Town of Berwick

Where Tradition Meets Tomorrow

Land Use Ordinance

Adopted: June 8, 1993

Amended: July 14, 2020

11 Sullivan Street
Berwick, Maine

(207) 698-1101

berwickmaine.org

Table of Contents

Page

Article I Preamble....1
1.1 Authority....1
1.2 Short Title....1
1.3 Purpose....1
1.4 Jurisdiction....1

Article II Definitions of Terms Used in this Ordinance....2
2.1 Construction of Language....2
2.2 Definitions....2

Article III Official Land Use Map....27
3.1 Official Land Use Map....27
3.2 Certification of Land Use Map....27
3.3 Changes of the Official Land Use Map....27
3.4 Replacement of Official Land Use Map....27

Article IV Establishment of Districts....28
4.1 Classes of Districts....28
4.2 Rules Governing District Boundaries....28
4.3 Rules Governing When One Lot is Located in Two Different Districts....28

Article V General Provisions....29
5.1 Land use Requirements....29
5.2 Non-Conformance....29
5.3 Mixed Use....32

Article VI District Regulations....33
6.1. Basic Requirement....33
6.1.2 Omitted Uses....33
6.2 Land Use District Regulations....33
Land Use Table....34
6.3 Dimensional Requirements....39
6.3.1 Residential Growth Limitations Provisions....40
6.4 Village Overlay District....41
6.5 Density on Division of Land....55

Article VII Performance Standards -- General Requirements....56
7.1 Air Emissions....56
7.2 Buffer Areas....56
7.3 Explosive Materials....56
7.4 Glare....56
7.5 Landscaping....56
7.6 Noise....56
7.7 Odor....56
7.8 Off-Street Parking and Loading....57
7.9 Refuse Disposal....61
7.10 Traffic....61
7.11 Sewage Provisions....61
7.12 Setbacks and Screening....62
7.13 Signs....62
7.14 Soils....64
7.15 Erosion and Sedimentation Control....64
7.16 Storage....65
7.17 Storm Water Management....65
7.18 Toxic and Noxious Discharges....65

7.19 Water Quality 65
7.20 Water Supply 66
7.21 Access to Lots 66
7.22 Non-Storm Water Discharge 67
7.23 Post-Construction Stormwater Management Article 70
7.24 Safety & Sanitation Provisions 74
Appendix 1 Maintenance Agreement for Stormwater Facilities 75
Appendix 2 Annual Stormwater Management Facilities Certification 77

Article VIII Performance Standards, Specific Activities and Land Uses 79
8.1 Campgrounds and Tenting Grounds 81
8.2 Home Occupation 81
8.3 Hotels/Motels and Inns 81
8.4 Kennels and Veterinary Hospitals 82
8.5 Mobile Home parks 83
8.6 Apartment Buildings and Multi-Family Developments 86
8.7 Professional Offices in the Urban Residential District 87
8.8 Cluster Developments 87
8.9 Restaurants 91
8.10 Mineral Industry 91
8.11 Waste Facilities 94
8.12 Agriculture and Animal Husbandry 96
8.13 Owner Occupied Apartments 96
8.14 Adult Business 97
8.15 Automobile Graveyard, Automobile Recycling Business and Junkyards 98
8.16 Construction in Flood Hazard Areas 98
8.17 Accessory Structure 99
8.18 Wireless Communication Facilities and Communications Towers 99
8.19 Temporary Storage 100
8.20 Swimming Pools 101
8.21 Automobile Hobbyist 102
8.22 Private Pond with or without a Dam 102
8.23 Small Wind Energy Systems 102
8.24 Elderly Housing 104
8.25 Adult Use & Medical Marijuana 105
8.26 Automobile Service/Motorcycle Repair Business 106
8.27 Wholesale Business 106
8.28 Commercial Mini-Storage 106
8.29 Retail Business 106
8.30 Vehicle Sales 106
8.31 Congregate Housing 106
8.32 Clearing or removal of vegetation for activities other than timber harvesting 107
8.33 Outdoor Wood Furnace 107
8.34 Fringe Financial 107
8.35 Low Impact Manufacturing 107
8.36 Drug Store 107

Article IX Administration, Enforcement, and Penalties 109
9.1 Basic Requirements 109
9.2 Permit Application 109
9.3 Foundation Certification 111
9.4 Certificate of Occupancy Required 111
9.5 Enforcement Officer 111
9.6 Legal Action and Violations 111
9.7 Fines 112
9.8 Conditional Use Permits and Site Plan Review 112

Article X Board of Appeals 120
10.1 Establishment and Organization 120
10.2 Proceedings of the Board of Appeals 120
10.3 Powers and Duties of the Board of Appeals 120
10.4 Variances 120
10.5 Appeals to the Board of Appeals 121
10.6 Decisions of the Board of Appeals 123
10.7 Stay of Proceedings 123

Article XI Planning Board 124
11.1 Establishment 124
11.2 Appointment 124
11.3 Organization and Rules 124
11.4 Duties and Powers 125

Article XII Amendments 126
12.1 Initiation 126
12.2 Procedure 126
12.3 Adoption 126

Article XIII Legal Status Provisions 127
13.1 Conflict with Other Laws 127
13.2 Separability 127
13.3 Effective Date 127

Article XIV Shoreland Zoning 128
14.1 Purposes 128
14.2 Authority 128
14.3 Applicability 128
14.4 Effective Date 128
14.5 Availability 129
14.6 Severability 129
14.7 Conflicts with Other Ordinances 129
14.8 Amendments 129
14.9 Districts and Zoning Map 129
14.10 Interpretation of District Boundaries 130
14.11 Land Use Requirements 130
14.12 Non-conformance 130
14.13 Establishment of Districts 136
14.14 Table of Land Uses 136
14.15 Land Use Standards 139
14.16 Administration 151

Article XV Community Facilities Impact Analysis 158
15.1 Purpose of Program 158
15.2 Authority 158
15.3 Use of Impact Fees 158
15.4 Applicability 158
15.5 Segregation of Impact fees from General Fund 159
15.6 Refund of Impact Fees 159

TOWN OF BERWICK
LAND USE ORDINANCE

ARTICLE I PREAMBLE

1.1 Authority.

This ordinance has been prepared in accordance with the provisions of 30-A Maine Revised Statutes Annotated (M.R.S.A.), Sections 3001 and 4352; and 38 M.R.S.A., Section 435, *et. seq.*

1.2 Short Title.

This ordinance and the accompanying Official Land Use Map shall be known as and may be cited as the "Land Use Ordinance, Town of Berwick, Maine."

1.3 Purpose.

The purpose of this ordinance is to promote the health, safety, and general welfare of the residents of the town; to encourage the most appropriate use of land throughout the municipality; to promote traffic safety; to provide safety from fire and other elements; to provide adequate light and air; to prevent overcrowding of real estate; to promote a wholesome home environment; to prevent housing development in unsanitary areas; to provide an allotment of land area in new developments sufficient for all the requirements of community life; to conserve natural resources; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect freshwater wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; to anticipate and respond to the impacts of development in shoreland areas; and to provide for adequate public services, as an integral part of a comprehensive plan for municipal development.

1.4 Jurisdiction.

The provisions of this ordinance shall govern all land and all structures within the boundaries of the Town of Berwick.

ARTICLE II DEFINITIONS OF TERMS USED IN THIS ORDINANCE

2.1 Construction of Language.

In the interpretation and enforcement of this ordinance, all words other than those specifically defined, except as provided in Section 2.2, "Definitions of the Town of Berwick Land Use Ordinance" herein contained, shall have the meaning implied by their context in the ordinance or their customary dictionary definition. In the case of any difference of meaning or implication between the text of this ordinance and any map, illustration, or table, the text shall control.

The word "person" includes firm, association, organization, partnership, trust, company, or corporation, as well as an individual or any other legal entity.

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

The word "shall" and "will" are mandatory, the word "may" is permissive. The word "lot" includes the words "plot" and "parcel."

The word "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be used or occupied."

The words "town" or "municipality" mean the Town of Berwick, Maine.

2.2 Definitions.

In this ordinance the following terms shall have the following meanings:

Access Road: See Right of Way.

Accessory Dwelling Unit (ADU): An apartment created by converting part of a single-family dwelling or accessory building into a separate dwelling unit. See Section 8.13 for Performance Standards.

Accessory Use or Structure: A use or structure which is customarily incidental to the principal use or structure. The term "incidental" in reference to the principal use or structure shall mean subordinate and minor in significance to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

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

Agriculture: Shall mean the cultivation of soil, producing or raising crops, including gardening as a commercial operation. More specifically, the term shall include the production, keeping or maintenance for sale or lease, of plants/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. The term shall also include greenhouses, nurseries and versions thereof, but those two terms, when used alone, shall refer specifically to a place where flowers, plants, shrubs, and/or trees are grown for sale. Agriculture does not include forest management and timber harvesting activities.

Aircraft Approach Zone: An area that begins 200 feet beyond the ultimate end of a runway and ends 10,200 feet beyond the end of a runway. The approach zone extends in a cone-shaped area 250 feet each side of the extended center line of the runway 200 feet beyond the ultimate end of the

runway and flares to 1,750 feet each side of the projected center line 10,200 feet from the ultimate end of the runway.

Alteration: Any change, addition, redevelopment or modification in construction, other than cosmetic or decorative or any change in the structural members of buildings such as bearing walls, columns, beams, or girders.

Amusement Center: Any private, commercial premises which are maintained or operated primarily for the amusement, patronage, or recreation of the public, containing four or more table sports, pinball machines, video games, or similar mechanical or electronic games, whether activated by coins, tokens, or discs, or whether activated through remote control by the management.

Applicant: A person with requisite right, title or interest, or an agent for such Person who has filed an application for development that requires a Post-Construction Stormwater Management Plan under this Ordinance.

Animal Farm: Any parcel of land that contains at least the following land area used for the keeping of horses, mules, cows, goats, sheep, hogs and similar sized animals for the domestic use of the residents of the lot, provided that adequate land area is provided for each animal unit, excluding water bodies of one-quarter acre surface area or larger:

The following standards apply to all districts except the R2 & R3 Zone:
Cattle: One bovine animal unit per acre of cleared hay-pasture land.
Horse: 1.5 animal units per acre of cleared hay/pasture land.
Sheep: Three animal units per acre of cleared hay/pasture land.
Swine: Two animal units per acre of cleared land.
Roosters: Are not allowed in the R1 District.

Other animal farms: The required lot size shall be determined by municipal officer charged with enforcement and shall conform to the lot size for similar sized animal

Animal Husbandry: The production of domestic animals or livestock, in all of the phases of breeding, feeding and management.

Antenna: Any exterior apparatus or collection of apparatus designed for telephone, radio, television, personal communications service, pager network, or any other communications through the sending or receiving of electromagnetic waves of any bandwidth, except for those used only for the reception of television or radio signals. The Federal Telecommunications Act exempts amateur "ham" radio stations.

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

Authorized Agent: Anyone having written authorization to act in behalf of a property owner, signed by the property owner.

Auto Body: Any repair or alteration to the body or frame of a motor vehicle including motorcycles, motor bikes or motor scooters.

Automobile Graveyard: Shall mean a yard, field or other area used as a place of storage, other then temporary storage by an establishment or place of business which is engaged primarily in doing auto body repair work for the purpose of making repairs to render a motor vehicle serviceable, for three or more unserviceable, discarded, worn-out or junked motor vehicles. This does not apply to an automobile hobbyist.

Automobile Hobbyist: A person who is not primarily engaged in the business of selling any of the following vehicles or parts from those vehicles: antique autos, antique motorcycles, classic vehicles,

horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in M.R.S.A., Title 29-A, Section 101 as long as the hobbyist's activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive regarding the storage of vehicles or vehicle parts that are collected by a hobbyist.

Automobile Recycling Business: Means the business premises of a person who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, provided that 80 percent of the business premises specified in the application is used for automobile recycling operations.

Automobile Service: Auto repair garages, gasoline service stations, car washes, machinery sales and service. Retail automobile parts and supplies are not considered automobile business.

Base Flood: Means the flood having a one percent chance of being equaled or exceeded in any given year alternately referred to as the 100-year flood.

Basal Area: The area of cross-section of a tree stem at 4 ½ feet above ground level and inclusive of bark.

Basement: Outside of the shoreland zone, the term shall mean the enclosed area underneath a structure, typically having a masonry floor and walls which comprise the structure's foundation. The clear height up to the joists supporting the floor directly above is three feet or greater. In the shoreland zone the term shall mean any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Bed and Breakfast: A single family dwelling in which lodging, or lodging and meals are offered to the general public for compensation, offering no more than 10 bedrooms for lodging purposes.

Best Management Practices ("BMP"): "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Boardinghouse: Any residential structure where lodging and/or meals are provided for compensation for a period of at least one week, and where a family residing in the building acts as proprietor or owner. There shall be no provisions for cooking in any individual guest room. The number of boarders shall be not more than eight in residence at any one time.

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

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

Bottle Club: An establishment where no alcoholic beverages are sold, but where members, guests or customers provide their own alcoholic beverages, paying a fee or other consideration for admission or membership to the bottle club and/or for set-ups.

Building: Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals, or personal property.

Building Footprint: means the total area of the foundation of the structure, or the furthest exterior wall of the structure projected to natural grade, not including stairs, patios, and decks.

Building Height: The vertical distance measured between the average finished grade of the ground at the front of a building to the highest point of a flat roof, to the deck of a mansard roof, or to the mean height between eaves and ridges of a gable, hip, or gambrel roof. Not to include chimneys, spires, towers, or similar accessory structures which have no floor area.

Build To Line: A line parallel to the property line or right of way where the façade of the building is required to be located.

Bureau: State of Maine Department of Conservation's Bureau of Forestry

Business Sign: An attached or freestanding structure which directs attention to a business or profession conducted on the premises.

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

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

Cemetery: Property used for the interring of the dead.

Change of Use: A change from one category in the land use table to another or the addition of a new category to an existing use.

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

Church/Parish House: A building or structure, or groups of buildings or structures, which by design or construction are primarily intended for the conducting of organized religious services and accessory uses therewith.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*., also known as the "Clean Water Act"), and any subsequent amendments thereto.

Club: Any association of persons organized for social, religious, benevolent, or academic purposes; whose facilities are open to members and guests including fraternities, sororities, and social organizations.

Club Facility: A place, the primary use of which is for meetings and activities associated with groups, such as but not limited to, those organized for social, religious, benevolent or academic purposes that are open to members and guests.

Cluster Development: A development designed to promote the creation of open space by a reduction in dimensional and area requirements.

Code Enforcement Officer: A person appointed by the municipal officers to administer and enforce this ordinance. Reference to the Code Enforcement Officer (CEO) may be construed to include building inspector, plumbing inspector, electrical inspector, and the like, where applicable.

Commercial Mini-Storage: means a structure containing three or more units which are available for lease or rent by persons other than residents of the premises for the storage of goods not related to the sale or manufacture of goods on the same lot.

Commercial Recreation: Any commercial enterprise which receives a fee in return for the provision of some recreational activity including but not limited to: racquet clubs, health facility, amusement parks but not including amusement centers.

Communications Tower: Any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purpose of supporting one or more antenna. The term includes radio or television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and similar structures. The Federal Telecommunications Act exempts amateur "ham" radio stations.

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

Community Living Arrangement: A housing facility for eight or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

Conditional Use: A use permitted only after review and approval by the Planning Board. A Conditional Use is a use that would not be appropriate without restriction, but which is permitted provided that all performance standards and other requirements of this Ordinance are met.

Conditional Use Permit: A permit authorized by the Planning Board for a conditional use. A Conditional Use Permit may be issued only after the applicant has followed the procedures of this Ordinance.

Congregate Housing: A multi-family dwelling with central dining facilities serving functionally impaired persons.

Constructed: Includes built, erected, altered, reconstructed, moved upon, or any physical operations on the premises which are required for construction. Excavation, fill, paving, new development, drainage, and the like, shall be considered as part of construction.

Construction Activity: Construction Activity including one acre or more of Disturbed Area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.

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.

Daycare Center: An establishment where more than 12 children will be cared for in return for payment.

Daycare Home (Family Daycare): An establishment, including a private residence as defined under the Rules of the Maine Department of Human Services Chapter 38, Licensing of Daycare Homes.

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

Decorative Changes: Repainting; removing or replacing trim, railings, or other nonstructural architectural details; or the addition, removal or change of location of windows and doors.

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

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

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

Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to "waters of the State." "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which Pollutants are, or may be discharged.

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.

District: A specified portion of the municipality, delineated on the Official Land Use Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this ordinance.

Disturbed Area: Disturbed Area is clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." "Disturbed area" does not include routine maintenance but does include redevelopment. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Dog Daycare: A boarding kennel that cares for dogs on a daily basis for a fee. Training may be a part of this use. Overnight boarding is not included in this definition.

Drive-Up Window, Drive-Up or Drive-Through: A portion of a business or a structure which allows the distribution of product(s) or services through an access point to serve client(s) in motor vehicle(s)

Driveway: Outside of the shoreland zone this term shall include a vehicular access-way of any length serving two single-family dwellings or one two-family dwelling, or less. Within the shoreland zone this term shall include a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

Drug store: means an establishment primarily engaged in the retail dispensing of prescription drugs and may offer nonprescription drugs, medical aids and convenience goods, but shall not permit the sale or distribution of Adult Use Marijuana. The definition of drug store includes a pharmacy

Dwelling: Any building, or structure, or portion thereof designed or used for residential purposes.

1. Single-Family Dwelling shall mean any structure containing only one dwelling unit for occupation by not more than one family, and may also include an owner-occupied apartment.

2. Two-Family Dwelling shall mean a building containing only two dwelling units, for occupation by not more than two families.

3. Multi-Family Dwelling shall mean a building containing three or more dwelling units, such buildings being designed for residential use and occupancy by three or more families living independently of one another, with the number of families not exceeding the number of dwelling units.

Dwelling Unit: Shall mean a room or suite of rooms designed and equipped exclusively for use by one family at a time as a habitation and which contains independent living, cooking, sleeping, and sanitary toilet facilities. The term includes manufactured housing and rental units that contain independent living, cooking, sleeping, and sanitary toilet facilities regardless of the time-period rented. Recreational vehicles or motel units are not residential dwelling units.

Education Facility: Any building or part thereof which is designed, constructed or used for educational or instruction in any branch of knowledge.

Elderly Housing: A dwelling or group of dwellings and shared community space, providing shelter and services to elderly persons, which may include meals, housekeeping, transportation, recreational activities, personal-care assistance, and the like. Elderly persons shall mean a person 55 years old or older.

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

Enforcement Authority: The Code Enforcement Officer, the person(s) or department authorized by the Municipality to administer and enforce this Ordinance.

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

Exempt Person or Discharge: Any Person who is subject to a Multi-Sector General Permit for Industrial Activities, a General Permit for Construction Activity, a General Permit for the Discharge of Stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a General Permit for the Discharge of Stormwater from State or Federally Owned Authority Municipal Separate Storm Sewer System Facilities; and any Non-Storm Water Discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

Expansion: In relation to a building, expansion shall include: Enlargement of floor area; construction of a basement; or enlargement of building enclosure.

Expansion of a Structure within the Shoreland Zone: An increase in the floor area or volume of a structure, including but not limited to all extensions, such as attached decks, garages, porches and greenhouses.

Expansion of Use: The addition of weeks or months to a use's operating season; additional hours of operation; or the use of more floor area or ground area devoted to a particular use.

Exterior Walls of Traditional Site-Built Appearance: Siding materials such as clapboards, shingles, and shakes, including synthetic or metal siding manufactured to closely resemble clapboards, shingles and shakes. This term shall also include masonry, wood board-and-batten, and "Texture 111" exterior plywood, but shall not include artificial masonry, or fake board-and batten made from metal or plastic.

Family: One or more persons occupying a premises, and living as a single housekeeping unit.

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

Finance, Insurance and Real Estate: Establishments such as, but not limited to, banks and trust companies, credit agencies, investment companies, brokers and dealers of securities and commodities, security and commodity exchanges, insurance agents, brokers, lessors, lessees, buyers, sellers, agents and developers of real estate.

Flea Market: See Used Merchandise Sales.

Floating Slab: A reinforced concrete slab which is designed to withstand pressures both from below and above.

Floodplain: The area designated as being in the special flood hazard area on the Flood Insurance Rate Map of the Town of Berwick, published by the Federal Emergency Management Agency, August 4, 1991.

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

Floor Area: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

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

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.

Forested Wetland: A freshwater wetland dominated by woody vegetation that is six (6) meters tall [approximately twenty (20) feet] or taller.

Foundation: Outside of the shoreland zone this term shall include the supporting substructure of a building or other structure, including but not limited to basements, slabs, sills, posts or frost walls. Within the shoreland zone this term shall include the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material.

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

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

Fringe Financial: A lending institution that typically has but is not limited to the following features: the loans are for small amounts; the loans are typically due in 4 weeks or less; and associated finance charges exceed 100% APR. These businesses include but are not limited to payday and auto title loan services.

Frontage: The dimension between the two sidelines of a lot, measured along the property line that borders upon whatever way serves as legal access to the lot. The following ways shall constitute legal access to a lot: (a) a way accepted by or established as belonging to the Town, the County, or the State; (b) a way shown on an approved subdivision plan; or (c) an unaccepted street existing prior to the original enactment of the Town's Subdivision Regulations provided it is shown on a plat recorded in the registry of deeds prior to such enactment and is deemed adequate as a street by the Planning Board as evidenced by its endorsement on the subdivision plan. Where a lot is situated on a curve of a street or on a corner of two streets, the measurement of frontage may include the entire length of the property line along such street or streets.

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

Frost Wall: A masonry foundation wall extending below the ground surface, supported by footings located below the frost-line to protect structures from frost heaves.

Function Hall: Premises that are frequently rented out for public or private activities that are not repeated on a weekly basis, and that are not open to the public on a daily basis at times other than when an event is scheduled.

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

Golf Course: A tract of land for playing golf, improved with tees, greens, fairways, hazards and which may include clubhouses and shelters.

Grade Beam: That part of a foundation system (usually in a building without a basement) which supports the exterior wall of the superstructure; commonly designed as a beam which bears directly on the column footings or may be self-supporting. The grade beam is located at the ground surface and is well-drained below.

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 Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner. Beaver Dam Pond and Hatfield Lake are considered "great ponds."

Great Pond Classified GPA: Any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Section 465-A. This classification includes, some but not all, impoundments of rivers that are defined as great ponds.

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

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

Hazardous Waste: Means a waste substance or material, in any physical state, designated as hazardous by the Board of Environmental Protection pursuant to 38 M.R.S.A., Section 1303-A. It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste or part or constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

Height of a Structure: Outside the shoreland zone the term shall mean the vertical distance between the highest point of a structure and the average grade of the ground adjacent to the structure. Within the shoreland zone the term shall mean 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.

Home Occupation: An occupation or profession which is carried on in a dwelling unit or structure accessory to a dwelling unit and which is 1) clearly incidental and secondary to the use of the dwelling for residential purposes and which does not change the character thereof; and 2) does not include any employees other than family members residing in the home. The term "home occupation" shall include both professional and personal services.

Hospital: An institution providing, but not limited to, overnight health services, primarily for in-patients, and medical or surgical care for the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient departments, training facilities, central services facilities, and staff offices.

Hotel: A building in which lodging or meals and lodging are offered to the general public for compensation and in which ingress and egress to and from the rooms are made primarily through an inside lobby or office. The hotel may contain such accessory services and facilities for the benefit of its guests, and only incidentally for the general public, as news-stands, personal grooming facilities and restaurants.

Impervious Surface: The total area of a parcel that consists of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of storm water. A natural or man-made waterbody is not considered an impervious surface, but is treated as an immediate runoff surface in curve number calculations.

Increase in Nonconformity of a Structure: Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Individual Private Campsite: An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fireplace, or tent platform.

Industrial: The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals. These activities do not meet the definition of Low Impact Manufacturing.

Industrial Activity: Any activity or activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

Industrial Minerals: Naturally occurring rock or minerals used as raw materials for building, manufacturing, and agriculture. Examples include aggregates, clay and cement.

Inland Wetlands: Land, including submerged land, which consists of any of the soil types designated as poorly drained, very poorly drained, and alluvial soils by the National Cooperative Soil Survey.

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

Intermittent Light: Changing in less than 30 seconds.

Junkyard: A yard, field or other area used as a place of storage for:

1. Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;

2. Discarded scrap and junked lumber;

3. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber or plastic debris, waste and all scrap iron, steel and other scrap ferrous or non-ferrous material.

Kennel: "Kennel" means one pack or collection of dogs or wolf hybrids kept in a single location under one ownership for breeding, hunting, show, training, field trials and exhibition purposes. The sale or exchange of more than one litter of puppies within a 12-month period shall be considered a kennel.

1. Types of Kennels.

a. Boarding kennel. "Boarding kennel" means any place, building, tract of land or abode in or on which three or more privately owned dogs or other pets, or both, are kept at any one time for their owners in return for a fee. A person maintaining a boarding kennel must obtain a license from the Department of Agriculture, Food and Rural Resources, Division of Animal Health and Industry and is subject to rules adopted by the department.

b. Breeding kennel. "Breeding kennel" means a facility operated for the purpose of breeding or buying, selling or in any way exchanging dogs or cats for value that exchanges more than 16 dogs or 16 cats in a 12-month period. A person maintaining a breeding kennel must obtain a license from the Department of Agriculture, Food and Rural Resources, Division of Animal Health and Industry and is subject to rules adopted by the department.

2. Requirements.

a. Kennel license. A person having a pack or collection of dogs shall obtain a kennel license from the town where the dogs are kept and that person is subject to rules adopted by the Department of Agriculture, Food and Rural Resources, Division of Animal Health and Industry. The sex, registered number and description are not required of dogs covered by a kennel license. The license expires December 31 annually. The kennel license permits the licensee or authorized agent to transport under control and supervision the kennel dogs in or outside the state. A kennel owner may not keep more than 10 dogs per license.

b. Kennel inspection. An animal control officer must inspect annually a kennel prior to the municipality issuing a kennel license.

Laboratory: A place equipped for experimental study in a science or for testing and analysis.

Laboratory Research Facility: An establishment or other facility for carrying on investigation in the natural, physical or social sciences, or engineering and development as an extension of investigation with the objective of creating an end product.

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

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

Lot: A parcel of land occupied or capable of being occupied by one building and the accessory structures or uses customarily incidental to it, including such open spaces as are required by this ordinance, and having frontage upon a public street, right-of-way or private way.

Lot Area: The area of land enclosed within the boundary lines of a lot, not including the area of any land which is: part of a right of way for a thoroughfare or easement, such as, but not limited to, surface drainage easement, or traveled rights of way (but not including utility easement servicing that lot); or which is below the normal high water line of a water body or upland edge of a wetland.

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

Lot Coverage: The percentage of the lot covered by all structures, parking lots and other non-vegetated surfaces.

Lot Lines: All municipal boundaries shall be lot lines, as well as the lines bounding a lot as defined below:

1. **Front Lot Line:** On an interior lot the line separating the lot from the street or right of way. On a corner or through lot, the line separating the lot from either street or rights of way.

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

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

Lot of Record: A parcel of land, a legal description of which or the dimensions of which are recorded on a document or map on file in the York County Registry of Deeds.

Lot Shorefront: Any lot abutting a body of water in the Shoreland Zone(s).

Lot Width: The distance between the side boundaries of the lot measured at the front setback line.

Low Impact Manufacturing: Industrial activity involving the manufacturing, assembly, packaging, repairing, or processing of goods. Including custom activities usually involving individual or special design, or handiwork and most high technology production. Low impact manufacturing uses include, but are not limited to the following: aerospace electronics, bakeries, breweries, distilleries, electronics assembly, jewelry, musical instruments, photonics, pottery, packaging of foods, pharmaceuticals, printing and publishing, science and research facilities, software, sporting & recreation equipment and woodworking. Low Impact Manufacturing uses are compatible, due to their size and nature of impact, with residential, commercial and other Low Impact Manufacturing uses because of the level of traffic generated, emissions levels, lighting and odors generated. See Applicable Performance Standards of the Berwick Land Use Ordinance Article 8.35 Low Impact Manufacturing.

Manufactured Housing (see also definition for modular home): A structural unit or units designed as housing, and constructed in a manufacturing facility and transported by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this ordinance, two types of manufactured housing are included. Those two types are:
1. HUD-code homes, which are those units constructed after June 15, 1976 that the manufacturer certifies are constructed in compliance with the HUD standard, meaning structures, transportable in one or more sections that, in the traveling mode, are 8 body feet or more in width and 40 body feet or more in length or, when erected on site, are 320 or more square feet, and 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; except that such term shall include 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 Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 United States Code 5401, et seq;

2. Pre-HUD-code homes, which are those units constructed prior to June 15, 1976, meaning structures, transportable in one or more sections, that are 8 body feet or more in width and are 32 body feet or more in length and 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 or electrical systems contained therein.

For purposes of flood damage prevention standards, the term manufactured housing also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured housing on individual lots shall meet the following design criteria;
1. A pitched, shingled roof
2. A permanent foundation,
3. Exterior siding that is residential in appearance, and
4. Electrical wiring that meets the National Electrical Code

Manufacturing: The making of goods and articles by hand or machinery. Manufacturing shall include assembling, fabricating, finishing, packaging or processing operations.

Marijuana: Marijuana means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

Marijuana Cooperative: Two or more Medical Marijuana or Adult Use cultivators claiming a location as a primary residence in order to conduct marijuana home production. Marijuana cooperatives are considered Adult Use Marijuana Production Facilities if marijuana is grown by an Adult Use cultivator and considered a Medical Marijuana Production Facilities if it is grown by a Medical Marijuana caregiver under the Berwick Land Use Ordinance.

Marijuana Home Production: Cultivating, processing and/or storing of Adult Use or Medical Marijuana at a person's primary year-round residence. This use shall be considered an accessory use.

Marijuana, Adult Use: Marijuana that is cultivated, manufactured, distributed or sold by a marijuana establishment for adults 21+ as defined by Maine Title 28-B.

Marijuana Caregiver Retail Store: A store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients.

Marijuana Cultivation Facility, Adult Use: A facility licensed under this chapter to purchase marijuana plants and seeds from other cultivation facilities; to cultivate, prepare and package adult use marijuana; to sell adult use marijuana to products manufacturing facilities, to marijuana stores and to other cultivation facilities; and to sell marijuana plants and seeds to other cultivation facilities and immature marijuana plants and seedlings to marijuana stores.

Marijuana Dispensary, Medical: An entity registered under section 2425-A that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana plants or harvested marijuana or related supplies and educational materials to qualifying patients and the caregivers of those patients.

Marijuana Establishment: A cultivation facility, a products manufacturing facility, a testing facility or a marijuana store licensed by the State of Maine.

Marijuana Manufacturing, Adult Use: The production, blending, infusing, compounding or other preparation of marijuana and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. "Manufacturing" or "manufacture" does not include cultivation or testing

Marijuana Store, Adult Use: A facility licensed under Maine Title 28-B to purchase adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, to purchase adult use marijuana and adult use marijuana products from a products manufacturing facility and to sell adult use marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

Marijuana Testing Facility: A facility licensed by the State of Maine to research and test marijuana, marijuana products and other substances.

Marina: A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

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.

Masonry-type Skirting: Concrete, concrete blocks, brick, stone or similar materials which are arranged to resemble a foundation.

Medical Care Facility: An institution providing overnight health services and/or medical or surgical care. Laboratories, outpatient, training, central services and staff offices are related uses. A medical care facility includes hospitals, nursing homes, convalescent center, and similar service facilities and excludes methadone clinics.

Medical Office: A room or a group of rooms used for conducting the affairs of a person engaged in medicine or dentistry. This includes outpatient, training, central services and staff offices.

Medical Marijuana: Marijuana that is acquired, possessed, cultivated, manufactured, used, delivered, transferred or transported to treat or alleviate a qualifying patent's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

Medical Marijuana Caregiver: A person, licensed hospice provider or licensed nursing facility that is designated by a qualifying patient to assist the qualifying patient with the medical use of marijuana in accordance with state law. A person who is a medical marijuana caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Medical Marijuana Production Facility: A facility used for cultivating, ethanol extraction, and/or storing medical marijuana by a medical marijuana caregiver at a location which is not the medical marijuana caregiver's primary year-round residence or their patient's primary year-round residence. Butane extraction is considered and Industrial Use and shall follow Section 7.3.

Methadone Clinic: A facility specifically established for the distribution of methadone (a substitute narcotic used for the treatment of opiate addiction).

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

Mineral Extraction: Any operation within any 12-month period which removes more than 50 cubic yards of topsoil, loam, sand, gravel, clay, rock, peat or other like material from its natural location and to transport the product removed away from the extraction site.

