

# TOWN OF ELIOT, MAINE

## PLANNING BOARD AGENDA

TYPE OF MEETING: REMOTE  
PLACE: ZOOM ONLINE MEETING

DATE: Tuesday, January 5, 2021  
TIME: 7:00 P.M.

*PLEASE NOTE: IT IS THE POLICY OF THE PLANNING BOARD THAT THE APPLICANT OR AN AGENT OF THE APPLICANT MUST BE PRESENT IN ORDER FOR REVIEW OF THE APPLICATION TO TAKE PLACE.*

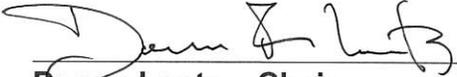
- 1) **ROLL CALL**
  - a) Quorum, Alternate Members, Conflicts of Interest
  - b) Election of Vice Chair
- 2) **PLEDGE OF ALLEGIANCE**
- 3) **MOMENT OF SILENCE**
- 4) **10-MINUTE PUBLIC INPUT SESSION**
- 5) **REVIEW AND APPROVE MINUTES**
  - a) December 15, 2020 – if available
- 6) **NOTICE OF DECISION**
  - a) 41 Rogers Point Drive (Map 32/Lot 2) – if available
  - b) 114 Harold L Dow Highway (Map 23/Lot 11) – if available
- 7) **OLD BUSINESS**
  - a) **Review of Draft Ordinance Amendments**
    1. Marijuana
    2. Variances
- 8) **NEW BUSINESS**
  - a) **Review of Draft Ordinance Amendments**
    1. Auto Graveyards, Auto Recycling Operations and Auto Hobbyists
    2. Accessory Dwelling Units
- 9) **CORRESPONDENCE**
- 10) **SET AGENDA AND DATE FOR NEXT MEETING**
  - a) January 12, 2021
- 11) **ADJOURN**

**To view a live remote meeting: (Instructions can also be found on the Planning Board webpage)**

- a) Go to [www.eliotme.org](http://www.eliotme.org)
- b) Click on "Meeting Videos" – Located in the second column, on the left-hand side of the screen.
- c) Click on the meeting under "Live Events" – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed up to a minute)

**Instructions to join remote meeting:**

- a) To participate please call into meeting 5 minutes in advance of meeting start time. Please note that Zoom does state that for some carriers this can be a toll call. You can verify by contacting your carrier.
- b) Please call **1-646-558-8656**
  1. When prompted enter meeting number: **929 7685 6891 #**
  2. When prompted to enter Attendee ID **press #**
  3. When prompted enter meeting password: **637108 #**
- c) Members of the Public calling in, will be first automatically be placed in a virtual waiting room until admitted by one of the members of the Planning Board. Members of the public will be unmuted one at a time to allow for input. Please remember to state your name and address for the record.
- d) Press \*9 to raise your virtual hand to speak

  
Denny Lentz – Chair

1 **ITEM 1 - ROLL CALL**

2  
3 Present: Dennis Lentz - Chairman, Carmela Braun, Bill Olsen, Mallory Strange –  
4 Alternate.

5  
6 Also Present: Jeff Brubaker, Town Planner; Kearsten Metz, Land Use Administrative  
7 Assistant.

8  
9 Absent: Melissa Horner (excused), Jeff Leathe – Alternate (excused).

10  
11 Voting members: Dennis Lentz, Carmela Braun, Bill Olsen, and Mallory Strange  
12 (appointed).

13  
14 **ITEM 2 – PLEDGE OF ALLEGIANCE**

15  
16 **ITEM 3 – MOMENT OF SILENCE**

17  
18 **ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION**

19  
20 There was no public input.

21  
22 **ITEM 5 – REVIEW AND APPROVE MINUTES**

23  
24 Ms. Braun moved, second by Mr. Olsen, to approve the minutes of December 1, 2020, as  
25 amended.

26 **VOTE**

27 **4-0**

28 **Motion approved**

29  
30 **ITEM 6 – NOTICE(S) OF DECISION**

31  
32 Mr. Lentz said that Mr. Brubaker and I had some conversations over the last few weeks.  
33 One of the things we talked about, and you will see some of that in his reviews this  
34 evening, is that we have kind of given up the opportunity for the PB to come up with  
35 more conditions of approval, more than just the standards. I think that we found some  
36 time ago, when we were concentrating on this, it was probably with an older Board, a  
37 different Board, there were things that were particular that we discussed in the meeting  
38 that got captured in the minutes but it was not included in the conditions of approval. So,  
39 we talked about looking for more of those specific items that we felt were very important  
40 to be listed in the conditions of approval. You'll see that on a couple of Mr. Brubaker's  
41 reviews that are in your packet for tonight; that Mr. Brubaker did recommend some  
42 conditions. So, just a sidenote. It's something we did at one time, and paid a lot of  
43 attention to, and lately, my fault, we haven't paid a lot of attention to that although we  
44 haven't missed it because it's in the minutes and the record.

47 **A. 43 Buck Drive (Map 47/Lot 10-1) PB20-23**

48  
49 Ms. Braun moved, second by Ms. Strange, to approve the Notice of Decision for PB20-  
50 23, as amended.

51 **VOTE**  
52 **4-0**  
53 **Motion approved**

54  
55 Mr. Brubaker asked if the PB was okay with me working with the Chair and the applicant  
56 to get a letter to the State saying that she was approved locally.

57  
58 The PB agreed to this.

59  
60 Mr. Brubaker again thanked Mr. Olsen for noticing the restrictive covenant. I wanted to  
61 follow up that Attorney Saucier gave a virtual presentation to the Maine Association of  
62 Planners a few weeks ago and, in one of the cases he reviewed this year, he did say that  
63 the Maine Supreme Court has precedent that local land use boards, like PBs and BOAs,  
64 shouldn't be making determinations about property rights under a deed. Part of this  
65 particular decision was that a municipal zoning case is not a proper forum for a private  
66 property dispute between neighbors. They had one catch in there regarding an easement  
67 on another property. But the point is that I think it's extremely useful to bring up when  
68 we find those restrictive covenants. But I also want to mention, if it comes up in the  
69 future that, at least based on Maine court precedent, it is okay for the PB to not weigh in  
70 on that type of private property question when considering whether to approve an  
71 application. I think it was both useful that we brought up and discussed the restrictive  
72 covenant with the home business application and I also think it was good that we decided  
73 to move forward with the motion despite that limitation.

74  
75 Mr. Olsen said that, just so I understand correctly, it is okay that we acknowledge it, or  
76 make it known, but it's not part of our decision-making because it's between two private  
77 parties.

78  
79 Both Mr. Lentz and Mr. Brubaker agreed.

80  
81 **ITEM 7 – PUBLIC HEARING**

82  
83 Mr. Lentz explained the Public Hearing process for the public.

84  
85 **A. 41 Rogers Point Drive (Map 32/Lot 2), PB20-19: Shoreland Zoning Application to**  
86 **replace and expand existing non-conforming residential structures – Application**  
87 **and Site Walk Review.**

88  
89 **Received: September 16, 2020**  
90 **1<sup>st</sup> Heard: October 6, 2020 (preliminary sketch site plan)**  
91 **2<sup>nd</sup> Hearing: November 10, 2020 (site plan review/site walk discussion)**  
92 **Public Hearing: December 15, 2020**

93           **Site Walk: November 9, 2020**  
94           **Approval: December 15, 2020**

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Mr. (Chris) Wilber and Ms. (Jennifer) Wilber, applicants, were present for this application.

99           **7:17 PM       Public Hearing opened.**

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Mr. Wilbur said that there is currently a one-story cottage on the property, at 742 square feet. There is a basement with that cottage, as well, that is currently within the flood plain. There is also a two-story boathouse on the property of approximately 825 square feet that is sitting on a poured slab foundation. Attached to that is an approximately 64 square-foot deck. There is an existing dock on the property. There is also a seawall. There are three large bull pine trees, an oak, that are under consideration here. Our proposal is to remove the existing cottage and replace it with a 920-square-foot, one-and-a-half story, slab on-grade, 2-bedroom house. That will be our permanent residence. That slab is proposed to be built at an elevation of 11, which is 2 feet above the base flood elevation for that area. It's intended to be designed to comply with the 20-foot height restriction in that zone. We propose no overall increase for the boathouse in the square footage of the footprint. We propose to remove the attached 64-square-foot deck and replace it on the other side of the structure with an exterior stairway to the second floor. That second floor of the existing structure has been compromised from a limb that fell a number of years ago. Our proposal is to remove the second story and replace it with a new roof. There has been some discussion whether it is our intent to create an additional dwelling unit in that area and, while we probably won't do it exactly at the same time, it is our intent to create a space for our two grown children to come home and use it while they are home as an additional dwelling unit, understanding that, currently, the existing septic system that has been approved by the Town and is in place and functioning is only for a 2-bedroom structure. We will obviously have to go back through the building permit process as well as get a permit for the additional bedroom for the septic system. I understand that that may be a contingency of anything we do here tonight. In our general plan, there is a well on-site. We understand that, for the trees we will have to remove, we will have to replace those. Our intent is not to replace them with pine trees but to replace them with birch or oak, or something like that.

Mr. Lentz said that I received a letter from one of Mr. Wilbur's neighbors and read it into the record:

From: [Bob Vaccaro](#)  
To: [Land Use](#)  
Cc: [Chris Wilber](#)  
Subject: Support for 41 Rogers Point Drive Improvements  
Date: Tuesday, December 8, 2020 9:24:30 PM

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To: Denny Lentz, Chair of Eliot ME Planning Board

Dear Denny,

I was given your email address by Jeff Brukaker, Eliot Planning Director, so I could register our support of the improvements Chris and Jennifer Wilber are proposing to make to 41 Rogers Point Drive.

My husband, Dan Rawling, and I own the property at 46 Rogers Point Drive which is adjacent to 41 Rogers Point Drive, and thereby received notice of the upcoming Public Hearing. Please read into the record (Jeff's phrase) that we enthusiastically support the plans that Chris and Jennie have for their property. On at least two occasions they have reviewed their plans with us in great detail and it is an understatement that their rebuilding of the house and the boathouse will be a boom to our neighborhood.

We pray they receive smooth approval and begin work on their buildings soon!

Sincerely,  
Bob

Bob Vaccaro  
603-380-4885  
411 Middle St, Apt 3  
Portsmouth NH 03801

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Mr. Lentz asked if there was anyone from the public who wished to speak.

There was no one who spoke from the public.

**7:22 PM Public Hearing closed.**

Mr. Lentz said that if the PB members look on Page 9 of Mr. Brubaker's review memo, you'll see what I was talking about before. Along with the standard conditions of approval are two good suggested conditions from Mr. Brubaker, one of which Mr. Wilbur covered in his presentation tonight regarding the septic. He asked for the pleasure of the PB.

**Ms. Braun moved, second by Mr. Olsen, that the Planning Board approve PB20-19, to include the site plan, with the following conditions of approval:**

- 1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.**



201 **4-0**

202 **Motion approved**

203  
204 Mr. Lentz said that the application stands approved and there is a 30-day period from  
205 which the PB decision can be appealed by an aggrieved person or parties – move forward  
206 but move forward cautiously.

207  
208 Ms. Lemire clarified that I have already included this amendment language in another  
209 section of the Notice of Decision. Do you want me to just reference that in the motion or  
210 do you want me to write it out in both places.

211  
212 Mr. Lentz said that I think you can reference it. I think that's fine. We need to discuss,  
213 sometime, how that happened so we aren't doubling up. Maybe we should be doing that  
214 at a different point in the process, what we did as a PB, so we don't interfere with what  
215 you are doing.

216  
217 Ms. Lemire said that that's okay. This is a new thing.

218  
219 Mr. Brubaker said that I may have been a little bit redundant with my suggestion. I just  
220 wanted to make sure it was included.

221  
222 Mr. Lentz said that it is something we are trying that's new, again, and we're going to  
223 make some errors. And that's alright. He clarified for the applicant that the site plan  
224 could be dropped at the Town Hall for signatures.

225  
226 NOTE: Mr. Lentz asked to take the agenda out of order to allow the New Business item  
227 to be heard next as the other items under Old Business will have much more discussion.

228  
229 The PB agreed.

230  
231 **ITEM 9 – NEW BUSINESS**

232  
233 **A. 114 Harold L. Dow Highway (Map 23/Lot 11) PID #006-002-000, PB20-25: Site**  
234 **Plan Amendment to add 36'X70' pole barn to the existing structure.**

235  
236 **Received: November 17, 2020**

237 **1<sup>st</sup> Heard: December 15, 2020 (preliminary sketch site plan)**

238 **2<sup>nd</sup> Hearing: November 10, 2020**

239 **Public Hearing: N/A**

240 **Site Walk: N/A**

241 **Approval: December 15, 2020**

242  
243 Attorney Sandra Guay, Chris Tymula (Project Manager) were present for this application.

244  
245 Attorney Gay thanked the PB for taking us out of order. We will try to move through this  
246 as quickly as we can. The application is for a minor revision to our approved site plan. It

247 is under §33-140 of the ordinance and it's for the ENI property that's located at 114  
248 Harold L. Dow Highway. ENI purchased the property in 2019. Their request is for a  
249 36'X70' pole barn that would be located entirely within the building envelope on the  
250 property, as you will see in the site plan. The purpose of the pole barn (illustration at Tab  
251 8), which is basically a roof with suspended poles, is to provide drivers with a covered  
252 area to perform mandatory safety inspections of the vehicles (Tab 6 – description). The  
253 inspections require drivers to walk around vehicles, lift and open hatches and to actually  
254 climb on top of the vehicles to inspect the tanks. As you can imagine, inspecting  
255 uncovered vehicles in inclement weather in that way can be especially hazardous. The  
256 application is for a site plan amendment because, as noted by your Planner and as shown  
257 and described in the application (Tab 6), the property received approval on June 11, 1993  
258 as an automotive repair facility. On August 17, 1994, the PB approved an addition to the  
259 then existing building on the property, although the plan submitted at the time was  
260 basically a hand-drawn sketch, which is included. At some point several years ago, the  
261 use changed to the Jenkins Fuel use. However, the Town files have no information on  
262 that change; so, one of the purposes of this amended plan is to bring the site plan, itself,  
263 and the existing established uses of the property up-to-date for the Town's records. The  
264 property is located in the Town's C/I District. As noted in the memo, ENI had originally  
265 hoped to place the pole barn in the rear of the parcel but that was outside of the building  
266 envelope; so, ENI sought a variance for that. The variance was denied and now it's been  
267 relocated into the building envelope, itself. During the initial review, the CEO confirmed  
268 that the parcel is not part of the mapped Shoreland Zone and there were not required  
269 setbacks from the wetlands. However, the Planner did forward an email from ENI to the  
270 Conservation Commission, who looked at this application and that Commission has  
271 suggested the Board considers a 75-foot setback. With me tonight is Chris Tymula,  
272 Project Engineer, and Peter Kropp, representative of ENI. Mr. Tymula will review the  
273 site plan with you and he will also show you that there is virtually no, or very little,  
274 location on the entire parcel that is outside of that 75-foot setback. I think there's a little  
275 triangular area in the middle of the parcel. In addition to that, the area proposed for the  
276 pole barn is already an approved area and is where trucks park now. So, the only  
277 difference will be that the trucks will now be covered. The Commission had also asked  
278 for a copy of the wetland delineation survey report, which was received today and  
279 submitted to Mr. Brubaker and, if you like, Mr. Tymula can review that, as well. The  
280 Planner also sent ENI comments on the application and all have been responded to,  
281 including the addition of screening and vegetative cover on the western corner of the  
282 property along the highway. We are hopeful that the PB will consider this site plan  
283 application to be minor so that ENI can get the structure up as soon as possible in order to  
284 protect the drivers. There's no proposed change or enlargement to the existing use. There  
285 is no change to the building structure, itself, or to the operation of the business. ENI is  
286 only asking for the pole barn. We requested that the Fire Chief take a look at this, as well,  
287 and I see we got a letter just before the meeting. The Chief reviewed the plan for the roof-  
288 styled pole barn within the vehicle parking area and, because it has no walls, it's not  
289 considered a building and requires no further review from the Fire Chief's office. I'm  
290 happy to answer any question the PB might have and, again, Mr. Tymula will go over the  
291 site plan; that Perter Kropp is also here to answer any questions.  
292

293 Mr. Tymula, (Greenman-Pederson) Project Manager, shared his screen as he reviewed  
294 the site plan. He described the exiting conditions plan showing the current structure,  
295 paving and gravel. The dotted line surrounding almost the entire property is the  
296 delineated wetlands from 2019 by a wetland scientist. The tree line basically runs along  
297 the edge of the existing wetland, with limits of work all the way up to the tree line and the  
298 edge of the wetland, itself, today. From a proposed point of view, we are looking to  
299 construct a 36'X70' 2,520 square-foot pole barn. The pole barn is there to shelter the  
300 drivers from the elements. We have a 50-foot front building setback, 20-foot side  
301 building setbacks and, then, a 100-foot rear building setback. Along with the building,  
302 itself, the existing grades will stay the same. As I mentioned, there is pavement on-site,  
303 gravel on-site; that we'll expand some of the gravel but the proposed barn will be sitting  
304 on essentially gravel and pavement. We added a landscaping buffer in the front, which  
305 consists of some arborvitaes – dogwoods, winter berries – providing a screen from the  
306 road while still maintaining plenty of site visibility for the vehicles entering and exiting  
307 the site. The proposed pole barn shown on this plan is actually smaller than the original  
308 one we had previously proposed. It should be able to house from 4-6 vehicles at a time,  
309 which will allow them to walk around the vehicle outside of the elements and, hopefully,  
310 get approved this evening. Another item, with regard to wetlands, he showed as a hatched  
311 area, which is what is left over if you are adhering to the 75-foot wetland setback as well  
312 as the building setbacks on the site. Again, we are hoping to get this approved this  
313 evening. The vehicles are already parking along 'this' area. I'd be happy to answer any  
314 questions the PB may have.

315  
316 Mr. Lentz said that, if I'm not mistaken, that area you are proposing to put the pole barn  
317 is where they park their trucks today.

318  
319 Mr. Tymula said that that is correct. They all butt into the tree line and face the building.

320  
321 Ms. Braun asked him to clarify the gray, hatched area regarding the 75-foot wetland  
322 setback.

323  
324 Mr. Tymula said that, based on the letter we received from the Town, we aren't required  
325 to provide a 75-foot wetland setback. We are keeping the building within 'this' dashed  
326 line, which are the existing building setbacks. If we were required to meet the 75-foot  
327 wetland setback, 'this' is the only area we'd have on-site for a usable area; that you  
328 would actually be left with nothing.

329  
330 Mr. Lentz asked if I understand that the wetland delineation is being added to the plan as  
331 requested by Conservation Committee.

332  
333 Attorney Guay said that there wasn't any plan to add that to the plan. We just, after the  
334 comments, asked Mr. Tymula to put this together so that they could show the PB that  
335 what we're showing on the plan are the required setbacks, the building sideline setbacks.  
336 There is no required wetland setback because it's not Shoreland Zone. We did this as an  
337 illustration to help the PB understand what would happen if we tried to impose a 75-foot  
338 wetland setback.

339  
340 Mr. Lentz clarified that he was referring to their request to have the wetlands delineation  
341 survey report referenced on the plan.

342  
343 Mr. Tymula said that right now we do have a note on the plan, which does indicate that  
344 the wetlands were delineated by Gove Environmental Services on April 23, 2019. We  
345 could add an additional note to the plan indicating we have a wetland report from the  
346 wetland scientist. He read portions of the report (on file at Town Hall).

347  
348 Mr. Brubaker said that I think the applicant has done a good job explaining the delineated  
349 wetland, the lack of a needed buffer in this case in a non-Shoreland situation. I did  
350 receive the delineation letter today from the applicant, not forwarding it to the PB  
351 because of it coming in today but Mr. Tymula pretty much covered the significant  
352 conclusion in the letter. It looked good to me, overall, and I do appreciate the  
353 Conservation Commission's comments. Clearly, in this case, the 75-foot wetland buffer  
354 would, if this site was vacant, render the it pretty much unbuildable. I think the applicant  
355 has adequately demonstrated that. I don't have any more comments.

356  
357 Mr. Lentz said that I think that as long as that letter is in the record, in the file, it suffices.

358  
359 Ms. Braun said that I understand that there is no external lighting, only lighting in the  
360 roof that comes down to the trucks.

361  
362 Mr. Tymula said that that is correct. It is much like a gas station canopy where the lights  
363 are recessed inwards. It's there for safe illumination of the vehicles. There will be no  
364 light intrusion from this.

365  
366 Mr. Olsen said that, from my perspective, is this a minor site plan amendment or is it  
367 major. As a humble opinion, I see this as minor; that we are basically covering an area  
368 that has been utilized for the same purpose, for the purpose of employee safety, which I  
369 am a fan of. I'm supportive of this as a minor site plan amendment, obviously, with the  
370 conditions the Planner has set forth.

371  
372 The PB agreed.

373  
374 **Ms. Braun moved, second by Mr. Olsen, that the Planning Board approve PB20-25,**  
375 **including the site plan, to add a 36-foot by 70-foot pole barn to the existing**  
376 **structure, and to approve already-established uses to update the file with these**  
377 **approved uses: Commercial Establishment, Bulk Oil Fuel Tanks, and Truck**  
378 **Terminals and Storage. The Planning Board finds that the proposed revisions are**  
379 **minor and do not result in any substantial changes to the approved development or**  
380 **further impact abutters, with the following conditions of approval:**

381 **1. The property may be developed and used only in accordance with the plans,**  
382 **documents, material submitted, and representations of the applicant made**  
383 **to the Planning Board. All elements and features of the use as presented to**  
384 **the Planning Board are conditions of approval and no changes in any of**

- 385 those elements or features are permitted unless such changes are first  
386 submitted to and approved by the Eliot Planning Board. Copies of approved  
387 permits from Maine DEP, Army Corps of Engineers, if applicable, and State  
388 shall be provided to the CEO before construction on this project may begin.  
389 2. The permit is approved on the basis of information provided by the  
390 applicant in the record regarding the ownership of the property and  
391 boundary location. The applicant has the burden of ensuring that they have  
392 the legal right to use the property and that they are measuring required  
393 setbacks from the legal boundary lines of the lot. The approval of this  
394 permit in no way relieves the applicant of this burden. Nor does this permit  
395 approval constitute a resolution in favor of the applicant of any issues  
396 regarding the property boundaries, ownership, or similar title issues. The  
397 permit holder would be well-advised to resolve any such title problems  
398 before expending money in reliance on this permit.  
399 3. The applicant authorizes inspection of premises by the Code Enforcement  
400 Officer during the term of the permit for the purposes of permit  
401 compliance.  
402 4. The additional structures on the site plan are to be constructed in  
403 accordance with Article VI of Chapter 25 of the Town Code – Floodplain  
404 Management Ordinance. A flood hazard development permit shall be  
405 obtained from the Code Enforcement Officer prior to beginning  
406 construction. The Town of Eliot may enforce any violation of the  
407 construction requirement. These requirements and enforcement  
408 information shall be included in any deed, lease, purchase and sale  
409 agreement, or document transferring or expressing an intent to transfer any  
410 interest in real estate or structure. The construction requirement shall also  
411 be clearly stated on the approved site plan.

412  
413 **VOTE**

414 **4-0**

415 **Motion approved**  
416

417 Mr. Lentz said that the application stands approved and there is a 30-day period from  
418 which the PB decision can be appealed by an aggrieved person or parties – move forward  
419 but move forward cautiously.

420  
421 The PB thanked Mr. Brubaker for his motion language. It is appreciated.  
422

## 423 **ITEM 8 – OLD BUSINESS**

424  
425 **A. 787 Main Street & 0 Main Street (Map 6/Lot 44 & 154) PB19-24: Land of LJE**  
426 **Property Development, LLC & Jesse Realty, LLC: Seven (7)-Lot Residential**  
427 **Subdivision – Sketch Plan Review.**  
428

429 **Received: December 26, 2019**

430 **1<sup>st</sup> Heard: January 21, 2020 (sketch plan review)**

431 **2<sup>nd</sup> Hearing: July 7, 2020 (continued sketch plan review)**  
432 **Site Walk: July 21, 2020**  
433 **3<sup>rd</sup> Hearing: December 15, 2020 (continued sketch plan review/waiver request)**  
434 **Approval: \_\_\_\_\_, 2020**  
435

436 Mr. (Tom) Harmon, P.E., Civil Consultants, Kris Glidden (Jesse Realty & owner), and  
437 Tom Howarth (LJE Property Development, LLC) were present for this application.  
438

439 Mr. Lentz said that, whatever we'll discuss, I think it comes to one; that we will have to  
440 talk about the road sooner or later, with that intersection. I see that there is a new owner,  
441 asking if there are any other changes that have been made since the last time we reviewed  
442 this.  
443

444 Mr. Harmon said that Tom Howarth is with me tonight; that he has taken David Chases'  
445 place, so he and Kris Glidden are the partners in this project, now.  
446

447 Mr. Lentz said that we have reviewed this over and over, again, and we always come to  
448 the point where we're not sure what we are doing or where we're doing it or if we're  
449 going any further. If Mr. Brubaker or Mr. Harmon could tell us what we are specifically  
450 here for tonight...  
451

452 Mr. Harmon agreed that we have gone around and around on this. We've gone through  
453 five different planners on this project at this point. We have been here with two sketch  
454 plans around splitting the lots, there was also a question of the docks being approved and  
455 come in along with the subdivision plan. We then waited until the docks got approved  
456 then came in with a sketch plan, went through a second review with the PB and a site  
457 walk. Your ordinance requires a sketch plan to be approved by the PB prior to moving to  
458 a preliminary plan. At the site walk, I asked for consensus from the Board members on  
459 their feelings about the entrance location to the subdivision compared to Aqua Avenue.  
460 It's approximately 145 feet from centerline to centerline. Your ordinance requires a 400-  
461 foot separation between entrances onto the public road. At that time, the consensus was  
462 that the PB was not comfortable giving a waiver to that distance. So, since that time, we  
463 have had a traffic study done by a traffic engineer and basically has come back and said  
464 that separation distance on this particular road, in this particular instance, is acceptable;  
465 that it is not a traffic hazard. We did have a DOT Entrance Permit, which should also  
466 back up the fact that we should be able to get the waiver. Mr. Brubaker had a couple of  
467 questions in his review; that he questioned whether we ought to be doing a speed study  
468 out there. We sent that back to our traffic engineer and he came back saying that was not  
469 necessary because site distances were based on an 85<sup>th</sup> percentile of the posted speed, so  
470 they actually took into account vehicles that were speeding. We need approval for the  
471 sketch plan. We don't believe we can get that approval, with that entrance, unless we get  
472 a waiver from the PB. We feel that we have provided the information that shows that this  
473 is not a public health or safety issue. This situation occurred prior to the enactment of the  
474 zoning ordinance; that that parcel was given 70 feet of frontage on Main Street so this  
475 isn't something that the people or prior owners did, it was created by the implementation  
476 of the zoning ordinance. It is our belief that the PB has justification for granting the

477 waiver we have requested with this application. Granting the waiver would then allow  
478 moving to approving the sketch plan and we would then move to preliminary. Although  
479 we do not have documentation of it, we have met in group session with the Town  
480 Manager, the Fire Chief, with Public Works, and there was no dissension on this  
481 subdivision. They thought it was good. I think you can see from the Fire Chief's letter of  
482 a question of the location of the fire hydrant, how the water comes in, and that type of  
483 thing, but the subdivision, as a whole, was acceptable. We are here tonight, we've gone  
484 through, I think, all the other things with you prior to this and we are her tonight for you  
485 to review this, grant us a waiver, and grant sketch plan approval so we can move on to  
486 preliminary.

