2015]

### **A. District Designation**

The property designated for contract rezoning is the property located near 137 Leeman Highway; being identified as portions of lots 53 & 54-1 on tax map 28 on the tax maps dated April 1, 2014. The property is known as the former Dunkin' Donuts.

### **B. Findings**

Mark Sewall proposes to demolish all extant structures located near 137 Leeman Highway and construct a one-story, approximately 2,000 square foot retail building and supporting infrastructure. The City Council makes the following additional specific findings:

1. The building is adjacent to Route 1 and is located within the Route 1 Commercial Contract Zoning District (C-4). The purpose of the Route 1 Commercial Contract District is to provide a location for the highway-oriented businesses needed by residents of the City, the region, and the traveling public. The goal of the district is to encourage better appearances and improved highway safety.
2. The proposed use is classified as a 'Sales or Rental of Goods, Merchandise, or Equipment, Low-volume Traffic Generation with Less than 5,000 square feet of gross floor area.' The use is allowable within the C-4 zoning district with site plan approval.
3. Contract zoning is enabled in the C-4 zoning district, as identified in §8.20B1 of the Land Use Code.
4. The rezoning is consistent with the Comprehensive Plan of the City of Bath.

### **C. Zoning Provisions Affected**

This contract zone is intended to relax the following space and bulk standards of the Route 1 Commercial Contract Zoning District (C-4):

1. Minimum Front, Rear, and Side Setbacks (Reduce the requirement from 50 feet to 0 (Zero) feet, as depicted on the approved site plan)
2. Minimum Front, Rear, and Side Yard Areas (Reduce the requirement from 20 feet to 0 (Zero) feet, as depicted on the approved site plan)

### **D. Conditions of Approval**

This contract zone is approved subject to the following conditions:

1. This contract zone is subject to all conditions of approval that are part of the Site Plan approval, granted to the applicant, by the Planning Board on May 5, 2015.
2. The applicant has offered the following voluntary and discretionary conditions in exchange for the contract rezoning:
  - a. The project shall be developed in conformance with the plans, elevations, renderings, and documents reviewed and approved by the Planning Board on May 5, 2015, including:
    - i. The erection of roadside lighting fixtures, compliant with the design that exists along Route 1 and the Sagadahoc Bridge.
    - ii. The construction of sidewalks and erection of bike racks, along and beside Quimby Street and Leeman Highway.
    - iii. The construction of a decorative retaining wall along Court Street and enhanced plantings along the existing retaining wall, from Quimby Street to Floral Street along Court Street.
  - b. Prior to the issuance of any building permits, the applicant shall provide \$25,000 to the City of Bath for the improvement of the Route 1 Corridor.

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## **SECTION 16.24 – HUSE SCHOOL DISTRICT** [Section added August 26, 2015]

### **A. District Designation**

The property designated for contract rezoning is the property located at 39 Andrews Road; being identified as lot 46 on tax maps 25/28 on the tax maps dated April 1, 2013. The property is known as the former John E.L. Huse Memorial School site.

### **B. Findings**

Huse School Apartments, LP proposes to renovate the extant structure located at 39 Andrews Road and construct a new addition to provide a total of up to 59 apartments on site, with supporting infrastructure. The City Council makes the following additional specific findings:

1. The building is located within the Mixed Commercial and Residential District (C2).
2. The proposed use is classified as a 'Multi-Family Dwelling.' The use is allowable within the C2 zoning district with site plan approval.
3. The rezoning is consistent with the Comprehensive Plan of the City of Bath and the Bath Housing Assessment and associated Housing Revitalization Goals adopted by the City Council.

### **C. Zoning Provisions Affected**

This contract zone is intended to relax the following space and bulk standards of the Mixed Commercial and Residential District (C2).