Mineral Industry: Manufacturing, processing, and storage of industrial minerals.

Minimum Lot Area: See Lot Area.

Minimum lot width: The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Mobile Home: A manufactured housing unit constructed prior to June 15, 1976.

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

Modular Home: State-certified modular homes, which are those units that the manufacturer certifies are constructed in compliance with the State's Manufactured 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 or electrical systems contained therein.

Modular housing on individual lots shall meet the following design criteria;

1. A pitched, shingled roof
2. A permanent foundation,
3. Exterior siding that is residential in appearance, and
4. Electrical wiring that meets the National Electrical Code

Motel: A building or group of buildings in which lodging is offered to the general public for compensation and where entrance to rooms is made directly from the outside of the building.

Motor Vehicle: A self propelled machine not operated exclusively on tracks or rails but does not include snowmobiles, all-terrain vehicles, motorized wheelchairs or an electric personal assistive mobility device.

Motorcycle Repair Business: Operations which provide service, maintenance, and minor repairs for motorcycles.

Municipal Facility: A building or complex of buildings that house municipal offices and services and which may include cultural, recreational, athletic, convention and entertainment facilities owned and/or operated by a governmental agency.

Municipal Permitting Authority: The municipal official or body that has jurisdiction over the land use approval or permit required for a Development.

Municipal Separate Storm Sewer System, or MS4: Conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

Municipality: The Town of Berwick.

Museum: An institution devoted to the procurement, care and display of objects of lasting interest or value. Includes, but is not limited to galleries, art studios, historic structures and public viewing areas.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by the EPA or by the Maine DEP that authorizes the discharge of pollutants to waters

of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Native: Indigenous to the local forests.

Neighborhood "Convenience" Store: A store of less than 1,500 square feet of floor space intended to service the convenience of a residential neighborhood with such items as, but not limited to, basic foods, newspapers, emergency home repair articles, and other household items.

Net Residential Acreage: The acreage available for development, excluding the area for streets or access and the areas which are unsuitable for development.

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

New Development: Any Construction Activity on unimproved Premises.

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

Non-Conforming Lot of Record: A lot shown on a recorded plan or deed which does not meet the area, frontage, width, or depth requirements, of the district in which it is located, and was in lawful existence at the time this ordinance and/or subsequent amendments took effect.

Non-Conforming Structure: A structure that does not meet one or more of the following dimensional requirements: setbacks, height, yard or lot coverage. It is allowed solely because it was in lawful existence at the time this ordinance or subsequent amendments took effect.

Non-Conforming Use: Use of land, structures, premises or buildings or parts thereof that is not otherwise allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this ordinance or subsequent amendments took effect.

Non-Storm Water Discharge: Any discharge to an MS4 that is not composed entirely of storm water.

Normal High-Water Line: 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.

Nursing Home: Any facility which provides meals, lodging and skilled nursing care for compensation to include boarding home and convalescent home.

On-Street Parking: An area dedicated to the standing of motor vehicles that is located on a public street.

Out-of-pocket Expenses: All related legal and consultant fees incurred by the town on behalf of the applicant during the review process of the application.

Outdoor Wood Furnace: A fuel burning device designed to burn wood or other approved solid fuels. Heats building space and/or water via the distribution typically through pipes, of fluid heated in the device, typically water or a water/antifreeze mixture.

Parking facilities: A structure or land used for off-street parking of vehicles.

Parking Lot: A parking lot is all the area devoted to the standing, maneuvering, and circulation of motor vehicles. Parking lots do not include On-Street Parking, driveways or areas devoted exclusively to non-passenger loading. See also, Driveway, Garage, Structured Parking, and Vehicle Areas.

Parking Space: An area for the parking of vehicles.

Parks and Recreation: Non-commercially operated recreation facilities open to the general public including, but not limited to, playgrounds, parks, monuments, green strips, open space, mini-parks, athletic fields, boat launching ramps, piers and docks, picnic grounds, swimming pools, and wildlife and nature preserves, along with any necessary accessory facilities, restrooms, bath houses, and the maintenance of such land and facilities, but not including campgrounds, commercial recreation, and amusement centers as defined elsewhere in this ordinance.

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

Personal Sawmill: A machine for sawing logs into lumber able to be moved from lot to lot, similar to a trailer, not to exceed 30 horsepower.

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

1. Temporary: Structures which remain in the water for less than seven months in any period of 12 consecutive months.

2. Permanent: Structures which remain in the water for seven months or more in any period of 12 months.

Pollutant: Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Stormwater Management Plan: BMPs and Stormwater Management Facilities employed by a Development to meet the standards of this Ordinance and approved by the Municipal Permitting Authority.

Premises: Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

Principal Structure: The structure in which the primary use of the lot is conducted.

Principal Use: The primary use to which the premises are devoted.

Private Pond: An indentation in the ground capable of holding water, excluding swimming pools, specifically on private property.

Private Road: A private way meeting the town's road construction standards for preparation, sub-base, and base as specified in the Subdivision Regulations for the Town of Berwick, Maine.

Professional Offices: The place of business for, but not limited to, doctors, lawyers, accountants, architects, surveyors, psychiatrists, psychologists, counselors, but not including financial institutions or personal services.

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

Public Space: A gathering place or part of a neighborhood, downtown, or other area within the public realm that helps promote social interaction and a sense of community. Examples of public spaces may include but are not limited to: plazas, town squares, parks, and outdoor restaurant seating.

Public Utility: Any firm, corporation, municipal department, board or commission authorized to furnish gas, steam, electricity, waste disposal, transportation, or water to the public.

Public Utility Facility: A building necessary for the furnishing of essential public services, such as, but not limited to, natural gas, steam, electricity, waste disposal, communication facilities, transportation or water to the public. This facility shall not be intended for personnel, but for such things as, but not limited to switching stations, relay stations and sewage pumping stations.

Recent floodplain soils: The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvial, Cornish Charles, Podunk Rumney, Saco, Suncook, Sunday Winooski

Recreation Facility: A place designed and equipped, and which receives a fee in return, for the conduct of indoor and/or outdoor sports, leisure time activities and other customary and usual recreational activities excluding, boat launching facilities.

Recreation Vehicle: A vehicle or vehicular attachment designed to be towed for temporary sleeping or living quarters for one or more persons, which is not a dwelling, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be road-worthy (i.e., possess a current registration sticker from any State Division of Motor Vehicles).

Recycling Facility: A commercial operation of sorting co-mingled recyclables and marketing for sale, items such as: plastic, glass, tin, aluminum cans, paper and cardboard, and done inside a structure.

Redevelopment: Construction Activity on Premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

Regulated Small MS4: Any Small MS4 regulated by the State of Maine "General Permit for the Discharge of Stormwater from Small Municipal Separate Stormwater Sewer Systems" ("General Permit"), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside an UA that as of the issuance of the General Permit have been designated by the Maine DEP as Regulated Small MS4s.

Replacement System: A system intended to replace:

1. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or
2. Any existing overboard wastewater discharge.

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

Restaurant, Fast Food: A service establishment whose principal business is the sale of food and/or beverages in a ready-to-consume state for consumption:

1. within the restaurant building,
2. within a motor vehicle on the premises, or
3. off the premises as carry-out orders, and whose principal method of operation is characterized by the service of food and/or beverages in disposable or edible containers.

Restaurant, Standard: A service establishment whose principal business is the sale of food, and/or beverages to customers in a ready-to-consume state, and whose principal method of operation includes one or both of the following characteristics:

1. customers, normally provided with an individual menu, are served their foods and beverages by a restaurant employee at the same table or counter at which food and beverages are consumed; and/or
2. a cafeteria-type operation where food and beverages generally are consumed within the restaurant building.

Retail Business: A place engaged in sale to the ultimate consumer for direct consumption and not for resale.

Right of Way: An area or strip of land at least 50 feet in width, described in a deed, and dedicated to the purpose of providing access to a parcel or parcels of land abutting it and indicating responsibility for maintaining said right of way. No land in the deeded right of way may be used to meet any dimensional requirements of this ordinance.

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

River: A free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of 25 square miles to its mouth. The Salmon Falls River and Little River are considered "rivers."

Road: See Town of Berwick Road Standards.

Satellite Receiving Dish: An antenna designed to receive signals from satellites.

Sawmill: A mill or machine for sawing logs into lumber, may be located in a structure and used as a commercial operation, or is greater than 30 horsepower.

Schools:

1. **Public and Private-Including Parochial School:** An institution for education or instruction where any branch or branches of knowledge is imparted and which satisfies either of the following requirements:

a. the school is not operated for a profit or a gainful business; or

b. the school teaches courses of study which are sufficient to qualify attendance in compliance with State compulsory education requirements.

2. **Commercial School:** An institution which is commercial or profit-oriented. Examples are dancing, music, riding, correspondence, aquatic, driving, or business schools.

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

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 one thousand (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 one thousand (1,000) feet in length.

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

Setback from Water: The 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.

Service Business: The offering within a building or on the premises of services to persons or property, excluding automobile service or motorcycle repair business uses, and also excluding any other uses which by nature of noise, odor or as a heavy generator of traffic would be detrimental to the immediate neighborhood. The sale of goods is permitted only when incidental to the providing of services. Barbershops, beauty parlors, laundries, repair shops, and tailor shops are examples of a "service business."

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.

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 freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

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

Sign: A sign is a display surface, fabric or device containing organized and related elements (letters, pictures, products, or sculptures) composed to form a single unit, designed to convey information visually and which is exposed to the public view. In cases where matter is displayed in a random or unconnected manner without an organized relationship, each such component shall constitute a sign.

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

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

Small Wind Energy System: A device for generating electricity using wind power.

Small Municipal Separate Storm Sewer System, or Small MS4: Any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Solid Waste: Useless, unwanted or discarded solid material with insufficient liquid content to be free-flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

Storage and/or Maintenance Facility: Land and buildings used for maintenance and service of private business' own fleet of vehicles used to run the business. Maintenance is limited to owner's vehicles. The facility may be used for storing vehicles and equipment and supplies.

Storm Drainage System: The Municipality's Regulated Small MS4.

Stormwater: Any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "Storm Water."

Stormwater Management Facilities: Any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a Development.

Stream: A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area. This term shall also include Ferguson Brook, which is east of Old Pine Hill Rd. and runs through Hall's Pond between School St. and Blackberry Hill Rd., and Love Brook which is located north of Love Brook Rd. and runs through the intersection of School St. and Guinea Rd.

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

Street Improvements: Enhancements made to the public right of way that contribute to the walkability, aesthetics, and general welfare of the Town. Examples of street improvements include sidewalks, bike paths, benches, street trees, and street lights.

Street Screen: Landscaping or fencing that thoroughly limits visibility of surface parking lots and storage areas from public view. Street screens should be between 3.5 and 6 feet in height and constructed of a material matching the finishes of surrounding buildings. Street screens should have openings no larger than necessary to allow automobile and pedestrian access.

Structure: Anything constructed or erected, the use of which requires a fixed location on or in the ground, or an attachment to something having a fixed location on the ground, either permanently or temporarily, including buildings, commercial park rides and games, satellite receiving dishes, carports, porches, and other building features, but not including sidewalks, fences, driveways, parking lots, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or for any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historical Places.

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

Subdivision: See Subdivision Regulations of the Town of Berwick, Maine.

Subsurface Sewage Disposal System: Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 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.

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

Swimming pool: An outdoor artificial receptacle or other container, whether in or above the ground, used or intended to be used to contain water for swimming or bathing and designed for a water depth of 24 inches or more.

Temporary Sign: Any sign that is used only temporarily (30 days or less) and is not permanently mounted. Temporary signs cannot exceed-24 square feet in size (includes both sides) and shall not be illuminated. Temporary signs must visibly indicate the date that they were erected on the sign.

Timber Harvesting: The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (Q), Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

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

Tributary Stream: A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This term 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.

NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

Undue Hardship:

1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or a prior owner.

Upland Edge of a wetland: The boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation,

but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) foot) tall or taller.

Urbanized Area ("UA"): The areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

Used Merchandise Sales: The indoor or outdoor sale of used articles, conducted for more than five consecutive days or for more than two weekends per year.

Variance: A variance is a relaxation of terms of this ordinance. Variances permissible under this ordinance are limited to dimensional and area requirements. No variance can be granted for the establishment of any use otherwise prohibited, nor shall a variance be granted because of the presence of non-conformities in the immediate or adjacent zones.

Vegetation: All live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under four inches in diameter, measured at 4 1/2 feet above ground level.

Vehicle Sales: Any business which involves a parking or display area for the sale of new or used cars, trucks, motorcycles, campers, farm equipment, recreational vehicles, mobile homes, or similar products.

Veterinary Hospital or Clinic: A building used for the diagnosis, care and treatment of ailing or injured animals which may include overnight accommodations. The overnight boarding of healthy animals shall be considered a kennel.

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

Warehousing; Storage; Distribution: Terminal facilities for handling freight with or without maintenance facilities.

Waste Facility: Any land area, structure, location, equipment or combination of them, including dumps, used for handling hazardous or solid waste, sludge or septage. A land area or structure does not become a waste facility solely because:

1. It is used by its owner for disposing of septage from his/her residence;

2. It is used by individual homeowners or lessees to open burn leaves, brush, dead wood and tree cuttings accrued from normal maintenance of their residential property, when such burning is permitted pursuant to 38 M.R.S.A., Section 599, Subsection 3; or

3. It is used by its residential owner to burn highly combustible domestic, household trash such as paper, cardboard cartons or wood boxes, when such burning is permitted pursuant to 38 M.R.S.A., Section 599, Subsection 3.

Water Body: Any great pond, river or stream.

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

Wetland: A freshwater wetland.

Wetland Soils: The following soils, as described and identified in the Soil Survey of the County:

Biddeford mucky peat	Sulfihemists, frequently flooded
Chocorua peat	Vassalboro peat
Sebago peat	Vassalboro peat, ponded
Saco	Waskish peat

Wholesale Business: Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to such individuals or companies.

Wireless Communications Facility: Any antenna, satellite dish, microwave dish or equipment used for receiving, relaying or transmitting radio, telephone, television, or any other electromagnetic based communication or data transfer, or any tower, pole or structure supporting such equipment.

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

Workforce Housing: Dwelling units that may be purchased or rented for year-round occupancy by a working household whose income is between 50% and 60% of the median income for the Town per most recent census data.

Yard: The area between a structure and the property boundary.

Yard Sale: The term "yard sale" shall include so-called garage sales, porch sales, tag sales, and the like, and they occur on no more than five consecutive days or for no more than two weekends a year.

ARTICLE III OFFICIAL LAND USE MAP

3.1 Official Land Use Map.

Districts are located and bounded as shown on the Official Land Use Map which together with overlay maps is hereby adopted by reference and is a part of this ordinance. The Aquifer Protection and Shoreland Overlay District boundaries are determined by the terms of the section creating that district, and any delineation of them on the Official Land Use Map shall be for reference only and shall not supersede or modify such boundaries as created in that section. See Section 14.9 for provisions regarding the Official Shoreland Zoning Map.

3.2 Certification of Land Use Map.

The Official Land Use Map is certified by the Town Clerk under the following words: "This is the Official Land Use Map referred to in Section 3.2 of the Land Use Ordinance of the Town of Berwick," together with the date of the adoption of this ordinance. The official copy shall be located in the office of the Town Clerk.

3.3 Changes of the Official Land Use Map.

If changes are made in the district boundaries or other matter portrayed on the Official Land Use Map such changes shall be made on the Official Land Use Map within 14 days after the amendment has been adopted together with an entry on the Official Land Use Map as follows:

"On *(insert date)* by official action of the Town of Berwick, the following change(s) was(were) made: (*insert brief description of the nature of change)*." Immediately beneath the entry the Town Clerk shall place his/her signature.

3.4 Replacement of Official Land Use Map.

In the event that the Official Land Use Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the governing authority may by resolution adopt a new Official Land Use Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Land Use Map, but no such corrections shall have the effect of amending the Official Land Use Map.

ARTICLE IV ESTABLISHMENT OF DISTRICTS

4.1 Classes of Districts.

For the purpose of this ordinance, the town is hereby divided into the following classes of districts.

A. Zoning Districts.

1. Urban Residential Districts to be known as "R-1" Districts
2. Transition Residential Districts to be known as "R-2" Districts
3. Rural Residential-Farm Districts to be known as "R-3" Districts
4. Village/Commercial Districts to be known as "V/C" Districts
5. Rural Commercial/Industrial District to be known as RC/I Districts

B. Overlay Districts.

Aquifer Protection to be known as "AP" District
Village Overlay District

Shoreland Zone Districts:

A. Shoreland Commercial Industrial to be known as SC/I District
B. Resource Protection to be known as "RP" District
C. Limited Residential to be known as LR District
D. Stream Protection to be known as SP District

4.2 Rules Governing District Boundaries.

Unless otherwise indicated, the boundaries of districts are property lines, the centerlines of streets and roads and rights of way. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

A. Sources for the exact delineation of the Special Flood Hazard areas shall be the Berwick Flood Insurance Rate Map (effective date August 5, 1991) prepared by the Federal Emergency Management Agency, Community #230144.

B. Sources for the exact delineation of the Aquifer Protection District shall be the Maine Geological Survey "Sand and Gravel Aquifers, Open File No. 98-125, 98-126, 98-127, 1998."

4.3 Rules Governing When One Lot is Located in Two Different Districts.

Except the boundaries of the overlay districts, the following shall control when a lot is divided by a district boundary.

A. On lots of two acres or less in area, the lot shall be used as if the entire lot were in the district which comprises the larger portion.

B. On lots larger than two acres, the district regulations shall be followed in each portion.

ARTICLE V GENERAL PROVISIONS

5.1 Land Use Requirements.

Except as hereinafter specified, no building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, moved, or altered unless in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

5.2 Non-Conformance.

A. General.

1. Continuance, Enlargement, Reconstruction. Any non-conforming use or non-conforming structure may be continued but may not be extended, reconstructed, enlarged, or structurally altered except as specified below.

2. Transfer of Ownership**.** Non-conforming structures, non-conforming lots of record, and non-conforming uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this ordinance.

3. Restoration or Replacement. This ordinance allows the normal upkeep and maintenance of non-conforming uses and structures; repairs, renovations, or modernizations which do not involve expansion of the non-conforming use or structure; and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

Any non-conforming use or structure which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his/her agent, may be restored or reconstructed within one year of the date of said damage or destruction, provided that:

a. Any non-conforming structure shall not be enlarged except in conformity with this ordinance and the Maine State Plumbing Code.

b. Any non-conforming use shall not be expanded in area.

Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.

4. See Section 14.12 for nonconformities within the Shoreland Zone

B. Non-Conforming Use.

1. Resumption prohibited. A building or structure, or use of land in which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use, even if the owner has not intended to abandon the use. The time requirement of this section shall not apply to mineral extraction operations which are governed by the provisions of Section 8.10.

2. A Structure Non-Conforming As to Use. Except for single family dwellings, a building or structure, non-conforming as to use, shall not be enlarged unless the non-conforming use is terminated. Single family dwellings, which are non-conforming uses, may be enlarged as long as the dimensional requirements of the district in which they are located are met.

A non-conforming use or part of a building or structure shall not be extended throughout other parts of the building or structure unless those parts of the building or structure were manifestly arranged or designed for such use prior to the adoption of this ordinance, or of any amendment making such use non-conforming.

3. Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use is equally or more appropriate to the district than the existing non-conforming use, and the impact on adjacent properties is less adverse than the impact of the former use as determined by the Appeals Board. The case shall be heard as an administrative appeal. The determination of appropriateness shall include consideration of the probable changes in traffic volume and type, parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use. The performance standards in Article VII of this ordinance shall apply to such requests to establish new non-conforming uses.

4. Use of Land. A non-conforming use of land may not be extended into any part of the remainder of a lot of land. A non-conforming use of land which is accessory to a non-conforming use of a building shall be discontinued at the same time the non-conforming use of the building is discontinued.

In the case of earth removal operations, the removal of earth may not be extended as a non-conforming use beyond the required setback lines of the specific parcel upon which such operations were in progress when such use became non-conforming. Adjacent parcels in the same or different ownership shall not be eligible for exemption under the non-conforming use provisions unless earth removal operations were in progress on these parcels before these provisions were enacted. The provision of required off-street parking for an existing non-conforming use shall not be considered the expansion of said use.

C. Non-Conforming Structures**.** (Pertaining to dimensional requirements. Applications regarding non-conforming use shall be reviewed under the provisions above.)

1. Enlargements Controlled. A non-conforming structure shall not be added to or enlarged unless such addition or enlargement conforms to all the regulations of the district in which it is located, or a variance is obtained, except that dwellings in the residential districts which are situated entirely within the front setback area may be enlarged provided such enlargement does not encroach upon the existing front setback or upon any other required setback areas of the lot.

The addition of an open patio with no structures elevated above ground level shall not constitute the expansion of a non-conforming structure.

The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a non-conforming structure. But the addition of a deck shall constitute the expansion of a non-conforming structure and shall meet all the dimensional requirements of this ordinance.

Construction or enlargement of a foundation beneath the existing structure shall not be considered an expansion of the structure provided that the structure and new foundation are placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in section 5.2.C.4, that the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three additional feet.

2. Discontinuance. Discontinuance of the use of a legally existing non-conforming structure shall not constitute abandonment of the structure. Conforming use of the structure may be commenced at any time.

3. Lack of Required Parking or Loading Space. A building or structure which is non-conforming as to the requirements for off-street parking and/or loading space shall not be enlarged, added to, or altered unless off-street parking and/or loading space is provided to bring parking and/or loading space into conformance with the requirements of this ordinance for both the addition or alteration and for the original building or structure, or a variance is obtained.

4. Relocation. 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 Board of Appeals, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

5. Replacement. A nonconforming structure on a non-conforming lot of record may by replaced or reconstructed provided that:

a. The new structure is reconstructed or replaced within the footprint of the previous structure, or that the new structure is located on the lot so that the existing non-conformity is improved upon and not increased in any way.

b. In order to replace or reconstruct a non-conforming structure on a nonconforming lot of record a permit must be obtained from the Code Enforcement Officer prior to any demolition or building removal and the structure must be replaced no less than 180 days from receipt of the permit.

c. Any manufactured housing proposed for replacement must be a HUD-code home as defined under Manufactured Housing in the Berwick land use ordinance.

D. Non-conforming Lots of Record.

1. Vacant. A vacant non-conforming lot of record may be built upon provided it is not contiguous with any other vacant lot in the same ownership. A vacant lot of record does not have to meet area or frontage requirements of this ordinance. However, all other dimensional standards of this ordinance shall be met unless a variance is obtained from the Board of Appeals. Buildings shall be limited to a single family or two-family dwelling unit unless the property has frontage on Route 9 or Route 4 and the use is permitted in the pertinent zoning district.

2. Built Lots**.** A non-conforming lot of record that was built upon prior to the enactment or subsequent amendment of the ordinance is subject to the following restrictions. The structure(s) may be repaired, maintained, or improved, and may be enlarged in conformity with all dimensional requirements of this ordinance except lot area, lot width, or lot frontage. If the proposed enlargement of the structure(s) cannot meet the dimensional requirements of this ordinance a variance shall be obtained from the Board of Appeals.

3. Contiguous Built Lots. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of adoption of this ordinance, if all or part of the lots do not meet the dimensional requirements of this ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, providing the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with. If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this ordinance.

4. Contiguous Lots - Vacant or Partially Built. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this ordinance, if either or both of these lots do not individually meet the dimensional requirements of this ordinance or subsequent amendments, and if two or more of the lots are vacant or contain only an accessory structure, the lots shall be combined to the extent necessary to meet the dimensional standards, except where rights have vested, or the lots have frontage on parallel streets and state laws are complied with.

E. Vested Rights.

Non-conforming use rights cannot arise by the mere filing of a notice of intent to build, and application for building permits, or an application for required state permits and approvals. Such rights arise when actual construction has begun, or in the case of pending applications, when the review process on a complete application commences. Such construction must be legal at the time it is commenced and the owner must be in possession of and in compliance with all validly issued permits, both state and local. The right to develop a non-conformity shall automatically be lost, even if the owner or agent did not intend to abandon the project, if such development or construction is not substantially complete within two years of the adoption or amendment of this ordinance.

5.3 Mixed Use.

Mixed use means the development of a lot, building, structure or portion thereof which combines a residential and non-residential use. Mixed uses are allowed only under the following conditions:

1. Each use must comply with all performance standards of this ordinance applicable to that use.

2. Where different dimensional requirements apply to the different uses, the more restrictive requirements shall apply to the entire mixed use.

3. If any of the uses requires conditional use approval, the Planning Board shall consider the impacts and effects of the entire mixed use when the Board applies the conditional use approval criteria and when the Board determines what limiting conditions, if any, are required.

4. Where there is any conflict or inconsistency between any of the standards of this ordinance as applied to the different uses, the more restrictive standards shall govern the entire mixed use.

5. A mixed use shall meet the minimum lot size for a residential use plus half the minimum lot size for each additional commercial/industrial use.

6. Mixed uses located in the Village Overlay have no minimum lot size required although Shoreland Zoning standards are still applicable.

7. Industrial uses may not co-locate on the same lot with residential uses.

ARTICLE VI DISTRICT REGULATIONS

6.1 Basic Requirement.

Permitted uses and conditional uses in all districts shall conform to all applicable specifications and requirements. A plumbing permit, building permit, and/or Certificate of Occupancy shall be required for all buildings, structures, uses of land and buildings, and sanitary facilities, according to the provisions of this ordinance with the following exceptions: repairs, replacement, and/or normal maintenance not requiring structural elements, decorative changes in existing structures or buildings, patios, fences, driveways (not to exceed lot coverage) and yard sales provided that the activity is in conformance with federal, state or local laws and does not involve any physical modifications or changes requiring a permit under this ordinance.

See Section 14.13 for district regulations in the Shoreland Zone.

6.1.2 Omitted Uses.

In the event that a proposed use is not specifically identified in the tables, the Code Enforcement Officer shall select the listed use which most closely resembles the proposed use in impact and intensity. (A useful guide for examining nonresidential uses is the "North American Industry Classification System.")

In cases where no listed use is reasonably construed to closely resemble the proposed use, the Code Enforcement Officer may determine that there is no listing for the proposed use and that therefore it is not permitted in any zoning district.

6.2 Land Use District Regulations.

Land uses permitted in each district, in conformance with the General Performance Standards in Article VII and, where appropriate, the Specific Performance Standards of Article VIII are shown in the following table.

LAND USE TABLE

KEY: **P - Permitted Use - Permit Required**
X - Not Permitted
C - Conditional Use, May Require Site Plan Review
A - Allowed Without a Permit

	R1	R2	R3	V/C	RC/I	AP	LR	SC/I	RP	SP
RESIDENTIAL										
Single-Family Dwelling, including driveways	P	P	P	P	C	P	P	X	X	P
Accessory Dwelling Unit	P*	P*	P*	P*	C*	C*	C*	P*	X	X
Cluster Development	X	C	C	X	X	X	X	X	X	X
Community Living Arrangement	P	P	P	P	C	P	X	X	X	X
Congregate Housing	C	C	C	C	C	X	X	C*	X	X
Elderly Housing	C*	C*	X	C*	X	X	X	X	X	X
Mobile Home Parks	C	C	X	X	X	X	X	C*	X	X
Multiple Manufactured/Mobile Homes on Individual Lots	C	P	P	X	C	P	P	X	X	X
Multi-Family Dwelling	C	C	X	C	C	X	X	X	X	X
Two-Family Dwelling, including driveways	P	P	P	P	C	P	P	X	X	P
Conversions of seasonal residences to year-round residences	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI
INSTITUTIONAL/PUBLIC										
Cemetery	C	C	C	X	X	X	X	X	X	X
Church, Parish House	C	C	C	C	C	X	X	C	X	X
Club Facility	C	C	C	C	C	C	C	C	X	X
Educational Facility	C	C	C	C	C	X	C	C	X	X
Daycare Home	C	C	C	C	C	C	X	C	X	X
Medical Care Facility	C	C	C	C	C	X	X	C	X	X
Municipal Facility	C	C	C	C	C	C	C	C	X	X
Museum	C	C	C	C	C	C	C	C	X	X
Public Facility	C	C	C	C	C	C	C	C	X	X
Public Utility Facility	C	C	C	C	C	C	C	C	C	C
Essential services										
A. Roadside distribution lines (34.5kV and lower)	A	A	A	A	A	A	A*	A*	P*	P*
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	A	A	A	A	A	A	P	P	C*	C*

	R1	R2	R3	V/C	RC/I	AP	LR	SC/I	RP	SP
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	A	A	A	A	A	A	C	C	C*	C*
D. Other essential services	A	A	A	A	A	A	C	C	C*	C*
Service drops, as defined, to allowed uses	A	A	A	A	A	A	A	A	A	A
COMMERCIAL										
Automobile Service/Motorcycle Repair Business	C*	C	C*	C	C	X	X	C	X	X
Bed and Breakfast	C	C	C	C	C	C	X	C	X	X
Boardinghouse	C	C	C	C	C	X	X	C	X	X
Bottle Club	X	C*	X	C	C	X	X	C	X	X
Campground	X	C	C	X	X	C	C	X	X	C
Commercial Mini-Storage	X	X	C*	X	C	X	X	X	X	X
Communication Tower*	X	C	C	C	C	C	X	X	X	X
Daycare Center	C	C	C	C	C	X	X	C	X	X
Drug Store	C	C	C	C	C	X	X	C	X	X
Finance, Insurance and Real Estate	C	C	C	C	C	C	X	C	X	X
Fringe Financial	X	X	X	X	C*	X	X	X	X	X
Function Hall	C	C	C	C	C	C	X	C	X	X
Golf Course	X	C	C	X	C	C	X	X	X	X
Hotel	C*	C*	C*	C	C	X	X	C	X	X
Motel	X	X	X	X	C	X	X	X	X	X
Kennels	X	C	C	X	C	X	X	X	X	X
Marijuana Caregiver Retail Store or Dispensary	X	X	X	X	C*	X	X	X	X	X
Marijuana Cultivation Facility, Adult Use	X	X	C*	X	C*	X	X	X	X	X
Marijuana Manufacturing, Adult Use	X	X	C*	X	C*	X	X	X	X	X
Marijuana Testing Facility	X	X	C*	X	C*	X	X	X	X	X
Marijuana Store, Adult Use	X	X	X	X	C*	X	X	X	X	X
Marina	C	C	C	C	C	X	C	C	X	X
Medical Office	C	C	C	C	C	X	X	C	X	X
Medical Marijuana Cooperative	X	X	C*	X	C*	X	X	X	X	X

Medical Marijuana Production Facility	X	X	C*	X	C*	X	X	X	X	X
	R1	**R2**	**R3**	**V/C**	**RC/I**	**AP**	**LR**	**SC/I**	**RP**	**SP**
Neighborhood Convenience Store	C	C	C	C	C	C	X	C	X	X
Professional Office	C	C	C	C	C	C	X	C	X	X
Recreation Facility	C	C	C	C	C	C	X	C	X	X
Restaurant	C	C	C*	C	C	X	X	C	X	X
Retail Business	C	C	C*	C	C	X	X	C	X	X
Service Business	C	C	C	C	C	X	X	C	X	X
Storage and/or Maintenance Facility	X	C	C	X	C	X	X	X	X	X
Wholesale Business	C*	C	C*	C	C	X	X	C	X	X
Wireless Communications Facility	C*	C	C	C	C	C	C*	C*	X	X
Vehicle Sales	C	C	C*	X	C	X	X	C	X	X
INDUSTRIAL										
Auto Graveyard/Junkyard/Auto Recycling	X	X	X	X	C	X	X	X	X	X
Laboratory	C	X	X	C	C	X	X	C	X	X
Laboratory Research Facility	X	X	X	C	C	X	X	C	X	X
Low Impact Manufacturing	X	C*	C*	C*	C*	X	X	C*	X	X
Industrial	X	X	X	X	C	X	X	X	X	X
Mineral Industry	X	C	C	X	C	C	C	X	X	X
Mineral Extraction	C	C	C	C	C	C	C	C	C	X
Sawmill	X	C	C	X	C	C	X	X	X	X
Warehousing; Storage; Distribution	X	X	X	X	C	X	X	X	X	X
Waste Facility	X	X	X	X	C	X	X	X	X	X

	R1	**R2**	**R3**	**V/C**	**RC/I**	**AP**	**LR**	**SC/I**	**RP**	**SP**
MISCELLANEOUS										
Agriculture	P	P	P	P	P	C	C	X	C	C
Animal Husbandry	X	C	P*	X	C	C	C	X	C	X
Forest Management	P	P	P	P	P	P	P	X	P	P
Private Pond with or without a dam	P	P	P	P	P	P	X	X	X	X
Timber Harvesting*	P	P	P	P	P	P	P	X	P	P
Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking, and non-motorized boating	A	A	A	A	A	A	A	A	A	A
Disturbed area greater than 1 acre*	P	P	P	P	P	P	P	P	P	P
Aquaculture	-	-	-	-	-	-	C	C	C	A
Small, non-residential facilities for educational, scientific, or nature interpretation purposes	C	C	C	C	C	C	P	P	C	C
Public and private recreational areas involving minimal structural development	C	C	C	C	C	C	C	P	C	C
Individual private campsites	C	P	P	X	P	P	P	X	P	P
Clearing or removal of vegetation for activities other than timber harvesting	A	A	A	A	A	A	A	A	P*	P
Fire prevention activities	A	A	A	A	A	A	A	A	A	A
Wildlife management practices	A	A	A	A	A	A	A	A	A	A
Soil and water conservation practices	A	A	A	A	A	A	A	A	A	A
Structures accessory to allowed uses	P	P	P	P	P	P	P	A	C	C

	R1	**R2**	**R3**	**V/C**	**RC/I**	**AP**	**LR**	**SC/I**	**RP**	**SP**
Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland										
A. Temporary	-	-	-	-	-	-	P*	P*	P*	P*
B. Permanent	-	-	-	-	-	-	C	C	C	C
Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI	LPI
Road construction	P	P	P	P	P	P	C	C	X*	C
Land management roads	A	A	A	A	A	A	A	A	C	A
Parking facilities	C	C	C	C	C	C	C	C	X*	X
Filling and earth moving of <10 cubic yards	A	A	A	A	A	A	A	A	P	P
Filling and earth moving of >10 cubic yards	P	P	P	P	P	P	P	P	C	C
****ACCESSORY USES**										
Home Occupation	P	P	P	P	P	P	C	C	X	X
Non-Residential Buildings > 5,000 square feet	C	C	C	C	C	C	X	C	X	X
Outdoor Wood Furnace*	C	P	P	C	P	P	P	C	X	X
Small Wind Energy System	C	C	C	C	C	C	C	C	X	C
Yard Sale	A	A	A	A	A	A	A	A	X	X

*** Indicates this use has specific performance standard in Article VIII that must be met.**

6.3 Dimensional Requirements.

Lots and principal buildings in all districts shall meet or exceed the following minimum requirements. If more than one principal building is constructed on a single parcel of land all dimensional requirements shall be met separately for each principal building. Additional requirements may be imposed by other provisions of this ordinance.