487  
488 Mr. Brubaker said that Mr. Harmon covered a lot of it and I just wanted to add a few  
489 more points. I wanted to note the two emails/letters from abutters, as they may be on  
490 Zoom with us, and I wanted to note that those came in today. As Mr. Harmon mentioned,  
491 this has been discussed. The ordinance requires those signed review comments from the  
492 Road Commissioner, Police Chief and Fire Chief. Chief Muzeroll wasn't able to make  
493 tonight's meeting. He did submit written correspondence, which was immediately  
494 forwarded to the PB and the applicant. But, since we have not received a signed comment  
495 from the Road Commissioner or Police Chief, I believe if a vote is taken tonight, there  
496 would need to be a condition, at least, speaking to the fact that the waiver would not be  
497 effective unless or until those signed review comments came in. It is certainly up to the  
498 PB to decide what you want to do with the vote. The default situation is the street section  
499 requirement is in place and a positive vote would need to be taken for the waiver to be  
500 applied. If you look at the traffic and safety analysis, Mr. Harmon summarized it. It had  
501 some comments; that clearly there is good site distance; it does cover a small number of  
502 peak hour trips; it doesn't cover daily trips or some trips from some of the driveways  
503 along Main Street. I think there are some pros and cons there. That's all I have right now.  
504

505 Mr. Lentz commented on the DOT Entrance Permit. It also says in that permit that it has  
506 to comply with the federal, state, and municipal regulations and ordinances. That is way  
507 off from our ordinance. I read the letters from Mr. Crosier and a man and a lady who  
508 lives at the corner of Aqua Avenue and this proposed roadway. They are not in favor of  
509 it. Could Mr. Harmon state for the PB exactly what the waiver is that you are looking for.  
510

511 Mr. Harmon said that we are requesting to waive the 400-foot separation between  
512 entrances to the 145 feet that we show on our plan.  
513

514 Mr. Lentz said that you are looking right now for the PB to vote on that.  
515

516 Mr. Harmon said that we are looking for sketch plan approval and I believe you would  
517 need to vote on that waiver prior to being able to give plan approval.  
518

519 Ms. Lemire said that it has to be a concurring vote of four, that all four of you would  
520 have to approve it.  
521

522 Mr. Olsen said that I am not in favor of a waiver.

523  
524 Mr. Lentz said that I think the last time we met the answer was no all the way around.

525  
526 Ms. Strange said that I can't seem to find the traffic report but I was wondering when that  
527 was done because, since then, there has been a 3-home development that has gone in  
528 directly across the street from this. So, we have Aqua Avenue, that development, and  
529 Patriot's Lane that are all within 400 feet, and that's my concern.

530  
531 Ms. Braun said that I am also not in favor of a waiver.

532  
533 Mr. Lentz said that, to keep this in a positive way, we could put a motion out there on the  
534 floor to approve and the results of that would let them fall where they would. Mr. Lentz  
535 made the motion.

536  
537 **Mr. Lentz moved, second by Mr. Olsen, that the Planning Board honor the waiver**  
538 **requested by Mr. Harmon to reduce our 400-foot ordinance down to 145 feet.**

539 **VOTE**

540 **0-4**

541 **Motion fails**

542 Mr. Lentz said that the waiver is denied.

543  
544 Mr. Lentz said to Mr. Brubaker that I don't know where we go from here.

545  
546 Mr. Harmon said that we will have to look at it and see, Thank you for your time

547  
548 **B. 7 MacLellan Lane (Map 37/Lot19) PB20-5: Site Plan Review for an 8,000-sq.-ft.**  
549 **expansion to an existing 2,000-sq.-ft. structure and Change of Use to ad retail sales**  
550 **to existing approved uses (also includes a Shoreland Zoning Application for a**  
551 **portion of the site).**

552  
553 **Received: January 21, 2020 (initial submittal withdrawn)**

554 **New submittal received: February 3, 2020**

555 **1<sup>st</sup> Heard: May 12, 2020 (sketch plan review)**

556 **2<sup>nd</sup> Hearing: December 15, 2020**

557 **Public Hearing: \_\_\_\_\_**

558 **Site Walk: \_\_\_\_\_**

559 **Approval: \_\_\_\_\_, 2020**

560  
561 Mr. (John) Chagnon (Ambit Engineering, Inc.), Mr. (Blake) Dubin (owner) and Mr.  
562 (Ken) Couperthwait (former owner and builder for project) were present for this  
563 application.

564  
565 Mr. Chagnon said that e came here some nine months ago for sketch plan review and I  
566 believe the PB granted sketch plan approval. We are back now with fully-developed  
567 plans, looking for your approval of the project. He screen-shared and reviewed the  
568 project. We have a cover sheet that shows the site location, the project team members, the

569 zoning and abutters. We have a standard boundary survey plan showing the results of a  
570 survey of the property. Next is an existing conditions and demolition plan and the PB  
571 may recall when this site was an operating car wash. The site is on Dow Highway but  
572 accessed via MacLellan Lane. There is still a large septic system that handled the entire  
573 production waste from the car wash. The demolition consists of removing the vacuum  
574 islands, taking out pavement and to be re-done and graded, taking out some concrete  
575 around the building for the same purpose, shortening the water service; that we will be  
576 putting a building in that was formally sort of a lawn area and removing some drainage  
577 associated with that prior site design. There is an existing shed building 'here' that houses  
578 some of the mechanical equipment that operated the sophisticated treatment system for  
579 the waste from the car wash. The next sheet is our new site layout. We are proposing to  
580 add an 8,000 square-foot building to the existing 2,000 square-foot building. We are  
581 proposing to re-do the entrance at MacLellan and re-do the circulation and parking  
582 around the building. There was no need for parking when it was a car wash but, for this  
583 upgrade, we are re-purposing the site for retail and manufacturing and providing 53  
584 spaces. Along the front will be the bulk of spaces for retail and employee parking is in the  
585 back, primarily for the manufacturing. We are also showing improvements to the site  
586 landscaping along the edges to soften the view. The site has the required number of ADA  
587 parking spaces; that we have three throughout the site. Two are in front, which are in the  
588 center of the new building addition and they will serve the two proposed doors; that this  
589 will allow for adaptive uses in the future but, now, the path to either door is the shortest  
590 route. Grading impacts will be discussed later around this. The third ADA spot is in the  
591 back of the building and this area is at grade and has an at-grade door entrance. The  
592 grading and drainage plan shows that the grading in the front rises up along the centerline  
593 of the structures 'here'; so, 'this' part is at grade and flush with the sidewalk. As the  
594 project slopes away from that central point to allow drainage, the sidewalk extends north  
595 and south, then has varied reveal going to the standard 6" reveal as you get to the edges.  
596 Currently, the existing building has flush concrete aprons at either end; that that floor  
597 elevation of the existing building is at 30.3. The site slopes up to the south and, as you go  
598 up, it is elevation 33 up 'here'. So, we were faced with a sloping site that had a building  
599 at flush grade down 'here' and we chose to place the elevation of the addition of finished  
600 floor elevation at 32, which is 1.7 feet above the floor of the existing building. So, that  
601 presented the need for 'these' two steps and this grade separation landscaped area to  
602 separate 'this' flush sidewalk at grade section from the new building floor elevation,  
603 which is 1.7 feet higher. The site has sloping parking that will go to a detention pond  
604 feature in front. That retention pond will serve to attenuate the peak flow to change the  
605 peak flows exiting the site to the rear; that there is an overflow structure 'here' that would  
606 overflow into the swale that exists along H.L. Dow Highway in the unlikely event that  
607 the drainage is clogged up and overwhelmed. The drainage heading towards the rear of  
608 the property exits through a culvert pipe, through a headwall, and has the requisite riprap  
609 to provide protection to the site soils in that vicinity. Next is the utility plan and, as I  
610 mentioned before, there is an existing \_\_\_ 'here' so the water line is going to be truncated  
611 and brought into the new building and then connected internally to the old structure. The  
612 septic system will remain in the same location. The underground utility services come  
613 from a transformer 'here' to the existing building and we would anticipate that those  
614 would just be extended within the new building. However, there was a need to extend

615 utilities. There is a pole at MacLellan Drive that would provide services to the expanded  
616 facility. You then have a detail sheet containing all the information about erosion control,  
617 and the other sheets containing information about all the other site elements and how they  
618 will be constructed. Does anybody have questions about the layout of the plans.

619  
620 There were no questions at this time.

621  
622 Mr. Chagnon said that I think the Planner did a good job of analyzing the site and brought  
623 up a couple of questions. One was about the sewer flow. The existing system is sized for  
624 1,950 gpd. I did submit today a calculation of what the exact numbers are for the  
625 proposed re-use. The manufacturing use would be 15 employees at 12 gpd and the  
626 shopping center, which is the closest use in the State plumbing code with a restroom.  
627 There would potentially be one restroom available to the public and would be 325 gpd  
628 plus 12 gpd for employees. So, the total is 421 gpd. For the two uses, the total is 601 gpd  
629 and that leaves 1,349 gpd for any process flows associated with the manufacturing use. I  
630 think there's enough of a cushion to handle the water uses associated with the  
631 manufacturing. The septic is acceptable for the re-use of this site. We also did a trip  
632 generation calculation and, using ITT standards, the trip generation study showed that the  
633 impact of conversion from the existing use (2,000 square feet of manufacturing) to the  
634 proposed use would result in 24 additional trips, which is a small number based on the  
635 existing volume of traffic logging in as over 1,000 trips in one direction in the peak hour.  
636 If you have any questions, we'd be glad to answer them, and we look forward to your  
637 approval of this project.

638  
639 Mr. Lentz said that I am looking at the requirements of site plan review, which this is a  
640 site plan review. Last time we were together we talked about manufacturing of extracting  
641 something-or-other from hemp and I was wondering if it is the same manufacturing you  
642 are going to do in this new application.

643  
644 Mr. Chagnon said that the current approved use is manufacturing of extraction of  
645 industrial hemp and the proposed use is the same, just expanded to the new space.

646  
647 Mr. Lentz wanted clarification that we were not talking about marijuana.

648  
649 Mr. Chagnon said no; that I believe industrial hemp is a different product.

650  
651 Mr. Lentz agreed that it is. He asked what the 'retail' is.

652  
653 Mr. Chagnon said that the retail is currently unspecified; it is not a marijuana retail use.  
654 Whoever the vendor is would need to comply with the allowed use and the requirements  
655 the Town would impose for a retail use.

656  
657 Mr. Lentz asked if the retail would be in the same building as the manufacturing.

658  
659 Mr. Chagnon said correct. It would have a dividing wall dividing that new 8,000 square-  
660 foot space roughly in half, with the retail being close to MacLellan.

661  
662 Mr. Lentz asked if we have hours of operation down, yet, and number of employees.

663  
664 Mr. Chagnon said that there will be 15 employees for the manufacturing space and I  
665 estimate about 8 employees for the retail space. The hours of operation would be in  
666 accordance with the ordinance or otherwise as agreed. We could add a note to the plan so  
667 stating the hours of operation. The retail hours would potentially be 8AM to 11PM and  
668 the manufacturing, at least in the beginning, would probably be 8AM to 5PM. I don't  
669 know if they're allowed to have second shifts, what they would do in that regard.

670  
671 Ms. Braun said that I am not familiar with the manufacturing of hemp, asking if it  
672 generated an odor that would come out into the retail section and necessitate odor  
673 controls.

674  
675 Mr. Chagnon said that that was a good question; that I'm not well-versed in that but I do  
676 know that the retail component would not be very saleable if they did not provide that  
677 sort of odor control and segregation of uses.

678  
679 Ms. Braun said that that would be something we would need to know for sure. What it is  
680 and what you will do about it.

681  
682 Mr. Chagnon said that there could very well be a condition that the tenant of the  
683 manufacturing expansion provide that information to the building inspector before they  
684 can get a fit-up permit. There would have to be a building permit application so that  
685 could very well be a part of that; that they will have to show the building inspector that  
686 they will be providing odor control for any odors created in the manufacturing process.

687  
688 Ms. Braun asked that the manufacturer would have to provide the odor controls and not  
689 the retail space.

690  
691 Mr. Chagnon agreed.

692  
693 Ms. Braun asked about lighting and if you have a lighting plan.

694  
695 Mr. Chagnon said that I do have a lighting plan. Unfortunately, our lighting designer is  
696 quite busy so it didn't make it into your package. I can put it on the screen to show you.

697  
698 Mr. Lentz said that there are a lot of performance-type requirements that we're going to  
699 ask you about. Odors, noise, handling of waste by-products. A lot of the performance  
700 standards in the ordinance are questions we're going to ask because we're not sure about  
701 what you're manufacturing.

702  
703 Mr. Chagnon showed the lighting plan, saying that it consists of 6 pole-mounted parking  
704 lot fixtures, three building-mounted fixtures. The fixtures are downward-pointing.

705

706 Ms. Braun said that, if I'm reading the site plan correctly, the wetlands are going in to the  
707 parking area in the back; that you are withing the buffer, is that correct.

708  
709 Mr. Chagnon said yes, that is the current condition and there is no change to the current  
710 condition of the property within that section of the lot. That is what was approved and  
711 constructed in 2005. But that does segue to the second application for Shoreland Zoning.  
712 The Shoreland Zoning lines are shown 'here' and the area of the lot that is in the Limited  
713 Commercial is 'this' corner of the lot. As stated in the application, we are reducing the  
714 amount of impervious surface in that section of the lot. The area that is in this 75-foot  
715 wetland buffer is pre-existing and we're not changing it.

716  
717 Ms. Braun said that, on your ADA space in the back, there's no indication of how that  
718 individual would access where he needs to go. Will there be a curb-cut there or is that  
719 also flush like the front.

720  
721 Mr. Chagnon said that the grade along the back of the building is going to be the same.  
722 We are going to take out the concrete but it's going to be paved and will be the same  
723 grade. We can re-locate the ADA parking space so that it lines up with the door because  
724 that whole rea in the back will be flush.

725  
726 Mr. Olsen asked if the 'D' box farthest from the back parking a dumpster.

727  
728 Mr. Chagnon said yes.

729  
730 Mr. Olsen said that I would imaging that, with the car wash, that's where it's always  
731 been. Because this waste from my perspective is unknown, and it is a change of use,  
732 given that this is the wetland buffer I think it would be proper to move that outside of that  
733 buffer area. Maybe somewhere closer to the shed; that you might lose a parking space. It  
734 just seems that, with this change of use, it's hypocritical to have it in that buffer.

735  
736 Mr. Chagnon said that I think you make a very good point and we can easily move the  
737 dumpster over by the shed.

738  
739 Mr. Olsen said that I assume that the dumpster will be fenced, with screening, and  
740 locked.

741  
742 Mr. Chagnon said that currently the dumpster sits on a pad and I believe the Planner has  
743 pointed out that you have new regulations requiring enclosure.

744  
745 Mr. Lentz asked if he mentioned security at all with this building. Are there going to be  
746 surveillance cameras around; that I didn't see or read anything about that.

747  
748 Mr. Chagnon said that I'm not sure that is required for this. I would have to defer to  
749 others on that but we can certainly address it.

750  
751 Ms. Braun asked how many loading bays you have.

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Mr. Chagnon said that there is one in the back and we believe that is sufficient. The architectural plan will have a roll-up door at that location. Interior to the building there will be a common hallway that will service both the retail side and the manufacturing side. So, we believe this location will serve the entire building and in the appropriate location for loading. Vehicles can come in, back up to the loading dock, and unload safely out of the way of traffic. They will block parking spots but they are employee spots so that can be coordinated by the tenants. If there is a second requirement that would require more, we would request a waiver to that because we believe we have enough space to meet the needs of new building.

Mr. Lentz asked if the PB had any other questions. Would the PB find this application complete.

Mr. Brubaker said that I think a lot of PB questions and a lot of what Mr. Chagnon has presented has covered it but I think there are a few other outstanding things I wanted to convey to the PB. This is pretty much a full site plan review, I think, even though it is technically an amendment to an existing plan. Obviously, the expansion is substantial. So, what I think we're looking at is going through a full site plan review process that would include a public hearing. As Mr. Chagnon mentioned, there was some information received today, including the updated architectural plan, sewer flow calculations, trip generation calculations, the lighting plan. Obviously, you've seen some of those documents via screen-share and Mr. Chagnon has summarized some of those documents but I do think it may present an opportunity to have another review of this before application completeness. However, if the PB does feel like Mr. Chagnon's presentation has covered those late-breaking documents and you have no further questions on those, you certainly could decide on application completeness tonight. He covered the Shoreland Zoning component and the uses. I think we talked about the full currently-approved use on the site is hemp and other botanical oils. In addition to the loading areas, just a technical note that the applicant also requested a waiver of the high intensity soils report and that is something that would eventually have to be voted on. We do have pretty strong screening requirements for properties abutting Route 236 and there is a depth to that screening requirement that is covered in my staff report; that there is a question of whether the screening should be deeper on Route 236 than it is currently. There are shade trees proposed, along with shrubs, so I think that part of the requirement is covered. I think it's legitimate to ponder whether there should be more depth of a thicker vegetative cover. Although, part of the frontage along Route 236 is devoted to that important stormwater infrastructure so I do think there are some constraints to making additional vegetative screening; but I do think there is some opportunity to increase the depth of that screening. There is also a plan for a partial foundation planting, right along the building. There is a little of that with those islands next to the parking spaces but it is another thing to ponder as to whether there could be a little bit more. There wasn't much discussion of the look of the building but, just today, updated architectural plans came in. I think stormwater is pretty well covered so I don't have much to add there. It was pretty well done and does show decreased impact and much better stormwater infrastructure than the current situation. I think there is a little bit of

798 gray area in our Town code as to whether the sign needs to be moved back a little bit  
799 from the ROW boundary; that it could be considered a non-conforming sign as there is a  
800 provision in our code for that. At the same time, depending on when it was installed, it  
801 might not be legally non-conforming so I do think there is an opportunity to continue to  
802 engage with the applicant as to whether the sign should be moved or a new, flashier sign  
803 that might be able to incorporate future retail use. Back in May, Mr. Galbraith had some  
804 informational questions and I think the applicant has addressed most of that. I just wanted  
805 to make one clarification about a gas storage tank being 75 feet or more from the adjacent  
806 lot line; that I don't think that would apply in this case. There is an underground gas  
807 storage tank and it's only for the actual site, not for bulk oil distribution.  
808

809 Mr. Lentz confirmed that there re documents that we haven't seen yet.  
810

811 Mr. Brubaker said not in depth. Mr. Chagnon did summarize and screen-share some of  
812 them but there were some that were received today and, unless it's correspondence from  
813 the Fire Chief or something like that, our practice has been not to burden you with late-  
814 breaking documents from applicants.  
815

816 Mr. Lentz said that that was good. I was thinking that, with what we asked Mr. Chagnon  
817 tonight and with what's on those documents, we may be better to go on with continued  
818 review of this.  
819

820 Ms. Braun agreed we should continue this for another review. There are documents I  
821 have not seen and does the Conservation Commission have to weigh in on this  
822 application.  
823

824 Mr. Brubaker said that we did share this with them on December 1. So, I think it's just a  
825 matter of continued review that would also allow them another opportunity at their next  
826 meeting to weigh in. I do think there are several benefits to continued review. It would  
827 allow the applicant to make suggested changes already made by the PB, allow more time  
828 for these documents to be reviewed in advance of the next meeting.  
829

830 Mr. Lentz said that we should see something back from the Fire Chief and Police Chief.  
831

832 Mr. Olsen agreed; that I would also like to see more information on hemp manufacturing.  
833 I just honestly don't know anything about it.  
834

835 Mr. Lentz agreed.  
836

837 Mr. Dubin aid that, with respect to hemp manufacturing, I was the applicant who got that  
838 approved a year or so ago. There currently isn't any manufacturing going on at the site.  
839 That was the plan for the site but has remained idle since seeking approval. I have tenants  
840 that are currently under contract for the 2,000 square feet and potential tenants for the  
841 8,000 square feet who can certainly, in their submission for full site plan review and  
842 permitting, if necessary, can outline and expand upon what I have already had it before

843 on-site. I would welcome any questions that you may have in terms of my initial approval  
844 as well as the targeted tenants that I have for the future.

845  
846 Mr. Lentz said that Mr. Olsen's suggestion was a good one. I think we all could use a  
847 little more education on processing hemp, what that is, and what is its relationship to  
848 cannabis. We are under fire here, as a Board, because people ask us these questions about  
849 security, what if some of this stuff gets out, what if somebody breaks in. I think Mr.  
850 Olsen is right. Anything that we can look at, listen to, see or do tells us a little more about  
851 hemp. Part of my thinking is, and that's why I was asking, when you are done processing,  
852 does the stuff smell, what do you do with it, put it out in that container, is the container  
853 locked, is it dangerous. Those are the kind of questions the public will ask.

854  
855 Mr. Dubin said that I welcome all those questions. In fact, I remember covering them in  
856 our process to get approval and the site is approved for that use. If my tenants continue to  
857 choose to use this site for that kind of manufacturing, I'm sure they will go into more  
858 depth on their processes and what they plan to do for security and disposal of the  
859 material. But, at this point, the site is idle. This site plan is for the expansion so that I can  
860 best monetize the opportunity here for many interested parties.

861  
862 Mr. Chagnon said that, in regard to the foundation planting, the purpose of having the  
863 approach that we do at the side of the building along Route 236 is that it's a parking  
864 space and it's a sidewalk that spans the front of the building in its entirety. That allows  
865 for placement of doors in the future at various locations to not only make this site more  
866 usable, now, but more usable at some point in the future. So, we would like to keep that  
867 same configuration. I can see the possibility, after talking to the Planner today, that it  
868 would probably be very easy to take this section of the sidewalk and move it away from  
869 the building so that side could have a planted area. I think we could accommodate that in  
870 the next revision of the plan and hopefully that would meet the PB's approval and not  
871 require additional work.

872  
873 Mr. Brubaker clarified that I certainly wouldn't suggest that, if additional foundation  
874 planting is put in place, that it replace the sidewalk. I do think the sidewalk is obviously  
875 important for access and ADA access. I didn't mean to suggest that the sidewalk be  
876 replaced by any additional planting.

877  
878 Mr. Chagnon clarified that I wouldn't replace the sidewalk. I'd move the sidewalk to the  
879 south on that end so there could be some planting along the building. As far as the front  
880 goes, I think we would rather present the detail in its full glory; that it has a lot of  
881 windows and not confuse the customers with a lot of plants in front of those windows so  
882 that they can see whatever is in the store. So, we would like to keep that front sidewalk  
883 flush up to the building, and that's all I meant by the change. I hope that would be  
884 acceptable to the PB. As far as the screening, we could take this and probably take the  
885 same plant design and vary it a little bit so that it is deeper. We can do that with the same  
886 amount of plants and make it look a lot better. There are some trees out there, now, that  
887 wouldn't be cut down so that would be sort of located between the trees that are left. As

888 far as the sign, I would ask the prior owner. Mr. Couperthwaite, talk about that sign and  
889 its non-conforming status.

890  
891 Mr. Couperthwaite said that I was the previous property owner and the builder of the  
892 property as it exists today. When I sought approval in 2005 for the car wash, there was a  
893 question with the State as far as where I could locate a sign based on the proximity to the  
894 road. One of the issues that I had originally with the State is that everybody's sign on  
895 Route 236 was very close to the road and the State was requiring that I had to meet the  
896 setback because, if the highway was ever expanded, I would have to move the sign  
897 regardless. So, we pushed the sign back to the point it now is and met the satisfaction of  
898 the State in case the highway was expanded. I also had to keep that setback because the  
899 Town required me to keep the large trees that were in that area and it was a site issue for  
900 being able to see the sign but I cooperated with the State and I thought we met the  
901 requirements to be able to put the sign up. The sign, itself, is a steel tubular frame sign in  
902 that concrete footing that goes down approximately four feet below grade and is 6'X7' in  
903 width and length so it would be a pretty good process to have to move that. We built that  
904 with the hope it would never fall over. It's covered right now with boat shrink wrap to  
905 protect the electrics, and stuff, that is in the sign. It is a lighted sign and I believe the size  
906 of the sign met the requirements that the Town had at the time.

907  
908 Mr. Lentz thanked him. Are there other questions or comments. Can we have a consensus  
909 that we move on to another review.

910  
911 It was the **consensus of the PB** to continue review of this application.

912  
913 Mr. Brubaker will work with the applicant to schedule another meeting and get back to  
914 the PB.