1. Minimum Lot Area Per Dwelling Unit (Reduce the requirement from 6,000 square feet to 1,800 square feet, as depicted on the approved site plan)
2. Minimum Rear Yard Area (Reduce the requirement from 15 feet to 10 feet, as depicted on the approved site plan)

### **D. Conditions of Approval**

This contract zone is approved subject to the following conditions:

1. This contract zone is subject to all conditions of approval that are part of the Site Plan approval, granted to the applicant, by the Planning Board on June 2, 2015.
2. The applicant has offered the following voluntary and discretionary conditions in exchange for the contract rezoning:

- a. The design and construction of a playground to the north of the subdivided lot, as indicated on the approved site plan. The playground shall be completed prior to the issuance of a certificate of occupancy by the Code Enforcement Officer.
- b. Resurfacing the existing basketball court, as indicated on the approved site plan. The work shall be completed prior to the issuance of a certificate of occupancy by the Code Enforcement Officer.
- c. The design and construction of new walking paths from the Donald Small School to the east and west sides of the Huse School apartments, as indicated on the approved site plan. The walking paths shall be completed prior to the issuance of a certificate of occupancy by the Code Enforcement Officer.
- d. Installation of new public bicycle racks on the property, for the use of any visitors to the site or the “Donnie Small Athletic Complex.”
- e. Improvement and maintenance of walking paths connecting the site to the adjacent Bath Area Family YMCA site.

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## ARTICLE 17 - WIRELESS COMMUNICATIONS FACILITIES

[NEW ARTICLE FEBRUARY 22, 2012]

### SECTION 17.01 PURPOSE

The City of Bath recognizes that Wireless Communications Facilities (also referred to as personal wireless service facilities as that term is defined in Title 47, United States Code, Section 332 (c) (7) (C) as may be amended) provide a valuable and necessary service to the public. The City also recognizes the goal to minimize the proliferation of these facilities through proper planning and design. These regulations are intended to balance the interests of the telecommunication providers, their customers, and the public by:

- A. Establishing appropriate submission criteria, standards, and approval process for Wireless Communication Facilities (WCFs).
- B. Encouraging the co-location of WCFs with existing facilities and requiring new support structures to be designed to permit co-location.
- C. Requiring the use of finishes and colors that minimize visual impact by matching or blending the appearance of the new facilities with the surrounding natural or built environment.
- D. Ensuring that new WCFs, either by themselves or in combination with other existing on- or off-site WCFs, will not interfere with any public safety communications.
- E. Establishing a process to protect the important view sheds, which have been identified in the Comprehensive Plan.
- F. Requiring that WCFs that are no longer in use are removed in a timely manner and not at the expense of the City of Bath.

### SECTION 17.02 DEFINITIONS

In addition to the definitions in Article 2 of this Code, the following definitions are applicable to this Article.

**Antenna** – Any system of poles, panels, rods, reflecting discs or similar devices used for the transmission of radio or electromagnetic frequency signals.

**Camouflaged** -- A WCF, including the support structure, which is disguised, hidden, part of an existing or proposed non-tower structure, or placed within an existing or proposed non-tower structure.

**Carrier** -- A company licensed by the Federal Communications Commission (FCC) that provides personal wireless services; also sometimes referred to as a provider.

**Co-location** – The use of a support structure by more than one carrier.

**Environmental Assessment (EA), Environmental Impact Statement (EIS)** - EAs and EISs are a documents required by the FCC when a WCF is placed in certain designated areas.

**NEPA Review** - A review required as part of the National Environmental Policy Act (NEPA) by multiple local, state and federal agencies to determine if a proposed WCF will negatively impact certain environmental, historic or Native American resources.

**Equipment Shelter** – A building, cabinet, vault, box, or similar structure near the base of the support structure within which is housed equipment for a WCF such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

**Expansion of WCF** – The addition of antennas or other devices to an existing support structure.

**Fall Zone** -- The area on the ground from the base of a WCF support structure that forms a circle within a radius equal to 125% of its height, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material. [amended June 24, 2015]

**Height** -- The height above ground level from the natural grade of a site to the highest point of a support structure.

**Parabolic Antenna** – An antenna which is bowl-shaped, designed for the reception and/or transmission of radio frequency communication signals in a specific directional pattern (also known as a dish antenna).