DIMENSIONAL REQUIREMENTS TABLE

REQUIREMENTS	R-1	R-2	R-3	V/C	RC/I	AP	VILLAGE
Minimum Lot Size with Public Sewer and Water in square feet	10,000	20,000	90,000	10,000	50,000	20,000	See Note 10
Minimum Lot Size with Septic in square feet	20,000	60,000	90,000	20,000	90,000	120,000	See Note 10
Minimum Lot Width in feet	100	150	300	100	200	300	See Note 10
Minimum Frontage in feet	100	150	300	100	200	300	See Note 10
Minimum Front Yard Setback in feet	25	50	75	25	40	75	See Note 10
Minimum Side Yard Setback in feet	25	25	50	15	25	50	See Note 10
Minimum Rear Yard Setback in feet	25	25	50	25	25	50	See Note 10
Maximum Building Height in feet	35	35	35	45	45	35	45
Maximum Lot Coverage percentage	50	35	20*	80	80	20	See Note 10
Shoreline Setback from River or Great Pond							25
Shoreline Setback from Wetlands and Streams							See Note 10
Shoreline Frontage							See Note 10

Notes:

1. In V/C, R1, R2 & RC/I, the setback may be reduced to the average of like setbacks of the existing structures on abutting properties.

2. The setback along a railroad spur may be waived for loading facilities that require rail access.

3. Two-family dwellings require twice the lot size as single-family dwellings. Multifamily dwellings require a minimum lot size which equal that required for the equivalent number of single-family dwelling units.

4. No land in a deeded right of way may be used to meet any of the dimensional requirements of this ordinance.
5. The frontage requirement for lots on curves with a centerline radius of 100 feet or less may be reduced by 20 percent provided the lot width requirements are met.

6. For all structures side and rear setbacks may be reduced by the percentage that the non-conforming lot is less than the requirement.

7. For lots with public water and sewer in the R-2 District the front setback requirement may be reduced to 25 feet.

8. Additions to existing non-conforming buildings may be built to meet the existing line of non-conformity but may not be less than ten feet from a side or rear property line. However, the non-conforming portion of the building shall not expand by 30 percent or more in volume or floor area during the lifetime of the structure. Average of the abutters (footnote #1 above) would apply if this average was less than ten feet.

9. One acre equals 43,560 square feet or 4,840 square yards.

10. All uses within the Village Overlay District are exempt from dimensional and density requirements of the underlying District, except the 25' setback requirement from the river, and subject to the requirements established in Section 6.4. Uses within the Village Overlay District that are located in the Shoreland Zoning District are subject to all applicable dimensional requirements of the underlying Shoreland zone pursuant to Section 14.15.

11. If more than one single family dwelling is located on a single lot, the lot size shall equal that required for the equivalent number of single-family dwelling units. The dwelling units shall be placed on the lot and separated from one another in such a manner that if the lot were divided each dwelling unit would meet all dimensional requirements.

* Lots containing only commercial or industrial uses may be allowed a maximum lot coverage percentage of 50%.

6.3.1 Residential Growth Limitation Provisions.

A. Within the R-3 District, the number of residential building permits issued within any given subdivision during any calendar year, commencing the effective date of this ordinance amendment shall be limited to three (3), except as noted in Section 6.3.1.E below.

B. Within the R-2 District the number of residential building permits shall be limited to 20 permits in any given subdivision within any given calendar year, if such subdivision is served by public water and sewer service (See Section 7.11, Sewage Provisions and 7.20, Water Supply). The Planning Board may require the phasing of a project according to Section 13.6 of the Berwick Subdivision Regulations. Any subdivision within the R-2 District and not served by both water and sewer will be limited to three (3) building permits per calendar year per subdivision from the effective date of this ordinance amendment except as noted in Section 6.3.1.E., below.

C. Within the RC/I District, the number of residential building permits issued within any given subdivision during any calendar year commencing the effective date of this ordinance amendment shall be limited to three (3), except as noted in Section 6.3.1.E., below.

D. For those subdivisions either approved or pending (according to MRSA, Title 1, section 302) as of the effective date of this ordinance amendment, the limit on the number of permits to three (3) shall not apply, however those subdivisions either approved or pending as of the effective date of this ordinance amendment will be subject to a limit of nine (9) permits per calendar year.

E. For determining number of permits to be issued; if a parcel is split or conveyed into 2 parcels 3 years prior to application for subdivision, the number of permits will be issued based on the parent parcel.

6.4 **Village Overlay District** - Form-Based Code Districts

The purpose of Form-Based Code is to:

- Allow for a diversity of appropriate and compatible uses within a zoning district
- Provide a more concise process for design, review and approval of structures.
- Deliver a development outcome that is more consistent with a traditional pedestrian oriented street development pattern

Berwick's Form-Based Code zoning district is the Village Overlay District which overlays portions of the R1, SC/I and V/C Zoning Districts.

FIGURE 1. – Map of Village Overlay District - See the Town of Berwick's Zoning Map at berwickmaine.org/maps as the map may be amended from time to time.

6.4.1 General: Purpose and Intent

A. The Village Overlay District is intended to promote the development of the former tannery site, which is bounded by Sullivan Street, Wilson Street and School Street. The establishment of the Village Overlay District is consistent with the vision presented in the Comprehensive Plan which includes the Berwick Downtown Vision Report and Implementation Plan.

B. The Village Overlay District will utilize the former tannery site, transforming it into a new village center that repurposes older buildings and allows for new buildings that will offer economic and commercial opportunities while also recognizing the Town's industrial past. The reuse of the industrial buildings along with new buildings, a new street, and new public and private spaces will become the foundation of a thriving downtown.

C. The Form-Based Code establishes standards for use and design of new and existing buildings, including size, height and required features as well as criteria related to roads, sidewalks, parking areas and open space.

6.4.2 Village Overlay District

A. Objectives

1. The Village Overlay District will improve and expand Berwick's downtown and provide connections to the open spaces and adjacent residential neighborhoods.

2. The Village Overlay District will allow for repurposing of existing former industrial buildings for commercial and residential uses, thereby allowing for a core downtown area of higher density, mixed use, buildings including low-impact manufacturing, offices, retail and other commercial businesses and multifamily housing.

3. Continuous open space (known as a greenway) will run through the former tannery site connecting the recreational river area and the downtown neighborhoods to the community open space near the former Estabrook School.

4. The Village Overlay District will have a tight network of streets, including a new main street, with wide sidewalks, street trees and buildings set close to the street or with frontage on pleasing outdoor public spaces. A greenway connects public open spaces and the downtown to adjacent neighborhoods.

5. A wide range of residential buildings; including single-family, two-family, town houses or row houses and apartment houses will be allowed in the district.

6.4.2.1 Design Standards

A. Key Design Features of the Village Overlay District:

- 3 to 4 story mixed use buildings on Main Street with front façade detailing
- Active interaction between public and private spaces
- Increased density
- Increased availability of on-street parking
- Wide sidewalks
- Street trees
- Small off-street parking areas
- Public commons, outdoor spaces for restaurants and open space for civic activities
- Well defined corner buildings at the Main Street intersections with Wilson and Sullivan Streets.
- Greenway connectivity between the downtown, the river and surrounding neighborhoods
- Underground power and utilities

6.4.2.2 Main Street Design Standards
*Refer to Figure 2 and Figure 3

The new street to be designated Main Street shall run east to west through the former tannery site, connecting to School Street at its eastern end and to Sullivan Street, approximately opposite of Eleanor's Street, at its western end.

Minimum Right-of-Way Width	60 feet
Curb face to curb face	40 feet
Minimum Traveled Way Width	24 feet total paved driving lanes (12-feet for each direction) Refer to Figures 2 and 3
Parking Lanes	Parallel, 8 feet wide, paved, total length of street except for pedestrian crossings and intersections
Minimum Sidewalk Width	8 feet
Minimum Grade	.5%
Minimum Angle of Street Intersections with School and Sullivan Streets	90 degrees
Pedestrian crossing	• Raised: approximately same height as the curb • Use pavers or material different in color and texture than the travel lanes but must be ADA-friendly. • Provide bump outs at pedestrian crossings to shorten length of travel from sidewalk to sidewalk. • Granite curbing
Landscaping	Provide street trees every 25 feet on center in tree grates or as necessary to allow for ample growth
Street Lighting	Lighting fixture types to be similar along Main Street, School Street and Sullivan Street See Figure 6.4.2.4 Street Lighting
Access	To minimize curb-cuts, access to parking areas and driveways servicing buildings both new and existing, shall be shared.
Utilities	All utilities, including power, shall be installed underground.

FIGURE 2.- MAIN STREET SECTION A- without planting strip along road

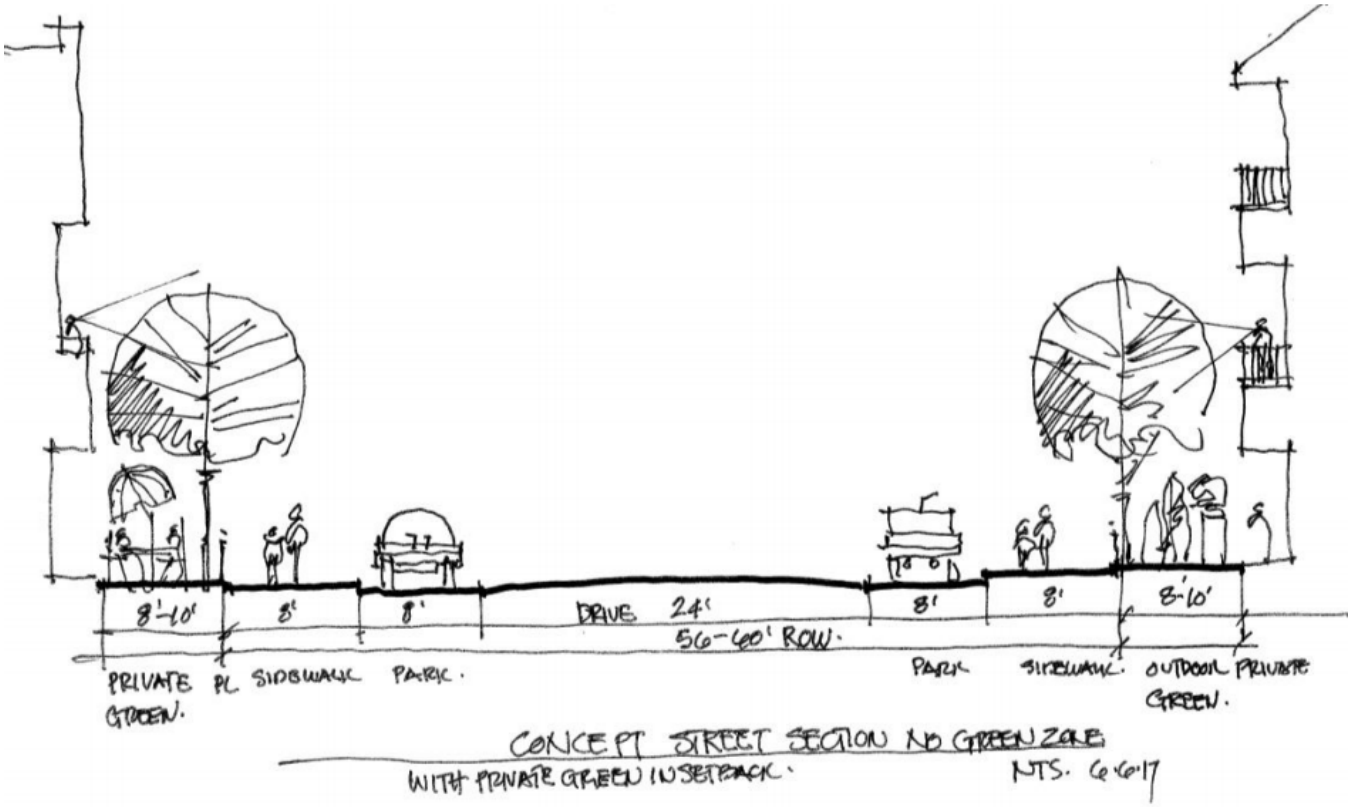
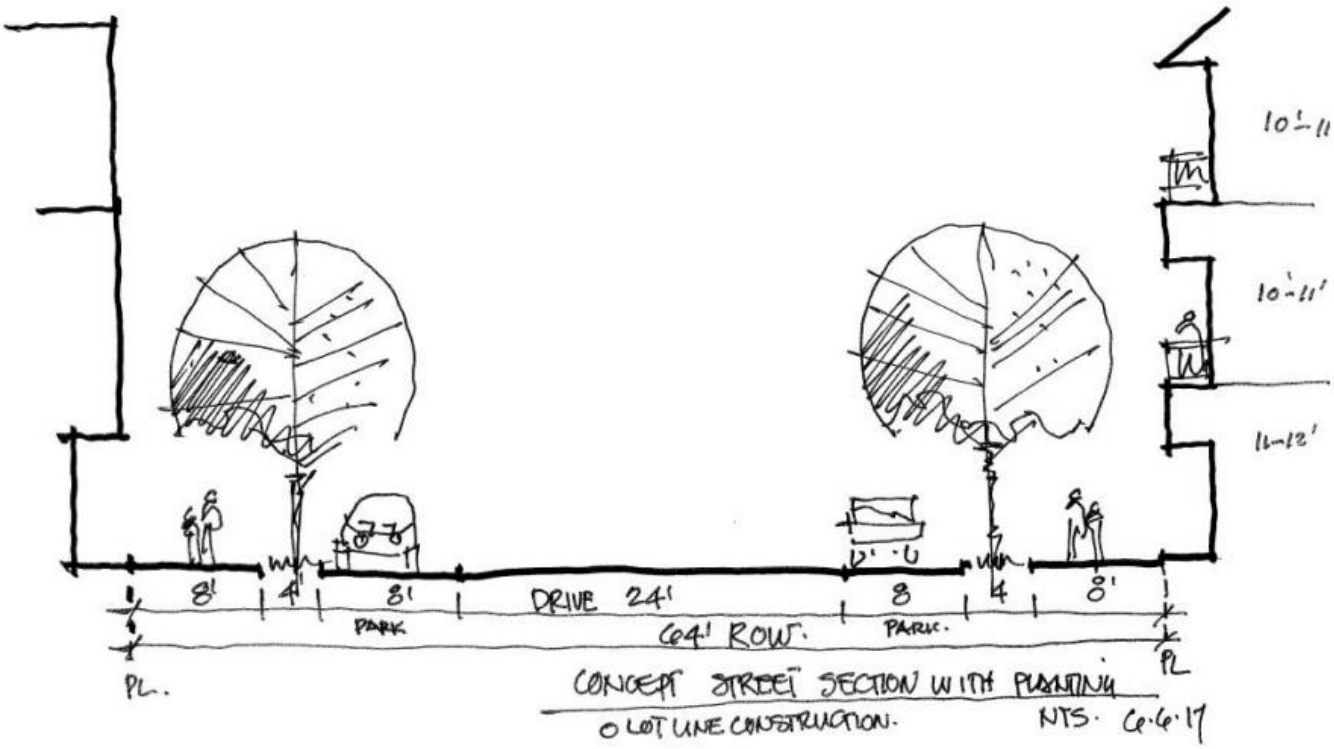


FIGURE 3. MAIN STREET SECTION B- with planting strip along road



6.4.2.3 Additional Streets

As redevelopment occurs within the former tannery site, portions of Sullivan Street, Wilson Street and School Street that abut the former tannery site shall be subject to new development and design standards. As parcels that abut the above-mentioned streets and others within the district are redeveloped, the following design standards shall apply

Minimum Sidewalk Width	6 feet
Pedestrian crossings	• Use materials different in color and texture than the travel lanes but must be ADA-friendly. • Granite curbing
Access	To minimize curb-cuts, access to parking areas and driveways servicing buildings both new and existing, shall be shared.
Landscaping	Provide street trees every 25 feet on center in tree grates or as necessary to allow for ample growth
Street Lighting	Lighting fixture types to be similar along Main Street, School Street and Sullivan Street See Figure 6.4.2.4 Street Lighting
Utilities	Utilities, including power, shall be located underground.

6.4.2.4 Street Lighting

All new street lighting added along Main Street, Sullivan Street, Wilson Street and School Street shall be in a style similar to Figure 4 below. Street lighting along Main Street must also include accessory arms for hanging banners and decorations.

FIGURE 4. - CONCEPT SITE LIGHTING-

Lighting Type	
 Gooseneck	Gooseneck Street Lamp LED Black post with candy cane arm *Approved light fixture for Main Street
	All other site and exterior building lighting are subject to Planning Board approval.
	All exterior lights shall have full cut off/fully shielded luminaries approved by the International Dark-Sky Association.

6.4.2.5 Open Space

A. Redevelopment of the former tannery site requires 25% of the total site (comprised of the area bounded by Wilson Street, Sullivan Street, Saw Mill Hill and School Streets, excluding the area between Back Street, Sullivan Street and Saw Mill Hill) to be open space. This open space will be a combination of larger spaces suitable for public/civic events, greenways and smaller more intimate spaces. Refer to Section 6.4.4 Open Space/Greenways.

6.4.2.6 Building Standards and Features

A. New buildings shall be oriented to the street on which they have frontage, with large windows, covered entries, easy pedestrian access, and little to no setback from the street for business/commercial uses. Buildings with first floor residential units shall be set back with small yards and/or porches and primary entrances facing the street. While not required, garages are encouraged for residential structures but shall be located in back of or to the side of the buildings.
B. Building designs and construction shall meet all current energy codes and strive for near net zero. See Section 6.4.6 Energy and Sustainability.
C. Best practices for storm water management and low-impact design are required. See Section 6.4.7 Storm water.
D. Building materials, including siding and trim, shall be reviewed and approved by the Planning Board and shall be found consistent with the Design Guidelines as adopted by the Town.
E. Residential uses on the first floor of a building shall be allowed in nonconforming structures in existence prior to May 12, 2015. However, first floor residential uses of nonconforming structures shall not be allowed if the building's footprint is expanded by 10% or more.
F. All first-floor residential uses in new buildings with frontage on the new main street shall:

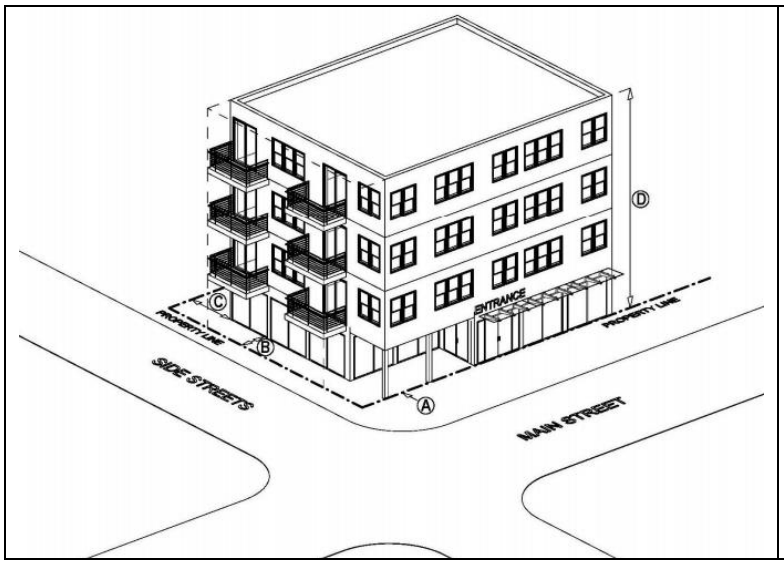
- be reviewed by the Planning Board as a conditional use; and
- be Consistent with the terms of the Comprehensive Plan, which includes the Berwick Downtown Vision Report and Implementation Plan.
- not exceed a 4:1 ratio of residential to non-residential use measured by constructed floor space. This statistic is tracked by the Planning Department and updated as new permits are issued.

  This ratio pertains to the 7.7-acre parcel formerly known as Prime Tanning and structures contained with frontage on Wilson Street, School Street, and Sullivan Street.

6.4.3 Dimensional Requirements

The following Figures and Tables set forth the dimensional requirements and design standards for structures, parking and external elements within the Village Overlay District.

Figure 5: VILLAGE OVERLAY DISTRICT BUILDING PLACEMENT



A- FRONT SETBACK- MAIN STREET, SULLIVAN STREET, WILSON STREET, SCHOOL STREET

B- FRONT SETBACK- ALL OTHER STREETS

C- SIDE SETBACK

D- BUILDING HEIGHT

BUILDING PLACEMENT (PRINCIPAL BUILDING)		
Front Setback: Main Street, Sullivan Street, Wilson Street and School Street	0 feet to 5 feet setback for non-residential uses except for restaurants which propose outdoor dining which shall have a front setback of between 10 and 15 feet. 5 feet to 15 feet setback for residential uses depending on whether porches or front yards or both are proposed.	**A**
Front Setback: All other streets	Equal to the average setback for existing buildings within the same block.	**B**
Front Setback, Secondary Street: (Corner Lot)	0 feet to 10 feet setback for non-residential uses except for restaurants which propose outdoor dining which shall have a setback between 10 and 15 feet. 5 to 10 feet for residential uses	**B**
Side Setback:	0 to 5 feet (2)	**C**
Rear Setback:	10 feet minimum (2)	
Frontage Build out:	75% minimum at front setback	

Notes:

(1) Building height shall not exceed immediately adjacent existing residential buildings by more than one story unless the existing building will be separated from the proposed building by more than 50 feet.

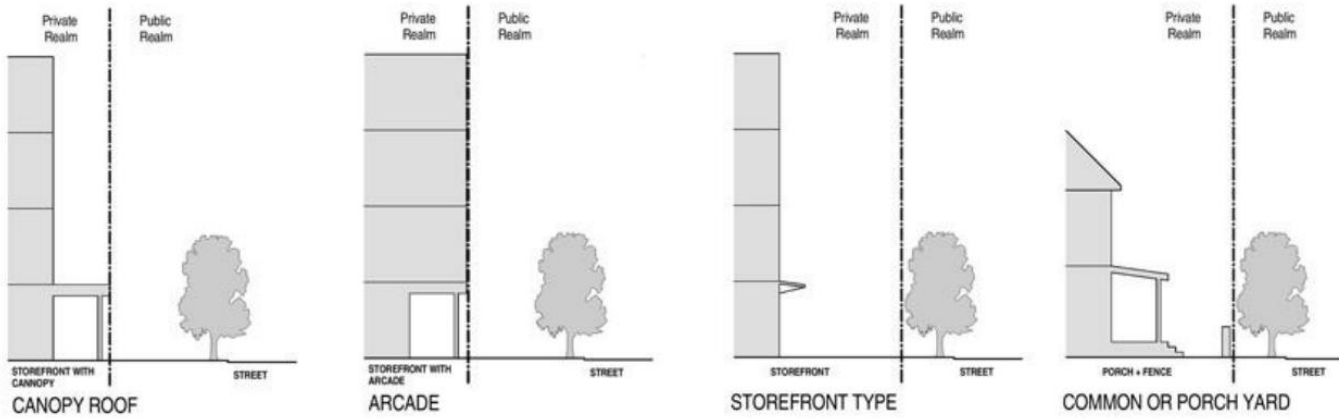
(2) When a building is constructed adjacent to an existing single-family residence, the applicable side or rear setbacks shall not be less than 10 feet.

LOT OCCUPATION		
Maximum lot coverage	95%	
Lot Width	18 feet minimum, 150 feet maximum	

BUILDING FORM (PRINCIPAL BUILDING)		
Maximum building footprint	15,000 square feet	
Building Height:	2 story minimum, maximum of 4 stories/45 feet excluding unlivable attic space or as approved by Berwick Fire Department (see Note (1) above)	**D**
Entries	Primary entry door is encouraged along ground story facade facing the street on which the building has frontage.	
Façade Windows	20%-70% - first floor commercial uses must have 70% except for professional offices or financial or insurance services offices	
Front Façade Wall	Blank lengths of wall exceeding 12 linear feet are prohibited.	
Roof type	Gable, hip, flat	

BUILDING PLACEMENT (ACCESSORY)	
Front setback:	Principal building setback + 20 feet at minimum
Side setback:	0 feet minimum
Rear setback:	5 feet minimum

FIGURE 6: BUILDING SECTION- FRONTAGE TYPES



EXTERNAL ELEMENTS	
Fencing (residential):	A front yard fence, a minimum of 2 feet and a maximum of 4 feet in height is encouraged to maintain spatial edge of street. No chain link, vinyl, split rail, wire, or barbed wire is allowed.
Access:	A vehicle entry way to a parking or loading area shall be a maximum width of 18 feet. Pedestrian access from parking areas, garages or parking structures shall exit directly to a frontage line except for underground parking accommodations.
Building Projections:	No part of any building, except overhanging eaves, awnings, balconies, bay windows, and other architectural features shall encroach beyond the minimum front setback line.
Landscaping:	Landscaping is encouraged but shall not be an impediment on streets, sidewalks or travel ways. Street trees are encouraged. See Section 6.4.5

PARKING	
Residential	Vehicle parking areas shall be located only on driveways, in garages or designated parking areas and shall not extend into the street right of way or sidewalk. Residential parking areas and/or garages shall be located to the rear of the building whenever possible or to the side if rear location isn't achievable. Screening and/or fencing is required for parking areas along a street. Parking areas larger than 10 spaces require additional

	landscaping. See Section 6.4.3
Commercial	No on-site or off-street parking (see Section 6.4.3.2 below) is required for certain commercial uses, see Section 6.4.3. However, if on-site or off-street parking is required or is to be provided, such parking shall be located to rear of the property to the greatest extent possible. Parking to the side is limited to no more than 40% of the lot width. Screening and/or fencing is required for parking areas along a street. Parking areas larger than 10 spaces require additional landscaping. See Section 6.4.3.
Low-Impact Manufacturing	Parking shall be located to rear of the property to the greatest extent possible. Parking to the side is limited to no more than 40% of the lot width. Screening and/or fencing is required for parking areas along a street. Parking areas larger than 10 spaces require additional landscaping. See Section 6.4.3.

6.4.4 Parking

Article 7.7 for parking requirements shall apply except as noted below.

6.4.4.1 Parking Waivers

The Planning Board may waive or adjust all requirements for parking within the Village Overlay District when it is not possible or in the best interest of the Town to meet the requirements.

6.4.4.2 Definitions

For the purposes of the Village Overlay District, the following definitions apply:

Off-street parking means parking located in a parking area or lot which is shared with other buildings and is not located on the lot for which the use is proposed

On-site parking means parking provided on the same lot as the building for which the proposed use is located.

On-street parking means parking along either a proposed or existing street.

6.4.4.3 General Parking Standards for Commercial, Office, Mixed-Use or Multi-family Structures in the Village Overlay District

A. On-street parking along the new main street shall be parallel parking only.
B. All off-street or on-site surface parking areas shall be located to the rear of the building. If this is not possible, as determined by the Planning Board, the parking area shall be to the side of the building.

C. No off-street or on-site surface parking area may contain greater than 30 parking spaces.
D. All off-street and on-site surface parking areas which are not located behind a building or are located along a street must be screened from the street (see Section 6.4.5 Landscaping).
E. Any off-street or on-site parking area which contains greater than 10 spaces is required to have additional landscaping (see Section 6.4.5 Landscaping)
F. Shared parking is encouraged. A plan describing how shared parking would work is required as part of application that proposes such parking.

6.4.4.4 Parking Standards for Certain Uses

A. Retail uses located on the first floors of mixed-use buildings are not required to have on-site parking. If on-site parking is proposed for a retail use, the standards in 6.4 shall apply.

B. Restaurants are not required to have on-site parking if they will seat 40 or fewer people. If on-site parking is proposed for such a restaurant use, the standards in 6.4 shall apply.

6.4.5 Open Space/Greenways

A. Objectives

The Village Overlay District shall include open spaces both public and private. Open space means landscaped green areas designed for a purpose such as civic gatherings, outdoor performances, playgrounds, or sitting. These open spaces may or may not also contain hardscaped or paved walkways, seating areas, performing areas or sidewalks. Open space which may include a walkway and primarily exists to connect from one place to another is a greenway. A continuous greenway shall connect the former tannery site to the Salmon Falls River to the south and to the open space adjacent to the former Estabrook School to the north. Such greenway may connect along the way to other open space.

Redevelopment of the former tannery site within the Village Overlay District requires 25% of the total site (comprised of the area bounded by Wilson Street, Sullivan Street, Saw Mill Hill and School Streets, excluding the area between Back Street, Sullivan Street and Saw Mill Hill) to be open space.

Developers shall coordinate with the Town on locations of open space, greenways and connections to adjacent community spaces, seating areas, residential housing and playgrounds.

B. Key Design Features

1. Sustainably landscaped, using drought-tolerant and when possible, native plantings
2. Shade trees
3. Benches
4. Continuous greenway through former tannery site
5. Green infrastructure and best practices storm water management, such as rain gardens to manage and filter storm water
6. Places to sit, play and gather for all ages
7. Public art

6.4.5.1 Design Standards

A. Greenways or paved/hardscaped walkways must be a minimum of 8 feet wide.
B. The required continuous greenway shall connect the public park at the intersection of Saw Mill Hill and School Streets to the Town owned land on Wilson Street adjacent to the former Estabrook School.
C. Open space shall comprise 25% of the former tannery site comprised of the area bounded by Wilson Street, Sullivan Street, Saw Mill Hill and School Streets, excluding the area between Back Street, Sullivan Street and Saw Mill Hill.
D. All open space which includes seating shall have either trees or shrubs to provide shade and/or a sense of enclosure.
E. Shade trees shall be installed along greenways whenever feasible, as determined by the Planning Board.
F. Greenways and open space shall be included on site plans and landscape plans submitted for consideration by the Planning Board.

6.4.6 Landscaping

A. Objectives

This section consists of landscaping and screening standards for use throughout the Village Overlay District. The Town of Berwick recognizes the aesthetic, ecological, and economic value of landscaping and requires its use to:

- Promote the reestablishment of vegetation in more densely settled areas for aesthetic, health, and urban wildlife reasons;
- Reduce storm water runoff pollution, temperature, and rate and volume of flow;
- Promote compatibility between land uses by reducing the visual, noise, and lighting impacts of specific development on users of the site and abutting uses;
- Unify development, and enhance and define public and private spaces;
- Promote the retention and use of existing non-invasive vegetation;
- Aid in energy conservation by providing shade from the sun and shelter from the wind.