915  
916 \*\*\*\*\*

917  
918 Mr. Olsen discussed the rooster conversation the PB had. I felt bad for the folks that came  
919 in. They appear to be getting a complete run-around from the Town and nobody is taking  
920 accountability for this. From my reading of our current ordinance, that rooster is  
921 domesticated and I think that's where it comes into play. I don't want to see us just brush  
922 this off. We did change the ordinance. There's some confusion on the ordinance and I  
923 think the PB has the responsibility to the Town to set the Chief of Police correct and  
924 make him understand that we didn't change the ordinance saying a rooster could go and  
925 do its thing 24/7. That wasn't the intent. That's not what we were talking about. This is  
926 definitely a domesticated animal, just like your dog, and needs to act under the same  
927 thing. And if we are going to do anything with an ordinance change, I would say that  
928 maybe we just need to clarify that a little bit deeper. But I think a letter, if Mr. Brubaker  
929 and the Chair think that we did discuss this and that, according to our view of the  
930 ordinance we proposed and voted, that is a domesticated animal and, therefore, should be  
931 treated as such and the police should do their job.

932

933 Mr. Lentz said that those are good comments. I think the first thing that we had talked  
934 about at the end of the conversation was let's understand what we changed in that  
935 ordinance that they think is a problem. I don't know what that is and I think that Mr.  
936 Brubaker said that he would look at that. From there on, I'm agreeing with you. Let's  
937 change it if it needs to be changed, again, but if not, let's put the problem in whoever's  
938 lap it belongs to. I feel bad for the people.

939  
940 Mr. Brubaker thanked Mr. Olsen for raising that issue. I am committed to making that  
941 clarification change to the ordinance. That is something I've talked with the Town  
942 Manager and he definitely wants me to work on that. I was reading that new  
943 'domesticated animal' definition as dogs and cats and Ms. Lemire pointed it out to me  
944 "but not limited to". So, based on that language I will engage again with the Town  
945 Manager, Chief Moya and Ms. Buckley (ACO) just to check in on that. In addition to  
946 those things, if it's the PB's desire I could come back with a draft that could be on the  
947 agenda for a future meeting.

948  
949 The PB agreed that that would be good.

950  
951 Mr. Brubaker said that my one red flag on that, and this is just my intuition, is that  
952 whatever clarification we make to the ordinance, I'm not comfortable with tying it to  
953 zoning districts. That doesn't mean it shouldn't be area-specific, I would just rather tie it  
954 to something else and I think if enough brains were put together, we could figure out  
955 something better zoning to tie it to.

956  
957 Mr. Lentz agreed. He wished everyone a Merry Christmas.

958  
959 **ITEM 10 – CORRESPONDENCE**

960  
961 There was no correspondence.

962  
963 **ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING**

964  
965 Mr. Lentz said that we have no Vice Chair and we must have a Vice Chair. He added  
966 that if Ms. Strange is thinking about moving up to a regular voting member she will  
967 have to fill out another application. It is now available.

968  
969 Ms. Braun asked Mr. Brubaker if he had had a chance to talk with Mr. Lee on what I  
970 have to do to continue with my term being up in April 2021.

971  
972 Mr. Brubaker said that I will definitely touch base with Mr. Lee about that.

973  
974  
975 The next regular Planning Board Meeting is scheduled for January 5, 2021 at 7PM.

976  
977 **ITEM 13 – ADJOURN**

978

979           There was a motion and a second to adjourn the meeting at 9:07 PM.

980

981

982

983

984

\_\_\_\_\_  
**Carmela Braun, Secretary**

985

**Date approved:** \_\_\_\_\_

986

987

988   **Respectfully submitted,**

989

990   **Ellen Lemire, Recording Secretary**

991

992

# TOWN OF ELIOT, MAINE

## PLANNING BOARD NOTICE OF DECISION

CASE #: **PB20-19 - SHORELAND ZONING**

**PERMIT APPLICATION/REPLACEMENT OF  
NON-CONFORMING RESIDENTIAL STRUCTURE**

MAP/LOT: **32/2**

DATE OF DECISION: **12/15/2020**

\_\_\_\_\_, 2020

**DRAFT**

Chris and Jennifer Wilber  
PO Box 90  
Eliot, Maine 03903

Dear Mr. & Mrs. Wilber,

This **Notice of Decision** is to inform you that the Planning Board has acted on your **Shoreland Zoning Permit Application** for the replacement of an existing, non-conforming structure, re-built shoreline retaining wall, and modification of an existing boathouse/garage:

### **I. APPLICATION DOCUMENTS AND SUPPORTING MATERIAL SUBMITTED FOR THE RECORD:**

#### **Submitted for October 6, 2020:**

1. Request for Planning Board Action, received September 16, 2020.
2. Warranty Deed: Book 18370, Page 733, recorded at the York County Registry of Deeds, dated September 9, 2020.
3. Abutters List.
4. Project Narrative.
5. Shoreland Zoning Permit Application, received September 16, 2020.
  - Drawing of proposed Boathouse.
  - Drawing of proposed Cottage.
  - Site Plan showing existing and proposed structures, prepared by Chris Wilber, PLS.
6. Memo from Jeff Brubaker, Town Planner, dated October 6, 2020.

#### **Submitted for November 10, 2020:**

1. Copy of Shoreland Site Review Application /Request for Planning Board Action and accompanying documents.
2. Copy of Notice of Site Walk, posted October 26, 2020.
3. Copy of legal Notice of Site Walk, advertised in the Portsmouth Herald October 24, 2020.
4. ME DEP NRPA Permit-by-Rule Application, dated September 27, 2020. Approved October 21, 2020, PBR #71136.
5. CAI Technologies Location Map.
6. Copy of existing/proposed site plan.
7. Copy of HHE-200 Subsurface Wastewater Disposal System Application, prepared by Joseph Noel, SE, dated April 1, 2000.
8. Copy of Replacement System Variance Request and accompanying approval letter, dated June 5, 2000.
9. Photographs of the site and existing structures.
10. Memo from Jeff Brubaker, Town Planner, dated October 6, 2020, updated.

#### **Submitted for December 15, 2020:**

1. Notice of Public Hearing to the Town, dated December 3, 2020.
2. Copy of Legal Notice of Public Hearing in the Portsmouth Herald, dated December 3, 2020.
3. 500-foot Abutters List, dated October 26, 2020.
4. Copy of Request for Planning Board Action/Shoreland Site Review Application.
5. Copy of HHE-200 Application and approval letter.

6. Copy of ME DEP NRPA Form.
7. Copy of Location Map.
8. Copy of Site Plan existing and proposed structures.
9. Letter from abutters at 46 Rogers Point Drive in support of the project, dated December 8, 2020.
10. Memo from Jeff Brubaker, Town Planner, dated December 8, 2020.

#### FINDINGS OF FACT:

1. The owners of the property are Chris and Jennifer Wilber (mailing address: PO Box 90, Eliot, Maine 03903).
2. The applicants are: Chris and Jennifer Wilber (mailing address: PO Box 90, Eliot, Maine 03903).
3. The property is located at 41 Rogers Point Drive, Eliot, ME and is 0.32 acres.
4. Property can be identified as Assessor's Map 32/ Lot 2 and is located in the Suburban Zoning District/Resource Protection and Limited Residential Shoreland Zoning District Overlays.
5. The applicant proposes to replace existing non-conforming 1-story,  $\frac{3}{4}$  bath residential structure (cottage) further away from the Piscataqua River with a  $1\frac{1}{2}$ -story,  $1\frac{3}{4}$ -bath, 2-bedroom residence and modify the 2-story boathouse/garage, to include a new roof and Accessory Dwelling Unit within existing footprint, demolish the existing deck and add stairway to second floor, keeping the same square footage (64 square feet).
6. Copies of the application and supporting materials were provided to the Police Chief, Public Works, Fire Department, Conservation Commission, and Code Enforcement. The Conservation Commission's only comment was that measures have been identified to avoid environmental impact.
7. The Planning Board reviewed the application at the following regular meetings:
  - October 6, 2020 (Sketch Plan Review)
  - November 10, 2020 (Site Plan Review/Site Walk Review)
  - December 15, 2020 (Site Plan Review/Public Hearing)
8. In accordance with §33-130, a public hearing was advertised in the Portsmouth Herald/Seacoast Online on December 3, 2020 and held on December 15, 2020. Abutting land owners were notified via certified mail.
9. One abutter sent a letter supporting the project. No one from the public spoke at the public hearing.
10. The following application fees have been paid by the applicant, in accordance with §1-25:
  - Site Plan Review Application Fee (Shoreland): \$100, paid 9/16/2020.
  - Non-conforming structure in Shoreland Overlay \$75.00, paid 9/16/2020.
  - Public Hearing Fee: \$175.00, paid 9/16/2020.
11. The Planning Board held a site walk on November 9, 2020, which was legally noticed October 24, 2020. The property was well-flagged and all questions were satisfactorily answered.
12. The Planning Board accepted the application as complete on November 10, 2020.
13. The subject parcel is within a subdivision created in 1937, titled "*Rogers Point*". Cottage built in 1940 and garage/boathouse built in 1979.
14. Parcel is within the 75-foot setback from the Piscataqua River and subject to §44-35(b)(1). Proposed cottage structure to be located further away from the Piscataqua River to the greatest extent practicable. Planning Board "greatest extent practicable" review of §44-32(c)(4) was completed during review of this application.
15. §44-32 was updated at Town Meeting in November 2018 to be consistent with the State of Maine Chapter 1000 Shoreland Zoning regulations, which removed 'volume' as part of the 30% expansion rule for non-conforming structures.
16. Majority of the proposed cottage structure re-location to be moved out of the 25-foot normal highwater line setback, with existing encroachment at 58 square feet and proposed at 9 square feet, making it less non-conforming.
17. Regarding Rogers Point Drive setbacks, setbacks will remain the same, not increasing the non-conformity.
18. There is a current dock structure on the property, described as in 'poor condition'. No change is proposed at this time.
19. There is a shared drilled well on the neighboring property with deed rights.
20. The applicant verified that there is no evidence available to indicate the garage/boathouse structure sustained damage from a discrete event of over 50% of its value at the time of the event.
21. Existing structures are allowed to expand by 30% under §44-32(c)(1) C.1.:
  - a. 30% expansion: 742 square feet to 920 square feet or 24%.

- b. Shoreland Lot Coverage: 15%
  - c. Shoreland Structure Height: proposed is to be no more than 20 feet.
  - d. Septic System, designed by Joseph Noel (Site Evaluator), is currently approved for two (2) bedrooms.
  - e. Parcel will retain access to the shared private well.
  - f. Parking area (driveway) will remain the same.
22. Applicant filed for a ME DEP NRPA Permit. The Permit was granted October 21, 2020 and a copy submitted to the Planning Department.
  23. Applicant will verify, prior to construction of accessory dwelling unit, that the current septic system is adequate for a third bedroom. Accessory Dwelling Unit will comply with §45-459.
  24. Four large trees, delineated on the Site Plan, will be removed and replaced.
  25. The applicant proposes to rebuild, in place, the shoreline retaining wall for soil stability. During replacement, silt fencing and/or hay bales will be used for erosion control; disturbed areas will be re-vegetated, per the Site Plan.
  26. The driveway is, and will remain, gravel.
  27. The existing property is accessed through a deeded, private gravel right-of-way of the land known as "Rogers Point".

**CONCLUSIONS:**

1. All applicable sections of the Shoreland Zoning Ordinance (Chapter 44), Shoreland Zoning Permit Application, Chapter 33 Site Plan Review and §45-459 (Accessory Dwelling Unit) have or will be met.
2. Based on the information presented by the applicant and in accordance with Sec. 44-44, the Planning Board finds that the proposed use:
  - a. Will maintain safe and healthful conditions;
  - b. Will not result in water pollution, erosion, or sedimentation to surface waters;
  - c. Will adequately provide for the disposal of all wastewater;
  - d. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird, or other wildlife habitat;
  - e. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
  - f. Will protect archaeological and historic resources as designated in the comprehensive plan;
  - g. Will avoid problems associated with floodplain development and use; and
  - h. Is in conformance with the provisions of section 44-35, land use standards.
3. Applicant has met §44-32 – Nonconformance. Without limiting the generality of this finding, the Planning Board also specifically finds:
  - a. The new residential structure and foundation will substantially reduce the area of encroachment in the river setback compared to the existing residential structure, from 58 square feet to 9 square feet, while continuing to meet the existing Rogers Point Drive setback. This nonconforming lot of record is narrow and creates a challenging building envelope. Therefore, working within a significantly constrained site, the applicant has met the river setback requirement for the residential structure and its foundation to the greatest practical extent.
  - b. Based on information presented during application review and the site walk, the Planning Board finds that there is no evidence of a discrete event damaging the boathouse by more than 50 percent of the market value of the structure before such damage, destruction or removal. Therefore, the boathouse is not subject to Section 44-32(c)(4). Normal upkeep and maintenance of nonconforming structures, including repairs or renovations which do not involve expansion of the nonconforming use or structure, are allowed under 44-32(b)(2).

**DECISION:**

Based on the above facts and conclusions, on **December 15, 2020**, the Planning Board voted to approve your application to replace existing non-conforming residential structure (cottage) further away from the Piscataqua River and modify the 2-story boathouse/garage, to include a new roof and Accessory Dwelling Unit, demolish the existing deck and add stairway to second floor, keeping the same square footage.

## CONDITIONS OF APPROVAL:

The applicant must comply with all requirements of the Town of Eliot Land Use Ordinances. In addition, to further promote the purposes of the (Eliot Zoning Ordinances), the Planning Board has voted to impose the following conditions on the approval of this application:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
4. Prior to installation of a third bedroom, the capacity of the subsurface wastewater disposal system to serve three bedrooms shall be documented through an approved HHE-200 form and permit, or by a signed letter from a State-licensed site evaluator or other qualified professional.
5. Per §44-32(c)(1)(d), an approved plan for expansion of a non-conforming structure must be recorded by the applicant with the York County Registry of Deeds within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the Shoreland Zone boundary and evidence of approval by the Eliot Planning Board. The applicant may make minor informational or formatting changes to the site plan, relative to the plan presented for approval, to address the information required for the recorded plan. The Planning Board's approval authorizes (and the recorded plan must have) a signature from the Planning Board Chair.
6. Planning Board approval of this application is further supported and clarified by specific language in the "Conclusions" section (2 a. and b.) of the Notice of Decision per §44-32.

## PERMITS:

The Planning Board has approved your application and the Code Enforcement Officer is authorized to grant you the necessary Permits or Certificates of Occupancy, as appropriate. It is your responsibility to apply for these permits. In exercising this approval, you must remain in compliance with all the conditions of approval set forth by the Planning Board, as well as all other Eliot, State, and Federal regulations and laws. Be aware, however, that Site Plan approvals (including home businesses) that are granted by the Eliot Planning Board have expiration provisions specified in Section 33-59 of the Town of Eliot Code of Ordinances, which states:

*The approval of a site plan review under chapter 33, article III shall expire if the work or change involved does not commence within two years of the date the planning board makes its determination of approval under section 33-131, or if the work or change is not substantially completed within three years after such date.*

The holder of an approved permit should take care to ensure that the approval granted on **December 15, 2020** does not expire prior to commencement of work or change.

**APPEALS:**

This decision can be appealed to the Board of Appeals within 30 days after **December 15, 2020** by an aggrieved person or party as defined in Sec. 1-2 and Sec. 45-50(b) of the Eliot Zoning Ordinance. Computation of time shall be in accordance with general provisions of the Town of Eliot Municipal Code of Ordinances, section 1-2.

Sincerely,

---

Dennis Lentz, Chair

*This letter reviewed and approved by the Planning Board on \_\_\_\_\_ 2020.*

CC: Steve Robinson, Public Works Director  
Elliott Moya, Police Chief  
Jay Muzeroll, Fire Chief  
Martine Painchaud, Tax Assessor  
Shelly Bishop, Code Enforcement Officer  
Kari Moore, Conservation Commission

DRAFT

# TOWN OF ELIOT, MAINE

## PLANNING BOARD NOTICE OF DECISION

CASE #: **PB20-25 - AMENDED SITE**

**PLAN/REQUEST FOR PLANNING BOARD**

**ACTION:**

MAP/LOT: **23/11**

DATE OF DECISION: **12-15-2020**

\_\_\_\_\_, 2020

**DRAFT**

ENI 114 HLD HWY, LLC  
Kenneth Black, Manager  
2 International Way  
Lawrence, MA 01843

Woodman Edmands Danylik Austin Smith & Jacques, P.A.  
Attorney Sandra Guay  
234 Main Street PO Box 468  
Biddeford, ME 04005

Greenman-Pederson, Inc.  
Chris Tymula, Engineer  
44 Stiles Road, Suite One  
Salem, NH 03079

To: Kenneth Black, Chris Tymula and Attorney Guay,

This letter is to inform you that the Planning Board has acted on your **application to amend a previously-approved site plan to add a 36'X70' pole barn to the existing structure** as follows:

### APPLICATION DOCUMENTS AND SUPPORTING MATERIAL SUBMITTED:

#### Submitted for December 15, 2020:

1. Application for a Request for Planning Board Action (minor revision) to amend a previously-approved site plan (dated August 17, 1994) received November 17, 2020.
  - a) Authorization letter from ENI 114 HLD HWY, LLC (Kenneth Black) authorizing Woodman Edmands Danylik Austin Smith & Jacques, P.A. and Greenman-Pederson, Inc. to act as the applicant's agents, dated August 18, 2020.
  - b) Quitclaim Deed: Book 17888/Page 692, registered at the York County Registry of Deeds, dated January 21, 2019.
  - c) Project Description
  - d) Site Location Tax Map.
  - e) Abutters List.
  - f) Copy of original Planning Board site plan approval.
  - g) Site Redevelopment Plans for 114 Harold L. Dow Highway showing existing and proposed; grading, drainage & erosion control plan; detail sheet; truck turn plan.
  - h) Illustration & Schematic of Pole Barn.
2. Letter from Bob Sexton, Safety Director, Energy North Incorporated, dated August 14, 2020.
3. Memo from Jeff Brubaker, Town Planner, dated December 8, 2020.
4. Response letter from Attorney Guay to the Planner's report, dated December 8, 2020.

### FINDINGS OF FACT:

1. The owner of the property is: ENI 114 HLD HWY, LLC (mailing address: 2 International Way, Lawrence, MA 01843).
2. The applicant is: ENI 114 HLD HWY, LLC (Kenneth Black) (mailing address: 2 International Way, Lawrence, MA 01843).

3. The property is located at 114 Harold L. Dow Highway, Eliot, ME and is 1.10 acres.
4. Property can be identified as Assessor's Map 23/ Lot 11 and is located in the Commercial/Industrial Zoning District.
5. The applicant proposes to amend a previously-approved site plan (approved August 17, 1994) by adding a 36'X70' pole barn to the existing structure, per §33-140.
6. The proposed structure will be located entirely within the building envelope of the property.
7. The site is located within the MS4 Urbanized Area. No DEP Stormwater Permit is required because disturbance is less than one (1) acre. Erosion control measures and maintenance are described on Sheet 5 of the Plan Set.
8. The purpose of the pole barn is to provide drivers with a covered area to perform mandatory safety inspections of the vehicles out of inclement weather. Safety inspections require drivers to walk around vehicles, lift and open hatches and to climb on top of the vehicles to inspect the tanks.
9. There will be no external lighting. Canopy to have Soffit lighting below the roof, which directs lighting downward.
10. An additional shrub and evergreen buffer will be planted between the pole barn and Route 236, per §33-175(b).
11. Property is located entirely within a flood hazard area (100-year flood, Zone A; see Note #12 on Site Plan) and will require a flood hazard development permit from the Code Enforcement Officer prior to construction.
12. A variance request to the Board of Appeals to place the pole barn to the rear of the property was denied by the Board of Appeals in September 2020.
13. Additionally, one of the purposes of this amended plan is to bring the site plan, itself, and the existing established uses of the property up-to-date for the Town's records, to include "Commercial Establishment", "Bulk oil fuel tanks" and "Truck terminals and storage".
14. Copies of the application and supporting materials were provided to the Code Enforcement, Public Works, Police Department, Fire Department and Conservation Commission. Conservation Commission concerned with proximity of proposed pole barn to wetlands and would like to see the wetland delineation survey report referenced on the drawings. They have requested consideration of a 75' setback from wetland boundaries. Fire Chief comment: Because the pole barn has no walls, it is not considered a building and requires no further review from his office.
15. The parcel is not located within the mapped Shoreland Zone and does not require setbacks from the wetlands. (Note #3, Existing Conditions Site Plan),
16. The Project Engineer explained that, if the 75' wetland setback were to be used, the site would be unusable.
17. The Planning Board reviewed the application at the following regular meeting.
  - December 15, 2020.
18. The following application fee(s) have been paid by the applicant, in accordance with §1-25:
  - Site Plan Review Application Fee: \$100 (Check dated 11/23/2020).
  - Public Hearing Fee: \$175 (Check dated 11/23/2020).
19. The Planning Board agreed a site walk and public hearing was not necessary.

#### **CONCLUSIONS:**

1. Revisions to site plans are allowed with Planning Board approval under Section 33-140 (Revisions to final site plans after planning board approval).
2. Per §45-290 (Table of Permitted and Prohibited Uses), "Commercial establishment" is a permissible use in the Commercial/Industrial Zone with Planning Board approval.
3. The Board determined that the proposed revisions to the approved site plan were minor and did not result in any substantial changes to the approved development or further impact abutters and, therefore, did not require full site plan review.

#### **DECISION:**

Based on the above facts and conclusions, on **December 15, 2020**, the Planning Board voted to approve your application to amend a previously-approved site plan (approved **August 17, 1994**) to add a 36'X70' pole barn to the existing structure.

## CONDITIONS OF APPROVAL:

The applicant must comply with all requirements of the Town of Eliot Land Use Ordinances. In addition, to further promote the purposes of the (Eliot Zoning Ordinances), the Planning Board has voted to impose the following conditions on the approval of this application:

Ms. Braun moved, second by Mr. Olsen, that the Planning Board approve PB20-25, including the site plan, to add a 36-foot by 70-foot pole barn to the existing structure, and to approve already-established uses to update the file with these approved uses: Commercial Establishment, Bulk Oil Fuel Tanks, and Truck Terminals and Storage. The Planning Board finds that the proposed revisions are minor and do not result in any substantial changes to the approved development or further impact abutters, with the following conditions of approval:

1. The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.
2. The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.
3. The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.
4. The additional structures on the site plan are to be constructed in accordance with Article VI of Chapter 25 of the Town Code – Floodplain Management Ordinance. A flood hazard development permit shall be obtained from the Code Enforcement Officer prior to beginning construction. The Town of Eliot may enforce any violation of the construction requirement. These requirements and enforcement information shall be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure. The construction requirement shall also be clearly stated on the approved site plan.

## PERMITS:

The Planning Board has approved your application and the Code Enforcement Officer is authorized to grant you the necessary Permits or Certificates of Occupancy, as appropriate. It is your responsibility to apply for these permits. In exercising this approval, you must remain in compliance with all the conditions of approval set forth by the Planning Board, as well as all other Eliot, State, and Federal regulations and laws. Be aware, however, that Site Plan approvals (including home businesses) that are granted by the Eliot Planning Board have expiration provisions specified in Section 33-59 of the Town of Eliot Code of Ordinances, which states:

*The approval of a site plan review under chapter 33, article III shall expire if the work or change involved does not commence within two years of the date the planning board makes its determination of approval under section 33-131, or if the work or change is not substantially completed within three years after such date.*

The holder of an approved permit should take care to ensure that the approval granted on **August 17, 1994 and amended on December 15, 2020** does not expire prior to commencement of work or change.

**APPEALS:**

This decision can be appealed to the Board of Appeals within 30 days after **December 15, 2020** by an aggrieved person or party as defined in Sec. 1-2 and Sec. 45-50(b) of the Eliot Zoning Ordinance. Computation of time shall be in accordance with general provisions of the Town of Eliot Municipal Code of Ordinances, section 1-2.

Sincerely,

---

Dennis Lentz, Chair

*This letter reviewed and approved by the Planning Board on \_\_\_\_\_, 2020.*

CC: Steve Robinson, Public Works Director  
Elliott Moya, Police Chief  
Jay Muzeroll, Fire Chief  
Martine Painchaud, Tax Assessor  
Shelly Bishop, Code Enforcement Officer  
Kari Moore, Conservation Commission

DRAFT

## **Proposed Town Code Amendments Related to Marijuana Licensing and Land Use Regulations**

*Discussion draft for Planning Board review, January 5, 2021 (REVISED)*

*Previous PB reviews on Sept. 29 and Dec. 1.*

*Attorney review on Nov. 30.*

**Article \_\_. Shall an ordinance entitled “[insert title]” dated 6/8/2021 be enacted?**

### **Background and rationale [DRAFT]**

These amendments make changes to marijuana licensing requirements and land use regulations. The amendments consolidate land use regulations for medical and adult use marijuana while improving and expanding the performance standards they must meet; better define various medical marijuana uses under the term “medical marijuana establishment”; bring medical marijuana establishments under Chapter 11 licensing requirements; and improve the clarity of marijuana land use regulations.

The Commercial/Industrial (C/I) zoning district will continue to be the only zoning district where any marijuana use is allowed, and Planning Board site plan review and approval will continue to be required for all marijuana development applications. The amendments also clarify shoreland zoning requirements for marijuana uses. Toward maintaining protections for sensitive natural resources, the amendments update the shoreland zoning land use table (Section 44-34) so that only marijuana stores, medical marijuana caregiver retail stores, dispensaries, testing facilities, and marijuana cultivation are allowable in the shoreland zone, and only within the Limited Commercial and General Development shoreland zoning districts, and subject to Planning Board review and approval. The amendments clarify that all marijuana uses are prohibited in the Resource Protection, Stream Protection, and Limited Residential shoreland zoning districts. Remember that shoreland zoning restrictions apply in addition to base zoning (e.g. the C/I District).