**Radio Frequency (RF) Engineer** -- An engineer specializing in the design of wireless networks and frequency planning, especially the study of the impacts of radio frequencies.

**Radio Frequency Radiation (RFR)** -- The energy or emissions transmitted from the antennas as part of the WCFs.

**Support structure** – Any built structure, including guy wires and anchors to which antennas and associated hardware are mounted. Support structures include:

**Self-Supported Lattice Tower** – A support structure that consists of a network of crossed metal braces, which is usually triangular or square in cross section. A self-supported lattice tower is attached to a foundation and does not require guy wires and anchors. Also includes support structures referred to as “masts” and “radio masts.”

**Guyed Lattice Tower** – A support structure that consists of a network of crossed metal braces, which is usually triangular or square in cross section. A guyed lattice tower is attached to a foundation and is held erect by the use of guy wires and anchors. Also includes support structures referred to as “masts” and “radio masts,” if such structures are guyed.

**Monopole** – A support structure that consists of a single pole that is tapered from the base to the top, attached to a concrete pad, building, or other foundation and does not require guy wires and anchors.

**Existing Nonresidential Structure** – An existing non-residential structure, having an original principal use other than a WCF, to which wireless facility components may be attached under certain conditions.

**Targeted Coverage Area** – The geographic area that is targeted to be served by a WCF.

**Ten-Percent Tree Canopy Height** -- An average height found by inventorying the height, at above ground level, of the tallest 10 percent of the trees within the area that extends for a distance of 150 feet from the base of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. Trees that will be removed for construction are not to be used in this calculation.

**Wireless Communications Facility (WCF)** – The facilities that may include an equipment shelter, support structure, one or more antennas or other device that provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio telecommunications (SMR), common carrier wireless exchange phone services, common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

## **SECTION 17.03 APPLICABILITY**

### **A. This Article applies to all WCFs except the following:**

1. Parabolic antennas less than 3 feet in diameter, which are receiving-only antennas, and are accessory to the principal use of the property on which they are located.
2. The maintenance, repair, or reconstruction of a WCF and related equipment, provided it does not constitute an expansion of a WCF and there is no change in the height, appearance, or any dimension of the support structure or any antennas.

3. An antenna that is an accessory use to a permitted residential use.

#### **B. Locations where WCFs are not Permitted**

1. A WCF is not allowed if closer than ½ mile from an existing public safety WCF, unless it can be demonstrated by an RF engineer that the proposed WCF will not cause interference with the existing public safety WCF.
2. A WCF is not allowed in the Historic Overlay District unless it is placed within an existing or proposed non-tower structure.
3. A WCF is not allowed in certain other zones, according to the Land Use Table in Section 9.02.

### **SECTION 17.04 REVIEW AUTHORITY**

#### **A. Approval by the Planning Board**

Construction of a new WCF or new support structure, structural modification to an existing support structure, an increase of 10 percent or more in height of a support structure or antennas on a support structure, or the addition of one or more new antennas on an existing support structure is permitted only after Site Plan Approval from the Planning Board in accordance with the provisions of this Code, including this Article.

#### **B. Approval by the CEO**

The replacement of an existing antenna with one of the same size may be permitted subject to review by and approval from the CEO in accordance with this Article 17 and any other applicable City Codes.

### **SECTION 17.05 APPLICATION PROCESS AND SUBMISSION REQUIREMENTS**

#### **A. WCFs allowed with approval from the Planning Board**

Prior to submitting an application to the Planning Office in accordance with the requirements of Article 12 of this Code, an applicant for a new WCF must schedule a Pre-application Workshop with the Planning Board in order to discuss the application. An applicant may request a Pre-application Workshop with the Planning Board according to Section 12.05, A.