B. Key Design Features

- Diversity of street trees
- Shade trees within the open spaces and along the continuous greenway
- Purpose-driven landscaped open spaces
- Landscaped parking areas
- Fencing • Hardscaped or paved walkways

6.4.6.1 Design Standards

Landscape plans shall be submitted for all projects for the Planning Board's review and approval.

A. Screening for Parking Lots

All parking lots not located behind a building or located along a street shall be screened as follows:

1. By trees and/or shrubs at least six feet tall, composed of at least 50% evergreen plantings, in numbers as determined by the Planning Board or;
2. By a fence between five and six feet tall, constructed of a material matching the finishes of surrounding buildings or;
3. By a combination of a fence four feet tall, constructed of a material matching the finishes of surrounding buildings, and deciduous trees and shrubs

B. Screening for Service and Loading Areas

1. All service areas for dumpsters, compressors, generators and similar items shall be screened as follows:
   a. By a fence six feet tall, constructed of a material matching the finishes of surrounding buildings, surrounding the service area except for the necessary ingress/egress.
2. All areas to be used for loading that are not located within a parking area or that are not located behind a building shall be screened as follows:
   a. By a fence six feet tall, constructed of a material matching the finishes of surrounding buildings, screening it from the street.

C. Landscaping for Parking Lots

All parking lots with more than ten parking spaces must:

1. Plant shade trees within planting strips at least four feet wide around the perimeters of the parking area at 15-20-foot intervals or
2. Provide a four-foot-wide interior planting strip within the parking area and plant shade trees at 15-20-foot intervals.
3. Shade trees shall have at minimum 1.5-inch caliper as measured six inches from the ground

D. Street Trees

1. Street trees shall be of a diversity of deciduous species to avoid decimation in the event of a disease or a pest and shall be non-fruit bearing
2. Street tree species shall be native when possible but shall be tolerant of salt and drought. Tree gators are required for the first several years after a tree is installed.
3. Street tree species chosen shall not be known for weak branching structure or a propensity for shallow roots that may cause sidewalk/walkway heaving.
4. Street trees shall have at minimum two inches caliper as measured six inches from the ground.

E. Types of Plantings (Trees, Shrubs, Perennials, Ornamental Grasses)

1. Native plants are preferred
2. Invasive species as defined by the State of Maine are prohibited

3. Herbaceous perennials and ornamental grasses are encouraged
4. Low maintenance, drought-tolerant plants are encouraged

F. Installation and Maintenance
1. All planting beds and strips shall be mulched either with compost or with a natural-colored bark mulch. No dyed mulches such as orange or red are permitted.
2. All trees shall have tree gators installed to provide moisture during their first years of being planted.
3. Any tree, including a street tree, shrub or plantings that are part of a plan, reviewed and approved by the Planning Board which does not survive for one full year after installation shall be replaced by the applicant at the applicant's cost.
4. Even if drought-tolerant, all plantings will require water at least occasionally the first year or two after planting in order to survive.
5. While plantings should be drought-tolerant, drip irrigation may be used if regulated by a timer and conditions. Irrigation may not be run indiscriminately.

6.4.7 Energy and Sustainability

A. Site design and building placement shall be attentive to the surrounding environment including sun, wind and shade patterns related to existing buildings.
B. Buildings must be built to meet IEEC2015 standards. Building designs and construction shall meet all current energy codes. Energy efficiency with a goal of near net zero is strongly encouraged.
C. Use of solar power, geothermal, and other alternative and sustainable power sources are encouraged.

6.4.8 Storm water

A. All applications in the Village Overlay District shall be required to comply with the Town of Berwick's storm water regulations as found in Berwick's Zoning Ordinance.
B. Green roofs, rain gardens, bioretention cells and other such low impact development is both strongly encouraged and preferred.

6.4.9 Application and Process

6.4.9.1 Application

A. All applications must include:

1. Village Overlay District application form.

2. Site plans which meet the requirements of Article 9.8 and in addition must show:
   a. All greenways, open space and sidewalks, both proposed and existing
   b. The footprint of all existing abutting buildings
   c. All existing or proposed utilities
   d. All on-site parking, loading and service areas

3. Building elevation drawings showing all four sides of the building including details such as windows, doors, trim, etc.
4. A materials list to include the type of siding, roofing and trim.
5. Landscape plan as a separate plan if a parking area and/or open space area, either public or private is proposed. Such plan shall include a planting list and hardscaping and/or fencing details.
6. A storm water management plan prepared in accordance with Article 7.17 if required.

B. The Planning Board may request additional plans or reports as they deem necessary at any time during the approval process.

6.4.9.2 Process

A. Prior to submitting the application, the Applicant shall meet with the Code Enforcement Officer and the Town Planner/Planning Consultant to discuss the application.

B. The process as described in Article 9.8 Conditional Use Permits and Site Plan Review shall be followed unless otherwise noted.

C. The Planning Board may, at the Applicant's expense, hire an engineer, consultant or other professional to review the plans. The Applicant shall be given an estimate of the cost of such services and shall submit that sum to the Town before being placed on the agenda for further discussion with the Planning Board. Any funds remaining after the Town has paid the review bill in full shall be remitted to the Applicant. If the Planning Board requires additional review or the funds are not sufficient to complete the review, the Applicant shall submit the necessary funds before being placed on the Planning Board agenda. No building permit may be issued until all review costs have been submitted in full by the Applicant to the Town.

6.4.9.3 Waivers

A. Submission Requirements.

1. The Planning Board may waive a submission requirement when it is shown by the Applicant that the circumstances of the site proposed for development are such that the requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect abutting landowners or the general health, safety and welfare of 20 the Town and where the waiver would not have the effect of nullifying the intent and purpose of the official zoning map, any ordinance, or the Comprehensive Plan.

2. The Applicant shall submit a written request and the reason for the waiver at the time of application submission.

3. The Board shall consider and accept or reject each waiver request separately. Each approved waiver request and the special circumstances which the Board considered before granting the waiver shall be included in written Findings of Fact.

B. Dimensional Requirements

1. Any request for variance of any dimensional requirements under this Ordinance shall be subject to the requirements for applications for variance under the Town's Zoning Ordinance and as required by 30-A M.R.S. § 4353(4) or any successor statute and shall be decided by the Town's Zoning Board of Appeals.

6.5 Density on Division of Land.

The maximum net residential density allowable for any division of land or for construction or placement of more than one dwelling unit on a single parcel of land shall be calculated on the basis described in the table below. For example, in developments where sewer service is not being provided, all of the well-drained and moderately well-drained land may be included in the density calculations, plus one quarter of the poorly drained land. Development on divided land shall not occur in percentages greater than those listed in the table below.

Land Which May Be Included as Suitable Land When Calculating Net Residential Density*

	Excessively drained, well drained and moderately well-drained (percent)	Poorly drained and somewhat poorly drained (percent)	Very poorly drained (percent)	Slopes greater than 25% (percent)
Public sewer	100	50	0	25
No public sewer	100	25	0	0

*Land as designated by the United State Department of Agriculture Soil Conservation Service National Cooperative Soil Survey. A high intensity soil survey by a licensed soil scientist may be required by the Planning Board or Code Enforcement Officer.

ARTICLE VII PERFORMANCE STANDARDS -- GENERAL REQUIREMENTS

The following standards shall apply to all uses, both conditional and permitted, as appropriate in the various districts. See Article XIV for standards in the shoreland zone.

7.1 Air Emissions.

Emission of dust, dirt, fly ash, fumes, vapors or gases which could be injurious to humans, animals or vegetation, detrimental to the health and safety of adjoining or nearby properties or which could soil or stain persons or property, at any point beyond the lot line of the commercial or industrial establishment creating that emission, shall not be permitted. Any air emissions must meet all applicable state and federal statutes.

7.2 Buffer Areas.

Any non-residential building or use established in or abutting a residential district or use, shall provide a landscaped buffer strip to visually screen the use. Where no natural vegetation can be maintained or due to varying site conditions, the landscaping may consist of fences, walls, tree plantings, hedges or combinations thereof. The buffering shall be sufficient to minimize the impacts of any kind of potential use such as loading and unloading operations, outdoor storage areas, vehicle parking, mineral extraction or waste collection and disposal areas. Where a potential safety hazard to small children could exist, physical screening/barriers shall be used to deter entry to such premises. The buffer areas shall be maintained and vegetation replaced to insure continuous year-round screening.

7.3 Explosive Materials.

No flammable or explosive liquids, solids or gases used for commercial or industrial purposes shall be stored in bulk above ground unless they are located at least 75 feet from any lot line or 40 feet for underground storage and all materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations.

7.4 Glare.

Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce harmful effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings. Direct or indirect illumination shall not exceed 0.5 footcandles upon abutting residential properties.

7.5 Landscaping.

The landscape shall be preserved in its natural state insofar as practical by minimizing tree removal and grade changes in keeping with the general appearance of neighboring developed areas. Landscaping shall be designed to soften, screen, or enhance the physical design of structures and parking areas to avoid the encroachment of the proposed use on abutting land uses. All parking lots shall be landscaped along the property boundaries with shrubbery, trees and other landscape materials.

7.6 Noise.

The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity shall be limited by the time period and land use district listed below. Sound levels shall be measured at least four feet above ground at the property boundary.

Sound Pressure Level Limits
(Measured in dB(A) scale)

	7 a.m. to 10 p.m.	10 p.m. to 7 a.m.
Residential Districts	60	50
Industrial/Commercial Districts	75	70

The level specified may be exceeded by ten dB(A) for a single 15-minute period per day. Noise shall be measured by a meter set on the A-weighted response scale, slow response. The meter shall meet the American National Standards Institute (ANSI S1 4-1971) "American Standard Specification for General Purpose Sound Level Meters."

No person shall engage in activities on a site abutting any residential use between the hours of 10 p.m. and 7 a.m., which exceed those limits established for residential districts. Otherwise the following activities shall be exempt from these regulations.

A. Sounds emanating from construction and maintenance activities conducted between 7 a.m. and 10 p.m.

B. Sounds emanating from safety signals, warning devices, emergency pressure relief valves and other emergency activities.

C. Sounds emanating from traffic on public transportation facilities.

7.7 Odor

No use may, as a result of normal operation, regularly emit odors that are offensive or harmful by reason of their character, intensity, or duration, and that are perceptible beyond the lot line. No odor may be considered offensive if it is commonly associated by way of character, intensity, or duration with a permitted use in the zoning district in which it is located. Odors commonly associated with a permitted use may not be perceptible beyond the zoning district boundary unless the use is permitted in an adjacent zoning district.

7.8 Off-Street Parking and Loading.

A. General.

1. A permitted use in any district shall not be extended, and no structure shall be constructed or enlarged, unless off-street automobile parking space is provided in accordance with the following requirements.

2. Parking areas with more than two parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.

3. Each off-street parking area shall have no more than two openings onto the same street, each opening not to exceed 26 feet in width.

4. Required off-street parking for all land uses shall be located on the same lot as the principal building or facility.

5. Off-street parking and loading spaces for non-residential uses, where not enclosed within a building, shall be effectively screened from view by continuous landscaped area not less than six feet in height, unless waived by the Planning Board for expressed reasons, along exterior lot lines adjacent to residential properties and all public roads, except that driveways shall be kept open to provide visibility for entering and leaving. No off-street parking and loading shall be

permitted within the front setback or any setback adjoining a public street, except as specifically authorized in this ordinance.

6. The joint use of a parking facility by two or more principal buildings or uses may be approved as an administrative appeal by the Board of Appeals where it is clearly demonstrated that said parking facilities would substantially meet the intent of the requirements by reasons of variation in the time of peak hour use by patrons or employees of such establishments.

7. Parking spaces shall be provided as required and made available for use prior to the issuance of the Certificate of Occupancy.

8. Parking areas shall be designed to meet the stormwater performance standards in Section 7.17, and to meet the *Stormwater Management in Maine* manual, published by the Maine Department of Environmental Protection, January 2006, where applicable. Privately owned stormwater management facilities shall be maintained in accordance with Section 7.23.

B. Additional Requirements for Non-Residential Uses.

1. Access points from a public road to non-residential uses shall be so located as to minimize traffic congestion and to avoid generating traffic on local access streets of a primarily residential character.

2. All driveway entrances and exits shall be kept free from visual obstructions higher than three feet above street level for a distance of 25 feet measured along the intersecting driveway and street lines in order to provide visibility for entering and leaving vehicles.

3. Loading facilities shall be located entirely on the same lot as the building or use to be served so that trucks, trailers, and containers shall not be located for loading or storage upon any town way.

4. The following minimum off-street loading bays or berths shall be provided and maintained in the case of new construction, alterations, and changes of use:

a. Retail, office, consumer services, wholesale, warehouse and industrial operations (including waste facilities) with a gross floor area of more than 5,000 square feet require the following:

5,001 to	20,000 sq. ft.	1 bay
20,001 to	50,000 sq. ft.	2 bays
50,001 to	100,000 sq. ft.	3 bays
100,001 to	150,000 sq. ft.	4 bays
150,001 to	300,000 sq. ft.	5 bays

b. Each 150,000 square feet over 300,000 square feet requires one additional bay.

No loading docks shall be on any street frontage. Provision for handling all freight shall be on those sides of any buildings which do not face on any street or proposed streets.

C. Parking Lot Design Criteria (Not applicable to single family dwellings and duplexes)

1. Vehicular Entrance and Exit

a. Entrances and exits should be clearly identified by the use of signs, curb cuts, and landscaping.

b. Entrance/exit design should be reviewed by and be in conformance with the standards of the Maine Department of Transportation traffic personnel for size, location

sight-distance, grade separation, and possible future changes in highway alignment on any affected public roads.

2. Interior Vehicular Circulation

a. Major interior travel lanes should be designed to allow continuous and uninterrupted traffic movement.

b. Enclosures, such as guardrails, curbs, fences, walls, and landscaping, should be used to identify circulation patterns of parking areas and to restrict driving movements diagonally across parking aisles, but not to reduce visibility of oncoming pedestrians and vehicles.

3. Parking

a. Access to parking stalls should not be from major interior travel lanes, and shall not be immediately accessible from any public way.

b. Parking areas shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

c. Parking aisles should be oriented perpendicular to stores or businesses for easy pedestrian access and visibility.

d. All parking spaces and access drives shall be at least five feet from any side or rear lot line, except for the additional requirements in buffer yards.

e. Parking stalls and aisle layout shall conform to the below standards

PARKING ANGLE	STALL WIDTH	SKEW WIDTH	STALL DEPTH	AISLE WIDTH
90°	9'-0"		18'-5"	26'-0"
60°	8'-6"	10'-5"	19'-0"	16'-0" ONE WAY
45°	8'-6"	12'-9"	17'-5"	12'-0" ONE WAY
30°	8'-6"	17'-0"	17'-0"	12'-0"

f. Painted stripes should be used to delineate parking stalls. Stripes should be a minimum of four inches in width. Where double lines are used, they should be separated a minimum of one foot on center.

g. In aisles utilizing diagonal parking, arrows should be painted on the pavement to indicate proper traffic flow.

h. Bumpers and/or wheel stops should be provided where overhang of parked cars might restrict traffic flow on adjacent through roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.

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

Activity	**Minimum Required Parking**
Residential with 2 or more bedrooms with 1 bedroom elderly	 2 spaces per dwelling unit 1.5 spaces per dwelling unit 1 space per dwelling unit
Tourist home, boarding, lodging house, motel, hotel, inn	1 space per room per unit rental and for each employee on the largest shift
Church	1 space per three seats based upon maximum seating capacity
Schools Primary Secondary Post-Secondary	 1.5 spaces per classroom 8 spaces per classroom 1 space for each student and 1 space for each faculty and staff member
Child care facility	1 space for every 4 children the facility is licensed to care for
Private Clubs or Lodges	1 space per every 75 square feet of floor space
Theater, Auditorium, Public	1 space per three seats based upon Assembly Areas
Funeral Home	1 space for every 100 square feet of floor space
Medical Care Facilities	1 space for every three beds and every two employees on the maximum working shift
Medical Offices (MD's, OD's, Dentists)	10 spaces for each doctor, dentist, or other medical practitioner
Veterinarian clinic, kennel	5 spaces per veterinarian
Retail and Service Businesses	1 space for every 150 square feet of floor space
Barber/beauty shop	4 spaces per chair
Restaurant	1 space per three seats based upon maximum seating capacity
Industrial Businesses	1 space per employee on the maximum working shift
Warehouse, wholesale business	1 space per 500 sq. ft. floor area
Flea Market	3 spaces per table
Mixed Use	Total of individual uses
Automobile repair garages and gasoline filling stations.	5 spaces for each bay or area used for repair work
Library, museum, art gallery	1 space for each 150 square feet of floor space
Marina	1 space for each boat slip and mooring
Commercial recreation facility, fitness spa	1 space for each 100 square feet of floor area
Waste facility	1 space per employee on the maximum working shift

Notes:

1. Where the calculation of the aforementioned parking spaces results in a fractional part of a complete parking space, the parking spaces required shall be construed to be the next highest number.

2. The above are minimum standards, and additional parking spaces shall be required if these prove to be inadequate. However, within the V/C and SC/I Districts, where a new use or expanded use in an existing building cannot meet the above parking standards, the Planning Board may, as a conditional use in accordance with this chapter, waive the above requirements.

3. Where floor space is to be used in calculating the number of required parking stalls, gross floor space shall be used unless otherwise noted.

7.9 Refuse Disposal.

The applicant shall provide for the disposal of all solid and liquid wastes on a timely basis and in an environmentally safe manner. The Planning Board shall consider the impact of particular industrial or chemical wastes or by-products upon the town's facilities (in terms of volume, flammability or toxicity) and may require the applicant to dispose of such wastes elsewhere, in conformance with all applicable state and federal regulations. The 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.

7.10 Traffic.

Proposed developments shall provide for safe access and egress to roads. Safe access shall be assured by providing an adequate number and location of access/egress points with respect to sight distances, intersections, and other traffic generators. The proposed development shall not have an unreasonable impact on local roads by degrading the levels of service and shall assure safe interior circulation patterns by separating vehicular and pedestrian traffic within the site. Access/egress points shall be designed in accordance with the following safe sign distances.

Speed Limit	Recommend	Minimum
25 mph	250 ft.	175 ft.
30 mph	300 ft.	210 ft.
35 mph	350 ft.	245 ft.
40 mph	400 ft.	280 ft.

The Maine Department of Transportation may be consulted on plans reviewed under this ordinance.

7.11 Sewage Provisions.

A. When not serviced by the public sewerage system, the approval of building permit applications shall be subject to presentation of a completed site evaluation form (HHE-200) which evidences adequate soil conditions for sewage disposal.

B. When two or more lots or buildings in different ownership share a common subsurface disposal system, the system shall be owned and maintained in common by an owners' association. Covenants in the deeds for each lot shall require mandatory membership in the association and provide for adequate funding of the association to assure proper maintenance of the system.

C. Industrial or commercial waste waters may be discharged to municipal sewers only and in such quantities and/or of such quality as to be compatible with commonly accepted municipal sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to municipal treatment processes. Pretreatment includes, but is not limited to,

screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution. The disposal of industrial or commercial waste waters by means other than the municipal sewerage system must comply with the laws of the State of Maine concerning water pollution. Wash water or other process water carrying stone dust, stone particles, silt or other mineral matter will not be accepted into the municipal system.

D. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules.

E. Within the R-1 District, any new proposed subdivision shall be served by public sewer at the expense of the applicant or by negotiated agreement with the Berwick Sewer District. Within the R-1 District any new residential dwelling unit or commercial use requiring a building permit shall be served by public sewer.

F. When a lot is not serviced by public sewage disposal, or unless the lot is part of a cluster development served by a common subsurface disposal system, the following standards shall apply:

a. Each proposed lot must be served by a septic system located within its boundaries.
b. If the depth to a limiting factor, as defined by the above rules is less than 24 inches, both the septic system and a replacement system site must be located within each proposed lot. The reserve area shall be shown on the plan and restricted so it will not be built on.
c. Septic systems serving a structure on one lot are not allowed to be located on abutting or neighboring lots.
d. In no instance shall a disposal area be on a site that requires a New System Variance from the Subsurface Wastewater Disposal Rules.

7.12 Setbacks and Screening.

A. Exposed storage areas, exposed machinery, sand and gravel extraction operations, and areas used for the storage or collection of discarded automobiles, auto parts, metals or any other articles of salvage or refuse, shall have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge six feet or more in height) to provide a visual buffer sufficient to minimize their impact on other land uses and properties in the area.

B. Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.

7.13 Signs.

A. General Requirements

All signs must be stationary and permanently installed except where exempted by the ordinance. No sign shall be comprised of or illuminated by intermittent light except digital public service messages such as time, date, temperature, etc. All lighting shall be hooded or shielded to prevent direct illumination of public streets or abutting properties. Projecting signs shall maintain a minimum height clearance of eight feet above ground level, project only at an angle 90 degrees from the surface, and not extend more than four feet. The sign face shall not exceed six square feet per side, and the length to width ratio shall not exceed 2:1.

B. The following signs are exempted from land use requirements: temporary signs, memorial tablets, public notices, public safety signs, real estate signs, national and state flag, religious symbols or insignias, historical plaques, house numbers, political signs, interior signs, motor vehicle signs, service club road signs.

C. Signs existing at the time of enactment of these regulations may be continued and maintained but not enlarged or replaced except in conformity with these regulations.

In the Shoreland Commercial Industrial (SC/I) District, commercial signs may not exceed 40 square feet in area when mounted flat against the building surface. Such signs, individual and collectively, may at no time cover more than 20% of the gross surface area of the building face on which they are mounted. On each premise only one sign per occupancy may be affixed to the building exterior, except occupancies which face more than one public way may have one attached sign on each side of the building which faces a public way. The total signage area of all signs, identifying goods or services offered on the premises, per business shall not exceed a total of 100 sq. ft., except for corner lots which may double this amount.

E. Except for the Shoreland Commercial Industrial (SC/I) District or as otherwise provided in this ordinance, signs shall conform to the following requirements:

1. Signs relating names as well as goods and services sold on the premises shall be permitted, provided that such signs shall not exceed six square feet in area and shall not exceed two signs per premises.

2. Residential users may display a single sign not over three-square feet in area relating to the sale, rental, or lease of the premises.

3. Signs relating to trespassing and hunting shall be permitted without restriction as to number, provided that no such sign shall exceed two square feet in area.

4. Signs relating to public safety shall be permitted without restriction.

5. No sign shall extend higher than 20 feet above the ground.

6. Signs may be illuminated internally or externally by shielded, non-flashing lights.

7. The time for the message to change shall not exceed three (3) seconds nor fade into the subsequent message.

SIGN STANDARDS

Permitted Signs	Districts	Maximum Sign Area Posted Speed Limit	Post or Free Standing	Maximum Height	Maximum Wall Sign
Address	All (6)	n/a	1 sq. ft.	6 ft.	1 sq. ft.
Contractor	All (6)	n/a	12 sq. ft.	6 ft.	12 sq. ft.
Development	All (6)	n/a	12 sq. ft.	6 ft.	Not permitted
Real Estate	All (6)	n/a	6 sq. ft.	6 ft.	6 sq. ft.
Residential	All (6)	n/a	12 sq. ft.	6 ft.	12 sq. ft.
					% Signable Area (2)
Commercial	RC/I, V/C, SC/I	25 mph	32 sq. ft.	12 ft.	20%
	RC/I, V/C, SC/I	30 mph	40 sq. ft.	14 ft.	20%
	RC/I, V/C, SC/I	35 mph	45 sq. ft.	16 ft.	20%
	RC/I, V/C, SC/I	45 mph	64 sq. ft.	20 ft.	20%
	RC/I, V/C, SC/I	50 mph	75 sq. ft.	20 ft.	20%
	RC/I, V/C, SC/I	55 mph	88 sq. ft.	20 ft.	20%
Special Events	V/C	n/a	n/a	n/a	Refer to C/I
Travel Directory	V/C	n/a	64 sq. ft.	12 ft.	40%

Notes:

(1) All wall signs must be located below the cornice line or second story window sill, whichever is lower.

(2) Wall sign graphics may only be installed in the "signable area" of the facade (an area excluding window or door openings, or architectural details or ornamentation).

(3) Post signs must be separated by at least 100 feet and are permitted for buildings setback 35 feet or more.

(4) Permanent signs affixed to windows may not exceed 25 percent of the window area

(5) The sign area of a post sign shall be based on only one side of a two-faced sign.

(6) Does not include Stream Protection, Limited Residential and Resource Protection Districts

7.14 Soils.

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties.

The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions,

and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

7.15 Erosion and Sedimentation Control.

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall require a written soil erosion and sedimentation control plan. Erosion and sedimentation control plans shall be designed in accordance with the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

a. Mulching and revegetation of disturbed soil.

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

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

2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible. The top or bottom of a cut or fill shall not be closer than ten feet to an adjoining property unless otherwise mutually agreed to by the affected landowner and town but in no instance shall said cut or fill exceed a three-to-one slope.

3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity.

The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.

4. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a 25-year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

7.16 Storage.

All materials stored outdoors shall be stored in such a manner as to prevent the breeding and harboring of insects, rats or other vermin. This shall be accomplished by enclosures in containers, raising materials above ground, separation of material, prevention of stagnant water, extermination procedures or other means.

7.17 Storm Water Management.

All new construction and development, whether or not served by a storm water collection and transportation system, shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm water.

For developments that create less than one acre of disturbed area, the Basic Performance Standards specified in the Maine Department of Environmental Protection *Chapter 500: Stormwater Management, Appendix A-Erosion and Sedimentation Control* rules shall be utilized.

For developments that create one or more acres of disturbed area, the stormwater management provisions specified in Chapters 500 and 502 of the Maine Department of Environmental Protection Stormwater Management rules will apply.

All development plans shall define maintenance requirements and identify parties responsible for maintenance of the storm water control system, in accordance with Section 7.23.

Storm water runoff systems should be designed to facilitate aquifer recharge when it is advantageous to compensate for ground water withdrawals. Conversely, designs should avoid recharge where ground water effects might be harmful. Design of permanent storage facilities should consider safety, appearance, recreational use, and cost and effectiveness or maintenance operations, in addition to the primary storage function. Natural overland flows, and open drainage channel and swale locations should be the preferred alignments for major components of a residential drainage system. The use of enclosed components (such as underground piping) should be minimized.

7.18 Toxic and Noxious Discharges.

No use shall for any period of time discharge across the boundaries of the lot wherein it is located toxic and noxious matter in environmental concentrations in excess of standards set forth by the Environmental Protection Agency and/or the Maine Department of Environmental Protection.

7.19 Water Quality.

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous, or solid materials of such nature, quality, obnoxiousness, toxicity, or temperature that run-off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or submerged debris, soil or scum, color, odor,

taste, or unsightliness, or be harmful to human, animal, plant, or aquatic life. All outdoor storage facilities for fuel, chemicals, chemical or industrial wastes, and toxic biodegradable raw materials, shall be located on impervious pavement, and shall be completely enclosed by an impervious dike which shall be high enough to contain the total volume of liquid depth during a 25-year storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Storage tanks for "home heating oil" and diesel fuel, not exceeding 275 gallons in size, may be exempted from this requirement, in situations where neither high seasonal water table (within 15 inches of the surface) nor rapidly permeable sandy soils are involved.

7.20 Water Supply.

A. Prior to the issuance of any occupancy permit for any structure with a potable water supply system, a water quality analysis demonstrating that the State of Maine Safe Drinking Water Guidelines are met shall be submitted to the Code Enforcement Officer.

B. Within the R-1 District all subdivisions proposed after the effective date of this ordinance shall be served by public water. Any new residential unit (outside of an approved subdivision) or commercial use requiring a building permit and within 500 feet of the public water line shall be served by public water.

7.21 Access to Lots.

No permit shall be issued to erect any structure on a lot without frontage on a public way unless an access road meeting the following criteria has been constructed within a deeded right of way a minimum of 50 feet in width. The access road shall be constructed to a minimum width of 12 feet if serving one dwelling unit, and 15 feet if serving two dwelling units. The access road shall contain a minimum depth of 15 inches of bank-run gravel and have drainage ditches and culverts at all appropriate points. Such an access road shall serve no more than two dwelling units, except as noted below. Any access road serving three or more dwelling units shall meet the road design and construction standards of the Town of Berwick Road Construction Standards.

If the development is located in the R2, R3 or AP Zone, dead end streets shall remain private until connectivity to other streets may occur except if the road is part of a subdivision approved before the year 2019 and is still considered active by the Planning Department. If the street is connected to another street making it a through way with a second means of egress to a public way and built to town standards it may be petitioned to become a public way.

More than two dwelling units may be allowed on a discontinued road for those lots created prior to March 14, 1987, provided that the road is brought up to the standards for two dwelling units as described above. One dwelling unit shall be allowed per lot of record, and an additional dwelling unit shall be allowed per lot of record provided that:

A. the road standards described above are met (minimum width of fifteen feet, minimum depth of fifteen inches of bank-run gravel, and have drainage ditches and culverts at all appropriate points), and

B. the applicable zone road frontage and lot dimensions requirements are met, and

C. the building permit is issued only to a child of the record owner (this precludes any additional permits for those lots of record owned by other than an individual person or persons), and

D. access to the additional dwelling unit shall be from the discontinued road and no other right of way, and

E. a survey of the lot done by a State of Maine registered surveyor is recorded in the York County Registry of Deeds prior to the issuance of the additional building permit, said registered survey to contain the following provisions:

1. No further subdivision of this lot is permitted without compliance with the Town of Berwick subdivision regulations then in existence.

2. No further conveyance of this lot is permitted for five years from the date of the recording of the survey.

3. The discontinued road is not maintained nor plowed by the Town of Berwick. The Town of Berwick is not responsible for any upgrading or plowing of the discontinued road. Any upgrading or plowing of the discontinued road will be at the expense of the lot owner.

F. the conveyance creating a lot to the child of the record owner shall be recorded in the York County Registry of Deeds prior to the issuance of the additional building permit and said conveyance shall also contain the three provisions set forth in paragraph E. above as survey requirements, and

G. the additional building permit issued contain the following provision:

NOTICE

THE DISCONTINUED ROAD IS NOT MAINTAINED NOR PLOWED BY THE TOWN OF BERWICK. THE TOWN OF BERWICK IS NOT RESPONSIBLE FOR ANY UPGRADING OR PLOWING OF THE DISCONTINUED ROAD. ANY UPGRADING OR PLOWING OF THE DISCONTINUED ROAD WILL BE AT THE EXPENSE OF THE LOT OWNER.

7.22 Non-Storm Water Discharge

A. Purpose. The purpose of this provision is to provide for the health, safety, and general welfare of the citizens of Berwick through the regulation of non-storm water discharges into Berwick's storm drainage system as required by federal and state law. This provision establishes methods for controlling the introduction of pollutants into Berwick's storm drainage system in order to comply with requirements of the federal Clean Water Act and state law.

B. Objectives. The objectives of this provision are:

1. To prohibit unpermitted or unallowed non-storm water discharges to the storm drainage system; and

2. To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this provision.

C. Applicability.

This Provision shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

D. Responsibility for Administration.

The Code Enforcement Officer is the enforcement authority who shall administer, implement, and enforce these provisions.

E. Prohibition of Non-Storm Water Discharges.

1. General Prohibition. Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges unallowed non-storm water discharges to the storm drainage system.

2. Allowed Non-Storm Water Discharges. The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system are allowed as long as they do not cause or contribute to a violation of the State's water quality standards:

a. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing; and dechlorinated swimming pool discharges.

b. Discharges specified in writing by the Code Enforcement Officer as being necessary to protect public health and safety; and

c. Dye testing, with verbal notification to the Code Enforcement Officer prior to the time of the test.

3. Exempt Person or Discharge. This provision shall not apply to an exempt person or discharge, except that the Code Enforcement Officer may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

F. Suspension of Access to the Municipality's Small MS4.

The Code Enforcement Officer may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharges to the storm drainage system. If the person fails to comply with a suspension order issued in an emergency, the Code Enforcement Officer may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons, provided, however, that in taking such steps the Code Enforcement Officer may enter upon the premises that are the

source of the actual or threatened non-storm water discharge to the storm drainage system only with the consent of the premises' owner, occupant or agent, or pursuant to an administrative search warrant.