Currently, there are two sets of land use performance standards for marijuana uses. Section 33-189 has performance standards for certain medical marijuana uses and Section 33-190 has performance standards for adult use marijuana uses. The amendments consolidate the two by repealing Section 33-189 and incorporating medical marijuana references into Section 33-190 (which will be moved in the Town Code to a new Section 45-470). This will result in similar rules for both medical and adult use marijuana land uses.

The amendments also bring medical marijuana uses under the licensing requirements in Chapter 11. Currently, these requirements only apply to adult use marijuana establishments.

**(New text underlined in bold)**

~~Deleted text in strikethrough~~

*[Only the definitions being modified are included in this section]*

Sec. 1-2. - Definitions and rules of construction.

In the construction of this Code, and of all ordinances, the following rules shall be observed:

[...]

~~*Nonprofit medical marijuana dispensary* means a not for profit entity licensed under Section 6 of the Rules Governing the Maine Medical Use of Marijuana Program, that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia, prepared marijuana any marijuana products or byproducts, or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.~~

[...]

~~*Prepared marijuana* means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks and roots of the marijuana or other ingredients in goods prepared for human consumption and use.~~

[...]

~~*Registered primary caregiver* means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's use of marijuana.~~

[...]

## Chapter 11 - MARIJUANA ESTABLISHMENTS

### Sec. 11-1. - Purpose.

The purpose of this article is to provide for and regulate the issuance of local licenses for adult use marijuana establishments as defined in this article and by the state under the Marijuana Legalization Act, 28-B M.R.S.A. ch. 1, as may be amended-, **and to provide for and regulate the issuance of local licenses for medical marijuana establishments as defined in this article and by the state under the Maine Medical Use of Marijuana Act, 22 M.R.S.A. ch. 558-C, as may be amended.**

(T.M. of 11-5-2019(2))

### Sec. 11-2. - Authority.

This article is adopted pursuant to the authority granted by 28-B M.R.S.A. § 401 et seq., as may be amended, and 22 M.R.S.A. § 2421 et seq., as may be amended.

(T.M. of 11-5-2019(2))

### Sec. 11-3. - Definitions.

As used in this article, the following words and phrases shall have the meanings ascribed to them in this section and section ~~33-190~~ **45-270** of this Code.

*Adult use marijuana* shall mean "adult use marijuana" as that term is defined in 28-B M.R.S.A. § 102(1), as may be amended.

*Adult use marijuana product* shall mean "adult use marijuana product" as that term is defined in 28-B M.R.S.A. § 102(2), as may be amended.

*Applicant* shall mean a person that has submitted an application for licensure as a marijuana establishment **or medical marijuana establishment** pursuant to this article.

*Cultivate or cultivation* shall mean the planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana for use or sale. It does not include manufacturing.

*Harvested marijuana* shall mean "harvested marijuana" as that term is defined in 22 M.R.S.A. § 2422(3-C), as may be amended.

*Immature plant* shall mean "immature marijuana plant" as a marijuana plant that is not a mature marijuana plant or a seedling.

*Licensed premises* shall mean the premises specified in an application for a state or local license pursuant to this article that are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, sell, or test adult use **or medical** marijuana, or adult use **or medical** marijuana products in accordance with the provisions of this article and the requirements of state law and regulations.

*Licensee* shall mean a person licensed pursuant to this article or, in the case of a holder of an occupational license, a natural person licensed pursuant to this article.

*Local marijuana license* shall mean any license required by and issued under the provisions of this article.

*Local licensing authority* shall mean the select board as further specified in the provisions of this article.

*Manufacture or manufacturing of marijuana* shall mean the production, blending, infusing, compounding or other preparation of marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis. It does not include cultivation.

*Marijuana* shall mean **“marijuana”** ~~the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not; but shall not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin including hashish and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake or the sterilized seed of such plant which is incapable of germination and as that term is defined in 28-B M.R.S.A. § 102(27), as may be amended.~~

*Definition in 8-18-20 draft:* ~~Marijuana shall mean the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not; but shall not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin including hashish and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake or the sterilized seed of such plant which is incapable of germination and as that term is defined in 28-B M.R.S.A. § 102(27), as may be amended.~~ **is defined in 28-B M.R.S.A. § 102(27), as may be amended.**

*Marijuana concentrate* shall mean the resin extracted from any part of a marijuana plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish. In determining the weight of *marijuana concentrate* in a marijuana product, the weight of any other ingredient combined with marijuana to prepare a marijuana product may not be included.

*Marijuana cultivation facility* shall mean a "cultivation facility" as that term is defined in 28-B M.R.S.A. § 102(13), as may be amended. A *marijuana cultivation facility* is an entity licensed to cultivate, prepare and package adult use marijuana and to sell adult use marijuana to marijuana establishments.

*Marijuana establishment* shall mean a "marijuana establishment" as that term is defined in 28-B M.R.S.A. § 102(29), as may be amended. A *marijuana establishment* is a marijuana store, a marijuana cultivation facility, a marijuana products manufacturing facility, or a marijuana testing facility or a marijuana social club.

*Marijuana products manufacturing facility* shall mean a "products manufacturing facility" as that term is defined in 28-B M.R.S.A. § 102(4243), as may be amended. A *marijuana products manufacturing facility* is an entity licensed to purchase adult use marijuana; to manufacture, label and package adult use marijuana products; and to sell adult use marijuana products from a marijuana cultivation facility only to other *marijuana products manufacturing facilities*, or marijuana stores and marijuana social clubs.

*Marijuana social club* shall mean a "marijuana social club" as that term is defined in 28-B M.R.S.A. § 102(33), as may be amended. A *marijuana social club* is an entity licensed to purchase adult use marijuana products from a marijuana products manufacturing facility and to sell adult use marijuana products to consumers for consumption on the licensed premises. *Marijuana social clubs* are prohibited within the town.

*Marijuana store* shall mean a "marijuana store" as that term is defined in 28-B M.R.S.A. § 102(34), as may be amended. A *marijuana store* is an entity licensed to purchase adult use marijuana from a marijuana cultivation facility and to purchase adult use marijuana products from a marijuana products manufacturing facility and to sell adult use marijuana and adult use marijuana products to consumers.

*Marijuana testing facility* shall mean a "testing facility" as that term is defined in 28-B M.R.S.A. § 102(5354), as may be amended. A *marijuana testing facility* is a facility licensed to develop, research and test marijuana, marijuana products and other substances.

*Mature marijuana plant* shall mean a marijuana plant that is flowering.

***Medical marijuana shall mean marijuana used or intended for “medical use” as defined in 22 M.R.S.A. § 2422(5), as may be amended.***

***Medical marijuana assistant shall mean an “assistant” as that term is defined in 22 M.R.S.A. § 2422(1-D), as may be amended.***

***Medical marijuana caregiver shall mean “caregiver” as that term is defined in 22 M.R.S.A. § 2422(8-A), as may be amended.***

***Medical marijuana caregiver retail store shall mean “caregiver retail store” as that term is defined in 22 M.R.S.A. § 2422(1-F), as may be amended.***

*Definition in 8/18/20 draft:* Medical marijuana retail store. A medical marijuana store is a retail establishment operated by a single medical marijuana registered caregiver where harvested marijuana is sold by that medical marijuana registered caregiver to medical marijuana qualifying patients for patients’ medical use and may include an area for consultation with patients. Two or more medical marijuana registered caregivers are prohibited from forming, owning or operating a medical marijuana retail store as a single medical marijuana retail store. A medical marijuana retail store is only authorized as a principal use, and not as an accessory use.

***Medical marijuana cultivation area shall mean a “cultivation area” as that term is defined in 22 M.R.S.A. § 2422(3), as may be amended.***

*Medical marijuana cultivation facility* shall mean a “medical marijuana cultivation area used or occupied by one or more medical marijuana registered caregivers. A medical marijuana cultivation facility is prohibited from selling medical marijuana to medical marijuana qualifying patients, medical marijuana caregivers or medical marijuana registered caregivers on premise. A medical marijuana cultivation facility shall not be used or occupied by a “collective” as that term is defined in 22 M.R.S.A. § 2422(1-A), as may be amended.

*Medical marijuana dispensary* shall mean a “registered dispensary” as that term is defined in 22 M.R.S.A. § 2422(6), as may be amended. A medical marijuana dispensary includes a location at which marijuana is cultivated by a registered dispensary pursuant to 22 M.R.S.A. § 2428, as may be amended. A medical marijuana dispensary is not a medical office or a professional office.

*Medical marijuana establishment* shall mean a medical marijuana dispensary, a medical marijuana cultivation facility, a medical marijuana caregiver retail store, a medical marijuana products manufacturing facility, or a medical marijuana testing facility.

*Medical marijuana product* shall mean a “marijuana product” as that term is defined in 22 M.R.S.A. § 2442(4-L), as may be amended.

*Medical marijuana products manufacturing facility* shall mean a “manufacturing facility” as that term is defined in 22 M.R.S.A. § 2422(4-R), as may be amended.

*Medical marijuana qualifying patient* shall mean a “qualifying patient” as that term is defined in 22 M.R.S.A. § 2422(9), as may be amended.

*Medical marijuana registered caregiver* shall mean a “registered caregiver” as that term is defined in 22 M.R.S.A. § 2422(11), as may be amended.

*Medical marijuana registered patient* shall mean a “registered patient” as that term is defined in 22 M.R.S.A. § 2422(12), as may be amended.

*Medical marijuana testing facility* shall mean a “marijuana testing facility” as that term is defined in 22 M.R.S.A. § 2422(5-C), as may be amended.

*Owner* shall mean a person whose beneficial interest in a marijuana establishment **and-or medical marijuana establishment** is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a marijuana establishment **and-or medical marijuana establishment** and has a controlling interest in a marijuana establishment **and-or medical marijuana establishment**.

*Plant canopy* shall mean the total surface area within the licensed premises of a cultivation facility that is authorized by the department for use at any time by the cultivation facility licensee to cultivate mature marijuana plants. The surface area of the plant canopy must be calculated in square feet and measured using the outside boundaries of the area and must include all of the area within the boundaries. If the surface area of the plant canopy consists of noncontiguous areas, each component area must be separated by defined boundaries. If a tiered or shelving system is used by the cultivation facility licensee, the surface area of each tier or shelf must be included in calculating the area of the plant canopy. Calculation of the area of the plant canopy may not include the areas within the licensed cultivation facility that are used to cultivate

immature marijuana plants and seedlings and that are not used at any time to cultivate mature marijuana plants.

*Person* shall mean a natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. *Person* does not include any governmental organization.

*Public facility* shall mean any facility, including, but not limited to, buildings, property, and recreation areas, which is ~~are~~ owned, leased, or otherwise operated, or funded by a governmental body or public entity.

*Seedling* shall mean a marijuana plant that is: (1) not flowering; (2) less than six inches in height; and (3) less than six inches in width.

*State license* shall mean any license, registration or certification issued by the state licensing authority.

*State licensing application* shall mean the application form and supporting materials required by the state for the purpose of a person obtaining a state license, registration or certification for the cultivation, manufacture, distribution, testing and sale of adult use marijuana, and/or adult use marijuana products in this state.

*State licensing authority* shall mean the authority (or authorities) created by the state for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale of adult use or medical marijuana, and/or adult use or medical marijuana products in this state.

(T.M. of 11-5-2019(2))

Sec. 11-4. - Allowed.

Marijuana establishments and medical marijuana establishments shall be allowed, subject to the requirements and restrictions of this chapter and chapter 45 of this Code.

(T.M. of 11-5-2019(2))

Sec. 11-5. - Prohibited activities.

- (a) No marijuana establishment or medical marijuana establishment shall be established or operated within the town without first receiving and then maintaining all approvals required under this Code, including, but not limited to, this chapter, chapters 33, 44 (as applicable), and chapter 45 in this Code.
- (b) No marijuana establishment or medical marijuana establishment shall conduct any activity for which it has not received the required state license and local marijuana license.
- (c) Marijuana social clubs are prohibited within the town.

(T.M. of 11-5-2019(2))

Sec. 11-6. - License required.

- (a) *State license.* A marijuana establishment shall not operate until it is licensed by the state licensing authority pursuant to the requirements of 28-B M.R.S.A. ch. 1, as may be amended. An applicant may not operate a marijuana establishment without a state license and all other necessary town approvals. **A medical marijuana establishment shall not operate until it is licensed, registered or certified, as applicable, by the state licensing authority pursuant to the requirements of 22 M.R.S.A. Chapter 558-C, as may be amended. An applicant may not operate a medical marijuana establishment without any required state license and without all other necessary town approvals.**
- (b) *Local marijuana license.* A local marijuana license issued under the provisions of this article is required for any marijuana cultivation facility, marijuana products manufacturing facility, **marijuana testing facility,** or marijuana store. ~~A marijuana testing facility does not require a local marijuana license issuance but is required to file an application.~~ **A local medical marijuana license issued under the provisions of this article is required for any medical marijuana cultivation facility, medical marijuana products manufacturing facility, medical marijuana dispensary, medical marijuana testing facility, or medical marijuana caregiver retail store.**

(T.M. of 11-5-2019(2))

Sec. 11-7. - Marijuana licensing procedures.

- (a) *License required.* It shall be unlawful for a licensee for any marijuana establishment **or medical marijuana establishment,** ~~except for a marijuana testing facility,~~ to operate without a valid local marijuana license **or medical marijuana license** from the town.
- (b) *Application.* An applicant for a local marijuana license **or medical marijuana license** shall file in person at the office of the town ~~administrative assistant~~ **manager** a completed application made on a form provided by the ~~administrative assistant~~ **town manager.** The application shall be signed as required by subsection (c) below and shall be notarized. An application shall be considered complete when it contains the information and/or items required in this subsection (b), accompanied by the appropriate license application fee:
- (1) The applicant's full legal name and any other names used by the applicant in the preceding five years.
  - (2) Current business address or another mailing address for the applicant.
  - (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
  - (4) The business name, location, legal description, mailing address and phone number.
  - (5) The name and business address of the statutory agent or other agent authorized to receive service of process.
  - (6) A copy of the applicant's state license for operation of a marijuana establishment.

- (7) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (8) A statement of whether any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
  - a. Been declared by a court of law to be a nuisance; or
  - b. Been subject to a court order of closure.
- (9) The completed application entitled: adult use marijuana stores, cultivation facilities, manufacturing facilities, and testing facilities application.
- (10) If a state license is required for the proposed use, a copy of the applicant's state license application and supporting documentation as filed with the state licensing authority, and any amendments thereto.
- (11) Evidence of all state approvals or conditional approvals required to operate a marijuana establishment, including, but not limited to, a state license as defined by this article, a state retail certificate, or a state health license.
- (12) If not included in the applicant's state license application, attested copies of the articles of incorporation and bylaws if the applicant is a corporation, operating agreement if the applicant is a limited liability company, evidence of partnership if the applicant is a partnership, or articles of association and bylaws if the applicant is an association.
- (13) If not included in the applicant's state license application, an affidavit that identifies all owners, officers, members, managers, or partners of the applicant, their ownership interests, and their places of residence at the time of the application and for the immediately preceding three years.
- (14) If not included in the applicant's state license application, a release authorized by 16 M.R.S.A. § 620(6), as may be amended, with the application for each applicant and for each officer, owner, member, manager, or partner of the applicant seeking a local license.
- (15) Evidence of all land use approvals or conditional land use approvals required to operate a marijuana establishment pursuant to this Code, including, but not limited to, a building permit, special exception approval, site plan approval, change of use permit or certificate of occupancy.
- (16) Evidence of all other local approvals or conditional approvals required to operate a marijuana establishment pursuant to this Code, including, but not limited to, food license or victualer's license.
- (17) A description of the premises for which the license is sought, including a floor plan of the premises showing how the floor space is or will be used, parking for the premises, total floor area of the building(s), and the nature and location of any existing or proposed exterior lighting and signage.
- (18) A copy of the applicant's security plan and operations manual.

The information provided pursuant to this subsection (b) shall be supplemented in writing by certified mail, return receipt requested, or in person to the town ~~administrative assistant~~ **manager** within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (c) *Signature.* If a person who seeks a local marijuana license under this section is an individual, they shall sign the application as applicant. If a person who seeks a license is other than an individual, each person with an influential interest in the establishment or in a legal entity that controls the establishment shall sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a marijuana license is granted.
- (d) *Confidentiality.* The information provided by an applicant in connection with an application for a local marijuana license under this article shall be maintained by the office of the town ~~administrative assistant~~ **manager** on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure. **The information provided by an applicant in connection with an application as medical marijuana registered caregivers and other applicants submitting applications and supporting information that is confidential under 22 M.R.S.A. § 2425-A(12), as may be amended, and the Maine Freedom of Access Act, 1 M.R.S.A. § 403(3)(F), shall mark such information as confidential. An individual who possesses a valid Maine medical marijuana registered caregiver registry identification card need not identify themselves in an application for a license for a medical marijuana establishment. The cardholder must identify themselves and provide the relevant cards to the town manager for examination, but the identity of the cardholder shall not be a public record and the town manager shall not share the identity of the cardholder, except as necessary by law in the performance of their duties. At the time of application, the cardholder may appoint a representative to appear before the local licensing authority on their behalf. Advertisements for public hearing shall contain the location of the proposed medical marijuana establishment and the identity of the owner of the real estate and the identity of the designated representative. The town manager may certify that the applicant meets the necessary legal requirements as a cardholder(s).**

(T.M. of 11-5-2019(2))

Sec. 11-8. - Issuance of local marijuana license.

- (a) Responsibilities and review authority.
  - (1) The local licensing authority shall have the authority to impose any conditions on a license that may be necessary to ensure compliance with the requirements of this chapter or to address concerns about operations that may be resolved through the conditions. The failure to comply with such conditions shall be considered a violation of the license.
  - (2) No local marijuana license shall be granted by the local licensing authority until the police chief, the fire chief, the code enforcement officer, and if applicable the health inspector have all made their recommendation upon the applicant's ability to comply with

this article. Whenever inspections of the premises used for or in connection with the operation of a licensed business are provided for or required by ordinance or state law, or are reasonably necessary to secure compliance with any ordinance provision or state law, it shall be the duty of the applicant or licensee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the town authorized to make the inspection at any reasonable time that admission is requested.

- (b) Upon the filing of a completed application for a marijuana license, the ~~town administrative assistant~~ **manager** shall immediately schedule a public hearing on the application before the town select board to occur within 30 days. The ~~administrative assistant~~ **town manager** shall provide written notice of the public hearing to the applicant and to the select board within five days of the filing of a completed application. **At least ten days before such hearing, notices shall be posted in at least three prominent places, advertised in a newspaper with local circulation, and forwarded to the clerk of an adjacent municipality in the case where the premises for which the local marijuana license is sought is located within 500 feet of a municipal boundary. Abutters shall be notified by certified mail, return receipt requested.**

- (1) At the public hearing on the local marijuana license application, the select board shall take testimony of the applicant and any interested members of the public. The hearing shall focus upon the criteria for issuance of a permit.
- (2) The select board shall issue to the applicant written notice of its decision to grant or deny the license. If the board denies the permit, the written notice shall set forth the board's reasons for the denial. The select board shall grant a marijuana license unless it finds that the issuance of the license would be detrimental to public health, safety or welfare, as demonstrated by the following criteria:
  - a. An applicant is less than 21 years of age.
  - b. An applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.
  - c. The establishment is in a location where a marijuana establishment is not permitted.
  - d. Any establishment in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
    1. Been declared by a court of law to be a nuisance; or
    2. Been subject to an order of closure.
    3. Been convicted of or pled guilty or nolo contendere to a specified criminal activity.
  - e. A person who has had a license for a marijuana establishment and/or medical marijuana establishment revoked by the town or by the state.
  - f. An Applicant who has not acquired all necessary state approvals and licenses and other required local approvals prior to the issuance of a local marijuana license.

- (c) The town may suspend or revoke a license for any violation of this chapter, chapter 45 or any other applicable building and life safety code requirements. The town may suspend or revoke a license if the licensee has a state license for a marijuana establishment and/or medical marijuana establishment suspended or revoked by the state. The licensee shall be entitled to notice and a hearing prior to any suspension or revocation.
- (d) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the business. The license shall be posted in a conspicuous place at or near the entrance to the business so that it may be read at any time that the business is occupied by patrons or is open to the public.
- (e) A local marijuana license renewal application shall be subject to the same review standards as applied to the initial issuance of the license and the same notice requirement as a new application. As part of the renewal process, the select board shall consider compliance from prior years, and based upon that review, may add conditions to any future license to correct, abate or limit past problems.

(T.M. of 11-5-2019(2))

Sec. 11-9. - License fees.

The initial license and annual renewal fees for marijuana establishments licenses shall follow the town's master fee schedule.

(T.M. of 11-5-2019(2))

Sec. 11-10. - License expiration and renewal.

- (a) Each local marijuana license issued shall be effective for one year from the date of issuance.
- (b) Renewal applications must be submitted at least 30 days prior to the date of expiration of the annual local marijuana license. An application for the renewal of an expired license shall be treated as a new license application.

(T.M. of 11-5-2019(2))

Sec. 11-11. - Operating requirements.

The licensee shall comply with all of the following requirements during the term of local marijuana license:

- (1) *Display of license.* The current local marijuana license shall be displayed at all times in a conspicuous location within the licensed premises.
- (2) *Location.* All licensed premises shall be in fixed, permanent locations. Licensees shall not be permitted to operate marijuana establishments **or medical marijuana establishments** in temporary locations such as mall kiosks, town events or farm stands.

- (3) *Compliance with other laws.* A marijuana establishment **or medical marijuana establishment** shall meet all operating and other requirements of state and local law and regulation. To the extent the state has adopted or adopts in the future any stricter law or regulation governing marijuana establishments the stricter law or regulation shall control.

(T.M. of 11-5-2019(2))

Sec. 11-12. - Transfer of ownership and change of location.

- (a) Licenses issued under this article are not transferable to a new owner.
- (b) A state transfer license shall require a new local marijuana license.
- (c) Licenses are limited to the location for which they are issued and shall not be transferable to a different location. A licensee who seeks to operate in a new location shall acquire a new local license for that location.
- (d) Licensees shall provide evidence to the town clerk annually of their license issue date with complete list of employees, owners, directors, and stake holders.

(T.M. of 11-5-2019(2))

Sec. 11-13. - Appeals.

Any appeals of decision shall be made to the state superior court.

(T.M. of 11-5-2019(2))

Sec. 11-14. - Violations and penalties.

- (a) The operation of any marijuana establishment **or medical marijuana establishment** without the required local marijuana license or in violation of the requirements of this chapter shall be a violation of this chapter.
- (b) Fines shall be set forth for violation of any of the provisions of this article; violators shall be punished by a civil penalty of not less than \$1,000.00 and not more than \$10,000.00 for each violation, plus attorneys' fees and costs, to be recovered on complaint, to the use of the town. Each day a violation is committed, or permitted to continue, shall constitute a separate violation and shall be fined as such.

(T.M. of 11-5-2019(2))

Sec. 11-15. - Other laws.

Except as otherwise specifically provided herein, this article incorporates the requirements and procedures set forth in the Maine Marijuana Legalization Act, 28-B M.R.S.A. ch. 1, as may be amended. In the event of a conflict between the provisions of this chapter and the provisions of the Maine Marijuana Legalization Act or any other applicable state or local law or regulation, the more restrictive provision shall control.

**Except as otherwise specifically provided herein, this article incorporates the requirements and procedures set forth in the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C, as may be amended. In the event of a conflict between the provisions of this chapter and the provisions of the Maine Medical Use of Marijuana Act or any other applicable State or local law or regulation, the more restrictive provision shall control.**

(T.M. of 11-5-2019(2))

*This section in 8/18/20 draft: Sec. 11-16 Effective Date.*

This Article shall take effect pursuant to the Town Charter. However, no application for any Local License for a marijuana establishment or medical marijuana establishment shall be acted upon until the effective date of regulations promulgated and adopted pursuant to 28-B M.R.S.A. Chapter 1, as may be amended.

**Sec. 11-16. Severability.**

**The provisions of this article are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.**

~~Sec. 33-189. Nonprofit medical marijuana dispensaries and registered primary caregivers.~~

- ~~(a) The provisions for nonprofit medical marijuana dispensaries shall apply to both dispensaries and registered primary caregivers.~~
- ~~(b) The applicant must hold a current dispensary certificate or registered primary caregiver license in good standing from the State of Maine Department of Health and Human Services, Division of Licensing and Regulatory Services prior to making an application with the town. If approved, the dispensary or registered primary caregiver facility operator shall annually submit a copy of the current dispensary certificate or registered primary caregiver license to the code enforcement officer.~~
- ~~(c) A dispensary or registered primary caregiver facility may not be located within 500 feet of the property line of an existing public or private school, residential property, childcare facility, place of worship or public facility as defined in chapter 11, section 11-3.~~
- ~~(d) All cultivation of marijuana must take place in a fully enclosed and locked structure. Outdoor cultivation of marijuana is prohibited.~~
- ~~(e) The property shall be screened in accordance with section 33-175.~~
- ~~(f) The dispensary or registered primary caregiver facility shall comply with the parking requirements of section 45-495(9).~~
- ~~(g) The dispensary or registered primary caregivers shall comply with all applicable town and state regulations.~~
- ~~(h) No materials described in the definition of a nonprofit medical marijuana facility shall be visible from the exterior of the building in which the nonprofit medical marijuana dispensary or registered primary caregiver facility is located.~~

~~(T.M. of 6-18-2011(6); T.M. of 11-8-2016(1); T.M. of [7-14-2020\(3\)](#))~~

[This section moved to Ch. 45]

Sec. 33-190 **45-470**. - Performance standards for marijuana establishments **and medical marijuana establishments**.

Notwithstanding anything to the contrary of 1 M.R.S.A. § 302 or any other law, to any application relating to the establishment or operation of a proposed marijuana establishment **or medical marijuana establishment**, whether or not such application had become "pending proceeding" as defined in 1 M.R.S.A. § 302 prior to the enactment of this section.

All marijuana establishments **and medical marijuana establishments** require site plan review and approval from the planning board prior to the issuance of any building permit or certificate of occupancy. **The review of an application for a marijuana establishment shall not begin until the applicant has submitted to the Town a valid state-issued conditional license to operate the marijuana establishment pursuant to 28-B M.R.S.A. § 205.** The following performance standards are to be used by the planning board in reviewing site plan applications and compliance with the same shall serve as requirements for approval of such site plans.