In addition to the submission requirements of Section 12.08 of this Code, an application for a WCF allowed with approval from the Planning Board must contain the following information:

1. Name, address, and contact information of the applicant for the WCF.

2. Name, address, and contact information of the owner of the land on which the WCF is to be, if other than the applicant.
3. A topographic map or maps showing the locations of all WCFs within a 5-mile radius of the proposed WCF (noting the number of carriers located on each WCF and the number of available carrier locations), and the existing and proposed propagation of service within five miles.
4. A site plan prepared and certified by a professional engineer registered in the State of Maine showing the location, type, and height of the proposed WCF; antenna capacity; on-site and abutting off-site land uses; buildings within 200 feet of the proposed support structure; access drives; property lines of the lot on which the WCF is to be located; Setbacks and Yard Areas; and the locations of any other existing or proposed WCFs on the site.
5. The site plan must include said engineer's certification that the proposed WCF complies with all applicable American National Standards Institute (ANSI) and other applicable technical codes.
6. Elevation drawings of the proposed WCF and any other proposed structures, showing height above ground level, guy wires, and existing and proposed tree line within 100 feet of the lot on which the WCF is proposed. Reference must be made to any design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
7. Details of the support structure base (foundation), support structures, access road, fencing, and gate.
8. Landscaping plan prepared by a Landscape Architect registered in the State of Maine showing the location of proposed screening and fencing, location of trees and the heights of the trees used in the Ten-Percent Tree Canopy Height Calculation, proposed plantings, existing trees and other plant materials to be retained and their means of protection during construction, trees or shrubs to be removed, and a landscape maintenance plan.
9. An analysis of the visual impact of the proposed facility, including the tower and supporting structures, which may include photo-simulations or other techniques, that identify the potential visual impacts of the proposed facility. Consideration must be given to views from streets, public areas, water bodies, private residences, and historic resources including historic districts and structures listed in the National Register of Historic Places and archaeological resources. The analysis of the impact on historical and archaeological resources must meet the requirements of the Maine State Historical Preservation Officer in his/her review capacity for the FCC.

10. A written report from a qualified forestry or environmental consultant that describes the Ten-Percent Tree Canopy Height and the methodology used to determine it.
11. Written description of how the WCF fits into the applicant's communications network.
12. Evidence that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the City prior to the beginning of the federal 30-day comment period, and the City's review process, is required.
13. Photographs of the site showing existing conditions, including existing vegetation and structures, at the perimeter of the site, within Setbacks and Yard Areas, and in the vicinity of proposed improvements.
14. An estimate of the cost of construction and cost of removal of the WCF, prepared by a professional engineer registered in the State of Maine, plus evidence of financial capacity to construct, operate, and remove the WCF.
15. For proposals to construct a new support structure, evidence that no existing building, site, or structure can accommodate the proposed facility. Such evidence may consist of the following:
  - (a) Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements.
  - (b) Evidence that existing facilities do not have sufficient height, structural strength, or capacity and cannot be reasonably improved to address these deficiencies to meet the applicant's engineering requirements.
  - (c) An inventory of all of the provider's existing and approved towers, antennas, or sites within the City of Bath and locations in surrounding municipalities where wireless communications are proposed to be utilized in conjunction with the facility proposed in the application.
  - (d) Evidence that the fees, costs, or contractual provisions required by the owner of an existing facility in order to permit co-location on an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable.
16. A letter signed by the applicant committing the applicant and its successors to allow future co-location of WCFs to FCC licensed wireless service providers without discrimination, based on a reasonable charge for shared use, based on



existing rates in the Maine Midcoast area and generally accepted accounting principles.

17. An analysis prepared and certified by a Radio Frequency Engineer or qualified engineer registered in the State of Maine demonstrating that the WCF will not interfere with any public safety communications.
18. Evidence of an agreement with an FCC licensed carrier to utilize the support structure to provide wireless communication services.
19. The applicant has submitted some form of surety, which must be approved by the Planning Board, for an amount agreed upon by the Planning Board and determined sufficient to cover the cost of removal of the WCF.
20. A letter of intent must be provided that commits the WCF owner and its successors in interest to:
  - (a) Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant; and
  - (b) Negotiate in good faith for shared use by third parties that have received an FCC license or permits.