G. Monitoring of Discharges.

In order to determine compliance with these provisions, the Code Enforcement Officer may enter upon and inspect premises subject to this provision at reasonable hours with the consent of the premises' owner, occupant or agent: to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

H. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of these provisions. Whenever the Code Enforcement Officer believes that a person has violated these provisions, the Code Enforcement Officer may enforce these provisions in accordance with 30-A M.R.S.A. § 4452.

1. Notice of Violation. Whenever the Code Enforcement Officer believes that a person has violated these provisions, the Code Enforcement Officer may order compliance with these provision by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

a. The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4;

b. The cessation of discharges, practices, or operations in violation of this provision;

c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or

d. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

2. Penalties/Fines/Injunctive Relief. Any person who violates these provisions shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates these provisions also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of these provisions; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

3. Consent Agreement. The Code Enforcement Officer may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely

abatement of the violation(s) of these provisions for the purposes of eliminating violations of these provisions and of recovering fines, costs and fees without court action.

4. Appeal of Notice of Violation. Any person receiving a notice of violation or suspension notice may appeal the determination of the Code Enforcement Officer to the Board of Appeals in accordance with the provisions of Article X of the Berwick Land Use Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Code Enforcement Officer. A suspension under Section 6 of these provisions remains in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

5. Enforcement Measures. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Code Enforcement Officer's decision, then the Code Enforcement Officer may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

6. Ultimate Responsibility of Discharger.

The standards set forth herein are minimum standards; therefore, these provisions do not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This provision shall not create liability on the part of the municipality, or any officer agent or employee thereof for any damages that result from any person's reliance on these provisions or any administrative decision lawfully made hereunder.

I. Severability.

These provisions are hereby declared to be severable. If any provision, clause, sentence, or paragraph of these provisions or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of these provisions.

7.23 Post-Construction Stormwater Management Article.

A. Purpose

The purpose of this Post-Construction Stormwater Management Article is to provide for the health, safety, and general welfare of the citizens of the Town of Berwick through review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by federal and State law. This Article establishes methods for post-construction stormwater management in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit.

B. Objectives

This Article seeks to meet the above purpose through the following objectives:

1. Reduce the impact of post-construction discharge of stormwater on receiving waters; and

2. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection (MEDEP) pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

C. Applicability

1. In General. This Article applies to all Development within the Municipality.

2. Exception. This Article does not apply to Development on a lot, tract or parcel less than one acre in area where that lot, tract or parcel is part of a subdivision that is approved under this Article; said lot, tract or parcel shall not require separate review under this Article, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

D. Post-Construction Stormwater Management Plan Approval

1. General Requirement. No Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for Development to which this Article is applicable shall receive such permit or approval for that Development unless the Municipal Permitting Authority for that Development also determines that the Applicant's Post-Construction Stormwater Management Plan for that Development meets the requirements of this Article.

2. Performance Standards.

a. The Applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the Development through a Post-Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet the standards contained in the MEDEP's Chapters 500 and 502 Rules and shall comply with the practices described in the manual *Stormwater Management for Maine*, published by the MEDEP, January 2006, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.

b. The Applicant may meet the quantity and quality design standards of Chapter 500 and Chapter 502 MEDEP Rules above either on-site or off-site, but where off-site facilities are used, the applicant must submit to the Municipality documentation approved as to legal sufficiency by the Municipality's attorney that the Applicant has a sufficient property interest in the property where the off-site facilities are located -- by easement, covenant or other appropriate legal instrument -- to ensure that the facilities will be able to provide post-construction stormwater management for the Development and that the property will not be altered in a way that interferes with the off-site facilities.

c. Where the Applicant proposes to retain ownership of the Stormwater Management Facilities shown in its Post-Construction Stormwater Management Plan, the Applicant shall submit to the Municipality documentation, approved as to legal sufficiency by the Municipality's attorney that the Applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the stormwater management facilities. Applications for Development requiring Stormwater Management Facilities that will not be dedicated to the Municipality shall enter into a Maintenance Agreement with the Municipality. A sample of this Maintenance Agreement is attached as Appendix 1 to this Article.

d. Whenever elements of the Stormwater Management Facilities are not within the right-of-way of a public street and the facilities will not be offered to the Municipality for acceptance as public facilities, the Municipal Permitting Authority may require that perpetual easements not less than thirty (30) feet in width, conforming substantially with the lines of existing natural drainage and in a form acceptable to the Municipality's attorney, shall be provided to the Municipality allowing access for maintenance, repair, replacement and improvement of the Stormwater Management Facilities. When an offer of dedication is required by the Municipal Permitting Authority, the Applicant shall be responsible for the maintenance of these Stormwater Management Facilities under this Article until such time (if ever) as they are accepted by the Municipality.

e. In addition to any other applicable requirements of this Article and the Municipality's Municipal Code of Articles, any Development which also requires a stormwater management permit from the MEDEP under 38 M.R.S.A. 420-D shall comply with the rules adopted by MEDEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the Municipal Permitting Authority. Where the standards or other provisions of such stormwater rules conflict with municipal ordinances, the stricter (more protective) standard shall apply.

f. For developments that result in new road construction where the facilities will be offered to the Municipality for acceptance, the applicant shall pay an amount equal to three percent (3%) of the road and infrastructure costs, as determined by the Municipality. For any developments that result in privately owned and maintained stormwater management facilities, any persons required to file an annual certification under Section E.1 of this Article shall pay an amount equal to one percent (1%) of the site infrastructure construction costs (parking lots, driveways, utilities, lighting, etc.), as determined by the Municipality.

g. Notice of BMP Discharge to Municipality's MS4. At the time of application, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

E. Post-Construction Stormwater Management Plan Compliance

1. General Requirements. Any Person owning, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan under this Article shall demonstrate compliance with that Plan as follows.

a. That Person shall, at least annually, inspect, clean and maintain the Stormwater Management Facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.

b. That Person shall repair any deficiencies found during inspection of the Stormwater Management Facilities.

c. That Person shall, on or by July 1 of each year, provide a completed and signed certification to the Enforcement Authority in a form identical to that attached as Appendix 2 to this Article, certifying that the Person has inspected, cleaned and maintained the Stormwater Management Facilities, describing any deficiencies found during inspection of the Stormwater Management Facilities and certifying that the Person has repaired any deficiencies in the Stormwater Management Facilities noted during the annual inspection.

2. Right of Entry. In order to determine compliance with this Article and with the Post-Construction Stormwater Management Plan, the Enforcement Authority may enter upon property

at reasonable hours with the consent of the owner, occupant or agent to inspect the Stormwater Management Facilities.

F. Enforcement

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Article or of the Post-Construction Stormwater Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Article or the Post-Construction Stormwater Management Plan, the Enforcement Authority may enforce this Article in accordance with 30-A M.R.S.A. § 4452.

1. Notice of Violation. Whenever the Enforcement Authority believes that a Person has violated this Article or the Post-Construction Stormwater Management Plan, the Enforcement Authority may order compliance with this Article or with the Post-Construction Stormwater Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

a. The abatement of violations, and the cessation of practices, or operations in violation of this Article or of the Post-Construction Stormwater Management Plan;

b. At the Person's expense, compliance with BMPs required as a condition of approval of the Development, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or

c. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

2. Penalties/Fines/Injunctive Relief. Any Person who violates this Article or the Post-Construction Stormwater Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Article or the Post-Construction Stormwater Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Municipality for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Article or the Post-Construction Stormwater Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

3. Consent Agreement. The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Article or of the Post-Construction Stormwater Management Plan for the purposes of eliminating violations of this Article or of the Post-Construction Stormwater Management Plan and of recovering fines, costs and fees without court action.

4. Appeal of Notice of Violation. Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Board of Appeals in accordance with Article X of the Berwick Land Use Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal

that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

5. Enforcement Measures. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

G. Severability

The provisions of this Article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Article.

H. Basis

The Town of Berwick enacts this "Post-Construction Stormwater Management Control Article" (the "Article") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems," has listed the Town of Berwick as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Article as part of the Municipality's Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in Development").

7.24 Safety and Sanitation Provisions

All lots shall be maintained in a safe and sanitary condition and shall be kept free of accumulations of trash, garbage, refuse or other noxious materials which may constitute a fire hazard or a danger to health or safety. Any such condition shall be repaired, replaced, or removed.

APPENDIX 1

Maintenance Agreement for
Stormwater Management Facilities

This Maintenance Agreement is made this ___day of _____ 20___ by and between _____ and the Town of Berwick, Maine.

The project name is _____.

The location is: _____, Berwick, Maine.

The project's Tax Map and Lot Numbers are Tax Map Lot_____

The project is shown on a plan entitled "_____" dated_____ and most recently revised on _____, approved by the _____ on _____ and recorded in the _____ County Registry of Deeds in Plan Book _____ Page _____ (the "Project").

WHEREAS, the approval of the Project includes Stormwater Management Facilities which requires periodic maintenance; and

WHEREAS, in consideration of the approval of the Project the Town of Berwick requires that periodic maintenance be performed on the Stormwater Management Facilities;

NOW, THEREFORE, in consideration of the mutual benefits accruing from the approval of the Project by the Town and the agreement of _____ to maintain the Stormwater Management Facilities, the parties hereby agree as follows:

1. _____, for itself, and its successors and assigns, agrees to the following:

(a) To inspect, clean, maintain, and repair the Stormwater Management Facilities, which includes, to the extent they exist, parking areas, catch basins, detention basins or ponds, drainage swales, pipes and related structures, at least annually, to prevent the build up and storage of sediment and debris in the system;

(b) To repair any deficiencies in the Stormwater Management Facilities noted during the annual inspection;

(c) To provide a summary report on the inspection, maintenance, and repair activities performed annually on the Stormwater Management Facilities to the Town Enforcement Authority;

(d) To allow access by Town personnel or the Town's designee for inspecting the Stormwater Management Facilities for conformance with these requirements.

(e) To create a homeowners' association for the purpose of maintaining the Stormwater Management Facilities.

2. Upon creation of the homeowners' association, the homeowners' association shall become responsible for compliance with the terms of this Agreement.

3. This Agreement shall constitute a covenant running with the land, and _____ shall reference this Agreement in all deeds to lots and/or units within the Project.

_____

_____ By: _____
Witness Its:

TOWN OF BERWICK, MAINE

_____ By: _____
Witness Its:

STATE OF MAINE
_____, ss. _____, 20__

Personally appeared the above-named _____ _____, the _____ of _____, and acknowledged the foregoing Agreement to be said person's free act and deed in said capacity.

Before me,

_____
Notary Public / Attorney at Law

Print Name: _____

STATE OF MAINE
_____, ss. _____, 20__

Personally appeared the above-named _____ _____, the _____ of the Town of _____, and acknowledged the foregoing Agreement to be said his/her free act and deed in said capacity.

Before me,

_____
Notary Public / Attorney at Law

Print Name: _____

APPENDIX 2

Annual Stormwater Management Facilities Certification
(to be sent to Municipal Enforcement Authority)

I, _____ (print or type name), certify the following:

1. I am making this Annual Stormwater Management Facilities Certification for the following property: _____ (print or type name of subdivision, condominium or other development) located at _____ (print or type address), (the "Property");

2. The owner, operator, tenant, lessee or homeowners' association of the Property is: _____ (names of owner, operator, tenant, lessee, homeowners' association or other party having control over the Property);

3. I am the owner, operator, tenant, lessee or president of the homeowners' association, or a contractor or consultant hired by the same (circle one);

4. I have knowledge of erosion and stormwater control and have reviewed the approved Post-Construction Stormwater Management Plan for the Property;

5. On _____, 20__, I inspected, cleaned and maintained the Stormwater Management Facilities, including but not limited to parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures required by the approved Post-Construction Stormwater Management Plan for the Property;

6. At the time of my inspection of the Stormwater Management Facilities on the Property, I identified the following deficiencies in the Stormwater Management Facilities:
_____
_____
_____
_____
_____

7. On _____, 20__, I repaired or oversaw the repair of the deficiencies listed above, and when the repairs were completed, the Stormwater Management Facilities were performing in a satisfactory manner.

Date:_____, 20__. By:_____
Signature

_____
Print Name

STATE OF MAINE
_____, ss. _____, 20__

Personally appeared the above-named _____, the _____ of _____, and acknowledged the foregoing Annual Certification to be said person's free act and deed in said capacity.

Before me,

_____
Notary Public/Attorney at Law

Print Name: _____

Mail this certification to the Municipal Enforcement Authority at the following address (to be completed by the Municipality):

_____
_____
_____
_____

ARTICLE VIII PERFORMANCE STANDARDS, SPECIFIC ACTIVITIES AND LAND USES

The following standards shall apply to all uses, both conditional and permitted, as appropriate in the various districts. See Article XIV for standards in the shoreland zone.

8.1 Campgrounds and Tenting Grounds.

Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following (in cases of possible conflict, the stricter rule shall apply):

A. General.

1. A campground must be constructed on at least ten acres of land, and all camping units or structures shall be located at least 200 feet from any residence (except residences belonging to the campground owners).

2. Campsites shall be laid out and screened in such a manner that none are within view from public roads, navigable rivers, existing residences or approved subdivision lots. Any combination of evergreen planting, landscaped earthen berms, or solid fencing may be used to achieve this screening standard when campsites would otherwise be visible from the locations described above.

3. No trailers other than recreational vehicles as defined herein shall be permitted within any campground, temporarily or otherwise. No camping unit shall be stored or exhibited for sale for commercial purposes within the park.

4. Tent sites and sites for recreational vehicles (RVs) shall be laid out so that the density of each developed acre of land does not exceed the standards below (in terms of sites per acre of land, excluding circulation roads):

Tent sites	14 per acre
RV Sites	11 per acre

B. Parking and Circulation.

1. A minimum of 300 square feet of off-street parking plus maneuvering space shall be provided for each recreational vehicle, tent, or shelter site. Recreational vehicles shall be so parked in spaces that:

a. there shall be a minimum of 25 feet between vehicles; and

b. there shall be a minimum of 45 feet between all recreational vehicles/tents and all public rights of way located inside the boundaries of the campground.

2. Vehicular access shall be provided onto a hard-surfaced road adequate for the volume and type of traffic likely to be generated. Grades and sight distances specified in the town's subdivision regulations shall be observed in designing all intersections. Roads shall be constructed of at least 12 inches of bank-run gravel (no stone larger than four inches), two inches crushed gravel (1/2-inch chips) and two applications of liquid asphalt (1/2 gallon per square yard each application). The minimum width of roadways shall be 12 feet for one-way roads and 22 feet for two-way roads. No vehicle parking shall be permitted on the roadway.

C. Health and Safety.

1. Each recreational vehicle, tent, or shelter site shall be provided with a picnic table and trash receptacle. The park management shall dispose of refuse from said containers by transporting the refuse in a closed truck or in enclosed containers or bags to an approved disposal area at least once a week.

2. A campground shall provide water and sewerage systems, sanitary stations, and convenience facilities in accordance with the regulations of the State Plumbing Code. In no case shall less than one toilet, lavatory and shower be provided for each sex for every ten camping and tent sites. All recreational vehicle sites shall be equipped with water and sewage hook-ups, connected to approved distribution or disposal systems.

3. Fire extinguishers capable of dealing with electrical and wood fires shall be kept in all service buildings. A suitable ingress and egress shall be provided so that every campground may be readily serviced in emergency situations. Twenty-four-hour emergency communication service (e.g. telephones) shall be provided.

4. Each campsite shall be provided with a masonry or metal fireplace approved in writing by the fire chief.

D. Planning and Review.

1. Roads, parking, campsites and required facilities shall be planned in accordance with the basic principles outlined below and shall be shown on the proposed plan which is submitted for review and approval as a conditional use.

a. A logical sequence of entry and circulation should be created: entrance, administration and storage, parking, campsites, toilets and laundry, playing fields or shoreline.

b. Campsites should be clustered in groups according to intensity of use (low density, medium density, etc.) and also related to common support service areas (laundries, play areas, etc.) serving a number of campsite clusters. The purpose is to minimize road length, increase accessibility, and preserve open space.

c. Footpaths and roads should follow "desire lines" of pedestrian and vehicular movement between campsites and all jointly used facilities. Parking areas may be grassed, reinforced with open concrete blocks.

d. Access roads shall be laid out as loops to the greatest extent that is practicable, although "cul-de-sacs" or "dead-ends" may be allowed to serve up to 20 campsites.

2. An erosion and sedimentation control plan meeting the standards of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003. In addition to data on soils, slopes and drainage, a vegetation map showing the following items may be required:

a. The major types of vegetation should be identified and described (as to age, height, openness or density, and pattern either natural or reforested).

b. New plantings should be selected to provide screening and shelter, to tolerate existing and proposed site conditions, and to blend compatibility with existing natural vegetation.

c. All vegetative clearing should avoid creating straight line edges between open land and surviving stands.

e. Areas of activity and/or traffic should be sited to avoid wildlife areas (such as thickets for birds and small mammals, or deer yards and trails).

8.2 Home Occupation.

A home occupation shall be permitted if it complies with all of the requirements of this section.

A. The use of a dwelling unit for a home occupation shall clearly be incidental and subordinate to its use for residential purposes.

B. A home occupation shall be carried on by residents of the dwelling unit.

C. A home occupation may not alter the residential character of the structure or neighborhood, nor change the character of the lot from its principal use as a residence.

D. The home occupation shall be carried on wholly within the principal or accessory structures. The outside storage or display of materials or products shall be screened from view from the abutting properties and street.

E. The Performance Standards in Article VII of this ordinance shall apply. If additional parking spaces are provided, they shall be located to the rear or side yard of the principal structure but not within the yard setbacks.

F. One non-illuminated sign, no larger than four square feet may be erected on the premises.

G. The sale of products shall be limited to those which are crafted, assembled, or substantially altered on the premises, to catalog items ordered off the premises by customers and to items which are accessory and incidental to a service which is provided on the premises.

H. A home occupation shall not involve the use of heavy commercial vehicles for delivery from or to the premises.

I. A home occupation shall not create greater traffic than normal for the area it is located in or generate more than 20 vehicle trips/day.

8.3 Hotels and Motels.

For traffic safety on and immediately adjoining each motel or hotel and to assure health, safety and welfare of hotel occupants and of the neighborhood generally, the following land, space, building, traffic, utility, and service design requirements shall be complied with.

A. The minimum lot size for any motel, or hotel shall contain not less than three acres of total area. The minimum frontage shall be ten times the posted speed limit of the most traveled way serving the development but not less than 200 feet lot width at the street and throughout the first 200 feet of depth of said lot back from the street. Access driveways into the development shall be at an angle no less than 30 degrees and no more than 45 degrees to facilitate movement of traffic off the public way and onto the property. Driveways shall be separated by a minimum of 100 feet. The curb radius of the intersection of the driveway to public way shall be no less than 30 feet. Access and egress drives shall not exceed a slope of six percent for less than 60 feet onto the property.

B. No part of any building on a motel lot shall be closer than 60 feet to the front lot line, rear lot line or either side line of such lot. A green space, not less than 20 feet wide, shall be maintained open and green with grass, bushes, flowers or trees all along each side lot line, the rear lot line, the front line of such lot, except for entrance and exit driveways. The green space shall not be used for automobile parking.

C. Buildings on a motel lot shall not cover more than 15 percent of the area of the lot.

D. Each motel rental unit shall contain not less than 200 square feet habitable floor area enclosed by walls and roof, exclusive of any adjoining portions of roofed or covered walkways.

Each motel rental sleeping room shall not be less than 12 by 15 feet horizontal dimensions, exclusive of bath. Each rental unit shall include private bathroom facilities.

E. On each motel/hotel lot one apartment may be provided for resident owner, manager, or other responsible staff person.

F. Hotel building construction plans shall be reviewed and approved by the State Fire Marshal's Office.

G. Parking stalls shall be designed to accommodate the traveling public by a minimum stall width of 11 feet and stall depth of 23 feet for perpendicular stalls. Angled parking stall width and depths shall be increased by ten percent and 25 percent above the standards contained in this ordinance.

H. All motels and hotels shall be connected to the public sewer and water system. Accommodations providing kitchen facilities for the traveling public shall be considered as dwelling units and shall be required to meet the residential density requirements of the appropriate district.

I. Location Restrictions

In Districts R1, R2 & R3 Hotels are allowed only on major highways (Route 236 or Route 9) and subdivisions approved for commercial use.

8.4 Kennels and Veterinary Hospitals.

A. Structures or pens for housing or containing the animals shall be located not less than 100 feet from the nearest residence existing at the time of permit.

B. All pens, runs, or kennels, and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of prevailing winds, the relationship and location of residences and public facilities on nearby properties, and other similar factors.

C. The owner or operator of a kennel shall maintain the premises in a clean, orderly, and sanitary condition at all times. No garbage, offal, feces, or other waste material shall be allowed to accumulate on the premises. The premises shall be maintained in a manner that they will not provide a breeding place for insects, vermin or rodents.

D. Temporary storage containers for any kennel or veterinary wastes containing or including animal excrement shall be kept tightly covered at all times, and emptied no less frequently than once every four days. Such containers shall be made of steel or plastic to facilitate cleaning, and shall be located in accordance with the setbacks required for outdoor runs.

E. If outdoor dog "runs" are created, they shall be completely fenced in, and shall be paved with cement, asphalt or a similar 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 shall be located a minimum distance of 400 feet from nearest residence other than the applicants, and shall have a chimney vent not less than 35 feet above the average ground elevation. The applicant shall also provide evidence that he/she has obtained approval from the Maine Department of Environmental Protection for the proposed incinerator, and that it meets state standards for particulate emissions, flue gas temperature, and duration of required flue temperatures.

G. All other relevant performance standards in Article VII of this ordinance shall also be observed. The Department of Agriculture, Food and Rural Resources Division of Animal Health & Industry Rules Governing Animal Welfare shall apply.

8.5 Mobile Home Parks.

Except as stipulated below, mobile home parks shall meet all the requirements for a residential subdivision, and shall conform to all applicable state laws and local ordinances or regulations. Where the provisions of this section conflict with specific provisions of the Subdivision Regulations for the Town of Berwick, Maine, the provisions of this section shall prevail.

A. Lot Area and Lot Width Requirement.

Notwithstanding the dimensional requirements table located in Section 6.3 of this ordinance, lots in a mobile home park shall meet the following lot area and lot width requirements.

1. Lots served by public sewer:

Minimum lot area:	6,500 square feet
Minimum lot width:	50 feet

2. Lots served by individual subsurface wastewater disposal systems:

Minimum lot area:	20,000 square feet
Minimum lot width:	100 feet

3. Lots served by a central subsurface wastewater disposal system approved by Maine Department of Human Services:

Minimum. lot area:	12,000 square feet
Minimum lot width:	75 feet

4. The overall density of any park served by any subsurface wastewater disposal system shall not exceed one dwelling unit per 20,000 square feet of total park area.

B. Unit Setback Requirement.

1. On lots 10,000 square feet in area or larger, structures shall not be located less than 15 feet from any boundary lines of an individual lot. On lots less than 10,000 square feet in area, structures shall not be located less than ten feet from any boundary lines of an individual lot.

2. On lots which abut a public way either within the park or adjacent to the park, structures shall meet the front setback requirements in the dimensional requirements table in Section 6.3 of this ordinance.

C. Buffering.

If a park is proposed with a residential density at least twice the density of adjacent development in existence, or at least twice the density permitted in the Land Use District in which the park is located if the neighboring land is undeveloped, the park shall be designed with a continuous landscaped area not less than 50 feet in width which shall contain no structures or streets. The first 25 feet of the buffer strip as measured from the exterior boundaries of the park shall contain evergreen shrubs, trees, fences, walls or any combination which forms an effective visual barrier to be located on all exterior lot lines of the park, except that ways shall be kept open to provide visibility for vehicles entering and leaving the park.

D. Open Space Reservation.

An area no less than ten percent of the total area of those lots with a lot area of 10,000 square feet or less shall be reserved as open space. The area reserved as open space shall be suitable to be used for recreational purposes or use by the residents of the park for storage. Generally, the reserved open space shall have slopes less than five percent, shall not be located on poorly or very poorly drained soils, and shall be accessible directly from roads within the park. The Planning Board may waive the requirement for open space when the park is located within one half mile of a publicly owned recreation area.

E. Road Design, Circulation, and Traffic Impacts.

Streets within a park shall be designed by a professional engineer, registered in the State of Maine.

1. Streets which are to be dedicated as public ways shall be designed and constructed in accordance with the Subdivision Regulations of the Town of Berwick, Maine.

2. Streets which the applicant proposes to remain private ways shall meet the following minimum geometric design standards.

a. Minimum right of way width: 23 feet

b. Minimum width of traveled way: 20 feet

3. Any mobile home park expected to generate average daily traffic of 200 trips per day or more shall have at least two street connections with existing public streets. Any street within a park with an average daily traffic of 200 trips per day or more shall have at least two street connections leading to existing public streets, other streets within the park, or other streets shown on an approved subdivision plan.

4. No individual lot within a park shall have direct vehicular access onto an existing public street.

5. The intersection of any street within a park and an existing public street shall meet the following standards.

a. Angle of intersection. The desired angle of intersection shall be 90 degrees. The minimum angle of intersection shall be 75 degrees.

b. Maximum grade within 75 feet of intersection. The maximum permissible grade within 75 feet of the intersection shall be two percent.

c. Minimum sight distance. A minimum sight distance of ten feet for every mile per hour of posted speed limit on the exiting road shall be provided.

d. Distance from other intersections. The centerline of any street within a park intersecting an exiting public street shall be no less than 125 feet from the centerline of any other street intersecting that public street.

6. The application shall contain an estimate of the average daily traffic projected to be generated by the park. Estimates of traffic generation shall be based on the Trip Generation Manual, 1987 edition, published by the Institute of Transportation Engineers. If the park is projected to generate more than 400 vehicle trip ends per day, the application shall also include a traffic impact analysis by a registered professional engineer with experience in transportation engineering.

7. Privately owned stormwater management facilities shall be maintained in accordance with Article 7.23.

F. Ground Water Impacts.

1. Assessment Submitted. Accompanying the application for approval of any mobile home park which is not served by public sewer shall be an analysis of the impacts of the proposed mobile home park on ground water quality. The hydrogeologic assessment shall be prepared by a certified geologist or registered professional engineer experienced in hydrogeology and shall contain at least the following information.

a. A map showing the basic soils types.

b. The depth 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, either from test wells in the mobile home park or from existing wells on neighboring properties.

e. An analysis and evaluation of the effect of the mobile home park on ground water resources. The evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the mobile home park, at the mobile home park boundaries and at a distance of 1,000 feet from potential contamination sources, whichever is a shorter distance. For mobile home parks within the watershed of a lake, projections of the development's impact on groundwater phosphate concentrations shall also be provided.

f. A map showing the location of 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 Ground Water Impacts.

a. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60 percent of annual average precipitation).

b. No mobile home park shall increase any contaminant concentration in the groundwater to more than one half of the Primary Drinking Water Standards. No mobile home park shall increase any contaminant concentration in the groundwater to more than Secondary Drinking Water Standards.

c. If ground water contains contaminates in excess of the primary standards, and the mobile home park is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.

d. If ground water contains contaminates in excess of the secondary standards, the mobile home park shall 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 shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells are recommended in the assessment, those standards shall be included as a note on the plan.

G. No development or subdivision which is approved under this section as a mobile home park may be converted to another use without the approval of the Planning Board, and meeting the

appropriate lot size, lot width, setback and other requirements. The plan to be recorded at the Registry of Deeds and filed with the municipality shall include the following restrictions as well as any other notes or conditions of approval.

1. The land within the park shall remain in a unified ownership and the fee to lots or portions of lots shall not be transferred.

2. No dwelling unit other than a manufactured housing unit as defined in this ordinance shall be located within the park.

H. Location Restrictions

In the SC/I district mobile homes are only allowed on major highways (Route 236 or Route 9), or where public water and sewer services are available within 2,000 ft. of the property line.

8.6 Apartment Buildings and Multi-Family Developments.

A. Apartment buildings and multi-family developments may be approved by the Planning Board in accordance with Land Use Table of this ordinance. All proposals to convert existing structures to multi-family use or to construct apartment buildings and multi-family developments shall be in conformance with the General Performance Standards of Article VII, Section 9.7 Conditional Use Permits and Site Plan Review, the design requirements listed below or the Subdivision Regulations of the Town of Berwick, Maine

B. Applications shall include: a map of the area, dimensions, boundaries and principal elevations of the land for which approval is sought; the names of all property owners within 200 feet of the proposed site, as found on the most recent tax list; building layout and general construction plans; a site plan of all driveways and parking areas proposed to be constructed; and other information which addresses all appropriate performance standards and design requirements and all appropriate factors to be considered in evaluating proposals.

C. Design Requirements.

1. Density: Each unit of the apartment building(s) or multi-family development requires the same density as single-family dwellings in that district. Land required for circulation (exclusive of parking) and land classified by the Natural Resource Conservation Service as having seasonal highwater table at or above the surface, for at least several months every year, shall not be included in meeting the minimum lot area requirements. This includes all very poorly drained soils and some poorly drained soils as classified by the Natural Resource Conservation Service.

2. All apartment buildings and all dwellings in a multi-family development (This does not include two-family, or accessory dwelling units) shall be connected to the Berwick water supply and distribution system. The applicant shall demonstrate by a signed letter from an authorized representative of the water department that an adequate water supply can be provided to the development at an adequate pressure for fire fighting purposes.

3. Where available fire hydrants shall be located so that they are not more than 600 feet from any building, as hose is laid on the street.

4. All residential buildings shall be connected to a public sewer system where it exists. The applicant shall submit to the Planning Board a letter from the Superintendent of the Berwick Sewer District indicating that service is available and the sewage from the development can be adequately treated.

5. It shall be the responsibility of the owner to provide for rubbish disposal, snow removal, and site maintenance. Privately owned stormwater management facilities shall be maintained in

accordance with Article 7.23. All outdoor storage areas for waste collection shall be enclosed by a wooden or masonry screen at least six feet in height. A 50-foot landscaped buffer shall be provided along all property boundaries.

6. Storm water and surface drainage systems shall be designed in accordance with the Subdivision Regulations of the Town of Berwick, Maine.

7. Access, Circulation, and Parking.

a. The proposed development shall provide for safe access to and from public or private roads. Safe access shall be assured by providing an adequate number and location of access points, with respect to sight-distances, intersections, schools, and other traffic-generators. All corner lots shall be kept clear from visual obstructions higher than three feet above ground with respect to sight-distances, intersections, schools, and other traffic-generators. All corner lots shall be kept clear from visual obstructions higher than three feet above ground level, for a distance of 25 feet, measured along the intersecting street lines.

b. The proposed development shall not have an unreasonable adverse impact on the public road system and shall assure safe interior circulation within its site, by separating pedestrian and vehicular traffic and by providing adequate parking and turn-around areas.

c. All developments containing 15 or more dwelling units may be required by the Planning Board to have more than one street access (for emergency and safety purposes). No more than two accesses shall be allowed on any single street or roadway.

8.7 Professional Offices in the Urban Residential District.

In the urban residential district, professional offices may be permitted as conditional uses in accordance with applicable standards and the provisions below.

A. New professional offices shall be located only within existing buildings in order to retain the essential character of the neighborhood, except as allowed in Section D below.

B. Parking for professional offices shall be located to the side or rear of the building, and shall be screened from view from all streets and abutting residential properties.

C. Exterior alterations shall be minimized and shall be similar to the original architectural style of the building.

D. In special situations where a building is extremely dilapidated and structurally unsound and where reuse is therefore not practicable or economically feasible, or where a building is not judged to be a significant component of the neighborhood's overall architectural and historic character, the Planning Board may approve plans to replace an existing residential building with a proposed new professional office building whose scale and design would be appropriate to the site and to the neighborhood. The Board shall seek the recommendation of a recognized architectural authority before granting permission to demolish.

8.8 Cluster Developments.

A. Purpose. The purpose of these provisions is to allow for new concepts of housing development where variations of design may be allowed, provided that the net residential density shall be no greater than is permitted in the district in which the development is proposed. Notwithstanding other provisions of this ordinance relating to dimensional requirements, the Planning Board, in reviewing and approving proposed residential developments located in the town, may modify said provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following standards. This shall not be construed as granting variances.

B. Application Procedure.

1. The Planning Board may require subdivision development on reduced lot size in return for open space when greater than ten units are proposed and/or more than 50 percent of the parcel is comprised of prime agriculture or forest land based on the Town's Prime Farmland and Agriculture District Map found in the Town Code Enforcement Office. The developer shall submit a written application to the Board for cluster development.