Reference ~~chapter~~ **section** 11-3 for definitions related to this section.

- (1) All marijuana establishments **and medical marijuana establishments** shall be screened in accordance with section 33-175.
- (2) All marijuana establishments **and medical marijuana establishments** shall comply with the **applicable** parking requirements of section 45-495(15).
- (3) Signage and advertising. All signage and advertising for any marijuana establishment **or medical marijuana establishment** shall comply with **the signage provisions in 22 M.R.S.A § 2429-B and 28-B M.R.S.A § 702 in addition to** all applicable provisions of chapter 45 in this Code. ~~In addition, no signage or advertising shall use the word "marijuana" or "cannabis," or any other word, phrase or symbol commonly understood to refer to marijuana.~~ No interior signage, advertising as described above shall be visible from the exterior of the building in which the marijuana establishment is located. Signage containing misleading or deceptive marketing or marketing towards individuals under the age of 21 is prohibited.
- (4) Area of activities for all marijuana establishments **and medical marijuana establishments**; control of odors and emissions; sealed walls; disposal plan; security.
  - a. All activities of marijuana including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors. Marijuana establishments **and medical marijuana establishments** are not permitted to conduct outdoor sales or services of any kind. Any common areas, including, but not limited to, storage areas and building facilities, shared with another marijuana establishment and/or medical marijuana establishment must be clearly identified as such on the site plan application.
  - b. Odor management. For all marijuana establishments **and medical marijuana establishments**, odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining use of the property. Marijuana stores,

marijuana product manufacturing facilities, ~~and~~ marijuana testing facilities, **medical marijuana caregiver retail stores, medical marijuana product manufacturing facilities, and medical marijuana testing facilities** are not required to install filtration equipment on the licensed premises but must satisfy the same odor standard contained herein. While the town does not mandate any particular equipment specifications with regard to filtration, all marijuana establishments are strongly encouraged to adopt best management practices with regard to implementing state-of-the-art technologies in mitigating marijuana odor, such as air scrubbers and charcoal filtration systems.

- c. Noxious gases and fumes. Marijuana product manufacturing facilities, ~~and~~ marijuana testing facilities, **medical marijuana manufacturing facilities, and medical marijuana testing facilities** shall include appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the production.
- d. Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a marijuana establishment must be provided at all times.
- e. **Prior to planning board approval and for the duration of their operation, all** ~~All~~ marijuana establishments shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All trash receptacles on the premises used to discard marijuana products must have a metal cover or lid that is locked at all times. Security cameras must be installed to record activities in the area of such trash receptacles.
- f. Sufficient and appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana must be provided at all times. Security measures shall include, at a minimum, the following:
  - 1. Security surveillance cameras installed and operating 24 hours a day, seven days a week to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
  - 2. Door and window intrusion robbery and burglary alarm systems with audible and police department notification components that are professionally monitored and maintained in good working condition;
  - 3. A locking safe **or secure storage container** permanently affixed to the premises that is suitable for storage of all adult use marijuana product and cash stored overnight on the premises;
  - 4. Exterior lighting that illuminates the exterior walls of the premises and complies with applicable provisions of this Code; ~~and~~
  - 5. Deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows); **and**

**6. Identification checks ensuring that areas within the premises where marijuana or marijuana product cultivation, storage, weighing, manufacturing, sampling, packaging, preparation for testing, transfer or retail sale take place are only accessed by authorized persons displaying individual identification cards or authorized contractors of the marijuana establishment or medical marijuana establishment who are aged 21 and older and who display a valid visitor identification badge.**

All security recordings shall be preserved for at least 72 hours **as the state requires**. All marijuana establishments shall provide the police chief or their designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the town may provide notice of any operating problems associated with the establishment.

**(5) Separation (buffering) from sensitive uses.**

- a. No marijuana store-structure **establishment or medical marijuana establishment** shall be sited within 500 feet of the lot lines of a public or private school; ~~and~~ **This standard may not be relaxed by variance.**
- b. No marijuana store-structure, **medical marijuana caregiver retail store, or medical marijuana dispensary** shall be sited within 500 feet of the lot lines of any public facility, places of worship, residential property, or childcare facility.

The planning department **board** will not preclude a sensitive use listed in a. and b. above from opening at a location within the applicable buffer zones **solely because the sensitive use is within such buffer zones.**

A marijuana store, **medical marijuana caregiver retail store or medical marijuana dispensary** may continue to operate in its present location as a pre-existing use if a sensitive use as listed in a. and b. above later locates within the applicable buffer zone; however, the marijuana store-does so at its own risk, and town-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a marijuana store, near a sensitive use listed in a. and b. above.

**The distance cited in this subsection shall be measured as the aerial straight-line distance between the nearest point of the operating boundary of the marijuana establishment or medical marijuana establishment and the nearest point along a lot line of the site of the use listed in a. or b. above.**

**For purposes of this measurement, if a marijuana establishment or medical marijuana establishment is in a freestanding building, the operating boundary shall consist of the outer walls of the building. If a marijuana establishment or medical marijuana establishment leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the operating boundary of such establishment shall be the outer wall of the room or suite of rooms being leased by the establishment.**

- (6) Hours of operation. Marijuana stores, **medical marijuana caregiver retail stores and medical marijuana dispensaries** are limited to the same hours of operation as those for establishments serving or selling alcoholic beverages or products in accordance with ~~chapter 6~~ section 6-11 or as may be set forth in state statute. When there is a conflict between state statute and local zoning, the more restrictive hours of operation shall apply.
- (7) ~~Size~~ **Cultivation area** limitation. ~~The plant canopy of a marijuana cultivation facility shall not exceed their state issued tier permit.~~ **The number of plants or area of the plant canopy in a marijuana cultivation facility shall not exceed the number of plants or area of the plant canopy allowed by the facility's cultivation facility license tier issued by the state in accordance with Title 28-B M.R.S.A. Section 301. The number of plants or area of the plant canopy in a medical marijuana cultivation facility shall not exceed the number of plants or area of the plant canopy allowed by Title 22, M.R.S.A., Section 2423-A, paragraph 2, as may be amended. The site plan shall include the facility's cultivation area allowance and show or list the square footage of the proposed cultivation area.**
- (8) Sale of edible products. No food products shall be sold, prepared, produced or assembled by a marijuana establishment except in compliance with all operating and other requirements of state, local law and regulation, and compliance with this Code including, without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.
- (9) Drive-through and home delivery. Marijuana establishments **and medical marijuana establishments** are prohibited from having drive-through pick-up facilities. Marijuana stores are prohibited from providing home delivery services. Adult use marijuana customers may only purchase and obtain adult use marijuana products from within a marijuana store.
- (10) Pesticides. The only pesticides allowed to be used in marijuana establishments **and medical marijuana establishments** are non-synthetic substances, unless specifically listed as "prohibited" on the ~~national list~~ **National List of Allowed and Prohibited Substances in 7 CFR Part 205, as may be amended from time to time**, and pesticides determined to be "minimum risk pesticides" pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time. All marijuana establishments **and medical marijuana establishments** shall comply with all packaging and labeling requirements from the state.
- (11) Inspections. The code enforcement officer or their designee will inspect all marijuana establishments **and medical marijuana establishments** prior to issuance of a certificate of occupancy, to verify that the facilities are constructed and can be operated in accordance with the application submitted, the land use approval(s) issued and the requirements of this section, local and state building codes and electrical codes. The fire chief or their designee will inspect all marijuana establishments prior to issuance of a certificate of occupancy, to verify that the facilities are constructed and can be operated in accordance with the requirements of all applicable state and local fire codes. The initial inspection shall occur after the establishment is ready for operation, but no marijuana, marijuana products will be permitted on the premises until the inspection is complete and

a certificate of occupancy is issued. Nothing herein shall prevent the fire chief or their designee from inspecting marijuana establishments at random intervals, but not to exceed four times a year, and without advance notice provided that the inspection is during normal business hours of the establishment.

- (12) Change of use/addition of use. If any type of marijuana establishment **or medical marijuana establishment is** to change to another type of establishment or to add another type of marijuana establishment **or medical marijuana establishment** to its existing operations, such change of use or additional use must be reviewed and approved by the planning board for compliance with this section.
- (13) Other laws remain applicable. A marijuana establishment **or medical marijuana establishment** shall meet all operating, local and state licensing and other requirements of state and local laws and regulations. To the extent the state has adopted or adopts in the future any stricter law or regulation governing adult use marijuana and/or **medical** marijuana establishments, the stricter law or regulation shall control.

(T.M. of 11-5-2019(4))

Sec. 44-34. - Table of land uses.

*[In conjunction with other proposed amendments to this section proposed for June 2021 election.]*

All land use activities, as indicated in table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in section 44-33 and other applicable ordinances. The district designated for a particular site shall be determined from the official zoning map.

*Key to table 1:*

Yes	-	Allowed (no permit required but the use must comply with all applicable land use standards)
No	-	Prohibited
SPR	-	Allowed with site plan review and approval by the planning board
CEO	-	Allowed with permit issued by the code enforcement officer
LPI	-	Allowed with permit issued by the local plumbing inspector

*Abbreviations:*

RP	-	Resource protection
LR	-	Limited residential
LC	-	Limited commercial
GD	-	General development
SP	-	Stream protection

The following notes are applicable to the land uses table on the following page:

*Note:* The term "functionally water-dependent use" as defined, includes a very diverse group of uses ranging from large, industrial facilities that receive shipments by water or use water for cooling, to traditional commercial fishing enterprises, and public shorefront parks.

**Table 1. Land Uses in the Shoreland Zone**

Land Uses		Districts				
		SP	RP	LR	LC	GD
<b>Uses or Activities Without Structures</b>						
(1)	Clearing of vegetation for activities other than timber harvesting	CEO	CEO <sub>1</sub>	CEO	CEO	CEO
(2)	>Emergency operations	yes	yes	yes	yes	yes
(3)	Fire prevention activities	yes	yes	yes	yes	yes
(4)	Forest management activities, except for timber harvesting and land management roads	yes	yes	yes	yes	yes
(5)	Mineral exploration	no	no	no	yes <sup>2</sup>	yes <sup>2</sup>
(6)	Mineral extraction, including sand and gravel extraction	no	no	no	SPR	SPR
(7)	Motorized vehicular traffic on existing roads and trails	yes	yes	yes	yes	yes
(8)	Nonintensive recreational uses not requiring structures such as hunting, fishing and hiking	yes	yes	yes	yes	yes
(9)	Soil and water conservation practices	yes	yes	yes	yes	yes
(10)	Surveying and resource analysis	yes	yes	yes	yes	yes
(11)	Wildlife management practices	yes	yes	yes	yes	yes
<b>Principal Structures or Uses</b>						
(12)	Principal structures and uses:					
	a. One- and two-family residential	SPR <sub>4</sub>	SPR <sub>9</sub>	CEO	CEO	CEO
	b. Multifamily dwelling	no	no	SPR	SPR	SPR

	c.	Commercial (not listed elsewhere)	no <sup>13</sup>	no <sup>13</sup>	no <sup>13</sup>	SPR	SPR <sub>5</sub>
	d.	Industrial	no	no	no	no	SPR
	e.	Governmental and institutional	no	no	no	SPR	SPR
	f.	Small nonresidential facilities for educational, scientific or nature interpretation purposes	SPR <sub>4</sub>	SPR	CEO	CEO	CEO
(13)	Agriculture		CEO	SPR	CEO	CEO	CEO
(14)	Aquaculture		SPR <sub>10</sub>	SPR <sub>10</sub>	SPR <sub>10</sub>	SPR	Yes
(15)	Bed and breakfast		no	no	SPR <sub>10</sub>	SPR <sub>10</sub>	SPR
(16)	Boardinghouse		no	no	SPR <sub>10</sub>	SPR	SPR
(17)	Campgrounds		no	no <sup>7</sup>	no	no	SPR
(18)	Conversions of seasonal residences to year-round residences		LPI	LPI	LPI	LPI	LPI
(19)	Fireworks sales		no <sup>17</sup>				
(20)	Gambling Casino		no	no	no	no	no
<b>(21)</b>	<b><u>Marijuana establishment</u></b>						
	<b><u>a.</u></b>	<b><u>Marijuana store</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>SPR</u></b>	<b><u>SPR</u></b>
	<b><u>b.</u></b>	<b><u>Marijuana cultivation facility</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>SPR</u></b>	<b><u>SPR</u></b>
	<b><u>c.</u></b>	<b><u>Marijuana products manufacturing facility</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>SPR</u></b>
	<b><u>d.</u></b>	<b><u>Marijuana testing facility</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>SPR</u></b>	<b><u>SPR</u></b>
(21)	Marinas						

<b>(22)</b>							
	a.	Full service	no	no	no	no	SPR
	b.	Limited	no	no	no	SPR	SPR
<del>(22)</del>	<del>Nonprofit medical marijuana dispensary</del>		<del>no</del>	<del>no</del>	<del>no</del>	<del>no</del>	<del>no</del>
<b>(23)</b>	<b><u>Medical marijuana establishment</u></b>						
	<b>a.</b>	<b><u>Medical marijuana dispensary</u></b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>SPR</b>	<b>SPR</b>
	<b>b.</b>	<b><u>Medical marijuana cultivation facility</u></b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>SPR</b>	<b>SPR</b>
	<b>c.</b>	<b><u>Medical marijuana caregiver retail store</u></b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>SPR</b>	<b>SPR</b>
	<b>d.</b>	<b><u>Medical marijuana products manufacturing facility</u></b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>SPR</b>
	<b>e.</b>	<b><u>Medical marijuana testing facility</u></b>	<b>no</b>	<b>no</b>	<b>no</b>	<b>SPR</b>	<b>SPR</b>
<b>(23)</b>	Off-site parking		no	no <sup>7</sup>	no	no	no
<b>(24)</b>	Public and private recreational areas involving minimal structural development		SPR	SPR	SPR	SPR	CEO
<b>Accessory Structures or Uses</b>							
<b>(25)</b>	Structures accessory to allowed uses, not otherwise listed		SPR <sub>4</sub>	SPR	CEO	CEO	CEO
<b>(26)</b>	Essential services		SPR <sub>6</sub>	SPR <sub>6</sub>	SPR	SPR	SPR
	a.	Roadside distribution lines (34.5kV and lower)	CEO <sub>6</sub>	CEO <sub>6</sub>	yes <sub>12</sub>	yes <sub>12</sub>	yes <sub>12</sub>
	b.	Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	SPR <sub>6</sub>	SPR <sub>6</sub>	CEO	CEO	CEO
	c.	Non-roadside or cross-country distribution lines involving 11 or more poles in the shoreland zone	SPR <sub>6</sub>	SPR <sub>6</sub>	SPR	SPR	SPR

	d.	Other essential services	SPR 6	SPR 6	SPR	SPR	SPR
(27)	Fences		yes 11A	yes 11A	yes 11A	yes 11A	yes 11A
(28)	Filling and earthmoving of < 10 cubic yards		CEO	CEO	yes	yes	yes
(29)	Filling and earthmoving of > 10 cubic yards		SPR	SPR	CEO	CEO	CEO
(30)	Home business		no 12A	no 12A	SPR 10A	SPR 10A	no
(31)	Home occupations; regular and water-dependent		no	no	no	no	no
(32)	Home Office		CEO	no	CEO	CEO	CEO
(33)	Individual, private campsites		CEO	CEO	CEO	CEO	CEO
(34)	Land management roads		yes	SPR	yes	yes	yes
(35)	Piers, docks, wharves, bridges and other structures and uses and extending over or below the normal high-water line or within a wetland:						
	a.	Temporary	CEO 11	CEO 11	CEO 11	CEO 11	CEO 11
	b.	Permanent residential	SPR	SPR	SPR	SPR	SPR
	c.	Permanent commercial	SPR 14	SPR 14	SPR 14	SPR	SPR
	d.	Limited commercial	SPR 5	SPR 5	SPR 5	SPR	no
(36)	Private sewage disposal systems for allowed uses		LPI	LPI	LPI	LPI	LPI
(37)	Road and driveway construction		SPR	no <sup>8</sup>	SPR	SPR	SPR

(38)	Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes
(39)	Signs.	yes 9A	yes 9A	yes 9A	yes 9A	yes 9A
(40)	Solar energy system	CEO 15	CEO 15	CEO 15	CEO 15	CEO 15
(41)	Small wind energy system	SPR 16	SPR 16	SPR 16	SPR 16	SPR 16
(42)	Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO
(43)	Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO
(44)	Uses similar to uses requiring a SPR permit	SPR	SPR	SPR	SPR	SPR
(45)	Waste containers	CEO 5A	CEO 5A	CEO 5A	CEO 5A	CEO 5A

*Footnotes:*

- 1 In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.
- 2 Requires permit from the code enforcement officer if more than 100 square feet of surface area, in total, is disturbed.
- 3 In RP not allowed in areas so designated because of wildlife value.
- 4 Provided that a variance from the setback requirement is obtained from the board of appeals.
- 5 Functionally water-dependent uses and uses accessory to such water dependent uses only (see note on previous page).
- 5A Only as an accessory use to an allowed principal use on the lot. Must conform to the requirements of [section] 45-422, Waste containers.
- 6 See further restrictions in subsection 44-35(1)(2), essential services.
- 7 Except when area is zoned for resource protection due to floodplain criteria in which case a site plan review is required from the planning board.
- 8 Except as provided in subsection 44-35(h).
- 9 Single family residential structures may be allowed by special exception only according to the provisions of subsection 44-44(f), Special exceptions. Two-family residential structures are prohibited.
- 9A See sign ordinance section.

- 10 Except for commercial uses otherwise listed in this table, such as marinas and campgrounds, that are allowed in the respective district.
- 10A Must conform to the requirements of section 45-456.1, Home business.
- 11 Excluding bridges and other crossings not involving earthwork, in which case no permit is required.
- 11A Must conform to the requirements of section 45-423, Fences.
- 12 Permit not required, but must file a written "notice of intent to construct" with CEO.
- 12A "No" except in conjunction with aquaculture, small nonresidential facilities for educational, scientific or nature interpretation purposes or limited commercial piers, docks, wharves, bridges and other structures and uses extending over or below the normal high-water line or within a wetland.
- 13 Use is "No" except when permitted under another specific land use entry.
- 14 Only commercial aquaculture allowed on piers in this zone, with no other commercial pier uses. Pier must meet the requirements of a residential pier in these zones.  
  
*Note:* A person performing any of the following activities shall require a permit from the department of environmental protection, pursuant to title 38, M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:
  - a. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
  - b. Draining or otherwise dewatering;
  - c. Filling, including adding sand or other material to a sand dune; or
  - d. Any construction or alteration of any permanent structure.
- 15 Must conform to the requirements of section 45-462.
- 16 Must conform to the requirements of section 45-461.
- 17 See chapter 12 for additional regulations pertaining to the sale and use of fireworks.

(T.M. of 11-06-2018(3); T.M. of [7-14-2020\(4\)](#))

Sec. 45-290. - Table of permitted and prohibited uses.

The following table of land uses designates permitted uses by a yes and prohibited uses by a no. Any use not listed is a prohibited use. The letters CEO, SPR, and SD are explained in section 45-402.

*Table of Land Uses*

Land uses	R	S	V	C/I
Accessory dwelling unit	CEO	CEO	CEO	CEO
Agriculture, except animal breeding and care	yes	yes	yes	no
Animal breeding	yes <sup>1</sup>	12	SPR <sup>1&amp;8</sup>	no
Animal husbandry	yes <sup>1</sup>	yes <sup>1</sup>	yes <sup>1</sup>	no
Apartment house, see multiple-family dwelling	—	—	—	—
Apartment, see single-family dwellings	—	—	—	—
Aquaculture	13	13	SPR <sup>8</sup>	no
Assisted living facility	no	SPR/SD	SPR/SD	SPR/SD
Auto graveyards	SPR	no	no	no
Auto junkyard	no	no	no	no
Auto recycling business	9	9	no	SPR
Auto recycling operation	9	no	no	SPR
Auto recycling operation, limited	9	9	no	SPR
Auto repair garages	14	14	SPR <sup>8</sup>	SPR
Auto service stations	no	9	no	SPR
Banks	no	no	SPR	SPR
Bathhouse	11	11	no	no

Bathing beach	yes	yes	yes	no
Bed and breakfasts	14	14	SPR <sup>8</sup>	SPR
Boarding homes, see lodging businesses	—	—	—	—
Boarding kennel	no	no	no	SPR
Bulk oil fuel tanks	no	no	no	SPR <sup>2</sup>
Business office	14	14	SPR <sup>8</sup>	SPR
Campgrounds	SPR	no	no	no
Cemeteries	SPR	SPR	SPR	no
Clearing	yes	yes	yes	yes
Clinics	no	no	no	SPR
Clustered housing	SPR	no	no	no
Commercial adult enterprise	no	no	no	SPR
Commercial establishment, 2 or more where allowed	-	9	no	SPR
Day nurseries	SPR	16	SPR <sup>8</sup>	SPR
Earth material removal, less than 100 cubic yards 100 cubic yards or greater	yes SPR	yes SPR	yes SPR	yes SPR
Elderly housing	no	SPR/SD	SPR/SD	SPR/SD
Emergency operations	yes	yes	yes	yes
Equipment storage, trucks, 3 or more	no	no	no	yes
Essential services	yes	yes	yes	yes

Expansion of an existing telecommunication structure or collocation of antenna on a existing telecommunication structure or alternate tower structure	CEO	CEO	CEO	CEO
Farm equipment stores	SPR	10	no	SPR
Fences	yes <sup>5</sup>	yes <sup>5</sup>	yes <sup>5</sup>	yes <sup>5</sup>
Firewood sales	yes	13	SPR <sup>8</sup>	no
Fireworks sales	no <sup>20</sup>	no <sup>20</sup>	no <sup>20</sup>	no <sup>20</sup>
Forest management, except timber harvesting	yes	yes	yes	yes
Funeral establishment	no	no	SPR	SPR
Gambling casino	no	no	no	no
Gardening	yes	yes	yes	yes
Gasoline stations	no	9	no	SPR
Governmental buildings or uses	SPR	SPR	SPR	SPR
Grain or feed stores	SPR	10	no	SPR
Harvesting wild crops	yes	yes	yes	yes
Home business	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR <sup>8</sup>	no
Home occupations	10	10	no	no
Home office	CEO	CEO	CEO	CEO
Hospitals	no	no	no	SPR
Indoor commercial, recreational and amusement facilities	no	no	no	SPR
Industrial and business research laboratory	no	no	no	SPR

Industrial establishments and uses	no	no	no	SPR
Institutional buildings and uses, indoor	no	9	no	no
Junkyards	no	no	no	no
Landfill, dump	no	no	no	no
Libraries	SPR	SPR	SPR	SPR
Life care facility	no	SPR/SD	SPR/SD	SPR/SD
Lodging businesses, including bed and breakfasts, boarding homes or houses, hotels, inns, lodginghouses, rooming homes, and the like	14	14	SPR <sup>8</sup>	SPR
Manufacturing	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR
Marijuana establishment*	no	no	no	SPR <sup>21</sup>
<b><u>Medical marijuana establishment*</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>SPR<sup>21</sup></u></b>
Mobile home parks	SPR/SD <sup>7</sup>	SPR/SD <sup>7</sup>	SPR/SD <sup>7</sup>	no
Motel	no	no	no	SPR
Multiple-family dwelling	no	SPR	SPR	no
Museums	SPR	SPR	SPR	SPR
New construction of telecommunication structure 70 feet and higher	9	9	no	SPR
New construction of telecommunication structure less than 70 feet high	CEO	CEO	CEO	CEO
<del>Nonprofit medical marijuana dispensary</del>	<del>no</del>	<del>no</del>	<del>no</del>	<del>SPR<sup>19</sup></del>
Nurseries, plants	CEO	17	SPR <sup>8</sup>	no

Nursing facility	no	SPR	SPR	SPR
Off-site parking	no	no	no	no
Parks	SPR	SPR	SPR	no
Places of worship	SPR	SPR	SPR	SPR
Playgrounds	SPR	SPR	SPR	no
Printing plant	14	14	SPR <sup>8</sup>	SPR
Produce and plants raised locally, seasonal sales	yes	yes	yes	no
Professional offices	14	14	SPR <sup>8</sup>	SPR
Public utility facilities	SPR	SPR	SPR	SPR
Recreational facilities, nonintensive	SPR	SPR	SPR	no
Recreational use not requiring structures	SPR	yes	yes	no
Restaurant	9	9	SPR <sup>8</sup>	SPR
Restaurant, takeout	no	no	no	SPR
Retail stores, local, other	18	18	SPR <sup>8</sup>	SPR
Road construction	CEO	CEO	CEO	SPR
Schools	SPR	SPR	SPR	SPR
Sewage disposal systems, private	CEO	CEO	CEO	CEO
Signs, 6 square feet	CEO	CEO	CEO	CEO
Signs, other	CEO	CEO	CEO	CEO
Single-family dwellings	CEO	CEO	CEO	no <sup>6</sup>
Small wind energy system	SPR	SPR	SPR	SPR

Solar energy system	CEO	CEO	CEO	CEO
Surveying and resource analysis	yes	yes	yes	yes
Timber harvesting	yes	yes	yes	yes
Truck terminals and storage	no	no	no	SPR
Two-family dwellings	CEO	CEO	CEO	no <sup>6</sup>
Veterinary hospital	15	15	No	SPR
Warehouse	no	no	no	SPR
Waste containers	CEO <sup>3</sup>	CEO <sup>3</sup>	CEO <sup>3</sup>	CEO <sup>3</sup>
Wholesale	no	no	no	SPR
Wholesale business facilities	no	no	no	SPR
Uses similar to allowed uses	CEO	CEO	CEO	CEO
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
Uses similar to uses requiring a planning board permit	SPR	SPR	SPR	SPR

\*Marijuana establishment and medical marijuana establishment are is defined in section 11-3 of this Code.