#### **B. WCFs Allowed with approval from the Codes Enforcement Officer (CEO)**

An application for a WCF that is allowed by this Article with approval from the CEO as described in Section 17.04 must contain the following information:

1. Name, address, and contact information of the applicant for the WCF.
2. Name, address, and contact information of the owner of the land if other than the applicant.
3. Copy of City Tax Map showing the location of the proposed facility.
4. A copy of the FCC license for the Carrier proposing to use the WCF.
5. A description of the change of antennas including the height of the existing antenna and the replacement antenna.

#### **SECTION 17.06 PERFORMANCE STANDARDS FOR WCFs**

In addition to the applicable standards in Article 10, the Planning Board must find that the following standards have been met before they may approve an application. The

purposes of these standards are to balance the rights of applicants to install WCFs with the requirement of the City to protect the public's health, safety, and general welfare. If an applicant can meet the intent and purpose of the performance standard by an equivalent method, that equivalent method may be approved. The burden of proof as to whether the performance standard and the intent and purpose of the performance standard are met is that of the applicant. The Planning Board may waive the requirement to meet a standard if the applicant requests the waiver in writing and the Planning Board finds that, due to special circumstances, meeting the standard is not required in the interest of public health, safety, and general welfare, or is inappropriate. Waivers may be granted only in writing with written findings of facts and conclusions, and may be subject to conditions. The Planning Director or the Planning Board is authorized to retain experts at the applicant's expense to evaluate technical information or conduct studies that it finds necessary in order to determine whether these standards will be met.

- A. All new WCF support structures must be designed as monopoles. The Planning Board may allow a WCF as a self-supporting lattice tower or guyed lattice tower upon a finding by the Board that the particular conditions of a site (including but not limited to geologic or weather-related conditions) cause the erection of a self-supporting lattice tower or guyed lattice tower to reduce the potential hazard of a tower fall or other public safety concern.
- B. WCF consisting of a new or expanded support structure must be designed to accommodate future co-location of at least 3 additional WCFs or carriers.
- C. The fall zone area, as defined in Section 17.02, shall be located on the property of the developer, or if on leased property, the property of the lessor, except where the Planning Board allows a portion of the fall zone to encroach upon an abutter's property pursuant to this Section. The Planning Board may allow a portion of the 125% radius around the WCF support structure to extend upon the property of an abutting property owner(s), upon showing that the abutting property owner(s) has agreed to allow a portion of the fall zone to be extended onto their property. The allowed activity within the fall zone may be addressed under either of the following options. Option 1: If there are to be no restrictions on the placement or erection of structures within the fall zone area, then the lessor of the property where the WCF support structure is located and/or the abutting property owner if encroachment of the fall zone distance is approved by the Planning Board on that abutting property owner(s) property, then the lessor or abutter will provide a recordable document(s) that identifies by suitable metes and bounds description or survey depiction the area of the lessor or abutter(s) property within the fall zone area outside of the area controlled by the developer, acknowledging the potential hazard for falling debris. Option 2: Where the owners of property within the area defined as a fall zone are agreeable to prohibiting the placement of structures within that area, then the owners of all property so affected shall provide a recordable easement which defines the area affected by suitable metes and bounds description or survey depiction of the area and which restricts the placement of structures within that area for the duration of time that the support structure is in place.

The distance requirement for the fall zone shall be provided on the developer's property or property of the lessor if the developer is leasing property to locate the structure. The Planning Board, however, may decrease the amount of the fall zone on the developer or lessor's property by allowing a portion of the fall zone to extend into the abutting property(s). In such instance, however, the support structure may not be sited closer to the abutting property line than the minimum front, side and/or rear setback requirement of the zone and district in which the fall zone is located and the combined distance from the boundary and the portion of setback on the abutting property(s) shall be equivalent to the fall zone radius.