2. Two sketch plans shall be submitted with one layout as a standard subdivision and the second as a cluster development indicating open space and significant natural features. Each lot in the standard subdivision shall meet the minimum lot size and lot width requirements of this ordinance, and if not serviced by public sewer have an area suitable for subsurface wastewater disposal according to the Maine Subsurface Wastewater Disposal Rules. The lots shall be designed according to the following guidelines:

a. Wherever possible, side lot lines shall be perpendicular to the street.

b. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division.

c. If a lot on one side of a stream, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream or road to meet the minimum lot size.

d. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

The number of buildable lots or dwelling units in the cluster development shall in no case exceed the number of lots or dwelling units in a standard subdivision. Estimated costs of infrastructure development (roads, utilities, etc.) shall accompany the plan.

3. The written statement shall describe the natural features which will be preserved or enhanced by the cluster approach. Natural features include but are not limited to moderate to high value wildlife and waterfowl habitats, important agricultural soils, moderate to high yield aquifers and important natural or historic sites identified by the Comprehensive Plan as worthy of preservation.

4. The statement shall also compare the impacts upon the town from each plan. Examples of impacts are municipal cost for roads, school busing, solid waste removal and disposal, utility efficiencies, recreational opportunities, protection of flood water storage areas, environmental impacts on sensitive lands caused by construction activities, underground utilities, reclamation of land and provision of land for conservation use.

5. Within ten days of receiving the application, the Board shall invite comments on the application from the Conservation Commission, the Recreation Commission, other appropriate town agencies and abutters. Within 30 days of receiving the application, the Board shall determine whether to allow the subdivision to be developed in accordance with the cluster standards of this section.

C. Basic Requirements for Cluster Developments.

1. Cluster developments shall meet all requirements of the Subdivision Regulations of the Town of Berwick, Maine and other applicable town ordinances, including the Performance Standards of Article VII of this ordinance.

2. Each building shall be an element of an overall plan for site development. Only developments having a total site plan for structures will be considered. The developer shall illustrate the placement of buildings and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of this ordinance.

3. The net residential acreage shall be calculated by taking the total area of the lot and subtracting, in order, the following:

a. 15 percent of the area of the lot to account for roads and parking.

b. Portions of the lot which, because of existing land uses or lack of access, are isolated and unavailable for building purposes or for use in common with the remainder of the lot, as determined by the Planning Board.

c. Portions of the lot shown to be in a floodway as designated in the Flood Hazard Boundary Map prepared by the Federal Insurance Administration.

d. Portions of the lot which are unsuitable for development in their natural state due to topographical drainage or subsoil conditions such as, but not limited to:

i. slopes greater than 33 percent
ii. organic soils
iii. wetland soils
iv. 50 percent of the poorly drained soils.

e. Portions of the lot subject to rights of way.

f. Portions of the lot located in the resource protection zone.

g. Portions of the lot covered by surface water.

h. Portions of the lot utilized for storm water management facilities.

4. In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage shall be divided by the minimum lot size required in the district. A high-intensity soil survey map, certified by a registered soil scientist licensed in the State of Maine, shall be submitted. No building shall be sited on soil classified as being very poorly drained.

5. Unless a community sewage collection and treatment system is provided, no lot shall be smaller in area than 30,000 square feet. Within the Shoreland Zone, no lot shall be reduced below the minimum lot size otherwise required.

6. At least 30 percent of the site must be reserved in perpetuity as common open space. Of the minimum open space required, at least 50 percent must be non-wetland soils and soils with slopes less than 25 percent, which are reasonably available for recreational purposes. Open space dedicated in excess of the minimum required area may contain any percentage of wetland soils or steep slopes. Open space should include the most sensitive resource areas of the property and should be designed in larger blocks of land, preferably as part of an integrated open space network, laid out to be contiguous with open space areas of similar character (whether permanently preserved or not) on adjacent parcels.

7. Every building lot that is reduced in area below the amount normally required should be within 1,000 feet of the common land.

8. The distance between principal buildings shall not be less than 50 feet.

9. No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of development.

10. Shore frontage shall not be reduced below the minimum normally required in the zone.

11. Where a cluster development abuts a body of water, a usable portion of the shoreline, as well as reasonable access to it, shall be a part of the common land.

12. Buildings shall be oriented with respect to scenic vistas, natural landscape features, topography, solar energy, and natural drainage areas, in accordance with an overall plan for site development.

13. The applicant shall 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. The location of all wells shall be shown on the plan.

14. The location of subsurface wastewater disposal systems and an equivalent reserve area for replacement systems shall be shown on the plan. The reserve areas shall be restricted so as not to be built upon. The report of a licensed site evaluator shall accompany the plan. If the subsurface disposal system is an engineered system, approval from the Department of Human Services, Division of Health Engineering shall be obtained prior to Planning Board approval.

15. Utilities shall be installed underground wherever feasible. Transformer boxes, pumping stations, and meters shall be located so as not to be unsightly or hazardous to the public.

16. If a cluster development is proposed with a residential density at least twice the density of adjacent development in existence, or at least twice the density permitted in the land use district in which the development is located if the land is undeveloped, the development will be designed with a continuous landscaped area not less than 50 feet in width which shall contain no structure or streets. The first 25 feet of the buffer strip, as measured from the exterior boundaries of the development shall contain evergreen shrubs, trees, fences, walls, or any combination which forms an effective visual barrier to be located on all exterior lot lines of the development.

D. Dedication and Maintenance of Common Open Space Facilities.

1. Common open space shall be dedicated upon approval of the project as a separate lot of record and shall be used only for non-commercial recreation, agriculture or conservation. Easements for public utilities, or structures accessory to non-commercial recreation, agriculture or conservation, may be permitted; however, the land shall not be further divided.

2. The common open space(s) shall be shown on the development plan and with appropriate notation on the face thereof to indicate that:

a. the common open space shall not be used for future building lots; and

b. a part of all of the common open space may be dedicated for acceptance by the town.

c. A part or all of the common space may be dedicated for acceptance by a land conservation trust which has its principle purpose the conservation of land in its natural condition.

3. If any or all of the common space is to be reserved for ownership by the residents, the by-laws of the proposed homeowners' association shall specify maintenance responsibilities and

shall be submitted to the Planning Board prior to approval. Privately owned stormwater management facilities shall be maintained in accordance with Article 7.23.

4. Covenants for mandatory membership in the association, setting forth the owners' rights and interest and privileges in the association and the common land, shall be reviewed by the Planning Board and included in the deed for each lot.

5. This homeowners' association shall have the responsibility of maintaining the common open space(s), and other common facilities until accepted by the town.

6. The association shall levy annual charges against all property owners to defray the expenses connected with the maintenance of open space, other common and recreational facilities and town assessments.

7. The developer shall maintain control of such open space(s) and be responsible for their maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Planning Board upon request of the homeowners' association or the developer.

8.9 Restaurants.

A. The application for a permit shall state the maximum seating capacity of the restaurant. Any expansion or enlargement over the stated capacity shall require a new permit.

B. Any restaurant located within 500 feet of an existing public sewer line shall connect with the sewer system at the expense of the owners.

C. Location Restrictions

In the R3 district Restaurants are allowed only on major highways (Route 236 or Route 9) and subdivisions approved for commercial use.

8.10 Mineral Industry.

A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this ordinance only after a conditional use permit for such operations has been issued by the Planning Board.

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

The following earth-moving activities shall be allowed without a conditional use permit from the Planning Board:

1. Except in the Shoreland Zone, the removal of less than 50 cubic yards of material from any lot in any 12-month period.

2. The removal or transfer of material incidental to construction, alteration or repair of a building or in the grading and landscaping incidental thereto; and

3. The removal or transfer of material incidental to construction, alteration or repair of a public or private way or essential service.

All other earth-moving, processing and storage shall require conditional use approval from the Planning Board.

B. Submission Requirements.

1. Applications to the Planning Board for a conditional use permit for the excavation, screening storage of soil (including topsoil), peat, loam, sand, gravel, rock, or other mineral deposits shall be accompanied by a plan prepared according to the specifications and performance standards herein, in compliance with applicable state laws and accompanied by all required state permits or licenses.

2. The applicant shall submit plans of the proposed extraction site showing the property lines and names of abutting owners and ways, indicating by not greater than five foot contour intervals, related to U.S. Geodetic Survey data, the location and slope of the grades, existing and as proposed upon completion of the extraction operation; and detailing proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits; together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation.

3. The Board may require the additional submission of a hydrogeologic study to determine the effects of the proposed activity on ground water movement and quality within the general area.

C. Performance Standards.

1. No part of any extraction operation shall be permitted within 100 feet of any property or street line, or 300 feet from the property line of an existing residence or edge of public or private right of way or street line, except that drainage ways to reduce run-off into or from the extraction area may be allowed up to 100 feet of such line. Natural vegetation providing year-round screening shall be left and maintained on the undisturbed land.

2. If any standing water accumulates, the site must be fenced in a manner adequate to keep children out. Measures shall be taken to prevent or halt the breeding of insects.

3. No slopes steeper than three feet horizontal to one-foot vertical shall be permitted at any extraction site unless a fence at least six feet in height is erected to limit access to such locations.

4. Before commencing removal of any earth materials, the owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance against liability arising from the proposed extraction operations, and such insurance shall be maintained throughout the period of operation.

5. Any topsoil and subsoil suitable for purposes of revegetation shall, to the extent required for restoration, be stripped from the location of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased. Such stockpiles shall be protected from erosion, according to the erosion prevention performance standards of this section.

6. Erosion and sedimentation control measures shall be designed and built according to the standards of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003. Sediment shall be trapped by diversions, silting basins, terraces and other measures designed by a professional engineer.

7. Lagooning shall be conducted in such a manner as to avoid creation of fish trap conditions. The application shall submit written approval from the Department of Environmental Protection and Department of Inland Fisheries and Wildlife, as applicable, prior to consideration by the Planning Board.

8. The hours of operation at any extraction site shall be limited as the Planning Board deems advisable to ensure operational compatibility with residents of the town.

9. All access/egress roads leading to/from the extraction site to public ways shall be treated with suitable materials to reduce dust and mud for a distance of at least 100 feet from such public ways.

10. No equipment debris, junk or other material shall be permitted on an extraction site except those directly related to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith shall be removed within 30 days following completion of active extraction operations.

11. Within six months of the completion of extraction operations at any extraction site or any one or more locations within any extraction site, ground levels and grades shall be established in accordance with the approved plans filed with the Planning Board so that:

a. All debris, stumps, boulders, and similar materials shall be removed and disposed of in an approved location or, in the case of inorganic materials, buried and covered with a minimum of two feet of soil.

b. The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.

c. Stormwater management facilities will be designed according to Article 7.16. Storm drainage and water courses shall leave the location at the original natural drainage points where feasible, and in a manner such that the amount of drainage at any point does not significantly increase.

d. At least four inches of topsoil or loam shall be retained or obtained to cover all disturbed areas, which shall be reseeded and properly restored to a stable condition adequate to meet the provisions of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003.

e. The final graded slope shall be two to one slope or flatter.

D. Permit Approval.

1. All plans and supporting material shall be submitted to the Planning Board for their consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the town, upon existing or approved land uses which may be affected by the operation and implementation of comprehensive plan policies. The Planning Board may recommend changes to the application for resubmission to the Planning Board.

2. The Planning Board shall hold a public hearing on the application following the same notification requirements for conditional uses. The Planning Board shall make findings of fact and render a written decision specifying whether, and under what conditions, the proposed operation shall be permitted.

E. Existing Operations.

1. If any existing operation is discontinued for a period of more than three years, then no earth removal shall commence, continue or resume until a site plan review permit has been issued by the Planning Board. "Discontinuation" is defined as being the excavation, processing or storage of less than ten cubic yards of material.

2. Existing operations must submit to the Code Enforcement Officer within 90 days of the effective date of this chapter a map indicting the area within which earth removal activity is anticipated within the five-year period and the area which has already been subject to earth removal activity. If no map is submitted within 90 days then the operation must cease, and no earth removal activities shall commence, continue or resume until conditional use approval has been granted by the Planning Board.

3. Within 30 days of the effective date of this chapter or amendments, the Code Enforcement Officer shall notify by certified mail, return receipt requested, the owners of all property which to the best of his/her knowledge may come under the provisions of this section. Said notification shall inform the property owners of the above submission requirement. Failure of any property owner, after proper notification to submit the required information to the Code Enforcement Officer within 90 days shall be a declaration of inactivity. No earth removal activity shall commence, continue or resume until conditional use approval has been granted by the Planning Board.

8.11 Waste Facilities.

A. Submissions Requirements.

1. Applications to the Planning Board for a conditional use permit for a waste facility shall be accompanied by a plan prepared according to the specifications and performance standards set forth herein and a written statement detailing the project's compliance with applicable state, local and federal laws, regulations and ordinances. The application shall be accompanied by evidence that the applicant has applied for all required state or federal permits or licenses. The application shall be accompanied by a non-refundable application fee of $100 per acre.

2. The applicant shall submit plans of the proposed waste facility showing the property lines and names of abutting owners, and ways, indicating by not greater than two foot contour intervals, related to U.S. Geodetic Survey Data, the location and slope of the grades, existing and as proposed upon completion of the operation, and detailing any structures, proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits; together with a written statement of the proposed operation, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation, if applicable.

3. A hydrogeologic study performed by a qualified hydrogeologist to determine the effects of the proposed activity on ground water movement and quality within the area of the site.

4. The Planning Board shall have the authority to reasonably require submittal of test results or such additional studies or tests as may be necessary to properly evaluate the application and shall have the authority to hire such independent expert consultants to review all the studies and testing done by the applicant for adequacy and completeness, all of which shall be at the applicant's expense.

5. The applicant shall provide evidence of sufficient right, title and interest in the property which is the subject of the application to go forward with the project if the project receives the approval of the Planning Board.

6. The applicant shall provide evidence of sufficient financial and technical ability to construct, maintain, operate, and close the waste facility in accordance with applicable, federal, state and local statutes, ordinances and regulations.

B. Performance Standards.

1. The performance standards set forth in the Site Plan Review Section (9.7) of this ordinance shall be complied with.

2. Monitoring and verification: In addition to the ground water monitoring wells required for waste facilities by the Site Plan Review Section (9.7.) of the ordinance, the applicant shall provide such additional ground water monitoring wells as are determined necessary by the consultants employed by the Planning Board to ensure protection of ground water on the entire site and the surrounding area. Monitoring wells shall be a minimum of 30 feet deep and samples shall be taken at a frequency of every 30 days after the facility start-up. Results of sampling tests shall be certified by the person conducting the sampling and submitted to the Planning Board or, at the Planning Board's request, to an independent consultant selected by the Planning Board to review the test results. If the Planning Board determines that review by an independent consultant is necessary, the expense of such review shall be borne by the applicant.

3. The applicant shall post a performance bond, provide liability insurance, a cash escrow account, or other security acceptable to the town to ensure the town is protected from any adverse environmental impacts associated with the construction, operation, maintenance or closure of the waste facility. The Planning Board shall annually review the adequacy of the bond, insurance, or other security provided and shall require such modifications in the amount or nature of the security as may be necessary to ensure that the town is fully protected.

4. The applicant shall provide for routine maintenance and general cleanliness of the entire facility site, and shall undertake any reasonable steps necessary to control any litter or debris, wind-blown paper, other light materials by using suitable permanent or portable fencing and other natural barriers or other effective devices.

5. The operator shall insure that the facility site is provided with a drainage system adequate to minimize surface water contact with solid waste and to prevent erosion and the collection of standing water.

6. The applicant shall provide evidence that the person or persons responsible for the day to day operations of the waste facility have the technical expertise required to operate the facility safely.

7. Transfer of ownership of the waste facility or the site on which it is located shall require the prior written consent of the Planning Board, and the transferee shall demonstrate to the satisfaction of the Planning Board that it has the technical and financial capacity to operate the waste facility in accordance with applicable state, local and federal regulations.

8. The applicant shall agree to allow the town, its representatives and/or agents reasonable access to the waste facility as needed to perform inspections to ensure continued compliance with the standards set forth in this ordinance.

9. The applicant shall be responsible for insuring that closure of the facility occurs in accordance with applicable federal, state and local standards. In recognition of that responsibility the applicant shall submit and update as necessary an operation plan and a final closure plan in sufficient detail to establish that the facility will be closed safely at the termination of its operations.

10. The spreading of septage sludge shall not extend closer than 300 feet to any property line.

C. Permit Approval.

1. All plans and supporting material shall be submitted to the Planning Board for consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the town and upon existing or approved land uses which may be affected by the operation and implementation of comprehensive plan policies. The Planning Board may recommend changes to the application for resubmission to the Planning Board.

2. The Planning Board shall hold a public hearing on the application, following the same notification requirements for all conditional uses. The Planning Board shall make findings of fact and shall render a written decision specifying whether, and under what conditions, the proposed waste facility shall be permitted. Issuance of a conditional use permit is contingent upon the applicant demonstrating that it has received any other required federal or state permits or licenses.

8.12 Agriculture and Animal Husbandry.

The following restrictions apply to agriculture and animal husbandry.

a. All pastures, barns, barnyards and other areas where the livestock animals or fowl are kept, housed, fed or cared for shall be a minimum of 100 feet from the nearest dwelling other than the applicant's.

b. Uncovered manure shall be kept 150 feet from the nearest dwelling other than the applicant's and 300 from a well.

c. All feed and grain must be kept in enclosed rodent proof containers.

d. All paddocks, barnyards or other enclosures must be adequately fenced to contain livestock, animals or fowl.

8.13 Accessory Dwelling Unit.

The Code Enforcement Officer may approve the addition of one dwelling unit to an existing single-family dwelling and which must comply with the following standards.

1. The accessory apartment shall be more than 400 square feet and shall not exceed 50 percent of the total living area of the building.

2. The principal dwelling unit or the accessory apartment shall be occupied by a person who has a possessory interest in the real estate, who bears all or part of the economic risk of decline in value of the real estate and who receives all or part of the remuneration, if any, derived from the lease or rental of the other dwelling unit.

3. A single family dwelling as contained in this section means the building proposed for conversion and any accessory building attached. Only one accessory apartment shall be permitted per lot. An Accessory Dwelling Unit, however, shall not be allowed in a single-family dwelling within an approved subdivision that contains a note or condition on the plan recorded in the York County Registry of Deeds that specifically allows only single-family residential uses.

4. Any external expansion of the structure shall have a relationship to the existing buildings and neighborhood.

5. The Minimum Lot Size standard found in Section 6.3 are waived. All setback requirements shall be met.

6. Any request for an accessory apartment shall conform to all provisions of the Maine State Plumbing Code and no dwelling that is served by an on-site wastewater disposal system shall be modified to create an accessory apartment until a site evaluation has been conducted by a licensed soil evaluator which demonstrates that a new system can be installed to meet the disposal needs of the dwelling units or the existing system has adequate capacity for the proposed use.

7. This provision shall not prohibit the conversion of a single-family dwelling to a multiplex dwelling or the conversion of a duplex dwelling to a multiplex dwelling so long as said conversion complies with all district and zoning standards, including but not limited to dimensional requirements.

8. Upon approval by the Planning Board, the owner of the accessory apartment shall record within his/her deed at the York County Registry of Deeds that such dwelling shall be and is to remain "owner occupied" even upon future transactions.

8.14 Adult Business.

1. "Adult Business" means any business, a substantial or a significant portion of which consists of selling, renting, leasing, exhibiting, displaying or otherwise dealing in obscene materials which depict or describe any of the following:

a. human genitals in a state of sexual stimulation or arousal;

b. acts of human masturbation, sexual intercourse or sodomy;

c. fondling or other erotic touching of human genitals, pubic region, buttock or female breast;

d. less than completely and opaquely covered:

i. human genitals, pubic region

ii. buttock

iii. female breast below a point immediately above the top of the areola; and

e. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

2. "Viewing booth" means any booth, cubicle, room or stall within the premises of an adult business used to display, by audio or visual reproduction, projection or other means, any of the materials described in subparagraph (2) above.

3. "Public building" means a building owned, operated or funded in whole or in part by the Town of Berwick which members of the general public have occasion to visit, either regularly or occasionally, such as, but not limited to, the town hall, the public library, the police station and fire stations.

4. Location of adult business restricted. No adult business shall be located:

a. In any zoning district other than the Rural Commercial Industrial (RC/I) District located on Route 4.

b. In any location where the customer entrance to the adult business would be closer than 1,000 feet, measured in a straight line without regard to intervening structures or objects, to the nearest point on the boundary of any property which is:

i. occupied by a residence, school, child care facility, park, playground, church or public building.

ii. located in a residential zone, or

iii. occupied by another adult business.

5. Outside displays prohibited. No materials described in subsection (2) above shall be visible from the exterior of the building in which the adult business is located.

6. Design of viewing booths. Viewing booths shall be designed, located and lighted so that the interior of each viewing booth is clearly visible from the interior common areas of the premises and visibility into the viewing booths shall not be blocked or obscured by any doors, curtains, partitions, drapes or any other visual barriers.

8.15 Automobile Graveyard, Automobile Recycling Business and Junkyards.

Automobile graveyards, automobile recycling facilities and junkyards shall meet the following standards:

A. The site of the yard must be enclosed by a visual screen at least six feet high and built in accordance with rules adopted by the Department of Transportation pursuant to 30-A M.R.S.A., Section 3759.

B. A vehicle with an intact engine or motor may not be stored within 100 feet of any body of water or freshwater wetland, as defined by 38 M.R.S.A., Section 436-A, Subsection 5.

C. A vehicle may not be dismantled or stored within 500 feet of a school, church, or public playground or park that existed on the date the permit was issued.

D. A vehicle may not be dismantled or stored over a sand and gravel aquifer or aquifer recharge area.

E. A vehicle containing fluids may not be dismantled or stored within the 100-year flood plain.

F. A vehicle may not be dismantled or stored within 100 feet of a well that serves as a public or private water supply, excluding a private well that serves only the automobile recycling business or the owner or operator's abutting residence.

G. A vehicle may not be located or dismantled closer than 20 feet from any lot line unless the operator has notarized written permission from the abutting property owner.

H. Dismantling of a vehicle must be performed in accordance with the following standards.

1. The battery must be removed.

2. Engine lubricant, fuel, transmission fluid, brake fluid and engine coolant must be drained into watertight, covered containers and must be recycled or disposed of in accordance with applicable federal or state laws, rules or regulations.

3. Fluids from a vehicle may not be permitted to flow or be discharged into or onto the ground.

4. A recycling operation must comply with all applicable federal or state laws related to hazardous materials.

8.16 Construction in Flood Hazard Areas.

In areas delineated as special flood hazards on the Berwick Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency, all new construction, additions and modifications to existing structures shall conform to the Town of Berwick Floodplain Management Ordinance effective May 19, 1998.

8.17 Accessory Structure.

No garage or other accessory detached structure shall be located in a required front setback. When located to the rear of the main building, one accessory structure, no larger than 160 square feet, and single story, may be setback at least ten feet from the side or rear lot lines.

8.18 Wireless Communication Facilities and Communications Towers.

A. Communication towers and antennas are permitted as a conditional use only, except as follows. The placement of antennas and associated equipment onto an existing structure may be

allowed without a conditional use permit when they are designed to be incorporated into the architecture of new or existing buildings or into the fabric of other manmade or natural structures or features so as to be inconspicuous when viewed at any point beyond the limits of the host property. The placement of antennas and associated equipment may also be allowed without a conditional use permit when they are placed onto an existing communications tower or within an existing facility compound area at the base of an existing communications tower. A conditional use permit shall be required if the co-location of antennas or associated equipment exceeds the capacity of the existing communications tower or expands the perimeter of the existing facilities compound area at the base of the existing communications tower.

B. The maximum height of a communications tower shall be 199 feet including antenna. The height of an antenna shall be included in the total height limitation as allowed for a communications tower.

C. The tower shall be placed a minimum distance of 125 percent of the height of the tower from any boundary line to establish a safety zone. The Board of Appeals shall not be authorized to grant a variance from this requirement.

D. The tower shall not be lit unless mandated by the Federal Aviation Administration or other applicable state and federal requirements.

E. A new communications tower must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

F. A new wireless communication facility and tower must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standards entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" or its lawful successor.

G. The applicant shall present evidence to the Planning Board that there are no existing structures which may be used to support the antenna and associated equipment. The owner/operator of the tower is required to allow co-location until said tower has reached full antenna capacity. Space for any possible future accessory structures shall be shown on the plan.

H. A security fence to be approved by the Planning Board of not less than eight feet in height from the finished grade shall be provided around the Tower.

I. Prior to approval the applicant shall submit a guarantee acceptable to the town in an amount and form acceptable to the Board of Selectmen, taking into account the effects of inflation upon costs, sufficient to pay for the cost of removal of the facility. A wireless telecommunications facility that is not operated for a continuous period of 12 months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of an abandoned facility in writing and order the removal of the facility within 90 days of receipt of the written notice. The owner of the facility shall have 30 days from the receipt of the notice to demonstrate to the Code Enforcement Officer that the facility has not been abandoned. The Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

If the owner fails to show that the facility is in active operation, the owner shall have 60 days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its preconstruction condition, including the removal of roads, and reestablishment of vegetation.

The owner of the facility 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.

J. The applicant must meet all other pertinent sections of the Town of Berwick Land Use Ordinance.

K. Location Restrictions

Within the R1, LR, and SC/I Zoning Districts Wireless Communication Facilities must be installed on any existing tower, pole or structure capable of supporting such equipment.

8.19 Temporary Storage.

A. New.

1. Upon approval of the Code Enforcement Officer, truck boxes, portable or mobile trailers, vans or similar vehicles may be used for storage or display on a residential lot for a period not to exceed six months. The Planning Board may extend such approval for successive periods of six months if the Board finds that:

a. The use does not diminish area requirements as set forth in that district.
b. There is a valid, temporary need which cannot be met within the principal structure, and that adequate hardship can be shown.
c. The initial approval or any renewal of the use will not in any way be detrimental to the neighboring properties including aesthetic appearance.
d. The use is not intended as a permanent or long-term use.
e. The use in not intended to circumvent building area limitations for that district, or to prolong the use of facilities which have been outgrown.
f. The facilities will be adequately screened from neighborhood properties and the street.
g. The facilities will not be used as or intended for advertising for on or off premises purposes.
h. The facilities are not intended for retail sales.

2. The above provisions do not prohibit the use of such temporary facilities as construction or job site office or equipment storage facilities during construction. No advertising other than the contractor's name shall be on the vehicle or facility and such signs meet the requirements of Section 7.13 Signs.

B. Existing.

1. Any truck box that is currently located in a residential zone may be grandfathered if the property owner can document that the truck box was on site prior to the effective date of this ordinance. Information from abutting property owners, in the form of a letter stating the existence of the truck box on or around a specific date, could assist in this documentation.

2. Any existing truck box that is currently in a residential zone must receive a permit documenting the container's existence, size, and location of the property, and this permit must be acquired within six months from the effective date of this ordinance. If a permit is not requested within one year from the effective date of this ordinance, the truck box must be removed.

3. Only one grandfathered truck box shall be allowed on any lot, even though more than one may currently exist.

8.20 Swimming Pools.

A fence shall be erected and maintained around every swimming pool, except that portable above-ground swimming pools with sidewalls of at least 24 inches in height are exempted. A dwelling house or accessory building may be used as part of this enclosure. All gates or doors

opening through this enclosure shall be capable of being securely fastened at all times when not in actual use.

The fence shall be a good quality fence or wall not less than 4 feet in height above ground surface and of a character to exclude children. The fence shall be so constructed as not to have openings, holes or gaps larger than 4 square inches, except for fences constructed of vertical posts or louvers, in which case, the openings shall not be greater than 4 inches in width with no horizontal members between the top and bottom plates.

8.21 Automobile Hobbyist.

An automobile hobbyist shall comply with the screening requirements and operating standards in section 30-A M.R.S.A., Section 3754-A, as follows:

An automobile hobbyist may not be located within 1,000 feet of the right-of-way of federally funded streets to include Routes 4, 9 or 236, Pine Hill Rd. from town center to Ridlon Rd. intersection, or Hubbard Rd. from town center to Knox Ln. intersection, or within 600 feet of the right-of-way of any other street, except for those that meet the following performance standards:

Those automobiles and all associated automobile parts, equipment and accessories that are kept entirely screened from ordinary view from the highway at all times by natural objects, plantings or fences. Screening shall be:

1. At a height, density and depth sufficient to accomplish complete screening from ordinary view;
2. Well constructed and properly maintained at a minimum height of 6 feet;
3. Placed outside of the highway right-of-way; and
4. Acceptable to the code enforcement officer.

All automobile hobbyists shall comply with the following operating standards:

1. All fluids, including, but not limited to, engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water;
2. A vehicle containing fluids may not be stored or dismantled within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5; and
3. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly into inland waters, the ice of inland waters, or on the banks of inland waters in such a manner that they may fall or be washed into these waters.

8.22 Private Pond with or without a Dam.

No private pond, with or without a dam, may be created without a permit from the Code Enforcement Officer. Private ponds with a dam must show proof that such pond was designed by a State Licensed Professional Engineer.

8.23 Small Wind Energy Systems.

Definitions:

Rotor Diameter: Cross sectional dimension of the circle swept by the rotating blades.

Small Wind Energy System: A system of equipment located on a single lot that has an aggregate rated capacity of not more than 100kW that converts and then stores or transfers energy from he wind into usable forms of energy for use on the same lot as the system, or on an abutting lot in the case of a common system serving more than one principle use or structure. This equipment includes the base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wired, inverter, batteries, or other components used in the systems. Small wind energy systems are allowed only as accessory uses or as structures and only one small wind energy system is allowed per lot.

Small Wind Energy System Height: The height above grade to the tip of the turbine blade when it reaches its highest elevation.

Tower Height: The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Tower: The structure on which the wind system is mounted. This includes a monopole, freestanding, or guyed structure that supports a wind generator.

Wind Turbine: The parts of the wind system including the blades, generator and tail.

Purpose:

The purpose of this section is to promote the safe, effective and efficient use of small wind energy systems.

Setbacks:

Set backs for the system tower shall be no closer to the property line than the 110% of the height of the system and in no instance closer than the required setback in the District. Guy wire anchors may not be closer to the property line than 10 feet.

Tower Height:

Height shall be limited to a maximum of 80 feet. The applicant shall provide evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the system.

Design Requirements:

1. Access:

   (a) All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

   (b) The tower shall be designed and installed such that public access via step bolts or a ladder is prevented for a minimum of 12 feet above the ground.

2. Blade clearance:

For all systems the minimum distance between the ground and any protruding blades shall be 15 feet as me assured at the lowest point of the arc of the blades.

3. Appearance:

Towers shall maintain a galvanized steel finish unless FAA standards require otherwise or if owner is attempting to conform the tower to the surrounding environment and architecture, in which case it may be painted to reduce visual obtrusiveness.

4. Signs:

Towers shall not display any permanent or temporary signs, writing, systems, logos, or any graphic representation of any kind other than that of the manufacturer.

5. Lights:

No tower shall be lighted unless required by the FAA.

6. Noise:

Small Wind Energy systems shall adhere to the current language in Section 7.6 of this Ordinance.

Documents required:

The following must be submitted with the application for a Small Wind Energy system:

1. Plot plan showing:

   (a) A title block showing date, scale and arrow pointing north.

   (b) The Zoning District in which the Small Wind Energy System is proposed.

   (c) The setbacks of all existing and proposed structures or uses.

   (d) The location of all existing and/or proposed structures or uses.

   (e) Any overhead utility lines.

2. Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).

3. Tower Foundation blueprints or drawings.

4. Tower blueprint or drawing

5. Standard drawings and an engineering analysis of the systems tower, and certification by a professional engineer. This analysis shall include standards for ice and wind loading.

6. Date on approval from any small wind certification program that may apply.

7. Information showing that the generators and alternators to be used are constructed so as to prevent the emission of radio and television signals.

8. The applicant shall provide evidence that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

State and Federal Requirements:

1. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application.

2. Small wind energy systems must comply with applicable building code, National Electric Code and other State and Federal requirements.

Removal of Unsafe Small Wind Energy Systems:

Any small wind energy system found unsafe by the CEO shall be shut down immediately and repaired by the owner to meet all federal, state or local safety standards or removed within 30 days. If the owner fails to remove the system as directed the CEO may pursue legal action to have the system removed at the owner's expense.

8.24 Elderly Housing

A. Elderly Housing may qualify for a 50% reduction in minimum lot size requirement when the application satisfies the standards outlined below:

1. All construction will be in conformance with all applicable Americans with Disabilities Act regulations.

2. Sidewalks are required to be installed along any new roads and shall be constructed in conformance with Article 12.2.j. Design Guidelines Sidewalks in the Berwick Subdivision Regulations.

3. All buildings and accessory structures shall be maintained in a safe, sanitary, nonhazardous manner. The condition of all buildings, structures, and components thereon shall be maintained so as to prevent and repair deterioration, so that the appearance thereof shall reflect a level of maintenance ensuring that the property itself may be preserved safely, and so that hazards to the public health and safety are avoided.