*Notes:*

1. Buildings housing animals shall be no less than 100 feet from property lines.
2. Each bulk oil fuel tank shall not exceed 50,000 gallons in size and use shall be limited to local use only.
3. Only as an accessory to an allowed principal use on the lot. Must conform to the requirements of 45-422, Waste containers.
4. Individual stores shall not have more than 2,500 square feet of gross floor area, except stores located on Route 236 may have up to 5,000 square feet. Customer sales areas shall be confined to one floor.
5. Must conform to the requirements of section 45-423.
6. See section 45-192(b) for an exception on accessory uses and structures.

7. See division 2 of article V of chapter 41 of this Code for specific areas where mobile home parks are allowed.
8. Must conform to the requirements of section 45-456.1 Home business.
9. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
10. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
11. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) non-commercial properties.
12. Use is "SPR 1 & 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 1" and must be visually screened from abutting (same street side) non-commercial properties.
13. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "yes" and must be visually screened from abutting (same street side) non-commercial properties.
14. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
15. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties in accordance with Sec. 33-175(a). Overnight boarding and outdoor kenneling of animals is prohibited in the rural and suburban zoning districts.
16. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) noncommercial properties.
17. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) noncommercial properties.
18. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 4" and must be visually screened from abutting (same street side) noncommercial properties.
- ~~19. Must conform to the requirements of section 33-189.~~
20. See chapter 12 for additional regulations pertaining to the sale and use of fireworks.
21. **Must conform to the requirements of section ~~33-190~~ 45-270. Marijuana establishments and medical marijuana establishments may only be authorized as principal uses, and not as accessory uses.**

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 207); T.M. of 12-15-93; Amend. of 3-25-95; T.M. of 3-27-99(1), § 5; Ord. of 3-25-00(1); T.M. of 3-16-02, (art. 3), (art. 4); T.M. of 6-19-01, (art. 6), (art. 7); T.M. of 11-5-02; T.M. of 11-4-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-14-08; T.M. of 6-12-2010(3); T.M. of 6-18-2011(6); T.M. of 11-8-2011; T.M. of 6-16-2012(1); T.M. of 6-16-2012(2); T.M. of 11-5-2019(5); T.M. of [7-14-2020\(5\)](#).)

**Cross reference**— Review procedures and standards for site review requirements in the zoning table of uses, § 33-56 et seq.

## **Proposed Town Code Amendments Related to Variances**

*Discussion draft for Planning Board review, January 5, 2021*

*An earlier version of this draft was reviewed by the Planning Board on September 29, 2020, and the Planning Board advised for a draft to be reviewed by the Board of Appeals. Minor changes have been made from the September version to this one. The Board of Appeals reviewed on Nov. 17, and their review is represented with comments below.*

*The Town Attorney provided review comments on November 30, 2020.*

*The Planning Board did a second review on December 1, 2020.*

**Article \_\_. Shall an ordinance entitled “[insert title]” dated 6/8/2021 be enacted?**

### **Background and rationale [DRAFT]**

These amendments modify the existing language in the Town Code regarding variances to make them consistent with State law. Section 45-194 has a reference to a “waiver” of frontage, setback, or yard requirements for nonconforming lots of record, but there is no definition in either the Town Code or state statutes of the term “waiver” in this legal context. This section also authorizes the Code Enforcement Officer to permit a 25 percent reduction in frontage, setback, and yard requirements, but this authorization is not allowed by State law. The amendments remove the waiver reference and the Code Enforcement Officer 25 percent reduction authorization.

The amendments replace the waiver reference with three types of variances expressly provided for in State law: practical difficulty variance, hardship variance, and disability variance (30-A M.R.S.A. Section 4353). Town Code definitions are modified to reflect these new variance types. The State law criteria for a hardship variance are similar to the existing criteria for a “variance” in Section 45-49. A practical difficulty variance – which has a less stringent set of criteria than a hardship variance – would become an option for nonconforming lots of record. A disability variance allows for a relaxation of dimensional standards for the purpose of making a dwelling unit accessible to a person with a disability who resides in or regularly uses the dwelling. There was already a reference to a disability variance in Ch. 44 – Shoreland Zoning, but not in Ch. 45 – Zoning.

The amendments make similar changes to Ch. 44 – Shoreland Zoning, adding reference to a hardship variance and modifying the existing text for a disability variance to make it consistent between the two chapters and consistent with State law. Ch. 44 does not include reference to a

practical difficulty variance because such a variance is not allowed in State law for any properties that overlap wholly or in part with State-law-defined shoreland areas.

Finally, the amendments make technical changes to variance and waiver language in Ch. 41 – Subdivisions. “Variance” references are removed from Sections 41-66 to 41-68 to better distinguish the types of modifications and waivers the Planning Board may grant related to subdivision (Ch. 41) requirements from variances from zoning (Ch. 44 and 45) standards, which must be granted by the Board of Appeals.

**(New text underlined in bold)**

~~Deleted text in strikethrough~~

Sec. 1-2. - Definitions and rules of construction.

*[NOTE: for brevity, this section abridged in review drafts to only include definitions that are being modified, added, or deleted]*

In the construction of this Code, and of all ordinances, the following rules shall be observed:

[...]

***Appellant (as applied to seeking a variance) means the party who takes a variance appeal to the board of appeals.***

[...]

***Noncommercial vehicle (as applied to the definition of disability variance) means a motor vehicle as defined in Title 29-A, M.R.S.A., section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to Title 29-A, section 521 and owned by the person with the permanent disability.***

[...]

***Practical difficulty means that the strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the applicant.***

**State Law reference—Similar definitions, 30-A M.R.S.A. §4353(4-C)**

[...]

***Variance means a relaxation of certain requirements or dimensional standards in the Town Code that regulate land use of this chapter as provided in section 45-49(b). Unless otherwise specified, the generic use of “variance” means a disability variance, hardship variance, or practical difficulty variance, as applicable.***

[...]

**Variance, disability means a relaxation of dimensional standards applicable to the owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling.**

**State Law reference—Similar definitions, 30-A M.R.S.A. §4353(4-A)**

**Variance, hardship means a relaxation of dimensional standards when strict application of the ordinance to the applicant and the applicant's property would cause undue hardship. Chapters 44 and 45 list the defining factors and conditions of a hardship variance.**

**State Law reference—Similar definitions, 30-A M.R.S.A. §4353(4)**

**Variance, practical difficulty means a relaxation of lot area, lot coverage, street frontage, or setback standards for nonconforming lots of record when strict application of the ordinance to the appellant and the appellant's property would cause a practical difficulty. Chapter 45 lists the defining factors and conditions of a practical difficulty variance.**

**State Law reference—Similar definitions, 30-A M.R.S.A. §4353(4-C)**

[...]

(T.M. of 6-19-01, (arts. 6—8); T.M. of 11-6-01, (arts. 2, 8); T.M. of 3-16-02, (art. 3, § 1), (art. 4); T.M. of 11-5-02; T.M. of 6-10-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-8-04; T.M. of 6-14-05; T.M. of 6-16-07; T.M. of 6-16-07; T.M. of 6-14-08; T.M. of 6-9-09(1); T.M. of 6-9-09(2); T.M. of 6-12-2010(3); T.M. of 6-18-2011(5); T.M. of 6-18-2011(6); T.M. of 6-16-2012(1); T.M. of 6-16-2012(3); T.M. of 6-11-2013(1); T.M. of 11-5-2013; T.M. of 6-9-2015(1); T.M. of 6-9-2015(2); T.M. of 6-14-2016(1); T.M. of 11-6-2018(2); T.M. of 11-6-2018(3); T.M. of 11-5-2019(3))

**State Law reference—** Similar definitions, 30-A M.R.S.A. § 2001.

DIVISION 2. - VARIANCES, WAIVERS AND APPEALS

Sec. 41-66. - Variance **Modifications or waivers of standards authorized.**

Where the planning board finds ~~makes written findings of fact~~ that the subdivider or abutter has documented that **one or more of the following situations apply**, extraordinary and unnecessary hardships may result from strict compliance with this article or where there are special circumstances of a particular plan, it may vary **modify or waive** requirements of this article **chapter, subject to appropriate conditions**, so that substantial justice may be done, and the public interest secured; provided that such **modifications or waivers** variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan or the zoning chapters **44 or 45**, where such exist, **and provided that the public health, safety, and welfare will not be compromised by the modification or waiver:**

- (a) Extraordinary and unnecessary hardships may result from strict compliance with this article;**
- (b) There are special circumstances relating to a particular parcel proposed to be subdivided;**
- (c) The provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare; or,**
- (d) The provision of certain required improvements is inappropriate because of inadequacy or lack of connecting facilities adjacent, or in proximity, to the proposed subdivision.**

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1002.1))

Sec. 41-67. - Waiver of **information submission** requirements **authorized.**

**Where the planning board determines there are special circumstances relating to a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, except any submission requirements as to which the Town Code specifically prohibits waiver. For a waiver to be granted, the applicant must demonstrate in writing that the planning board can evaluate the proposed subdivision under the standards of 30-A M.R.S.A. §4404 and of this chapter without the information contained in the submissions for which the applicant requests a waiver.**

Where the planning board finds that due to special documented circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1002.2))

Sec. 41-68. - Conditions for granting modifications **or waivers.**

In granting ~~variances~~, waivers and modifications, the planning board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so ~~varied~~, waived or modified.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1002.3))

Sec. 41-69. - Appeals.

An aggrieved person or party as defined in section 41-178 may take an appeal from a decision on an application or final plan made by the planning board to the board of appeals in accordance with section 45-46 et seq.

(T.M. of 11-2-82; T.M. of 3-19-88; T.M. of 12-20-89, (§ 1003))

**Cross reference**— Board of appeals, § 45-46 et seq.

Sec. 44-47. - Appeals.

- (a) *Powers and duties of the board of appeals.* The board of appeals shall have the following powers:
- (1) 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 planning board in the administration of this chapter, and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the code enforcement officer in his or her review of and action on a permit application under [the ordinance from which this chapter is derived]. Any order, requirement, decision or determination made, or failure to act, in the enforcement of [the ordinance from which this chapter is derived] is not appealable to the board of appeals.
  - (2) Variance appeals: To authorize variances upon appeal, within the limitations set forth in this chapter.
- (b) *Variance appeals.* Variances may be granted only under the following conditions:
- (1) **Except for where variances are specifically prohibited in this chapter, hardship variances** Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, ~~percent of lot coverage,~~ and setback requirements.
  - (2) Variances shall not be granted for establishment of any uses otherwise prohibited by this chapter.
  - (3) The board shall not grant a variance unless it finds that:
    - a. The proposed structure or use would meet the provisions of section 44-35, except for the specific provision which has created the nonconformity and from which relief is sought; and
    - b. All of the defining factors and conditions of a hardship variance have been met.**
- ~~b. The strict application of the terms of this chapter would result in undue hardship. The term "undue hardship" shall mean:~~
- ~~(i) That the land in question cannot yield a reasonable return unless a variance is granted;~~
  - ~~(ii) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;~~
  - ~~(iii) That the granting of a variance will not alter the essential character of the locality; and~~
  - ~~(iv) That the hardship is not the result of action taken by the applicant or a prior owner.~~

- (4) Notwithstanding the variance conditions section above, the board of appeals may grant a disability variance only in accordance with the following rules:
- a. A disability variance shall only be granted for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling (including railing, wall or roof systems necessary for the safety or effectiveness of the structure) by the person with the disability; or to allow an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability to construct a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose.
  - b. The width and length of the place of storage and parking in subsection a. may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance.
  - c. Any person with the permanent disability seeking a disability variance shall prove by a preponderance of the evidence that the person's disability is permanent. For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, M.R.S.A. section 4553-A. All medical records submitted to the board and any other documents submitted for the purpose of describing or verifying a person's disability are confidential.
  - d. The board may impose conditions on a disability 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.
- 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 property" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- (5) 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 chapter 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.
- (6) 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 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.

- (c) *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.

When the board of appeals hears a decision of the planning board, it shall hold an appellate hearing, and may reverse the decision of the planning board only upon finding that the decision was contrary to specific provisions of the ordinance or contrary to the facts presented to the planning board. The board of appeals may only review the record of the proceedings before the planning board. The board appeals shall not receive or consider any evidence which was not presented to the planning board, but the board of appeals may receive and consider written or oral arguments. If the board of appeals determines that the record of the planning board proceedings ~~are~~ is inadequate, the board of appeals may remand the matter to the planning board for additional fact finding.

- (d) *Appeal procedure.*

(1) 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 or the planning board, except for enforcement-related matters as described in section 44-48. Such an appeal shall be taken within 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 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 or planning board, 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 35 days of its receipt of a complete written application, unless this time period is extended by the parties.

(2) Decision by board of appeals:

- a. A majority of the full voting membership of the board shall constitute a quorum for the purpose of deciding an appeal.
- b. The person filing the appeal shall have the burden of proof.
- c. The board shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.

- d. 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 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.
- (e) *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 45 days from the date of any decision of the board of appeals.
- (f) *Reconsideration.* In accordance with 30-A M.R.S.A. section 2691(3)(F), the board of appeals may reconsider any decision within 45 days of its prior decision. A request to the board to reconsider a decision must be filed within ten 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 45 days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to superior court must be made within 15 days after the decision on reconsideration.

(T.M. of 11-06-2018(3))

Sec. 45-49. - Powers.

- (a) *Administrative appeals.* The board of appeals shall hear and decide where an aggrieved person or party alleges error in any permit, order, requirement, determination, or other action by the planning board or code enforcement officer. The board of appeals may modify or reverse action of the planning board or code enforcement officer by a concurring vote of at least three members, only upon a finding that the decision is clearly contrary to specific provisions of this chapter.
- (b) *Variance appeals.* The board of appeals shall hear and decide cases involving the relaxation of regulations affecting height, area, size of structures, size of yards or open spaces, or other types of variance specifically provided by this chapter. ~~On a case-by-case basis the board of appeals may elect to hear cases involving establishment or change to a different nonconforming use.~~ A variance shall be as limited as possible to ~~relieve a hardship~~ **satisfy the reason for the variance. Where a party establishes that all of the defining factors and conditions for one of the following types of variances have been met, the board of appeals shall grant that variance.**
- (1) **A practical difficulty variance shall be granted only as provided in Section 45-194.**
- (2) **A disability variance shall be granted only in accordance with the following rules:**
- a. **A disability variance shall only be granted for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling (including railing, wall or roof systems necessary for the safety or effectiveness of the structure) by the person with the disability; or to allow an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability to construct a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose.**
- b. **The width and length of the place of storage and parking in subsection a. may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance.**
- c. **Any person with the permanent disability seeking a disability variance shall prove by a preponderance of the evidence that the person's disability is permanent. For purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, M.R.S.A. section 4553-A. All medical records submitted to the board and any other documents submitted for the purpose of describing or verifying a person's disability are confidential.**
- d. **The board may impose conditions on a disability 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.**
- (3) **A hardship variance shall be granted for any relaxation of dimensional standards not applicable to subsections (1) or (2).** ~~The board of appeals shall grant a variance where a party establishes that the strict application of this chapter will cause undue hardship. The words "undue hardship" 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 the variance will not alter the essential character of the neighborhood **locality**; and
- d.** That the hardship is not the result of action taken by the applicant or a prior owner.

**All of the above defining factors and conditions must be met for undue hardship to be demonstrated and for a hardship variance to be granted.**

- (4) **A hardship variance shall be granted for any establishment or change to a different nonconforming use where a party establishes that the strict application of this chapter will cause undue hardship and all of the same defining factors and conditions as in paragraph (3) above are met, except that no variance may be granted for any establishment or change to a different nonconforming use in a shoreland zoning district.**

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 507.4); T.M. of 12-15-93)

Sec. 45-50. - Appeal procedure.

- (a) In all cases, a person or party aggrieved by a decision of the code enforcement officer or by a decision of the planning board shall file his appeal within 30 days after a decision is made. When computing the 30 days, the day of the decision shall not be counted. All Saturdays, Sundays and holidays within the period shall be counted. The last day of the period so computed shall be included unless it falls on a day that the town hall is closed for business, in which event the time period will run until the end of the next day that the town hall is open for business. The appeal shall be filed with the board of appeals on forms approved by the board, and the aggrieved person or party shall specifically set forth on the form the grounds for the appeal. The aggrieved shall bear the burden of expense incurred in providing the board of appeals with information as is reasonable for it to arrive at a decision. The town clerk is responsible for receiving, dating and distributing appeal forms.
- (b) An aggrieved person or party is:
- (1) An owner of land whose property is directly or indirectly affected by the granting or denial of a permit, variance, ~~waiver~~ or administrative appeal under this chapter.
  - (2) A person whose land abuts land for which a permit, variance, ~~waiver~~, or appeal has been granted.
  - (3) A group of five or more residents or taxpayers of the town who represent an interest adverse to the granting or denial of such permit, variance, ~~waiver~~, or appeal.
- Municipal officials, and members of committees, boards, and commissions shall be granted the same rights as residents or taxpayers when filing appeals.
- (c) Following the filing of an appeal with the board of appeals, and before taking action on any appeal, the board of appeals shall hold a public hearing on the appeal during their next regularly scheduled meeting or sooner at their discretion, provided sufficient time exists from the date of filing to the regularly scheduled meeting, to meet the notification requirements of subsection (a) and administration of the same. The board of appeals shall notify the code enforcement officer and the planning board, at least ten days in advance of the time and place of the hearing, and shall publish notice of the hearing at least ten days in advance in a newspaper of general circulation in the area.
- (d) The board of appeals shall notify by mail the appellant and property owners abutting the property involved at least ten days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing. Abutting property shall include properties directly across a street or waterbody from the property for which the appeal is made. A fee in the amount established by the fee schedule set in section 1-25 shall be submitted by the appellant with the application.
- (e) The owners of property shall 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 board of appeals.
- (f) At any hearing, a party may be represented by an agent or attorney. The board of appeals shall not continue hearings to other times except for good cause. A continuation of a hearing

to a time and place certain, announced at the meeting, does not require a renotification of the abutters, officials, agencies, interested parties, etc.

- (g) 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 deems appropriate for an understanding of the appeal.
- (h) Within 30 days of the close of the public hearing, the board of appeals shall make a decision on an appeal. Within seven days of its decision it shall notify, in writing, the appellant, the code enforcement officer, the planning board, and municipal officers of its decision and its reasons for the decision.
- (i) Upon notification of the granting of an appeal by the board of appeals, the code enforcement officer shall immediately issue a building permit in accordance with the conditions of approval, if any.
- (j) A variance under the provisions of this chapter secured by vote of the board of appeals shall expire if the work or change involved is not commenced within one year of the date on which the appeal is granted, and if the work or change is not substantially completed within two years.
- (k) Except where noted, the board of appeals shall act by affirmative vote of those present to reverse or modify any order, requirement, decision or determination of the code enforcement officer or planning board, or to decide other matters on which it is required to pass under this chapter or other ordinances. The failure of the board of appeals to reach a decision within 60 days of the filing of the appeal constitutes a denial of the appeal, unless the board has already scheduled a meeting on the appeal, under which circumstance the 60 days begins on the date of the first meeting on the appeal. Appeals from the decision of the board of appeals may be taken to the superior court as provided in 30-A M.R.S.A. § 2691(3)(G).
- (l) *Reconsideration.* Reconsideration of board of appeals action is administered in accordance with 30-A M.R.S.A. § 2691(3)(f). (Requests must be received within ten days of the original decision and if reconsideration is accepted, the board of appeals action must be completed within 45 days of the original decision.)

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 507.5); T.M. of 3-27-99, (art. 3, § 1); T.M. of 3-23-02, (art. 50); T.M. of 11-4-03; T.M. of 11-8-05)

**State Law reference**— Procedure for board of appeal reconsideration, 30-A M.R.S.A. § 2691(3)(F); variance, 30-A M.R.S.A. § 4353.

Sec. 45-194. - Nonconforming lots of record.

- (a) If a single lot of record on the effective date of the adoption or amendment of this chapter does not meet the area, ~~road~~ **street** frontage or setback requirements of the district in which it is located, it may be built on provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, that all other provisions of this chapter are met and it conforms with all state laws and regulations.
- (b) If two or more contiguous lots or parcels are in single ownership of record at the time of adoption or amendment of this chapter and if all or part of the lots do not meet the dimensional requirements of this chapter, the lands involved shall be considered to be a single parcel for the purposes of this chapter, and no portion of such parcel shall be built upon which does not meet dimensional requirements of this chapter. This subsection shall not apply to any subdivision approved by the planning board for which an approved plan was recorded in the county registry of deeds prior to the adoption of the ordinance from which this chapter is derived.
- (c) All setback, yard, residential density, lot coverage, height, use, and other basic requirements shall apply to nonconforming lots. In cases where it is not possible to comply with these and other zoning requirements, the following rules shall apply:
- (1) On lots smaller than 10,000 square feet, permitted lot coverage shall be at least 2,000 square feet or a maximum of 25 percent, whichever is greater in applicable cases.
  - (2) ~~The code enforcement officer is authorized to permit a 25 percent reduction in frontage, setback, and yard requirements only. Any other deviation in frontage, setback or yard requirements to a maximum 50 percent reduction may be permitted as a waiver after public hearing by the board of appeals.~~ **A relaxation of up to 50 percent of lot coverage (for lots 10,000 square feet or greater) or setback standards may be permitted by, and consistent with, a practical difficulty variance granted by the board of appeals, after a public hearing, where the appellant establishes that strict application of the ordinance to the appellant and the appellant's property would cause a practical difficulty and when all of the following conditions exist:**
    - a. **The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;**
    - b. **The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;**
    - c. **The practical difficulty is not the result of action taken by the applicant or a prior owner;**
    - d. **No other feasible alternative to a variance is available to the applicant;**
    - e. **The granting of a variance will not unreasonably adversely affect the natural environment; and**
    - f. **The property is not located in whole or in part within shoreland areas as described in title 38, M.R.S.A. section 435.**

~~Any further reduction in frontage, setback or yard requirements shall be considered a variance. This section shall not apply to setbacks from the high water mark which is provided in section 45-195(c). In the shoreland zone the code enforcement officer shall not authorize reductions in frontage, setback or yard requirements. Such reduction can only be granted through the board of appeals.~~

- (3) **A relaxation of greater than 50 percent of lot coverage (for lots 10,000 square feet or greater) or setback standards may be permitted by, and consistent with, a hardship variance granted by the board of appeals after a public hearing.**

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 404))

DRAFT

## **Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas**

*Discussion DRAFT – December 29, 2020*

**Article \_\_. Shall an ordinance entitled “[insert title]” dated 6/8/2021 be enacted?**

### **Background and rationale [DRAFT]**

State law requires that auto graveyards and auto recycling operations obtain local operating permits, but the Town Code doesn't have a permitting process for them. It also lacks specific land use standards for auto graveyards and has limited land use standards specific to auto recycling operations. To improve protections for neighboring properties and the environment, improve local waste disposal and recycling practices, and sync the Town Code with State law, these amendments add specific land use standards to Chapter 45, as well as operating requirements and a permitting procedure to Chapter 16, for auto graveyards and auto recycling operations.

The current zoning of these uses would not change. Auto graveyards are allowable only in the Rural zone, subject to Planning Board site plan review and approval. Auto recycling operations are allowable only in the Commercial-Industrial zone or, otherwise, on properties abutting Route 236, also subject to Planning Board site plan review and approval (“SPR use”). These amendments continue this zoning while adding environmental protections, screening requirements, and noise limits. Junkyards and auto junkyards are currently prohibited in all zoning districts, and these amendments would maintain that prohibition.

The amendments also sync Town Code (Section 1-2) language with State law to reduce confusion, ambiguity, and subjectivity. Like state law, the Town Code definition of “auto graveyard” refers to a yard, field, or other outdoor (or open) area used to store three or more motor vehicles of a certain condition and status. However, the descriptions of the condition and status of the vehicles differ between the two. Under state law, the vehicles must be either “unregistered or uninspected”, while the Town Code has language similar to older state law language that has since been replaced: “unregistered or unserviceable, discarded, worn-out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable”. Many of these terms are vulnerable to subjective interpretation and argument over whether vehicles fit those descriptions. Another difference is that State law includes “parts of the vehicles” in its definition of auto graveyard but that is not explicitly clear in the current Town Code definition. By relying on State law, the Town can tighten restrictions on situations where vehicle parts are visibly strewn about on a property.

State law also has exceptions from the definition of an auto graveyard, including for an auto hobbyist. The amendments leverage this adding auto hobbyist definitions in the Town Code; adding auto hobbyist storage area as an SPR use in the Rural and Suburban zoning districts; and establishing screening requirements and environmental protections. Under state law, auto

hobbyists are limited to certain types of vintage, classic, or collector vehicles, and they can't be primarily engaged in the business of selling those vehicles.

As with auto graveyards, the amendments establish new land use standards and an operating permit process for auto recycling operations. Currently, the Town Code only has some land use standards for "limited" auto recycling operations, and these were placed in Section 1-2 definitions, rather than in Chapter 45. Full-scale auto recycling operations face no such regulations. The amendments place these land use standards in Chapter 45, revise them and sync them with state law, and apply them to all auto recycling operations.

If these amendments are approved, anyone wishing to operate an auto graveyard or auto recycling operation will first need to get Planning Board approval, and then get an operating permit from the Select Board. The amendments therefore continue the Town's practice of providing an opportunity for these uses in some zones while significantly improving protections for neighboring properties and the environment.

DRAFT

**(New text underlined in bold)**

~~Deleted text in strikethrough~~

**[This amendment pertains to only the Section 1-2 definitions shown below.]**

Sec. 1-2. - Definitions and rules of construction.

In the construction of this Code, and of all ordinances, the following rules shall be observed:

[...]

*Auto graveyard* means **an “automobile graveyard” as defined in 30-A M.R.S.A. §3752(1), as may be amended.** ~~a yard, field, or other open area used as a place of storage for three or more unregistered or unserviceable, discarded, worn out, or junked motor vehicles, including all vehicles which cannot pass the state inspection test in their existing condition or are otherwise inoperable.~~

**Auto hobbyist means a person or household who stores, organizes, restores or displays antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles, as these vehicles are defined in 29-A M.R.S.A. §101, as may be amended, and who is not primarily engaged in the business of selling any of those vehicles or parts from those vehicles.**

**Auto hobbyist storage area means an area used by an auto hobbyist to store vehicles or parts of vehicles included in the definition of auto hobbyist.**

[...]