The 125% setback shall not apply to Wireless Communication Facilities installed within Existing Nonresidential Structures. [amended June 24, 2015]

- D. An equipment shelter must be surrounded by a buffer of tree growth, vegetation, or topography sufficiently dense to screen views of such shelter from abutting properties and all public streets.
- E. A lockable gated perimeter fence at least 8 feet in height, must be constructed and maintained, which adequately protects the site from trespassers. The fence must include barbed wire around the top. A copy of the key or of the combination to the gate lock must be provided to the Bath Police Department and the Bath Fire Department.
- F. Lighting must be limited to shielded nighttime (sunset to sunrise) lighting as well as any illumination required by State or Federal regulations.
- G. All colors and materials must be designed to allow the support structure as well as antennas, cables, and other appurtenances to match or blend with the surrounding natural or built environment to the maximum extent practicable. Muted colors, earth tones, and subdued hues and metals having non-reflecting finishes must be used.
- H. The use of a generator to provide electricity is only allowed at times when the power supply from the electric utility is cutoff due to a power outage. When any backup, emergency generator is tested it may not be tested earlier than 7 am or later than 8 pm and it must be muffled so as to not emit sound (measured in dB (a) scale) greater than 50. Sound levels will be measured 4 feet above ground at the lot lines or lease lines of the lot or lease-hold area on which the generator is located.
- I. A new or expanded WCF must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Towers and Antenna Supporting Structures."
- J. A WCF must not, either by itself or in combination with other existing on- or off-site WCFs, interfere with any public safety communications.

- K. No advertising signage is allowed on any portion of a WCF.
- L. No tower may project higher than 30 feet above structures within 200 feet of the proposed facility or, if there are no structures within 200 feet, such facilities may not project higher than 30 feet above the Ten-Percent Tree Canopy Height. The Planning Board may allow a WCF to project higher upon a finding by the Board that existing trees or structures interfere with antenna signal such that it would limit the ability to serve up to four different licensed carriers.
- M. A self-supported lattice tower or a guyed lattice tower must be screened by existing trees, topography, or a combination of trees and topography, such that no more than the top 30 feet of the tower is visible from ground level within 200 feet of the base of the tower.
- N. All wires and cables must be bundled together or contained inside a conduit. The bundled wires and conduit must be of a color that blends in with the rest of the tower.
- O. The height of any WCF may not exceed 120 feet.
- P. A WCF that is disguised as another type of structure is limited in height to the maximum height allowed, in Article 8, of the structure the WCF is disguised as.
- Q. A WCF that is hidden as a part of a non-tower structure or is placed within a non-tower structure is not constrained by height limitations except to the extent that Article 8 restricts the height of such non-tower structure.
- R. All views and viewsheds identified in the Comprehensive Plan must be protected to the greatest extent practicable.
- S. Expansions located on any of the following existing structures are exempt from the height restriction of this Article provided that there is no more than a one-time 10-foot increase in height of the existing structure as a result of the installation of the WCF: electric transmission and distribution towers, telephone poles and other similar existing utility structures, and water towers.

## **SECTION 17.07 APPROVAL FROM STATE AND FEDERAL AGENCIES**

Before a building permit may be issued by the CEO for any WCF, the applicant must provide the Codes Enforcement Office with a copy of all required approvals from all applicable state and federal agencies including, a Determination of No Hazard from the Federal Aviation Administration (FAA), a copy of the carrier's FCC license and any additional approvals as may be required, including a description of any conditions of an approval, or a statement from the agency that no approval is required.

## **SECTION 17.08 ABANDONMENT**

A WCF that is not operated as a WCF for a continuous period of 12 months or for which the City has received notice that the removal surety is to be canceled is considered abandoned. The CEO must then notify the owner of an abandoned WCF in writing and order the removal of the facility within 60 days of receipt of a written notice. The owner of the facility has 30 days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned. If the owner fails to show that the facility has not been abandoned, the owner has 60 days to remove the facility. If the facility is not removed within the time period, the City may exercise the removal surety to pay for the costs of removing the WCF and returning the site to its pre-construction condition, including removal of access drives and reestablishment of vegetation.

The owner who removes an abandoned WCF may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

## **SECTION 17.09 APPEALS**

An appeal from a decision of the CEO or the Planning Board is to be made to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.