4. When three or more residential units are proposed; the applicants shall provide community and/or recreational opportunities for the residents. These community and/or recreational opportunities include but are not limited to common rooms, nature trails, and picnic areas.

5. The development shall always remain as elderly housing, and any change to the residential use shall require conformance with all district dimensional requirements as prescribed in Article 6.3 Dimensional Requirements

8.25 Adult Use & Medical Marijuana

8.25.1. Purpose: The purpose of this section of the ordinance is to ensure that all cultivation, processing, storage, and distribution of Adult Use & Medical Marijuana does not have an adverse impact on the health, safety, and general welfare of the residents of the Town of Berwick, ME, while still allowing for treatment and alleviation of a qualifying patient's debilitating medical condition or symptoms.

8.25.2. Exemptions: As an accessory use, Medical Marijuana Caregivers shall be permitted as a Home Occupation Business in any qualifying patient's residence or any medical marijuana caregiver's primary year-round residence in every base zone and overlay zone.

8.25.3. Location:
Medical Marijuana Cooperatives and Medical Marijuana Production Facilities are

allowed in the R3 Zone only on properties which have frontage on Route 9 or 4.

Marijuana Establishments cannot be within 1,000 feet of+:

- Any school – as measured from the nearest property line of the land used for the school to the nearest portion of the proposed business's building, via straight line measurement.
- Drug or Alcohol Treatment Facilities – as measured form the nearest property line of the land used for the treatment facility to the nearest portion of the proposed business's building, via straight line measurement.
- Child Care Centers – as measured from the nearest property line of the land used for child care purposes to the nearest portion of the proposed business's building, via straight line measurement.
- Other Marijuana Establishments – as measured from the nearest portion of the exiting or pending center or store's building to the nearest portion of the proposed business's building, via straight line measurement.

+Existing Medical Marijuana Facilities permitted prior to November 2017 are subject to 500' setbacks from schools only.

8.25.4. Odor Control

All Marijuana Establishments must submit an odor control plan with the conditional use application.

A. Odor Control Plans shall consist of the following:

1. Specific Odor-emitting activity(ies) – This section should describe the odor emitting activities or processes (e.g., cultivation) that take place at the facility, the source(s) (e.g., budding plants) of those odors, and the location(s) from which they are emitted (e.g., flowering room)

2. Odor Mitigation Practices – For each odor-emitting source/process outlined in Section 1 of the odor control plan, specify the administrative and engineering controls the facility implements or will implement to control odors.

- The best control technology for marijuana cultivation facilities is carbon filtration.

8.25.5. Security

A. All growing of medical marijuana within a commercial production facility shall occur inside and only within a completely enclosed structure. This does not apply to home growing of medical marijuana.

B. Prior to granting approval, the Planning and/or Code Enforcement Department shall receive a written statement from the Berwick Chief of Police or designee that the Department has reviewed the measures and if they have any recommendations.

8.25.6 Performance Standards

A. Signage and advertising. All signage and advertising for any facility responsible for the cultivation, manufacturing, sale or distribution of marijuana shall comply with all applicable provisions of the Land Use Ordinances.

B. Consumption.

- Pursuant Maine LR 2395 section 1501 subsection 2, marijuana in the Town of Berwick may only be consumed in a private residence or on private property. Such private property must not generally be accessible to the public and the consumption of marijuana or marijuana products must be explicitly permitted by the property owner. All other consumption limitations in Maine LR 2395 Section 1501 Subsection 2 shall apply in the Town of Berwick.

C. Visibility of activities. All activities of dispensaries, cultivation facilities,

processing facilities and marijuana establishments shall be conducted indoors.

8.25.7 Application Requirements

A. An operating plan for the proposed marijuana business including: 1. A description of products and services to be provided by the business. 2. A dimensioned floor plan including the layout of the structure and floor plan where the marijuana business is to be located.

B. A neighborhood responsibility plan that demonstrates how the business will fulfill its responsibilities to the neighborhood for effective mitigation of community impacts, including neighborhood outreach, methods for future communication, and dispute resolution.
C. Elevations of all buildings, existing and new. D. For cultivation facilities, a plan that specifies how wastewater will be handled. E. A rendering of the proposed signage.

8.25.8 Permits

A. The number of Conditional Use permits granted in each zone as of June 9, 2020 shall be the limit of permits granted in each zone. The number of Conditional Use permits in each zone shall be tracked and monitored by the Town of Berwick Community Development & Planning Office. This provision shall be reviewed by the Berwick Planning Board and amended as needed on an annual basis.

8.26 Automobile Service/Motorcycle Repair Business

A. Location Restrictions.
Within the R1 and R3 Zoning Districts Automobile Service/Motorcycle Repair Businesses are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.27 Wholesale Business

A. Location Restrictions.
Within the R1 and R3 Zoning Districts Wholesale Businesses are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.28 Commercial Mini-Storage

A. Location Restrictions.
Within the R3 Zoning Districts Commercial Mini-Storage are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.29 Retail Business

A. Location Restrictions.
Within the R3 Zoning Districts Retail Businesses are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.30 Vehicle Sales

A. Location Restrictions.
Within the R3 Zoning Districts Vehicle Sales are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

8.31 Congregate Housing

A. Location Restrictions.
Within the SC/I District Congregate Housing is allowed only on major highways (Rt. 236 and Rt. 9), or where public water and sewer services are available.

8.32 Clearing or removal of vegetation for activities other than timber harvesting

A. In the Resource Protection District, Clearing or removal of vegetation for activities other than timber harvesting requires a permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

8.33 Outdoor Wood Furnace

A. Must comply with Maine Department of Environmental Protection Chapter 150.

8.34 Fringe Financial

A. Subject to all parking and landscaping requirements established in Article 6.4

8.35 Low Impact Manufacturing

A. All Low Impact Manufacturing shall conform to the following standards:

1. All manufacturing, processing, or fabrication shall occur within a building or fully enclosed structure.

2. Activities shall be limited to the processing or fabrication of materials which does not involve basic processes such as the mechanical or chemical transformation of materials or substances into new products unless such basic processes do not result in any noxious noise, odors, or vibrations that are perceptible at the property line of the parcel on which the use is located.

3. Assembly, processing, and fabrication activities not involving basic processes shall be conducted so that they will not result in objectionable noise, glare, vibration, odor, or electrical interference that will disturb or endanger adjacent properties.

4. No outside storage of raw materials, products, and wastes are permitted with Low Impact Manufacturing uses.

5. Truck loading and material handling areas shall be located to the side or rear of the building. No overhead doors or other service or material delivery facilities shall be allowed on the side of the building facing a public street unless the Planning Board determines that there is no practical alternative.

8.36 Drug Store

A. Location Restrictions. Within the R3 Zoning Districts Drug Stores are allowed only on major highways (Rt. 236, Rt. 9) and subdivisions approved for commercial use.

ARTICLE IX ADMINISTRATION, ENFORCEMENT, AND PENALTIES

9.1. Basic Requirements.

After the effective date of this ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued non-conforming use.

An application for a land use permit or site plan review approval must be denied for any property where a violation exists until such violation has been corrected or resolved.

Every application shall be accompanied by a fee for a land use permit. The fee schedule, as posted in town hall, is determined by the Board of Selectmen and reviewed annually. This application fee shall be paid to the Town of Berwick. No land use permit shall be issued until the fee is paid.

The following activities shall not require a use permit: repairs, replacement, and/or normal maintenance not requiring structural elements, decorative changes in existing structures or buildings, patios, fences, driveways (not to exceed lot coverage) and yard sales provided that the activity is in conformance with federal, state or local laws and does not involve any physical modifications or changes requiring a permit under this ordinance.

9.2 Permit Application.

A. Every applicant for a permit shall submit a written application on a form provided by the municipality which shall include:

1. Structures to be erected, structures to be moved, and exterior additions to existing structures:

a. The shape, size and location of the lot for which application is made.

b. The shape, size and location on the lot of the proposed structure, and of any proposed additions to existing structures.

c. The shape, size and location of any other existing structures on the lot.

d. The location of adjacent structures on adjacent lots, with reference to the distance from the lot line.

2. The above requirements shall not apply to alterations wholly within an existing structure.

3. All applications shall also include:

a. The name and address of the property owner.

b. The name, address and telephone number of the person, firm or firms involved in the construction on the property.

c. The value of the proposed construction.

d. A statement of the proposed use for any new or moved structure or altered portion of an existing structure.

e. Any other information the applicant wishes to furnish.

f. Any other information requested by the Code Enforcement Officer to make the application intelligible, and to determine whether the proposed construction will conform to this ordinance, other local ordinances and state law. If the property is not served by a public sewer a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the plumbing inspector, shall be submitted.

g. A certification that the information in the application is complete and correct to the best of the applicant's knowledge and belief.

4. All applications shall be signed by the person or firm to do the work and by the owner of the property or other person authorizing the work.

5. All applications shall be dated, and the Code Enforcement Officer shall note upon each application the date and time of its receipt at his/her office.

B. Upon receipt of a permit application the Code Enforcement Officer shall:

1. Decide whether the information in the application is sufficient for him/her to determine whether, under the ordinance, the permit should be issued, or if the application is otherwise inadequate. If he/she feels the application is insufficient or inadequate, he/she shall at once notify the applicant in writing, indicating to him/her what information is necessary to correct the application. If the application is not so corrected, he/she shall deny it.

2. When an application conforms to the provisions of this ordinance and other codes and ordinances of the town, upon payment of the required fee, the Code Enforcement Office shall within ten days of its receipt issue the permit. He/she shall notify the Tax Assessor and keep a copy of the application/permit in a permanent file in his/her office.

3. If the application does not conform, the Code Enforcement Officer shall, within ten days, deny the permit in writing, stating therein his/her reasons for such denial. In the event the proposed building or structure is so constructed or is of such usage as to require a review of the application by other authorities or boards, as determined by reference to the land-use regulation file, the Code Enforcement Officer shall refer the applicant to the appropriate authority or board for review, approval or denial. Upon his/her receipt of the decision of the reviewing authority or board, in writing, and if such decision is an approval, the Code Enforcement Officer shall issue the permit with any conditions prescribed by the reviewing authority or board. The Code Enforcement Officer shall not issue any building permit if he/she has knowledge that a particular structure would be located in an unapproved subdivision, and/or if he/she has knowledge that the structure would be in violation of a particular state law or local ordinance. In denying any permit under these circumstances, the Code Enforcement Officer shall state in writing the reasons for the denial.

4. If he/she shall fail, for any reason, within ten days either to issue a permit or deny an application in writing, such failure shall be deemed a denial so that the applicant may appeal to the Board of Appeals if he/she so wishes.

C. Following the issuance of a land use permit if no substantial start is made on the construction within one year and completed within five years of the date of the permit, it shall lapse and become void. Thereafter no further work on such construction can be made until a new permit has been issued.

C. Any permit issued which is not in conformity with the provisions of this ordinance confers no rights and is void.

9.3 Foundation Certification.

For construction of a principal or accessory building, or an addition to an existing building, the application for a building permit must include a plot plan showing the location of proposed and existing structures to assure that setback requirements are satisfied. A foundation certification may be required from the applicant or contractor when the footing is inspected if any part of the proposed structure is to be located closer than five feet to the minimum front, side or rear yard setbacks required by the applicable zoning district regulations, or at the discretion of the Code Enforcement Officer.

9.4 Certificate of Occupancy Required.

A. A Certificate of Occupancy issued by the Code Enforcement Officer is required in advance of the use or occupancy of:

1. Any lot, or change of use, thereof.

2. A structure hereafter erected or a change in the use of an existing structure.

B. No Certificate of Occupancy shall be issued unless the lot or building or structure complies with all provisions of this ordinance. A record of all certificates of occupancy shall be kept on file in the office of the Code Enforcement Officer, and a copy shall be furnished, on request, to any person having a proprietary or tenancy interest in the structure or land involved. A duplicate copy shall be filed in the office of the Tax Assessor and the certificate of occupancy shall state specifically the uses which it permits.

9.5 Enforcement Officer.

A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this ordinance. If the Code Enforcement Officer shall find that any provision of this ordinance is being violated, he/she shall notify, in writing, the person responsible for such violations, indicating the nature of the violations and ordering the action necessary to correct it. He/she shall order the removal of illegal buildings, structures, additions or work being done, or shall take any other action as authorized by this ordinance to insure compliance with, or to prevent violation of, its provisions.

B. The Code Enforcement Officer should maintain a current file of all pertinent federal, state and local statutes, ordinances, regulations, codes, and plans relating to land use regulation including local subdivision plans.

C. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to approval. The Code Enforcement Officer may enter any property at reasonable hours and enter any structure with the consent of the property owner, occupant or agent, to inspect the property or structure for compliance with the laws or ordinances set forth in this section. If consent is denied he/she should obtain an administrative warrant before entering the property. The Code Enforcement Officer may revoke a permit if it was issued in error or if based on erroneous information.

9.6 Legal Action and Violations.

When any violation of any provision of this ordinance shall be found to exist, the Code Enforcement Officer is hereby authorized and directed to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this ordinance in the name of the town.

9.7 Fines.

Any person, firm or corporation being the owner or having control or use of any structure or premises who violates any of the provisions of this ordinance shall upon conviction be fined not less than $100 nor more than $2,500 for each violation. Each day such a violation is permitted to exist after notification shall constitute a separate offense. Fines shall be payable to the town.

9.8 Conditional Use Permits and Site Plan Review.

A person informed by the Code Enforcement Officer that he/she requires a conditional use permit or site plan review shall file an application for the permit with the Planning Board on forms provided for the purpose. A fee shall be paid at the time of filing an application to cover administrative costs. This fee shall be determined by the Board of Selectmen and reviewed annually. In addition, prior to receiving approval of any application, the applicant shall pay to the town all of its reasonable costs associated with legal advertisements and other out of pocket expenses applicable to the application. Out of pocket expenses are all expenses or costs for legal advice and technical consultation or advice that the Planning Board deems necessary to process the application. If fees are required per Article 7.23.D of the Land Use Ordinance, those fees shall be paid to the Town before the beginning of any construction activity. These services will be identified, budgets established, and the amount paid in advance of the service being performed. The fee for services payable by the applicant to the municipality will be deposited into a special account designed for that application. Plans for conditional uses and site plan review presented for approval under this section shall conform to the following submission requirements unless the Planning Board waives these requirements.

A. Authorization.

The Planning Board is hereby authorized to hear and decide upon applications for conditional use permits, in accordance with federal and state law, the provisions of this ordinance, and the provisions of other applicable town ordinances. The Board shall approve, approve with modifications or conditions, or disapprove an application for a conditional use permit. No conditional use or site plan review approval shall be authorized unless specific provisions for such conditional use is made in this ordinance.

B. Pre-existing uses or structures which would otherwise require conditional use or site plan review.

A use which now requires conditional use or site plan review but which existed prior to the effective date of this ordinance or any amendments thereto, may not be changed to another conditional use or use requiring site plan review, nor substantially expanded or altered except in conformity with all regulations of this ordinance pertaining to conditional uses.

C. Substantial Expansion.

A Substantial Expansion requires Conditional Use approval and shall be defined as:

1. Floor space increase of 1,500 square feet or 25 percent of the existing floor space, whichever is less; or

2. New materials, processes or production, or services and/or sales not normally associated with the existing use.

3. An increase of 2,500 square feet or more of the amount of impervious surface (parking, walks, etc.).

D. Changes or Modifications to Approved Use.

No changes or modifications shall be made in any approved conditional use or site plan approval without approval of the change by the Planning Board.

E. Site Plan Review.

A conditional use which meets the criteria specified below shall require site plan review approval in accordance with this section.

1. The construction or addition of 3,000 or more square feet of gross non-residential floor area.

2. The installation of or expansion of 5,000 or more square feet of impervious surfaces.

3. The establishment or expansion of a mobile home park.

4. Projects involving extraction industries.

5. Multi-family dwelling units.

F. Application Procedure.

1. Application for Conditional Use Review. Plans for conditional use review need not be drawn to scale, but should be legible and adequate for presentation purposes. The conditional use review application shall include as a minimum:

a. Name and address of the applicant or his/her authorized agent and name of proposed development in which the applicant has title or interest; a deed for the property;

b. Municipal tax maps and lot numbers and names and addresses of abutting landowners;

c. Total floor area, ground coverage and location of each proposed building; setbacks to property lines;

d. Approximate boundaries of the parcel;

e. If on-site sewage disposal is proposed, then an on-site soils investigation report by a licensed site evaluator shall be provided;

f. If public water and/or sewer are to be used, a statement from the water and/or sewer district or utility as to the availability of public water and/or sewer;

g. Existing and proposed entrances/exits from the property;

h. A parking plan shall also be provided;

i. Any existing restrictions or easements on the site;

j. A brief written narrative shall be provided on what type of business is proposed, hours of operation, number of employees, materials being used, waste disposal, etc.

The Planning Board may also require information outlined in the section below upon a determination that such information is needed to better review an application.

2. Application for Site Plan Review.

In addition to the information required above for conditional use review, an applicant for site plan review must also submit the following information. The site plan review application shall include as a minimum:

a. All information required in Section 9.8.F.1 a-j, for conditional uses, plus the following:

b. A map or maps prepared at a scale of not less than one inch to 40 feet and shall include:

i. Perimeter survey of the parcel made and certified by a registered land surveyor depicting reference points, showing true north point, graphic scale, corners of the parcel and date of survey and total acreage. The perimeter survey shall be recorded at the York County Registry of Deeds after Planning Board approval but prior to the issuance of the land use permit. Areas within 200 feet of the proposed development site shall be included;

ii. Existing and proposed locations and dimensions of any utility lines, sewer lines, water lines, easements, drainage ways, public or private rights of way;

iii. Location, ground floor area and elevations of buildings and other structures on the site.

iv. If the site is not to be served by a public sewer line, then an on-site soils investigation report by a Department of Human Services licensed site evaluator shall be provided. The report shall contain the types of soil, location of test pits, and proposed location and design of the best practical subsurface disposal system for the site, all of which must meet the standards set forth in the Maine State Plumbing Code;

v. Location and dimensions of on-site pedestrian and vehicular access ways, parking areas, loading and unloading facilities, design of ingress and egress of vehicles to and from the site on to public streets and curb and sidewalk lines;

vi. Landscape plan showing location, type and approximate size of plantings and location and dimensions of all fencing and screening.

vii. Topography indicating contours at intervals of not more than two feet in elevation unless otherwise specified by the Planning Board.

c. A written statement by the applicant that shall consist of:

i. A description of the proposed uses to be located on the site, including quantity and type of building construction if any;

ii. Total floor area and ground coverage of each proposed building and structure and percentage of lot covered by each building or structure;

iii. Method of solid waste disposal;

iv. Erosion and sedimentation control plan prepared in accordance with Article 7.15 if required;

v. Copies of letters to the town manager, selectmen, Planning Board, road commissioner/public works director, fire chief, police chief, etc. notifying them of the proposed development;

vi. Stormwater management plan prepared in accordance with Article 7.17 if required;

vii. Statement of financial capacity which should include the names and sources of the financing parties including banks, government agencies, private corporations, partnerships and limited partnerships and whether these sources of financing are for construction loans or long-term mortgages or both;

viii. The applicant's evaluation of the availability and suitability of off-site public facilities including sewer, water, and streets;

ix. A statement from the fire chief as to the availability of fire hydrants and/or fire ponds, or provisions of fire protection services;

x. If public streets are proposed, a statement from the town engineer that the proposed road or street construction will meet town specifications;

xi. An estimate of the date when construction will start and when the development will be completed.

G. Public Hearing

Following the filing of a complete application as determined by the Planning Board a public hearing shall be held on the application within 30 days. The Board shall notify the Code Enforcement Officer and the municipal officers at least seven days in advance, of the time and place of the hearing, and shall publish notice of the hearing at least seven days in advance in a newspaper of general circulation in the area.

1. The Board shall notify by regular U.S. mail, first class, postage prepaid, the applicant and the owners of all property within 200 feet of the property involved at least seven days in advance of the hearing of the nature of the application and of the time and place of the public hearing.

2. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board.

3. The Code Enforcement Officer or his/her designated assistant shall attend all hearings and may present to the Planning Board all plans, photographs or other material he/she deems appropriate for an understanding of the application.

4. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairman.

H. Decision.

1. Within 30 days of the public hearing the Planning Board shall reach a decision on a conditional use or site plan review and shall inform in writing, the applicant, the Code Enforcement Officer and municipal officers of its decision, and shall prepare a detailed finding of facts and conclusions within 14 days of its decision. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, with conditions prescribed by the Board, or deny a building permit.

2. A conditional use permit or site plan approval secured under the provisions of this ordinance by vote of the Planning Board shall expire if the use involved is not commenced within one year of the date on which the conditional use or site plan is authorized.

3. An appeal may be taken within 30 days after a decision is rendered to Superior Court.

I. Performance Standards for Conditional Use and Site Plan Review.

1. The following standards are to be used by the Planning Board in judging applications for site plan review and conditional use applications and shall serve as minimum requirements for approval of the application. The site plan shall be approved, unless in the judgment of the Planning Board the applicant is not able to reasonably meet any of these standards. In all circumstances the burden for proof shall be on the applicant and such burden of proof shall include the production of evidence necessary for the Planning Board to review the application.

a. Conformance with Comprehensive Plan: All proposed conditional uses and site plans shall conform to the Comprehensive Plan of the Town of Berwick and with the provisions of all pertinent federal, state, and local codes, ordinances, and regulations.

b. Preserve and enhance the landscape: The landscape shall be preserved in its natural state insofar as practicable by minimizing tree removal, disturbance of soil, retaining existing vegetation during construction. After construction is complete, landscape shall be designed and planted that will define, soften or screen the appearance of off street parking areas from the right of way and abutting properties and/or structures in order to enhance the physical design of the building(s) or site, and to minimize the encroachment of the proposed use on the neighboring land uses.

c. Relationship of the proposed buildings to the environment: Proposed structures shall be related harmoniously to the terrain and to the existing buildings in the vicinity which have a visual relationship to the proposed buildings. Special attention shall be paid to the bulk, location and height of the building(s) and such natural features such as slope, soil type and drainage ways.

d. Vehicular access: The proposed site layout shall provide for safe access and egress from public and private roads by providing adequate location, numbers and controls of access points including site distances, turning lanes, traffic signalization when required by existing and projected traffic flow on municipal road systems.

e. Parking and circulation: The layout and design of all vehicular and pedestrian circulation, including walkways, interior drives, and parking areas shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, loading areas, and arrangements and use of parking areas.

f. Surface water drainage: Adequate provision shall be made for surface drainage so that removal of surface waters will not adversely affect neighboring properties, downstream conditions, soil erosion or the public storm drainage system. Whenever possible, on-site absorption of unpolluted run-off waters shall be utilized to permit groundwater recharge on the site.

g. Existing utilities: The development shall not impose an unreasonable burden on sewers, sanitary and storm drains, water lines or other public utilities.

h. Advertising features: The size, location, design, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.

i. Special features of the development: Exposed storage areas, exposed machinery installation, service areas, truck loading areas, utility buildings and similar structures shall have sufficient setback and screening to provide an audio/visual buffer to minimize their adverse impact on other land uses within the development area and surrounding properties.

j. Exterior lighting: All exterior lighting shall be designed to minimize adverse impact on neighboring properties.

k. Emergency vehicle access: Provisions shall be made for providing and maintaining convenient and safe emergency vehicle access to all buildings and structures.

l. Municipal services: The development will not have an unreasonable adverse impact on the municipal services including municipal road systems, fire department, police department, solid waste program, sewer treatment plant, school, open spaces, recreational programs and facilities, and other municipal service and facilities.

m. Will not result in water or air pollution: In making this determination, it shall at a minimum consider: The elevation of the land above sea level and its relationship to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its attest on effluents; and the applicable state and local health and water resources regulations.

n. Has sufficient water available for the reasonably foreseeable needs of the development (this is usually considered to be ten years approximately).

o. Will provide for adequate sewerage waste disposal.

p. Will not have adverse affects on the scenic or natural beauty of the area, aesthetics, or rare and irreplaceable natural areas.

q. The developer has adequate financial and technical capacity to meet the above stated standards.

r. Whenever situated in whole or in part within 250 feet of any pond, lake or river, will not adversely affect the quality of such body of water or affect the shoreline of such body of water, based on the standards outlined in Section 9.8.I.1.j.

s. Low Impact Design: Each applicant is required to submit a statement to the Planning Board documenting proposed Low Impact Design (LID) for the site, which will help to reduce storm water volumes and help to enhance storm water quality. LID includes, but is not limited to green roofs, rain gardens, tree wells, infiltration basins, and permeable pavement.

J. Additional Requirements Attached to Conditional Uses and Site Plan Review

Upon consideration of the factors listed above, the Planning Board may attach such conditions in addition to those required in this ordinance that it finds necessary to further the purposes of this ordinance. Violation of any of these conditions shall be violation of this ordinance. Such conditions may include, but are not limited to, specifications for: type of vegetation; increased setbacks and yards; specified sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; professional inspection and maintenance; sureties; deed restrictions; restrictive covenants; locations of piers, docks, parking and signs; type of construction; or any other conditions necessary to fulfill the purposes of this ordinance.

In evaluating each application, the Board may request the assistance of the County Soil and Water Conservation District, state or federal agency, or consultant which can provide technical assistance.

K. Performance Guarantees

1. Types of Guarantees. At the time of approval of the application for conditional use or site plan approval, the Planning Board may require the applicant to provide one of the following performance guarantees for 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:

a. Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;

b A performance bond payable to the municipality issued by a surety company, approved by the municipal officers or town manager;

c An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the municipality may draw if construction is inadequate, approved by the municipal officers, or town manager; or

The conditions and amount of the performance guarantee shall be determined by the Board with the advice of the municipal engineer, road commissioner, municipal officers, and/or municipal attorney.

2. Contents of Guarantee. The performance guarantee shall 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 developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.

3. Escrow Account. A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the applicant, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the applicant unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the applicant and the amount withdrawn to complete the required improvements.

4. Performance Bond. A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the project for which approval is sought.

5. Letter of Credit. An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the project and may not be used for any other project or loan.

6. Release of Guarantee. Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the municipal engineer or other qualified individual retained by the municipality and any other agencies and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the project for which the release is requested.

7. Default. If upon inspection, the municipal engineer or other qualified individual retained by the municipality 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 or she shall so report in writing to the Code Enforcement Officer, the municipal officers, the Planning Board, and the applicant or builder. The municipal officers shall take any steps necessary to preserve the municipality's rights.

8. Improvements Guaranteed. Performance guarantees, when required, shall be tendered for all improvements required under this ordinance, including but not limited to, sidewalks,

drainage and storm water management facilities, parking areas, lighting, signs, landscaping and buffer areas, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.

ARTICLE X BOARD OF APPEALS

10.1 Establishment and Organization.

A Board of Appeals is hereby established which shall consist of five members and two associate members. The term of office of a member or associate is three years serving staggered terms. A municipal officer or his/her spouse may not be a member or associate member of the Board of Appeals. When a regular member of the Board is unable to act because of interest, physical incapacity or absence, an associate member shall act in his/her stead. Members of the Board of Appeals shall be appointed by the municipal officers. When there is a permanent vacancy, the municipal officers shall appoint a new member to serve for the remainder of the unexpired term. Members of the Board of Appeals may be removed from office by the municipal officers for cause upon written charges and after public hearing. The Board of Appeals shall elect a chairman and secretary from its own membership.

10.2 Proceedings of the Board of Appeals.

The Board of Appeals shall adopt rules necessary to the conduct of its affairs, in keeping with the provisions of this ordinance and 30-A M.R.S.A., Section 2691. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his/her absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board of Appeals shall keep the minutes of its proceedings, showing the vote of each member upon each question, or of absence or failure to vote, and shall keep records of its examinations and other official actions, all of which shall be public record and be filed in the town offices. A quorum shall consist of three members.

10.3 Powers and Duties of the Board of Appeals.

The Board of Appeals shall have the following powers:

A. Administrative review. To hear and decide appeals where it is alleged there is a land use violation or error in any order, requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this ordinance.

B. Variances. To authorize variances upon appeal in specific cases, but only within the limitations set forth in this ordinance

C. Interpretations of the ordinance.

10.4 Variances.

Variances may be permitted only under the following conditions:

A. Unless otherwise provided in this ordinance, variances are obtainable only for height, minimum lot size, minimum lot width, structure size, setbacks and open space requirements.

B. Variances cannot, under any circumstances, be obtainable for establishment of any uses otherwise prohibited.

C. The Board of Appeals shall not grant a variance unless it finds that all the following criteria are met:

1. That the land in question cannot yield a reasonable return unless a variance is granted;

2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. That the granting of a variance will not alter the essential character of the locality; and

4. That the hardship is not the result of action taken by the applicant or a prior owner. Such hardship may be found by the Board of Appeals where the Town of Berwick Land Use Ordinance, as applied to the applicant's property, substantially destroys or decreases the value of the property in question for any permitted use to which the land or property can reasonably be put. Mere inconvenience to the property owner shall not satisfy this requirement. Neither financial hardship alone nor pleading that a greater profit may be realized from the applicant's property were a variance granted shall be sufficient evidence of unnecessary hardship.

D. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of the ordinance as much as possible, and it may impose such conditions to a variance as it deems necessary, to this end.

E. Disability Variance. The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this section, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A., Section 4553 and the term "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

F. Setback Variance for Single-Family Dwellings. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner’s property would cause undue hardship. The term “undue hardship” as used in this subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

2. The granting of a variance will not alter the essential character of the locality;

3. The hardship is not the result of action taken by the applicant or a prior owner;

4. The granting of the variance will not substantially reduce or impair the use of the abutting property; and

5. That the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

10.5 Appeals to the Board of Appeals.

A. Making an Appeal

1. An appeal may be taken to the Board of Appeals by an aggrieved person from any decision of the Code Enforcement Officer. Such appeal shall be taken within 30 days of the decision appealed from.

2. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal, specifying the grounds for such appeal. For a variance appeal the applicant shall submit:

a. A sketch drawn to scale showing lot lines, location of existing building and other physical features pertinent to the variance request.

b. A concise written statement stating what variance is requested.

3. Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board all the papers specifying the record of the decision appealed from. Each appeal shall be accompanied by a fee as stated in the Cost Recovery Fee Schedule to cover advertising and administrative costs. The Board of Appeals shall hold a public hearing on the appeal within 45 days.

B. Procedures on Appeal

1. At least seven days prior to the date of the hearing on such appeal, the Board shall cause to be published in one issue in a newspaper of general circulation in the town a notice which includes:

a. the name of the person appealing;

b. a brief description of the property involved;

c. a brief description of the decision appealed from, or the nature of a variance appeal.;

d. the time and place of the Board's hearing.

2. At least seven days prior to the date set for hearing, the Board shall also cause the Town Clerk to give similar written notice to:

a. all property owners of record whose properties lie within 200 feet of the affected property;

b. the person making the appeal, and

c. the Planning Board and any other parties of record.

C. Hearings

1. The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts.

2. The appellant's case shall be heard first. To maintain orderly procedure each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairman.

3. At any hearing, a party may be represented by agent or attorney. Hearings shall not be continued to other times except for good cause.

4. The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he/she deems appropriate for an understanding of the appeal.

5. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

10.6 Decisions of the Board of Appeals.

A. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Code Enforcement Officer, or to decide in favor of the applicant on any matter on which it is required to pass under this ordinance, or to affect any variation in the application of this ordinance.

B. The Board shall decide all appeals within 30 days after hearing, and shall issue a written decision on all appeals.

C. All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented, and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed or hand delivered to the petitioner, his/her representative or agent, the Planning Board, agency or office and the municipal officers within seven days of the decision date.

D. Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall immediately issue a permit in accordance with the conditions of the approval, unless the applicant needs a conditional use permit.

E. Appeals may be taken as permitted by law from any decision of the Board of Appeals to Superior Court.

F. A copy of all variances granted by the Board of Appeals in the shoreland area shall be submitted to the Department of Environmental Protection within 14 days of the decision.

10.7 Stay of Proceedings.

An appeal stays all legal proceedings in a furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

ARTICLE XI PLANNING BOARD

11.1 Establishment.

Pursuant to Art. VIII, pt. 2, Section 1 of the Maine Constitution and 30-A M.R.S.A., Section 3001, the Town of Berwick hereby establishes the Planning Board.

11.2 Appointment.

A. Planning Board members shall be appointed by the Board of Selectmen and sworn by the clerk or other person authorized to administer oaths.