*Auto recycling operation, principal* means the dismantling of motor vehicles for the purpose of reselling the 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; **when such activity is the principal use of a property.**

*Auto recycling operation, limited* means the ~~incidental~~ dismantling of motor vehicles for the purpose of reselling the 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; **when such activity is conducted incidental to an approved (state and/or local) auto repair garage or auto service station.** ~~subject to the following limitations:~~

- ~~(1) Meets all state requirements for an auto recycling operation.~~
- ~~(2) Conducted incidental to an approved (state and/or local) auto repair garage or auto service station.~~
- ~~(3) No more than ten unregistered, unserviceable, discarded or worn out automobiles (or parts which take up the same area as ten assembled automobiles) per acre allowed on lot.~~
- ~~(4) All recycling operations must take place within the boundaries of the recycling enclosure or inside buildings on the lot.~~
- ~~(5) Recycling enclosure must be a solid visual screen (fence, wall, etc.) at least six feet high which completely surrounds all outside recycling operations.~~

~~(6) No vehicles or parts of vehicles are to be stored outside the recycling enclosure except those within buildings on the lot.~~

~~(7) Size of the recycling enclosure is to be no larger than 25 percent of the lot size or 10,000 square feet, whichever is less.~~

~~(8) The perimeter of the recycling enclosure should be located as far from the lot lines as practical and shall comply with setback requirements specified for front yard, side yard and rear yard dimensions from principle structures in section 45-405, dimensional standards (see information below for setbacks).~~

~~(9) The recycling enclosure must be fitted with a visual screen gate, which is kept closed at all times except when entering or exiting with vehicles.~~

~~(10) No portable or fixed crushing machinery is allowed on lot.~~

~~(11) Application must identify how all fluids, batteries, tires and lubricants are going to be removed and/or stored in compliance with DEP requirements where applicable.~~

~~(12) Hours of operation shall be limited to 8:00 a.m. through 5:00 p.m., five days a week, Monday through Friday.~~

~~(13) Noise shall not exceed 50 dbA during hours of operation. Noise shall be measured at the property line, four feet above ground. Exemptions of section 45-407 of the Eliot Zoning Ordinance shall apply.~~

~~(14) Minimum lot size shall be two acres in those districts where allowed.~~

[...]

*Junkyard (salvage yard)* means a **“junkyard” as defined in 30-A M.R.S.A. §3752(4), as may be amended.** ~~yard, field, or other area exposed to the elements and used as a place of storage or disposition for:~~

~~(1) Discarded, worn out or junked plumbing, heating supplies household appliances and furniture.~~

~~(2) Discarded or scrap 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 nonferrous material.~~

[...]

Sec. 1-25. - Fee schedule.

*[note: this section may be further amended by other amendments]*

<b>CODE ENFORCEMENT</b>				
<b>PURPOSE</b>		<b>FEE</b>		
Building permits (Sec. 45-125)	Foundation/slab only	\$100.00		
	Accessory structures	\$0.20/sq. ft.		
	Principal structures (new construction or additional living area)	Finished area	\$0.50/sq. ft.	
		Unfinished area	\$0.25/sq. ft.	
	Alterations/renovations	\$8.00 per \$1,000.00 of est. construction cost		
	Demolition (of structures 8' x 8' or more)	\$25.00 - Accessory structures		
		\$50.00 - Principal structures		
	Fence permit - any height or length (Sec. 45-423)	\$25.00		
	Swimming pool permit - any size, any type (excluding temporary/inflatable pools)	\$75.00		
	Piers, docks, wharves, bridges or other structure extending over or below the high water line (Sec. 44-35(c))	Temporary	\$50.00	
Permanent - residential		\$100.00		
Permanent - commercial		\$150.00		
Campsite license fees (Sec. 33-173)	New campsites	\$150.00 application fee + \$10.00/campsite		
	Annual renewals	\$25.00 application fee + \$10.00/campsite		
Electrical permits (Sec. 45-132)	New dwelling units (fee includes electrical permit and 2 inspections)	Single-family dwellings	\$100.00	
		All other dwelling units (ADUs, modular, manufactured, etc.)	\$75.00 each	
	AMP service (fee includes permit and 1 inspection)	Temporary service	\$30.00	
		100 & 200 AMP (panel & service)	\$50.00	
		Subpanels, underground service wire, other	\$30.00 each	

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

	Wiring (fee includes electrical permit and 1 inspection)	\$50.00	
	Alternative energy systems (fee includes permit and 1 inspection) (Sec. 45-461 & 462)	Solar energy systems	\$50.00
		Small wind energy systems	\$75.00
	Swimming pools, hot tubs, saunas, spas, etc. (includes permit and 1 inspection)	\$30.00 each	
	Signs (any illuminated)	\$30.00 each	
	Generators (any size), transfer switches, transformers (permit + 1 inspection)	\$30.00 each	
	Re-inspection fee (for any additional inspections)	\$50.00 each	
	Flood hazard development permit (Sec. 25-58)	\$50.00	
	Growth permit (Sec. 29-42(b))	\$500.00/dwelling unit (upon replacement with a building permit to construct a new dwelling unit, \$400.00/dwelling unit shall be credited toward building permit fees)	
Plumbing permits (Sec. 45-131)	External plumbing (subsurface wastewater disposal systems)	Engineered system	\$300.00
		Non-engineered system	\$250.00 + \$15.00 (state fee)
		Disposal field only	\$150.00
		Treatment tank only	\$125.00
		Holding tank	\$150.00
		Other components (complete pump station, piping, etc.)	\$50.00
		Primitive system (incl. 1 alternative toilet)	\$150.00
		Alternative toilet	\$50.00
		Seasonal conversion	\$50.00
		Separated laundry system	\$50.00
	1st time system variance	\$50.00	

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

	Internal plumbing	\$40.00 min. (includes 1—4 fixtures) + \$10.00 per additional fixture
	Re-inspection fee (for any additional inspections)	\$50.00 each
Tele-communication structures (Sec. 45-460)	Expansion of existing telecommunication structure	\$350.00
	Collocation of antenna on existing telecommunication structure	\$350.00
	New telecommunication structure (any height)	\$500.00
<b><u>Auto graveyards, auto recycling operations, and auto hobbyist storage area operating permits (Select Board)</u></b>	<b><u>Auto graveyard</u></b>	<b><u>\$175.00 application fee + \$50.00/permit</u></b>
	<b><u>Auto recycling operation</u></b>	<b><u>\$175.00 application fee + \$250.00/permit</u></b>
	<b><u>Auto hobbyist storage area</u></b>	<b><u>\$175.00 application fee + \$25.00/permit</u></b>
Sign permit (Sec. 45-130)	Exterior signs for commercial establishments (new, permanent signs only)	\$50.00
	Home business signs or replacement signs for commercial establishments	\$25.00
After-the-fact permits		Permit fees doubled

**PUBLIC WORKS/ROAD COMMISSIONER**

PURPOSE	FEE
Stormwater management facilities - annual inspection of properties entered into a maintenance agreement with the Town (Sec. 35-4(b)(6))	\$100.00 - annual inspection fee
Excavation permit - for excavation of town ways (Sec. 37-55)	\$100.00
Driveway construction permit	\$50.00

**PLANNING BOARD**

PURPOSE	FEE
Site Plan Review (Sec. 33-128)	Rural, Suburban, Village, Commercial/Industrial Zoning Districts
General site plan review application (non Shoreland zone)	\$100.00 per acre up to 5 acres; \$50.00 each additional acre

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

<i>(Public hearing fees not included)</i>			(minimum fee \$100.00)	
		Change of use (no site changes or major structural changes or additional square footage)	\$25.00	
		Home business; home occupation	\$25.00	
		Lodging businesses (bed & breakfasts, hotels, motels, boarding homes, inns, etc.)	\$25.00 per room for lodging businesses in lieu of acreage-based fee	
	Shoreland Zoning Districts		General site plan review application	\$100.00/acre up to 5 acres. \$50.00 each additional acre (minimum fee \$100.00)
			Piers, docks, wharves, bridges and other structures extending over or below the high-water line	\$50.00
		Road & driveway construction permits	\$50.00	
		Non-conforming structures, uses and lots per Sec. 44-32	\$75.00	
		Revisions to final site plans after planning board approval (Sec. 33-140)	\$100.00	
Subdivisions (Sec. 41-142)		Subdivision application fee	\$200.00 per lot or dwelling unit	
		Mobile home park application fee	\$50.00 per unit	
		Final plan fee for subdivisions and mobile home parks (Sec. 41-171)	\$50.00	
		Revisions to final subdivision plans after approval (Sec. 41-182)	\$200.00 per lot or dwelling unit affected by change	

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

Public hearing fees (includes abutter notification via certified mail and advertising in 2 local newspapers)	\$175.00
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<b>BOARD OF APPEALS</b>	
PURPOSE	FEE
All Board of Appeals applications (variances, waivers, administrative appeals) (Sec. 45-50)	\$150.00 (includes application and all public hearing fees)

(T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-11-2013(3); T.M. of 6-9-2015(2))

DRAFT

Chapter 16 - WASTE RECYCLING AND DISPOSAL

*Place existing Sections 16-1 through 16-12 under the following header:*

**ARTICLE I. – SOLID WASTE RECYCLING AND DISPOSAL**

*Add a new article as follows:*

**ARTICLE II. – MOTOR VEHICLE RECYCLING AND DISPOSAL**

**Sec. 16-13. – Purpose**

The purpose of this article is to provide operating requirements and a procedure for the granting, enforcement, renewal, and revocation of operating permits for auto graveyards, auto recycling operations, and auto hobbyist storage areas.

**Sec. 16-14. – Authority**

This article is adopted pursuant to the authority granted by title 30-A M.R.S.A., chapter 183, subchapter 1 (section 3751 et seq.), as may be amended.

**Sec. 16-15. – Goals**

The goals of this article are to:

- (a) provide adequate controls to ensure that auto graveyards and auto recycling operations do not have a deleterious impact on the town's health and safety, general welfare, and property values;
- (b) prevent contamination of land, water, and air in town;
- (c) help ensure proper handling of waste and recycling of auto parts and materials;
- (d) advance the purpose of the state's "Junkyards and Automobile Graveyards" law (30-A M.R.S.A. § 3751 et seq.);
- (e) prevent nuisance conditions potentially affecting abutting landowners, travelers on roadways near auto graveyards and auto recycling operations, and others; and,
- (f) create a process for approval of auto hobbyist uses distinct from that of auto graveyards and auto recycling operations.

**Sec. 16-16. – Applicability and prohibited activities**

- (a) This article shall apply to any auto graveyard, auto recycling operation, or auto hobbyist storage area, all or part of which is within the town.
- (b) No auto graveyard, auto recycling operation, or auto hobbyist storage area shall be established or operated within the town without first receiving and then maintaining all approvals required under this Code, including, but not limited to, this chapter and chapter 45 in this Code.
- (c) Junkyards are prohibited within the town.

**Sec. 16-17. – Permit required; fees.**

- (a) No person shall establish, operate or maintain, and the owner of property shall not permit the establishment, operation or maintenance of, any auto graveyard, auto recycling operation, or auto hobbyist storage area without first obtaining a permit therefore in accordance with the provisions of this chapter and title 30-A M.R.S.A. section 3751 et seq.
- (b) All permits issued under this article shall be approved by the select board and issued by the town manager. The town manager may designate in writing another town staff member to serve as the point of contact for the permitting process. If so, all references to the town manager in this article apply to said designee.
- (c) All permits issued under this article for an auto graveyard or auto hobbyist storage area are valid until the first day of October of the year following the year in which the permit is issued.
- (d) All permits issued under this article for an auto recycling operation are valid for five years from the date of issuance provided that the permit holder furnishes a sworn statement, annually, on the anniversary date of the granting of the permit, that the facility complies with the standards of operation applicable at the time of issuance of the permit.
- (e) Any person seeking to operate an auto graveyard, auto recycling operation, or auto hobbyist storage area shall first receive planning board approval, after which they become eligible to apply for an operating permit under this article.
- (f) The application fee for the operating permit shall be paid with submittal of the application. The permit fee shall be due after select board approval and shall be paid by the applicant as a requirement for the permit to become active. Fee amounts are provided in section 1-25.

**State law reference** – 30-A M.R.S.A. § 3753, 3756

**Sec. 16-18. – Administration**

- (a) *Conditions of approval.* All applicable land use standards and operating requirements in **section 16-19** are incorporated by reference as standard conditions of any permit granted under this article. The select board may impose additional special conditions of approval to further ensure compliance with the provisions of this article.
- (b) *Public hearing.* As required by title 30-A M.R.S.A. section 3754, the select board shall hold a public hearing before granting a permit to establish a new auto graveyard or auto recycling operation and may hold public hearings annually regarding the relicensing of these facilities. At least seven and not more than 14 days before the hearing, a notice of the hearing shall be posted in at least two public places in the municipality and published in one newspaper having general circulation in the town. The town manager shall give written or electronic notice of an auto graveyard or auto recycling operation permit application to the

automobile dealer licensing section of the department of the secretary of state, bureau of motor vehicles by mailing or emailing a copy of the application at least seven and not more than 30 days before the hearing. The town manager shall give written notice of the application to the public water supplier if the application is for an auto graveyard or auto recycling operation located within the supplier's source water supply area. The notice may be given by mailing a copy of the application at least seven and not more than 14 days before the hearing. The applicant shall be responsible for mailing notice of the application to all abutting property owners.

- (c) *Contents of application.* All applications for permits under this article shall be filed with, and in a form satisfactory to, the town manager. Such application shall include, but is not limited to, the following:
- (1) Name, address, and contact information including a phone number of the applicant and all other persons having a legal interest in the property.
  - (2) The location of the premises for which a permit is sought by identification of town tax map and lot numbers and street address.
  - (3) The dimensions and acreage of the property.
  - (4) For auto graveyards or auto recycling operations, an indication of whether the permit being sought is a regular or, based on paragraph (7)(b) below, a limited-term conditional permit.
  - (5) An original and three copies of a site plan, drawn to a scale of 100 feet or less to the inch, that contains the following information:
    - a. The boundary lines of the property for which a permit is sought.
    - b. The contours of the property as determined by the U.S. Geological Survey Contour Map.
    - c. The location of all existing and proposed buildings and structures.
    - d. The location of all existing and proposed areas within which all vehicles or parts of vehicles will be stored, and where vehicles will be drained or dismantled.
    - e. The location of any aquifer, classified waterway, or other water body on the property or within 300 feet of the property lines.
    - f. The location of any public or private wells within 300 feet of the property.
    - g. The boundaries of any floodplain areas located on the property, including, but not limited to, the 100-year floodplain.
    - h. A map and descriptions of the soils existing on the property as determined by the soil conservation service soils survey map.
    - i. The location of any sand and gravel aquifer recharge areas.
    - j. The location and characteristics of all existing and proposed natural objects, planting, or fences that are proposed to be maintained for required screening.
    - k. The location and characteristics of all vehicular entrances and exits serving the property.
    - l. The location of any residence or school within 500 feet of where the cars will be stored.

- m. The location of all roads within 600 feet of the proposed operation.
- (6) A plan for containment, storage, and disposal of fluids, refrigerant, lubricant, batteries, mercury switches, mercury-added lamps, and tires.
- (7) For auto graveyard and auto recycling operations only:
  - a. a notice of intent filed with the department of environmental protection to comply with the general permit provisions for stormwater discharges; or, a determination from the department of environmental protection that a stormwater discharge permit is not required.
  - b. a statement of compliance with all applicable provisions of the automobile dealer or recycler licensing provisions of title 29-A M.R.S.A. chapter 9, as may be amended, and a copy of the applicant's recycler license; or a statement that the applicant plans to seek only a limited-term operating permit under article II of chapter 16, conditioned upon the applicant's demonstrating compliance with the provisions of title 29-A M.R.S.A. chapter 9, as may be amended, within 90 calendar days of the issuance of the municipal or county limited-term permit.
  - c. Proof that the applicant mailed a notice of the application to all abutting property owners.
- (8) If more than 1,320 gallons of oils, including gasoline, diesel, heating and waste oil, are proposed to be stored on-site, a spill prevention, control, and countermeasures plan.
- (9) Documentation of planning board approval.
- (10) A nonrefundable application fee in accordance with Section 1-25.

**State law reference** – 30-A M.R.S.A. § 3753, 3756

**Sec. 16-19. – Operating requirements**

- (a) *General*: The following operating requirements shall govern the issuance of permits under this article for an auto graveyard, auto recycling operation, or auto hobbyist storage area and the operation and maintenance of all permitted premises:
  - (1) *Display of license*. The current operating permit shall be displayed at all times in a conspicuous location within the permitted premises.
  - (2) *Location*. All permitted premises shall be in fixed, permanent locations.
  - (3) *Compliance with other laws*. Auto graveyards, auto recycling operations, and auto hobbyist storage areas shall meet all operating and other requirements of state and local law and regulation. To the extent the state has adopted or adopts in the future any stricter law or regulation governing auto graveyards, auto recycling operations, and auto hobbyist storage areas, the stricter law or regulation shall control.
- (b) *Auto graveyard*: The following operating requirements shall govern the issuance

of permits under this article for an auto graveyard and the operation and maintenance of all permitted premises:

- (1) All land use standards in **section 45-468.1** shall be met. Without limiting the generality of the foregoing, construction of the required screening shall be complete and inspected prior to a permit issued under this article becoming active. Screening shall be properly maintained as a requirement for the permit to remain active.
- (2) No vehicle containing fluids, refrigerant, lubricants, batteries, mercury switches, or mercury-added lamps may be stored or dismantled:
  - a. within 100 feet of a body of water or freshwater wetland;
  - b. within a 100-year floodplain; or,
  - c. over a mapped sand and gravel aquifer.
- (3) No vehicle may be stored:
  - a. within 100 feet of the right-of-way of any highway, street, town way, public way, or private right-of-way;
  - b. within 300 feet of a residence, public building, public park, public playground, public bathing beach, school, church, or cemetery if it would be within ordinary view from said facility; or,
  - c. within 300 feet of a well that serves as a public or private water supply, excluding a private well that serves only the auto graveyard or the owner or operator's abutting residence. This prohibition does not apply to wells installed after an auto graveyard has received planning board approval or an operating permit under **article II of chapter 16**.
- (4) No vehicle may be stored or dismantled closer than 20 feet from any lot line, unless the operator has notarized written permission from the abutting property owner. This paragraph shall not supersede lot line setback standards in chapter 45.
- (5) Dismantling of a vehicle must be performed in accordance with the following standards.
  - a. Batteries shall be removed.
  - b. 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, shall be drained into watertight, covered containers and shall be recycled or disposed of in accordance with applicable federal and state laws, rules, and regulations.
  - c. Fluids from a vehicle may not be permitted to flow or be discharged into or onto the ground.
  - d. Storage, recycling, or disposal of all fluids, refrigerant, lubricants, batteries, mercury switches, and mercury-added lamps shall comply with all applicable federal and state laws, rules, and regulations.
  - e. A log shall be maintained of all motor vehicles handled that includes the date each vehicle was acquired, a copy of the vehicle's title or bill of sale, and the date or dates upon which all fluids,

refrigerant, lubricants, batteries, mercury switches, and mercury-added lamps were removed.

- f. All fluids, refrigerant, lubricants, batteries, mercury switches, and mercury-added lamps shall be removed from motor vehicles that lack engines or other parts that render the vehicles incapable of being driven under their own motor power or that are otherwise incapable of being driven under their own motor power within 180 days of acquisition. Fluids required to be removed under this subparagraph shall be removed to the greatest extent practicable.
  - g. All dismantling of motor vehicles with power tools shall take place within a building.
- (6) Junk, scrap metal, vehicles, or other solid wastes may not be placed or deposited, directly or indirectly, into the inland waters or tidal waters of the state or on the ice of inland waters or tidal waters or on the banks of inland waters or tidal waters in such a manner that they may fall or be washed into these waters.
  - (7) All federal and state hazardous waste laws and regulations shall be satisfied.
  - (8) Upon recommendation of the town manager, the select board may waive compliance with any of the above standards when the select board determines that strict compliance therewith is not necessary to accomplish the purposes of this article, and when such a waiver is not inconsistent with planning board approval.
  - (9) Any auto graveyard in existence and for which a valid permit was in effect on the effective date of the ordinance from which this article derives may remain in operation in its present location, pending the expiration of such permit, so long as such use complies with the provisions of title 30 M.R.S.A. section 3751 et seq. Thereafter, such auto graveyard shall be required to comply with all the provisions of this article. Any expansion of such auto graveyard beyond the size which existed and for which a valid permit was in effect on the effective date of this article is subject to planning board approval and shall comply with all provisions of this article.
- (c) *Auto recycling operation*: The following operating requirements shall govern the issuance of permits under this article for an auto recycling operation and the operation and maintenance of all permitted premises:
- (1) All land use standards in **section 45-468.2** shall be met. Without limiting the generality of the foregoing, construction of the required screening shall be complete and inspected prior to a permit issued under this article becoming active. Screening shall be properly maintained as a requirement for the permit to remain active.
  - (2) No vehicle containing fluids, refrigerant, lubricants, batteries, mercury switches, or mercury-added lamps may be stored or dismantled:
    - a. within 100 feet of any body of water or freshwater wetland; or,
    - b. within the 100-year floodplain.
  - (3) No vehicle may be dismantled or stored:

- a. within 500 feet of the lot line of a school, church, cemetery, or public playground or park that existed on the date the permit was issued;
  - b. over a sand and gravel aquifer or aquifer recharge area; or,
  - c. within 300 feet of a well that serves as a public or private water supply, excluding a private well that serves only the automobile recycling operation or the owner or operator's abutting residence. This prohibition does not apply to wells installed after an auto recycling operation has already received an operating permit under this article.
- (4) No vehicle may be stored or dismantled closer than 20 feet from any lot line, unless the operator has notarized written permission from the abutting property owner. This paragraph shall not supersede lot line setback standards in chapter 45.
- (5) Dismantling of a vehicle must be performed in accordance with the following standards.
- a. Batteries shall be removed.
  - b. 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, shall be drained into watertight, covered containers and shall be recycled or disposed of in accordance with applicable federal and state laws, rules, and regulations.
  - c. Fluids from a vehicle may not be permitted to flow or be discharged into or onto the ground.
  - d. Storage, recycling, or disposal of all fluids, refrigerant, lubricants, batteries, mercury switches, and mercury-added lamps shall comply with all applicable federal and state laws, rules, and regulations.
  - e. A log shall be maintained of all motor vehicles handled that includes the date each vehicle was acquired, a copy of the vehicle's title or bill of sale, and the date or dates upon which all fluids, refrigerant, lubricants, batteries, mercury switches, and mercury-added lamps were removed.
  - f. All fluids, refrigerant, lubricants, batteries, mercury switches, and mercury-added lamps shall be removed from motor vehicles that lack engines or other parts that render the vehicles incapable of being driven under their own motor power or that are otherwise incapable of being driven under their own motor power within 180 days of acquisition. Fluids required to be removed under this subparagraph shall be removed to the greatest extent practicable.
  - g. All dismantling of motor vehicles with power tools shall take place within a building.
- (6) No portable or fixed crushing machinery is allowed on the lot.
- (7) All federal and state hazardous waste laws and regulations shall be satisfied.

- (8) Hours of operation shall be limited to 8:00 a.m. through 5:00 p.m., five days a week, Monday through Friday.
  - (9) Upon recommendation of the town manager, the select board may waive compliance with any of the above standards when the select board determines that strict compliance therewith is not necessary to accomplish the purposes of this article, and when such a waiver is not inconsistent with planning board approval.
  - (10) Any auto recycling operation in existence and for which a valid permit was in effect on the effective date of the ordinance from which this article derives may remain in operation in its present location, pending the expiration of such permit, so long as such use complies with the provisions of title 30 M.R.S.A. section 3751 et seq. Thereafter, such auto recycling operation shall be required to comply with all the provisions of this article. Any expansion of such auto recycling operation beyond the size which existed and for which a valid permit was in effect on the effective date of this article is subject to planning board approval and shall comply with all provisions of this article.
- (d) *Auto hobbyist storage area.* The following operating requirements shall govern the issuance of permits under this article for an auto recycling operation and the operation and maintenance of all permitted premises:
- (1) All land use standards in **section 45-468.3** shall be met. Without limiting the generality of the foregoing, construction of the required screening shall be complete and inspected prior to a permit becoming active under this article. Screening shall be properly maintained as a requirement for the permit to remain active.
  - (2) An auto hobbyist may not be primarily engaged in the business of selling any of the vehicles or parts from the vehicles that are included in the definition of auto hobbyist and that are subject to the permit issued under this article.
  - (3) 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, shall 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.
  - (4) No vehicle containing fluids may be stored or dismantled within 100 feet of any body of water or freshwater wetland.
  - (5) Junk, scrap metal, vehicles, or other solid wastes may not be placed or deposited, directly or indirectly, into the inland waters or tidal waters of the state or on the ice of inland waters or tidal waters or on the banks of inland waters or tidal waters in such a manner that they may fall or be washed into these waters.
  - (6) Upon recommendation of the town manager, the select board may waive compliance with any of the above standards when the select board determines that strict compliance therewith is not necessary to accomplish the purposes of this article, and when such a waiver is not inconsistent with planning board approval.

**State law reference – 30-A M.R.S.A. 3753-3756**

**Sec. 16-19. – Transfer of ownership and change of location**

- (a) Permits issued under this article are not transferable to a new owner.
- (b) Permits are limited to the location for which they are issued and shall not be transferable to a different location. A permittee who seeks to operate in a new location shall acquire a new permit for that location.

**Sec. 16-20. – Appeals**

Any appeals of decisions made under this article shall be filed with the state superior court.