B. The Planning Board shall consist of five members and two alternate members.

C. The term of each member shall be three years. Upon adoption of this section, the Board of Selectmen shall reappoint the sitting members for three-year terms in the following manner: one member to serve until 12/31/99; two members to serve until 12/31/00; and two members to serve until 12/31/01. After the transition period, appointments shall be made for full three-year terms. The term of office of an alternate member shall be one year except for the transition term which shall be until 12/31/99. Thereafter the alternate members shall be appointed annually. This transition shall be effective July 1, 1999.

D. When there is a permanent vacancy, the municipal officers shall appoint a person to serve for the unexpired term. A vacancy shall occur upon the resignation, removal, or death of any member, or when a member ceases to be a legal resident of the town. When a vacancy occurs, the chairperson of the Planning Board shall immediately so advise the Board of Selectmen in writing. The Board of Selectmen may remove members of the Planning Board for cause after notice and hearing. Lack of regular attendance may constitute cause for removal.

E. A Board of Selectmen or his/her spouse may not be a member or alternate member.

11.3 Organization and Rules.

A. The Planning Board shall elect a chairperson and vice chairperson from among its members. The Planning Board may either elect a secretary from among its members or hire a non-board member to serve as secretary. The term of all offices shall be one year with eligibility for re-election.

B. When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the chairperson, the chairperson shall designate an alternate member to sit in that member's stead.

C. An alternate member may attend all meetings of the Planning Board and participate in its proceedings, but may vote only when he or she has been designated by the chairperson to sit for a member.

D. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the members except the member who is being challenged.

E. The chairperson shall call at least one regular meeting of the Planning Board each month.

F. No meeting of the Planning Board shall be held without a quorum consisting of three members or alternate members authorized to vote. The Planning Board shall act by majority vote, calculated on the basis of the number of members present and voting.

G. The Planning Board may establish and shall annually review Policies and Procedures (by-laws) setting forth procedural rules, regulations and guidelines governing the conduct of the Planning Board, its members, employees and other interested parties who regularly appear

before the Planning Board. These Policies and Procedures may be amended from time to time throughout the year and may include such rules and regulations as the Planning Board deems necessary to clarify its duties set forth in this ordinance.

11.4 Duties and Powers.

A. The Planning Board shall perform such duties and exercise such powers as are provided by this Land Use Ordinance, the Subdivision Regulations for the Town of Berwick, Maine, and the laws of the State of Maine.

B. The Planning Board is responsible for periodic updates to the Comprehensive Plan as mandated by 30-A M.R.S.A. Chapter 187, Subchapter II, for consideration at public hearings and decision by the voters.

C. The Planning Board is responsible for initiating and directing the long-range planning of the town following the guidelines of the Comprehensive Plan and to protect and retain the integrity of the character, natural beauty and historic architecture of the town.

D. The Planning Board may propose revisions and updates to the Land Use Ordinance, the zoning map, the Flood Plain Management Ordinance and such other ordinances dealing with planning and land use as may be considered by the town in the future, subject to consideration at public hearings and decision by the legislative body as provided for by Article 12. The Planning Board may write, revise and update the Subdivision Regulations for the Town of Berwick, Maine.

E. The Planning Board may provide assistance and recommendations to any municipal department on matters affecting the Comprehensive Plan. Each officer and department of the town shall give all reasonable aid, cooperation and information to the Planning Board.

F. The Planning Board may obtain goods and services necessary to its proper function within the limits of appropriations made for the purpose and within the limits of the town's purchasing policies.

ARTICLE XII AMENDMENTS

12.1 Initiation.

A proposal for an amendment to this ordinance may be initiated by:

1. The Planning Board, by majority vote of the Board;

2. The municipal officers, through a request to the Planning Board;

3. An individual, through a request to the Planning Board; or

4. A written petition of a number of voters equal to at least ten percent of the voters in the last gubernatorial election.

12.2 Procedure.

A. Any proposal for an amendment shall be made to the Planning Board in writing stating the specific changes requested. When a change in zoning boundaries is proposed, the application shall state the nature, extent, and location of the boundary change proposal, and shall be accompanied by a scale drawing showing the areas to be changed, with dimensions. When an amendment is proposed by other than the municipal officers or the Planning Board, a fee of $250.00 shall accompany the proposal to cover the costs of hearings and advertisements.

B. Within 30 days of receiving an amendment the Planning Board shall hold a public hearing on the proposed amendment (See 30-A M.R.S.A., Section 4352, Subsection 9 for notice requirements), and unless the amendment has been submitted by the municipal officers or by a petition, the Board shall vote whether to forward the amendment to the municipal officers. If the Board votes to forward the amendment to the municipal officers, it shall make a written recommendation regarding passage to the municipal officers and legislative body prior to any action on the amendment by the municipal officers.

C. The municipal officers shall hold a public hearing on the proposed amendment. Notice of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven days prior to the hearing. The notice shall contain the time, date, and place of hearing, and sufficient detail about the proposed changes as to give adequate notice of their content. If the proposed changes are extensive, a brief summary of the changes, together with an indication that a full text is available at the Town Clerk's office shall be adequate notice.

D. Except for amendments affecting the Shoreland Zone, amendments shall take effect and be in force from the date of their adoption. Amendments affecting the Shoreland Zone shall not be effective unless approved by the Department of Environmental Protection. A certified copy of the amendment, attested and signed by the Town Clerk, shall be forwarded to the Department for approval. If the Department fails to act on this ordinance within 45 days of its receipt of the amendment it shall be deemed approved. Any application for a permit submitted to the municipality within the 45-day period shall be governed by the terms of the amendment if the amendment is approved by the Department of Environmental Protection.

12.3 Adoption.

Any amendment to this ordinance shall be adopted by the legislative body.

ARTICLE XIII LEGAL STATUS PROVISIONS

13.1 Conflict with Other Laws.

When the provisions of this ordinance specify more restrictive standards than required by any other statute or ordinance the requirements of this ordinance shall govern.

13.2 Separability.

Should any section or part of a section or any provision of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

13.3 Effective Date.

This ordinance will be effective July 1, 2000 and replaces the Town of Berwick Land Use Ordinance first adopted March 8, 1986 and amended March 1987, March 1988, June 1991, and November 1992. It was readopted June 8, 1993 to conform to the Comprehensive Plan and amended June 1994, June 1996, November 1996, June 1997, May 1998, November 1998, May 18, 1999 and May 2000.

ARTICLE XIV SHORELAND ZONING

14.1 Purposes. The purposes of this Article are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

14.2 Authority. This Article has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

14.3 Applicability. This Article applies to all land areas within 250 feet, horizontal distance, of the

- normal high-water line of any great pond or river,
- upland edge of a freshwater wetland, and
- all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Article also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

14.4 Effective Date

A. Effective Date of this Article and Article Amendments. This Article, which was adopted by the municipal legislative body on May 12, 2009, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Article, or Article Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Article or Article Amendment, within forty-five (45) days of his/her receipt of the Article, or Article Amendment, it shall be automatically approved. For the purposes of Section 14.12, the effective date of this Article XIV is the original effective date of this ordinance as put forth in Section 13.3.

   Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Article, or Article Amendment, if the Article, or Article Amendment, is approved by the Commissioner.

B. Section 14.15(P) is repealed on the statutory date established under 38 M.R.S.A. section 438-B (5).

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

Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards."

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

14.6 Severability. Should any section or provision of this Article be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Article.

14.7 Conflicts with Other Ordinances. Whenever a provision of this Article conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

14.8 Amendments. This Article may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

14.9 Districts and Zoning Map

A. Official Shoreland Zoning Map. The areas to which this Article is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Article:

(1) Resource Protection
(2) Limited Residential
(3) Shoreland Commercial Industrial
(4) Stream Protection

B. Scale of Map. The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

NOTE: Because of map scale or other reason, a municipality may have a series of maps depicting its shoreland zone.

C. Certification of Official Shoreland Zoning Map. The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office.

D. Changes to the Official Shoreland Zoning Map. If amendments, in accordance with Section 4.8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days

after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

14.10 Interpretation of District Boundaries. Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

NOTE: Municipalities are encouraged to incorporate specific written descriptions of district boundaries into the Article so that disputes over district boundaries are minimized. The Maine Supreme Judicial Court has held that the Official Shoreland Zoning Map is the primary tool to which to refer in determining district boundaries under ordinances that are not more explicit in their district descriptions than the language of the Guidelines, and that where there is inconsistency between the Map and these general text descriptions of the shoreland districts as provided in the minimum guidelines, the Map prevails.

14.11 Land Use Requirements. Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

14.12 Non-conformance.

A. Purpose. It is the intent of this Article to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Article or amendments thereto shall be allowed to continue, subject to the requirements set forth in Article 12. Except as otherwise provided in this Article, a non-conforming condition shall not be permitted to become more non-conforming.

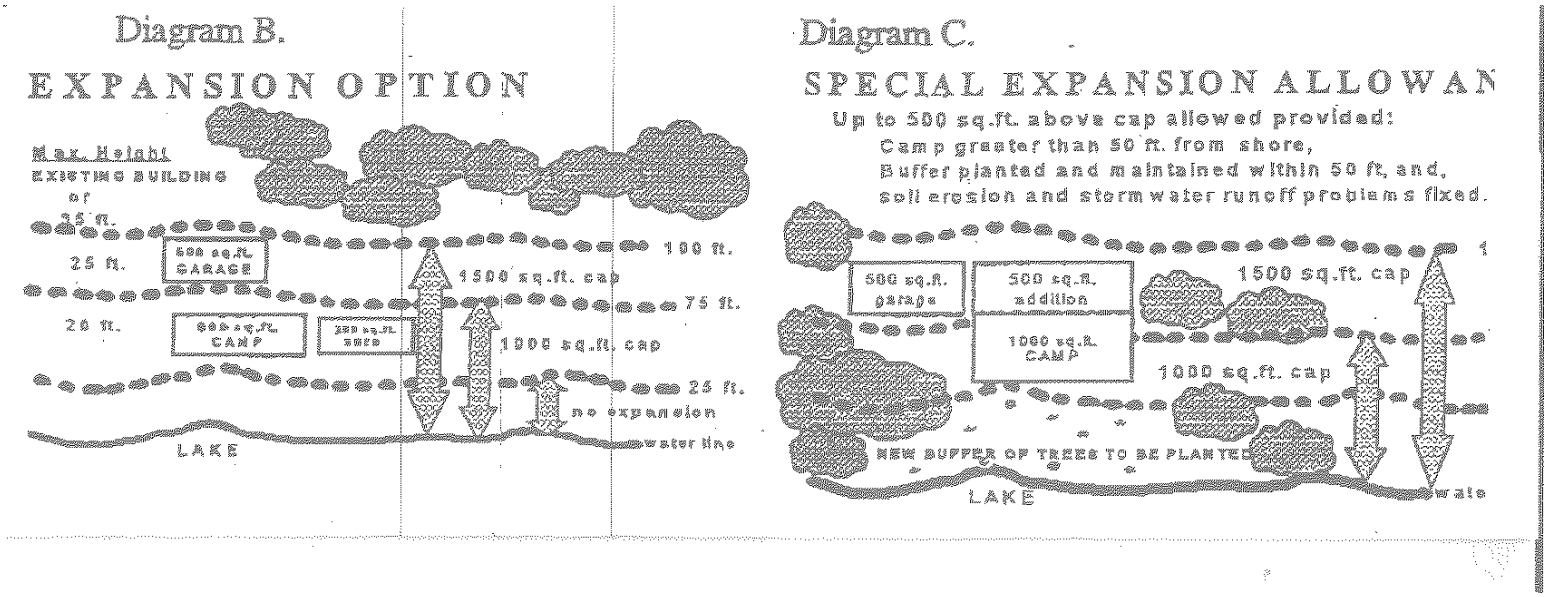
B. General

(1) Transfer of Ownership. Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Article.

(2) Repair and Maintenance. This Article allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

C. Non-conforming Structures

(1) Expansions. 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 subparagraphs (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 Ordinance 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.

iv. For structures located less than 100 feet, horizontal distance, from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total floor area for all portions of those structures within that 100-foot distance is 1,500 square feet, and the maximum height of any portion of a structure that is within 100 feet, horizontal distance, of a great pond is 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet, horizontal distance from the normal high-water line of a water body, tributary stream, or the upland edge of a wetland must meet the floor area and height limits of division (iii).

For the purposes of Section 14.12(C)(1)(a), 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 14.12(C)(2) Relocation, 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 three (3) additional feet, as measured from the uphill side of the structure, it shall not be considered to be an expansion of the structure.

NOTE: The special expansion allowance provided below is available to municipalities that wish to allow a greater expansion limit if the landowner has maintained a quality 50 foot buffer along the water body, tributary stream or wetland, or agrees to plant such a buffer, and agrees to implement certain measures to reduce erosion and sedimentation from the property. If the municipality does not have adequate resources to ensure compliance with this provision, the department recommends that it not be incorporated into the ordinance.

(1-A) Special expansion allowance. Existing principal and accessory structures that exceed the floor area or height limits set in Section 14.12(C)(1)(a)(iii) and 14.12(C)(1)(a)(iv) 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.

(a) 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.

(b) A well-distributed stand of trees and other natural vegetation as defined in Section 14.15(Q)(2)(b), 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 requirements of Section 14.15(Q)(2)(b) is not present, the 500 square foot special expansion allowance may be permitted only in conjunction with a written plan, including a scaled site drawing, by the property owner, and approved by the Planning Board or its designee, to reestablish a buffer of trees, shrubs, and other ground cover within 50 feet, horizontal distance, of the shoreline or tributary stream.

(c) Adjacent to great ponds classified GPA and rivers flowing to great ponds classified GPA, except for the allowable footpath, there exists complete natural ground cover, consisting of forest duff, shrubs and other woody and herbaceous vegetation within 50 feet, horizontal distance, of the normal high-water line. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch and plantings of native shrubs, and other woody and herbaceous vegetation in quantities sufficient to retard erosion and provide for effective infiltration of stormwater.

(d)A written plan by the property owner, including a scaled site drawing, is approved by the Planning Board and is developed, implemented, and maintained to address the following mitigation measures for the property within the shoreland zone.

(i)Unstabilized areas resulting in soil erosion must be mulched, seeded, or otherwise stabilized and maintained to prevent further erosion and sedimentation to water bodies, tributary streams, and wetlands.

(ii)Roofs and associated drainage systems, driveways, parking areas, and other nonvegetated surfaces must be designed or modified, as necessary, to prevent concentrated flow of storm water 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.

(1-B) Planting requirements. Any planting or revegetation required as a condition to the Special Expansion Allowance must be in accordance with a written plan drafted by a qualified professional, be implemented at the time of construction, and be designed to meet the rating scores contained in paragraph (b) and the ground cover requirements of paragraph (c) 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 three (3) feet tall for coniferous species and no less than six feet tall for deciduous species. The planting plan must include a mix of at least three native tree species found growing in adjacent areas, with no one species making up more than 50% of the number of saplings planted unless otherwise approved by the Planning Board or its designee, based on adjacent stand comparison. All aspects of the implemented plan must be maintained by the applicant and future owners.

`

NOTE: Municipalities are encouraged to specify those professions which they deem qualified to prepare planting and mitigation plans, taking into account the availability of those professionals in the region. Such professionals may include, but are not limited to, foresters, arborists, landscape architects, and landscape contractors.

(1-C) Filing and reporting requirements. Written plans required pursuant to Section 14.12(C)(1-A) (d) must be filed with the registry of deeds of the county in which the property is located. A copy of all permits issued pursuant to this section must be forwarded by the municipality to the department within 14 days of the issuance of the permit.

(2) Relocation. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the

land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

(a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% 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.

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

(3) Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Article. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 14.12(C)(1) above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 14.12(C)(2) above.

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% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding

normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 14.12(C)(2) above, the physical condition and type of foundation present, if any.

(4) Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the 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 Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Non-conforming Uses

(1) Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in 14.12(C)(1)(a) above.

(2) Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

(3) Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 14.12(C)(4) above.

E. Non-conforming Lots

(1) Non-conforming Lots: A non-conforming lot of record as of the effective date of this Article or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Article except lot area, lot width and shore frontage

can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

(2) Contiguous Built Lots: If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Article, if all or part of the lots do not meet the dimensional requirements of this Article, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Article, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Article.

(3) Contiguous Lots - Vacant or Partially Built: If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Article, if any of these lots do not individually meet the dimensional requirements of this Article or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Article and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

(a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or

(b) Any lots that do not meet the frontage and lot size requirements of 14.12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

14.13 Establishment of Districts

A. 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 shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Shoreland Commercial Industrial need not be included within the Resource Protection District.

(1) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of

December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or 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 along rivers and floodplains along artificially formed great ponds along rivers, 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.

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

(4) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during the period of normal high water.

NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.

(5) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement.

B. Limited Residential District. The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Shoreland Commercial Industrial District.

C. Shoreland Commercial Industrial District. The Shoreland Commercial Industrial District includes the following types of existing, intensively developed areas:

(1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:

(a) Areas devoted to manufacturing, fabricating or other industrial activities;

(b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

(c) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.

(2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.

D. Stream Protection District. The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those

areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater wetland. Where a stream and its associated shoreland area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

14.14 Table of Land Uses.

All land use activities in the shoreland zone, as indicated in the Land Use Table in Section 6.2, shall conform with all of the applicable land use standards in Section 14.15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

Zoning District Abbreviations:

RP - Resource Protection
LR - Limited Residential
SP - Stream Protection
SC/I- Shoreland Commercial Industrial

14.15 Land Use Standards. All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

A. Minimum Lot Standards
(1) See dimensional table below

	SP	**RP**	**LR**	**SC/I**
Minimum lot area (square feet.)	40,000	40,000	40,000	10,000
Minimum lot width (feet)	200	200	200	100
Minimum road frontage (feet)	200	200	200	100
Minimum shore frontage (feet)	200	200	200	100
Minimum front yard setback (feet)	50	50	50	25
Minimum side yard setback (feet)	25	25	25	15
Minimum read yard setback (feet)	30	30	30	25
Maximum building height (feet)	35	35	35	45
Maximum lot coverage (percent)	10	10	20	70
Shoreline setback from river and great ponds	100	100	100	25
Shoreline setback from wetlands and streams	100	100	100	25

(2) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.
(3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
(4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
(5) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

B. Principal and Accessory Structures

(1) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and one hundred (100) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the Shoreland Commercial Industrial District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance. In the Resource Protection District, the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition:

(a)The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

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

NOTE: A tributary stream may be perennial or intermittent. Where a tributary stream is present within the shoreland zone, setback standards from that tributary stream are applicable.

(2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height, and shall not exceed forty-five (45) feet in height in the Shoreland Commercial/Industrial District. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.

(3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.

(4) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the Shoreland Commercial Industrial District adjacent to rivers that do not flow to great ponds classified GPA where lot coverage shall not exceed seventy (70) percent.

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

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

(1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

(2) The location shall not interfere with existing developed or natural beach areas.

(3) The facility shall be located so as to minimize adverse effects on fisheries.

(4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.

(5) No new structure shall 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.

(6) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

(7) No existing structures 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 shall be converted to residential dwelling units in any district.

(8) Except in the Shoreland Commercial Industrial 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 shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

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

F. Individual Private Campsites. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

(1) One campsite per lot existing on the effective date of this Article, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.

(2) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

(3) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.

(4) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.

(5) A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.

(6) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall 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.

G. Campgrounds. Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

(1) Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.

(2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

E. Commercial and Industrial Uses. The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

(1) Auto washing facilities

(2) Auto or other vehicle service and/or repair operations, including body shops

(3) Chemical and bacteriological laboratories

(4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

NOTE: 22 M.R.S.A. section 1471-U requires municipal ordinances that apply to pesticide storage, distribution or use be filed with the Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333. If a municipality's ordinance is more inclusive or restrictive than these Guidelines, as it pertains to pesticides, a copy of the ordinance must be filed with the Board of Pesticides Control.

(5) Commercial painting, wood preserving, and furniture stripping

(6) Dry cleaning establishments

(7) Electronic circuit assembly

(8) Laundromats, unless connected to a sanitary sewer

(9) Metal plating, finishing, or polishing

(10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas

(11) Photographic processing

(12) Printing

I. Parking Areas

(1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities in Districts other than the Shoreland Commercial Industrial District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

(2) Parking areas shall be adequately sized for the proposed use and shall be designed to meet the stormwater performance standards in Article 7.17, and to meet the *Stormwater Management in Maine* manual, published by the Maine Department of Environmental Protection, January 2006, where applicable. Privately owned stormwater management facilities shall be maintained in accordance with Article 7.23.

(3) In determining the appropriate size of proposed parking facilities, the following shall apply:

(a) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.

(b) Internal travel aisles: Approximately twenty (20) feet wide.

J. Roads and Driveways. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

(1) Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Erosion and sedimentation control measures shall be designed and built according to the standards of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003.

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

Section 14.15 (I)(1) does not apply to approaches to water crossings or to roads or driveways 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. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 14.15(I)(1) except for that portion of the road or driveway necessary for direct access to the structure.

(2) Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.

(3) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall 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.

(4) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 14.15(R).

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

(6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified 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 which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

(7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

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

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

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

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

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

(8) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning, in accordance Article 7.23.

K. Signs. The following provisions shall govern the use of signs in the Resource Protection, Stream Protection, and Limited Residential:

(1) Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.

(2) Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.

(3) Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.

(4) Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.

(5) Signs relating to public safety shall be allowed without restriction.

(6) No sign shall extend higher than twenty (20) feet above the ground.

(7) Signs may be illuminated only by shielded, non-flashing lights.

L. Storm Water Runoff

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

(2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning, in accordance with Article 7.23.

NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a Stormwater Management permit to be obtained from the Maine DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of

developed area in any other stream, or wetland watershed. A Stormwater Permit-By-Rule is necessary for a project with one acre or more of disturbed area but less than 1-acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Any development that disturbs more than one acre, but does not require any of the following: A Stormwater Permit-By-Rule (under MEDEP Chapter 500), a full Stormwater Law Permit (under MEDEP Chapter 500) or a Site Law Permit (under Site Location of Development, 38 M.R.S.A., Article 6 Sections 481-490), is required by MEDEP to conform to the Maine Construction General Permit (MGCP) and submit a Notice of Intent (NOI). Developments that do require permits under MEDEP Chapter 500 or Site Location of Development are required to comply with the substantive requirements of MCGP, but are not required to submit a separate NOI.

M. Septic Waste Disposal

(1) All subsurface sewage disposal systems shall 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, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet 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.

N. Essential Services

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

(2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

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

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

Mineral extraction may be permitted under the following conditions:

(1) A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 14.15 (N)(4) below.

(2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.

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

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

NOTE: The State of Maine Solid Waste Laws, 38 M.R.S.A., section 1301 and the solid waste management rules, Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

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

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

(4) In keeping with the purposes of this Article, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

P. Agriculture

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

(2) Manure shall not be stored or stockpiled within two-hundred fifty (250) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within one hundred (100) feet horizontal distance, of other water bodies, 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.

(3) Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Article.

(4) There shall be no new tilling of soil within two hundred fifty (250) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within one hundred (100) feet, horizontal distance, from other water bodies; nor within one hundred (100) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this Article and not in conformance with this provision may be maintained.

(5) Newly established livestock grazing areas shall not be permitted within two hundred fifty (250) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within one hundred (100) feet, horizontal distance, of other water bodies, nor; within one hundred (100) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

(6) If fertilizer will be applied within one hundred (100) feet horizontal distance of the normal high-water line of the Salmon Falls River then best management practices will be utilized including the following:

1. Use phosphorus-free fertilizer, unless a soil test indicates a low phosphorus level, or when establishing a new lawn from seed.

2. Do not apply fertilizer between December 1 and April 1 or to frozen ground.

3. Do not apply fertilizer or pesticides if moderate to heavy rain is imminent or if the soil is saturated.

4. A filter strip of perennial vegetation shall be maintained along the normal high-water line of the Salmon Falls River at a width of ten (10) feet for average slopes of less than one (1) percent and proportionally up to at least (20) feet for slopes of fifteen (15) percent.

NOTE: 17 M.R.S.A. section 2805(4) requires a municipality to provide the Commissioner of Agriculture, Food and Rural Resources with a copy of any proposed ordinance that impacts farm operations. The law further requires the Commissioner to review the proposed ordinance and advise the municipality if the proposed ordinance would restrict or prohibit the use of best management practices. A copy of a shoreland zoning ordinance that regulates no more restrictively than contained in these Guidelines need not be provided to the Commissioner of Agriculture, Food and Rural Resources.

Q. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

(1) In the Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

(2) Except in areas as described in Section 14.15P(1), above, and except to allow for the development of permitted uses, within a strip of land extending 100 feet horizontal distance from the high water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

(a) There shall 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 six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.

(b) 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 Section 14.15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 12 or more in each 25-foot by 25-foot square (625 square feet) area as determined by the following rating system:

Tree at 4 1/2 feet above ground level (inches)	Points
2-4 in.	1
>4-12 in.	2
>12 in.	4

Adjacent to other waterbodies, tributary streams, and wetlands, a “well-distributed stand of trees” is defined as maintaining a minimum rating score of 8 per 25-foot square area.

Notwithstanding the above provisions, no more than 40 percent of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

(c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 14.15(R) paragraphs (2) and (2)(a) above.

(d) Pruning of tree branches, on the bottom one-third of the tree is allowed.

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

Section 14.15(R)(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

(f) For the purposes of Section 14.15(R)(2)(b), "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least three (3) saplings less than two (2) inches in diameter at four and one-half (4 1/2) feet above ground level for each 25-foot rectangular area. If three (3) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 3 saplings have been recruited into the plot.

(3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and 75 feet, horizontal distance, from the normal high water line of any water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25 percent of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared.

(4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this ordinance.

(5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 14.15(R).

R. Erosion and Sedimentation Control

(1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. Erosion and sedimentation control measures shall be designed and built according to the standards of the *Maine Erosion and Sediment Control BMP's* manual, published by the Maine Department of Environmental Protection, March 2003. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:

(a) Mulching and revegetation of disturbed soil.

(b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.

(c) Permanent stabilization structures such as retaining walls or rip-rap.

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

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

(4) Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

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

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

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

NOTE: Municipal officials should contact the Maine Historic Preservation Commission for the listing and location of Historic Places in their community.

14.16 Administration

A. Permits Required. After the effective date of this Article no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Article shall have a copy of the permit on site while the work authorized by the permit is performed.

(1) A permit is not required for the replacement of an existing road culvert as long as:

(a) The replacement culvert is not more than 25% longer than the culvert being replaced;
(b) The replacement culvert is not longer than 75 feet; and
(c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

(2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.

(3) Any permit required by this Article shall be in addition to any other permit required by other law or ordinance.

B. Permit Application

(1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.14.

(2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of

the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

(3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.

(4) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

C. Procedure for Administering Permits. Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in 14.14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Article.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Article.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

(1) Will maintain safe and healthful conditions;
(2) Will not result in water pollution, erosion, or sedimentation to surface waters;
(3) Will adequately provide for the disposal of all wastewater;
(4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
(5) Will conserve shore cover and visual, as well as actual, points of access to inland waters;
(6) Will protect archaeological and historic resources as designated in the comprehensive plan;
(7) Will avoid problems associated with floodplain development and use; and

(8) Is in conformance with the provisions of Section 14.15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.

D. Expiration of Permit. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

E. Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Article has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

F. Appeals

(1) Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:

(a) Administrative Appeals: To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by the Code Enforcement Officer in his or her review of and action on a permit application under this Article. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this Article is not appealable to the Board of Appeals.

(b) Variance Appeals: To authorize variances upon appeal, within the limitations set forth in this Article.

(2) Variance Appeals. Variances may be granted only under the following conditions:

(a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.

(b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Article.

(c) The Board of Appeals shall not grant a variance unless it finds that:

(i) The proposed structure or use would meet the provisions of Section 14.15 except for the specific provision which has created the non-conformity and from which relief is sought; and

(ii) The strict application of the terms of this Article would result in undue hardship. The term "undue hardship" shall mean:

a. That the land in question cannot yield a reasonable return unless a variance is granted;
b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
c. That the granting of a variance will not alter the essential character of the locality; and
d. That the hardship is not the result of action taken by the applicant or a prior owner.

(d) Notwithstanding Section 16(F)(2)(c)(ii) above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

(e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Article to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

(f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

(3) Administrative Appeals

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

(4) Appeal Procedure

(a) Making an Appeal

(i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer, except for enforcement-related matters as described in Section 16(F)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written

decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

(ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:

a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.

b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.

(iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.

(iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) Decision by Board of Appeals

(i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.

(ii) The person filing the appeal shall have the burden of proof.

(iii) The Board shall decide all administrative appeals and variance appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

(iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

(5) Appeal to Superior Court. Except as provided by 30-A M.R.S.A. section 2691(3)(F), 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 (45) days from the date of any decision of the Board of Appeals.

(6) Reconsideration. In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the

vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abuttors and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

G. Enforcement

(1) Nuisances. Any violation of this Article shall be deemed to be a nuisance.

(2) Code Enforcement Officer

(a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Article. If the Code Enforcement Officer shall find that any provision of this Article is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

(b) The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Article.

(c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

(3) Legal Actions. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Article in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Article and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

(4) Fines. Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Article shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

NOTE: Current penalties include fines of not less than $100 nor more than $2500 per violation for each day that the violation continues. However, in a resource protection district the maximum penalty is increased to $5000 (38 M.R.S.A. section 4452).

ARTICLE XV Community Facilities Impact Analysis

15.1. Purpose of Program

The Town of Berwick finds that new development places demands on municipal government to provide new services and expand and improve public facilities. In order to provide an equitable source of funding for these new services and facilities, the Town of Berwick has established a municipal infrastructure facilities improvement program. Under this program, persons or entities will be charged for an amount of the costs for creating and maintaining infrastructure, facilities, and other improvements in proportion to the degree said persons are responsible for the need for such infrastructure, facilities and improvements.

15.2 Authority

This section of the Berwick Land Use Ordinance is adopted pursuant to 30-A M.R.S. § 4354 *et seq*.

15.3 Use of Impact Fees

A. Impact fees may only be used for financing infrastructure facilities improvements needed due to demand caused by new growth.

B. Impact fees may not be used for any of the following

1. Operations and maintenance costs, such as but not limited to paying salaries, day-to-day operational costs or replacement of existing equipment,

2. The costs to improve infrastructure facilities to meet existing deficiencies, such as but not limited to relieving existing congestion or overcrowding

15.4 Applicability

A. The Code Enforcement Officer shall require the applicant for a Building Permit to participate in the municipal infrastructure facilities improvement program and pay a development impact fee at the rate currently in effect. The total impact fee shall be paid separately from any other fees required by this Ordinance and shall be paid at the time the Occupancy Permit is issued

B. The Board of Selectmen shall establish the initial impact fee schedule and shall review and revise, if necessary, the impact fee schedule at least annually to reflect changes in planned improvements current budget levels and compliance with the Town of Berwick Comprehensive Plan and the Town's Capital Improvement Program. Prior to the establishment or revision of the impact fee schedule, the Board of Selectmen shall hold two public hearings on the proposed fee schedule. Notice of the public hearings shall be published in a newspaper of general circulation within the Town at least twice. The first notice shall be published no more than thirty (30) days in advance of the hearings and the second no less than seven (7) days in advance of the hearings.
C. The impact fee schedule shall indicate the improvements to be financed, the anticipated schedule for construction, and the characteristic of new development by which the fee shall be calculated (e.g., a fixed rate multiplied by the number of bedrooms, a per unit per square foot, amount of traffic generated, etc.

D. The amount of the fee shall be reasonably related to the development's share of the cost of the infrastructure facilities improvements made necessary by the development or, if the improvements were previously constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the improvement used by the development.

15.5 Segregation of Impact Fees from General Fund

A. The Code Enforcement Officer shall record the name of the individual paying the impact fee. The Tax Assessor's map and lot numbers for the property for which the impact fee is being paid, the amount of the fee paid for the facility for which fees are collected, and the date the impact fee was paid.

B. Upon collection of an impact fee, the Code Enforcement Officer shall transfer the funds to the Municipal Treasurer who shall deposit the impact fee in special non lapsing accounts dedicated for funding the improvements for which the fee is collected.

C. Impact fee funds shall be maintained separately from and shall not be combined with other municipal revenues.

D. Funds collected as impact fees shall be expended only for the infrastructure improvement for which the fee was collected.

15.6 Refund of Impact Fees

The Town shall refund any Impact fees (or portion thereof) that exceed the Town’s actual costs which have not been expended within ten (10) years of the date they were first collected. The Board of Selectmen shall establish the procedure for refunding such impact fees. Unexpended fees shall be returned to the owner of record at the time a refund is issued, regardless of when said impact fees were received.