**Sec. 16-21. – Enforcement and violations**

- (a) The operation of any auto graveyard, auto recycling operation, or auto hobbyist storage area without the required permit or in violation of the requirements of this article shall be a violation of this chapter.
- (b) Fines shall be set forth for violation of any of the provisions of this article; violators shall be punished by a civil penalty of not less than \$1,000.00 and not more than \$10,000.00 for each violation, plus attorneys' fees and costs, to be recovered on complaint, to the use of the town. Each day a violation is committed, or permitted to continue, shall constitute a separate violation and shall be fined as such.
- (c) The town may suspend or revoke a permit granted under this article based on continued violation of the provisions of this article.
- (d) The suspension or revocation of a recycler license by the state under title 29-A M.R.S.A. section 1108, as may be amended, is grounds for the suspension or revocation of a permit granted under this article to an auto graveyard or auto recycling operation, as applicable.
- (e) *Right of entry.* Town officers or their designees may, to carry out the provisions of this article or to determine compliance with any laws, ordinances, permit approvals, decisions, or conditions:
  - (1) enter any auto graveyard, automobile recycling operation, or auto hobbyist storage area property and inspect all outside areas, equipment and activities at reasonable hours for compliance with the laws or ordinances set forth in accordance with this article
  - (2) enter any building on the property with the consent of the owner, occupant, or agent to inspect the building and activities within the building for compliance with the laws or ordinances set forth in accordance with this article.
- (f) A town officer's or designee's entry onto property under this article is not a trespass.

Sec. 45-290. - Table of permitted and prohibited uses.

*[note: other proposed June 2021 amendments also propose to make changes to this land use table.]*

The following table of land uses designates permitted uses by a yes and prohibited uses by a no. Any use not listed is a prohibited use. The letters CEO, SPR, and SD are explained in section 45-402.

*Table of Land Uses*

Land uses	R	S	V	C/I
Accessory dwelling unit	CEO	CEO	CEO	CEO
Agriculture, except animal breeding and care	yes	yes	yes	no
Animal breeding	yes <sup>1</sup>	12	SPR <sup>1&amp;8</sup>	no
Animal husbandry	yes <sup>1</sup>	yes <sup>1</sup>	yes <sup>1</sup>	no
Apartment house, see multiple-family dwelling	—	—	—	—
Apartment, see single-family dwellings	—	—	—	—
Aquaculture	13	13	SPR <sup>8</sup>	no
Assisted living facility	no	SPR/SD	SPR/SD	SPR/SD
<b><u>Auto hobbyist storage area</u></b>	<b><u>SPR</u></b>	<b><u>SPR</u></b>	<b><u>no</u></b>	<b><u>no</u></b>
Auto graveyards	SPR	no	no	no
Auto junkyard	no	no	no	no
Auto recycling business	9	9	no	SPR
Auto recycling operation	9	no	no	SPR
Auto recycling operation, limited	9	9	no	SPR
Auto repair garages	14	14	SPR <sup>8</sup>	SPR

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

Auto service stations	no	9	no	SPR
Banks	no	no	SPR	SPR
Bathhouse	11	11	no	no
Bathing beach	yes	yes	yes	no
Bed and breakfasts	14	14	SPR <sup>8</sup>	SPR
Boarding homes, see lodging businesses	—	—	—	—
Boarding kennel	no	no	no	SPR
Bulk oil fuel tanks	no	no	no	SPR <sup>2</sup>
Business office	14	14	SPR <sup>8</sup>	SPR
Campgrounds	SPR	no	no	no
Cemeteries	SPR	SPR	SPR	no
Clearing	yes	yes	yes	yes
Clinics	no	no	no	SPR
Clustered housing	SPR	no	no	no
Commercial adult enterprise	no	no	no	SPR
Commercial establishment, 2 or more where allowed	-	9	no	SPR
Day nurseries	SPR	16	SPR <sup>8</sup>	SPR
Earth material removal, less than 100 cubic yards	yes	yes	yes	yes
100 cubic yards or greater	SPR	SPR	SPR	SPR
Elderly housing	no	SPR/SD	SPR/SD	SPR/SD

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

Emergency operations	yes	yes	yes	yes
Equipment storage, trucks, 3 or more	no	no	no	yes
Essential services	yes	yes	yes	yes
Expansion of an existing telecommunication structure or collocation of antenna on a existing telecommunication structure or alternate tower structure	CEO	CEO	CEO	CEO
Farm equipment stores	SPR	10	no	SPR
Fences	yes <sup>5</sup>	yes <sup>5</sup>	yes <sup>5</sup>	yes <sup>5</sup>
Firewood sales	yes	13	SPR <sup>8</sup>	no
Fireworks sales	no <sup>20</sup>	no <sup>20</sup>	no <sup>20</sup>	no <sup>20</sup>
Forest management, except timber harvesting	yes	yes	yes	yes
Funeral establishment	no	no	SPR	SPR
Gambling casino	no	no	no	no
Gardening	yes	yes	yes	yes
Gasoline stations	no	9	no	SPR
Governmental buildings or uses	SPR	SPR	SPR	SPR
Grain or feed stores	SPR	10	no	SPR
Harvesting wild crops	yes	yes	yes	yes
Home business	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR <sup>8</sup>	no
Home occupations	10	10	no	no

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

Home office	CEO	CEO	CEO	CEO
Hospitals	no	no	no	SPR
Indoor commercial, recreational and amusement facilities	no	no	no	SPR
Industrial and business research laboratory	no	no	no	SPR
Industrial establishments and uses	no	no	no	SPR
Institutional buildings and uses, indoor	no	9	no	no
Junkyards	no	no	no	no
Landfill, dump	no	no	no	no
Libraries	SPR	SPR	SPR	SPR
Life care facility	no	SPR/SD	SPR/SD	SPR/SD
Lodging businesses, including bed and breakfasts, boarding homes or houses, hotels, inns, lodginghouses, rooming homes, and the like	14	14	SPR <sup>8</sup>	SPR
Manufacturing	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR <sup>8</sup>	SPR
Marijuana establishment*	no	no	no	SPR <sup>21</sup>
Mobile home parks	SPR/SD <sup>7</sup>	SPR/SD <sup>7</sup>	SPR/SD <sup>7</sup>	no
Motel	no	no	no	SPR
Multiple-family dwelling	no	SPR	SPR	no
Museums	SPR	SPR	SPR	SPR

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

New construction of telecommunication structure 70 feet and higher	9	9	no	SPR
New construction of telecommunication structure less than 70 feet high	CEO	CEO	CEO	CEO
Nonprofit medical marijuana dispensary	no	no	no	SPR <sup>19</sup>
Nurseries, plants	CEO	17	SPR <sup>8</sup>	no
Nursing facility	no	SPR	SPR	SPR
Off-site parking	no	no	no	no
Parks	SPR	SPR	SPR	no
Places of worship	SPR	SPR	SPR	SPR
Playgrounds	SPR	SPR	SPR	no
Printing plant	14	14	SPR <sup>8</sup>	SPR
Produce and plants raised locally, seasonal sales	yes	yes	yes	no
Professional offices	14	14	SPR <sup>8</sup>	SPR
Public utility facilities	SPR	SPR	SPR	SPR
Recreational facilities, nonintensive	SPR	SPR	SPR	no
Recreational use not requiring structures	SPR	yes	yes	no
Restaurant	9	9	SPR <sup>8</sup>	SPR
Restaurant, takeout	no	no	no	SPR
Retail stores, local, other	18	18	SPR <sup>8</sup>	SPR
Road construction	CEO	CEO	CEO	SPR

Proposed Town Code Amendments Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyist Storage Areas (DRAFT)

Schools	SPR	SPR	SPR	SPR
Sewage disposal systems, private	CEO	CEO	CEO	CEO
Signs, 6 square feet	CEO	CEO	CEO	CEO
Signs, other	CEO	CEO	CEO	CEO
Single-family dwellings	CEO	CEO	CEO	no <sup>6</sup>
Small wind energy system	SPR	SPR	SPR	SPR
Solar energy system	CEO	CEO	CEO	CEO
Surveying and resource analysis	yes	yes	yes	yes
Timber harvesting	yes	yes	yes	yes
Truck terminals and storage	no	no	no	SPR
Two-family dwellings	CEO	CEO	CEO	no <sup>6</sup>
Veterinary hospital	15	15	No	SPR
Warehouse	no	no	no	SPR
Waste containers	CEO <sup>3</sup>	CEO <sup>3</sup>	CEO <sup>3</sup>	CEO <sup>3</sup>
Wholesale	no	no	no	SPR
Wholesale business facilities	no	no	no	SPR
Uses similar to allowed uses	CEO	CEO	CEO	CEO
Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
Uses similar to uses requiring a planning board permit	SPR	SPR	SPR	SPR

\*Marijuana establishment is defined in section 11-3 of this Code.

*Notes:*

1. Buildings housing animals shall be no less than 100 feet from property lines.
2. Each bulk oil fuel tank shall not exceed 50,000 gallons in size and use shall be limited to local use only.
3. Only as an accessory to an allowed principal use on the lot. Must conform to the requirements of 45-422, Waste containers.
4. Individual stores shall not have more than 2,500 square feet of gross floor area, except stores located on Route 236 may have up to 5,000 square feet. Customer sales areas shall be confined to one floor.
5. Must conform to the requirements of section 45-423.
6. See section 45-192(b) for an exception on accessory uses and structures.
7. See division 2 of article V of chapter 41 of this Code for specific areas where mobile home parks are allowed.
8. Must conform to the requirements of section 45-456.1 Home business.
9. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
10. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
11. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) non-commercial properties.
12. Use is "SPR 1 & 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 1" and must be visually screened from abutting (same street side) non-commercial properties.
13. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "yes" and must be visually screened from abutting (same street side) non-commercial properties.
14. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties.
15. Use is prohibited unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) non-commercial properties in accordance with Sec. 33-175(a). Overnight boarding and outdoor kenneling of animals is prohibited in the rural and suburban zoning districts.
16. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR" and must be visually screened from abutting (same street side) noncommercial properties.
17. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "CEO" and must be visually screened from abutting (same street side) noncommercial properties.

18. Use is "SPR 8" unless property abuts Route 236. If property abuts Route 236, use is "SPR 4" and must be visually screened from abutting (same street side) noncommercial properties.
19. Must conform to the requirements of section 33-189.
20. See chapter 12 for additional regulations pertaining to the sale and use of fireworks.
21. Must conform to the requirements of section 33-190.

(T.M. of 11-2-82; T.M. of 6-26-85; T.M. of 11-23-85; T.M. of 11-4-86; T.M. of 4-21-87; T.M. of 3-19-88; T.M. of 12-20-89, (§ 207); T.M. of 12-15-93; Amend. of 3-25-95; T.M. of 3-27-99(1), § 5; Ord. of 3-25-00(1); T.M. of 3-16-02, (art. 3), (art. 4); T.M. of 6-19-01, (art. 6), (art. 7); T.M. of 11-5-02; T.M. of 11-4-03; T.M. of 11-4-03; T.M. of 3-20-04; T.M. of 6-14-08; T.M. of 6-12-2010(3); T.M. of 6-18-2011(6); T.M. of 11-8-2011; T.M. of 6-16-2012(1); T.M. of 6-16-2012(2); T.M. of 11-5-2019(5); T.M. of [7-14-2020\(5\)](#))

**Cross reference**— Review procedures and standards for site review requirements in the zoning table of uses, § 33-56 et seq.

## ARTICLE IX. - STANDARDS FOR SPECIFIC ACTIVITIES

*Add a new section:*

### **Sec. 45-468.1. – Auto graveyards**

- (a) *Purpose.* The purpose of this section is to prescribe specific land use standards for auto graveyards.
- (b) *Applicability.* The standards in this section are land use standards applicable to planning board approval. After planning board approval, before they may commence, auto graveyards also must have operating permits as required by **article II of chapter 16**.
- (c) *Auto graveyard area.* The site plan shall clearly show specific area(s) on the lot proposed for an auto graveyard.
- (d) *Auto graveyard standards.* Auto graveyards shall comply with the following land use standards:
  - (1) All auto graveyards shall be kept entirely screened from ordinary view from any highway, street, town way, public way, or private right-of-way, and from neighboring residences, at all times by natural objects, plantings, or fences. Screening required by this paragraph shall be:
    - a. At a height, density, and depth sufficient to accomplish complete screening from ordinary view;
    - b. Well-constructed and properly maintained at a minimum height of six feet; and,
    - c. Placed outside of the right-of-way.
  - (2) No portion of an auto graveyard may be located:
    - a. within 100 feet of the right-of-way of any highway, street, town way, public way, or private right-of-way.
    - b. within 300 feet of a residence, public building, public park, public playground, public bathing beach, school, church, or cemetery if it would be within ordinary view from said facility.
    - c. within 300 feet of a well that serves as a public or private water supply, excluding a private well that serves only the auto graveyard or the owner or operator's abutting residence. This prohibition does not apply to wells installed after an auto graveyard has received planning board approval or an operating permit under **article II of chapter 16**.
    - d. within 100 feet of a body of water or freshwater wetland, within a 100-year floodplain, or over a mapped sand and gravel aquifer, unless a note on the site plan indicates that such portion will not store any vehicles containing fluids, refrigerant, lubricants, batteries, mercury switches, or mercury-added lamps, and such a location is consistent with applicable provisions of chapter 44.

- (3) The perimeter of the auto graveyard shall be located as far from the lot lines as practical and shall comply with setback requirements specified in section 45-405.
- (4) The application and site plan shall identify how 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), batteries, tires, and lubricants will 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.
- (5) The application shall include either:
  - a. a notice of intent filed with the department of environmental protection to comply with the general permit provisions for stormwater discharges; or,
  - b. a determination from the department of environmental protection that a stormwater discharge permit is not required.
- (6) If more than 1,320 gallons of oils, including gasoline, diesel, heating and waste oil, are proposed to be stored on-site, the application shall include a spill prevention, control, and countermeasures plan.
- (7) The application shall include a statement of compliance with all applicable provisions of the automobile dealer or recycler licensing provisions of title 29-A M.R.S.A. chapter 9, as may be amended, and a copy of the applicant's recycler license, or a statement that the applicant plans to seek only a limited-term operating permit under **article II of chapter 16**, conditioned upon the applicant's demonstrating compliance with the provisions of title 29-A M.R.S.A. chapter 9, as may be amended, within 90 calendar days of the issuance of the municipal or county limited-term permit.

*Add a new section:*

**Sec. 45-468.2. – Auto recycling operations**

- (a) *Purpose.* The purpose of this section is to prescribe land use standards for auto recycling operations of two different scales: as a principal use or as a limited use, according to their definitions in section 1-2.
- (b) *Applicability.* To determine what standards will apply, planning board applications shall clearly state the scale of the proposed auto recycling operation (principal or limited). The standards in this section are land use standards applicable to planning board approval. After planning board approval, before they may commence, auto recycling operations also must have operating permits as required by **article II of chapter 16**.
- (c) *Recycling enclosure.* The site plan shall clearly show any and all outdoor or indoor areas on the lot proposed to have auto recycling operations. For the purpose of this section, and consistent with the screening and size requirements herein, these areas will be collectively referred to as the “recycling enclosure”.
- (d) *Auto recycling operations, principal, standards.* Auto recycling operations, principal, shall comply with the following land use standards:
  - (1) No vehicles that have been rebuilt or repaired as part of the recycling process, are currently being recycled, or are being stored for future recycling, nor any parts thereof, shall be stored outside of the recycling enclosure.
  - (2) **The size of the recycling enclosure shall be no larger than 25 percent of the lot size or 10,000 square feet, whichever is less.**
  - (3) The perimeter of the recycling enclosure shall be located as far from the lot lines as practical and shall comply with setback requirements specified in section 45-405.
  - (4) No portion of the recycling enclosure may be located:
    - a. within 100 feet of a body of water or freshwater wetland, within a 100-year floodplain, or over a mapped sand and gravel aquifer, unless a note on the site plan indicates that such portion will not store any vehicles containing fluids, refrigerant, batteries, mercury switches, or mercury-added lamps, and such a location is consistent with applicable provisions of **chapter 44**;
    - b. within 300 feet of a well that serves as a public or private water supply, excluding a private well that serves only the auto recycling operation or the owner or operator’s abutting residence. This prohibition does not apply to wells installed after an auto recycling operation has received planning board approval or an operating permit under **article II of chapter 16**; or,
    - c. within 500 feet of the lot line of a school, church, cemetery, or public playground or park.
  - (5) To visually screen the recycling enclosure, all auto recycling operations shall take place inside buildings on the lot or otherwise shall be kept entirely screened from ordinary

- view from any highway, street, town way, public way, or private right-of-way, and from neighboring residences, at all times by natural objects, plantings, or fences. Screening required by this paragraph shall be:
- a. At a height, density, and depth sufficient to accomplish complete screening from ordinary view;
  - b. Well-constructed and properly maintained at a minimum height of six feet; and,
  - c. Placed outside of the right-of-way.
- (6) No portable or fixed crushing machinery is allowed on the lot.
- (7) Any point of vehicle entry and egress to and from the recycling enclosure shall be fitted with an opaque visual screen gate or vehicle entry door, which is kept closed at all times except when entering or exiting with vehicles.
- (8) In addition to demonstrating compliance with the noise standards in **section 45-407**, the application and site plan shall also convey that all dismantling of motor vehicles with power tools shall take place within a building.
- (9) The application and site plan shall identify how all fluids, refrigerant, lubricants, batteries, mercury switches, mercury-added lamps, and tires will be removed and/or stored in compliance with the state department of environmental protection requirements where applicable.
- (10) The application shall include either:
- a. a notice of intent filed with the department of environmental protection to comply with the general permit provisions for stormwater discharges; or,
  - b. a determination from the department of environmental protection that a stormwater discharge permit is not required.
- (11) If more than 1,320 gallons of oils, including gasoline, diesel, heating and waste oil, are proposed to be stored on-site, the application shall include a spill prevention, control, and countermeasures plan.
- (12) The application shall include a statement of compliance with all applicable provisions of the automobile dealer or recycler licensing provisions of title 29-A M.R.S.A. chapter 9, as may be amended, and a copy of the applicant's recycler license, or a statement that the applicant plans to seek only a limited-term operating permit under **article II of chapter 16**, conditioned upon the applicant's demonstrating compliance with the provisions of title 29-A M.R.S.A. chapter 9, as may be amended, within 90 calendar days of the issuance of the municipal or county limited-term permit.
- (e) *Auto recycling operations, limited, standards.* Auto recycling operations, limited, shall comply with all the standards of auto recycling operations, principal, listed above, except as follows:
- (1) Auto recycling operations, limited, must be conducted incidental to an approved (state and/or local) auto repair garage or auto service station.
  - (2) **The size of the recycling enclosure shall be no larger than 25 percent of the lot size or 10,000 square feet, whichever is less.**

- (3) No more than ten unregistered or uninspected automobiles (or parts which take up the same area as ten assembled automobiles) per acre may be allowed per lot.
- (f) All auto graveyards and auto recycling operations shall meet all applicable state requirements. If there is a conflict between this section and state requirements, the state requirements shall apply.

DRAFT

*Add a new section:*

**Sec. 45-468.3. – Auto hobbyist storage areas**

- (a) *Purpose.* The purpose of this section is to prescribe land use standards for auto hobbyist storage areas.
- (b) *Applicability.* The standards in this section are land use standards applicable to planning board approval. After planning board approval, before they may commence, auto hobbyists also must have operating permits as required by **article II of chapter 16**.
- (c) *Auto hobbyist storage area.* The site plan shall clearly show specific area(s) on the lot proposed for storage of auto hobbyist vehicles.
- (d) *Auto hobbyist storage area standards.* Auto hobbyist storage areas shall comply with the following land use standards:
  - (1) An auto hobbyist storage area shall be kept entirely screened from ordinary view from any street, town way, public way, or private right-of-way, and from neighboring residences, at all times by natural objects, plantings, or fences. Screening required by this paragraph must be:
    - a. At a height, density, and depth sufficient to accomplish complete screening from ordinary view;
    - b. Well-constructed and properly maintained at a minimum height of six feet; and,
    - c. Placed outside of the right-of-way.
  - (2) The application shall identify how 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, will 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.
  - (3) No portion of an auto hobbyist storage area may be located within 100 feet of a body of water or freshwater wetland, unless a note on the site plan indicates that such portion will not be used for storage or dismantling of any vehicles containing fluids.

**State law reference – 30-A M.R.S.A. 3752(1)(A)(2)**

**Proposed Town Code Amendments Related to Accessory Dwelling Units**

*Discussion DRAFT for January 5, 2021 Planning Board meeting*

Article \_\_. Shall an ordinance entitled “[insert title]” dated 6/8/2021 be enacted?

**Background and rationale [DRAFT]**

These amendments modify Section 45-459 of the Town Code to create greater flexibility for accessory dwelling units (ADUs). They increase the maximum floor area of an ADU from 650 sq. ft. to [redacted] sq. ft.

*Planning Board input sought on new max. size. Select Board discussion on 11/12/20 suggested 1,000. Also, add % of principal DU area requirement?*

**Temporary – ADU size ranges in nearby municipalities**

Municipality	Min sq. ft.	Max sq. ft.	Source
South Berwick	unable to find minimum	30% of existing DU, which must be $\geq 2,000$ area	140-46.1 Accessory apartments
Kittery	based on building code	1000, or 80% of principal DU $\leq 1000$ sq. ft.	16.8.25.4 Accessory dwelling unit standards.
York	unable to find minimum	750, or 50% of GFA of principal (lesser of)	Zoning Ordinance 7.9 Accessory residential unit [permitted only by special exception only for family members]
Dover	300	800	Zoning 170-24 Accessory Dwelling Units
Ogunquit	unable to find minimum	800, or 40% area of principal (lesser of)	Zoning 224-9.1 Accessory affordable apartments
Berwick	>400	50% of total living area of building	Land Use Ordinance 8.13 Accessory Dwelling Unit

\*\* See also Grow Smart Maine attachment for additional Maine communities’ ADU size ranges.

Sec. 45-459. - Accessory dwelling unit.

- (a) An accessory dwelling unit (ADU) is a small apartment which is part of an existing or new single family owner-occupied home, and which is clearly secondary to the single family home. The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.
- (b) Owner-occupied means that either the principal dwelling unit or the accessory dwelling unit is occupied by a person who has a legal or equitable ownership interest in the property and bears all or part of the economic risk of decline in value of the property and who receives all or part of the remuneration, if any, derived from the lease or rental of the dwelling unit.
- (c) An accessory dwelling unit may be permitted as an accessory use to a single family home under the following conditions:
  - (1) Only one accessory dwelling unit (ADU) is permitted per lot. The accessory dwelling unit shall be located in the same building as the principal dwelling unit or in a building accessory to the principal dwelling unit. Any structure containing an accessory dwelling unit must meet minimum yard and setback requirements for principal structures.
  - (2) A building permit for the proposed construction of a new ADU or the creation of a new ADU within an existing building, must be issued by the CEO. Planning board approval is not required for an ADU.
  - (3) A building permit for a new single family home may include an ADU as long as the provisions of this section are met and the building conforms to all of the dimensional requirements for the zone in which it is being built. An ADU may be included in a new home constructed on a lawful nonconforming lot of record which may be built upon pursuant to section 45-194.
  - (4) The property owner must occupy either the principal dwelling unit or the ADU as their principal residence, and at no time receive rent for the owner-occupied unit. Principal residence must be proven by voter registration or other evidence acceptable to the CEO.
  - (5) In no case shall an ADU be more than 650 square feet or less than 300 square feet, nor have more than two bedrooms. Area shall be measured using the interior dimensions of the ADU.
  - (6) A home occupation or home business may be conducted, subject to existing regulations, as an accessory use to either the ADU or the principal dwelling unit, but not both.
  - (7) Apartments built prior to November 2, 1982 and existing on March 16, 2002, shall be considered lawful nonconforming uses which may continue pursuant to section 45-191. Any apartments existing on (effective date of section 45-459) and built on or after November 2, 1982 shall not be considered lawful nonconforming uses, unless the property owners applies for a building permit for the ADU and brings the unit up to the health and safety provisions of the minimum housing code standards. A grace period of one year from the adoption of this article will be allowed for homeowners to modify such unlawful non-conforming units. The CEO will have the authority to waive certain space and setback requirements for such unlawful nonconforming units where full compliance would be impractical. On March 16, 2003, all owners of unlawful nonconforming units

who have not brought them up to the health and safety standards of the minimum housing code, will be in violation of this section and subject to fines per section 45-6 (b).

- (8) When any property containing an accessory dwelling unit is sold or transferred, the new owner must continue to meet the requirements of this Section in order to continue the use of the accessory dwelling unit. Should the new owner not meet the requirements of this section, the use of the unit must be discontinued. However, any lease in effect at the time of transfer may be continued until it expires or up to one year from the date of the transfer, whichever is shorter. This paragraph (8) does not apply to an apartment built before November 2, 1982 and existing on March 16, 2002.
- (9) To ensure continued compliance by current and subsequent owners, the applicant shall provide and record in the York County Registry of Deeds a covenant in a form acceptable to the town attorney that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by a person who owns the property. It is also required that any owner of the property must notify a prospective buyer of the limitations of this section.
- (10) New accessory dwelling units are not subject to the requirements of the Growth Management Ordinance, chapter 29. However, the number of accessory dwelling units that may be issued building permits within a calendar year is limited to a total of 12, to be issued on a first- come, first-served basis in the order in which the code enforcement officer receives completed applications for building permits under section 45-127. If two or more applications are received simultaneously (as in as a single mail delivery), the code enforcement officer shall determine their order by random selection. The provisions of this paragraph are retroactive to January 1, 2003.
- (11) This provision shall not prohibit the conversion of a single family dwelling to a multifamily dwelling so long as said conversion complies with all current zoning requirements. However, if such conversion is approved, any accessory dwelling unit previously allowed under this section must be incorporated into and meet all the requirements for one of the units of the multifamily dwelling. Multifamily dwellings shall not include accessory dwelling units as defined in this section.
- (12) Design criteria:
  - a. An ADU shall be designed to maintain the architectural design, style, appearance, and character of the main building as a single-family residence. If an ADU extends beyond the existing footprint of the main building, such an addition must be consistent with the existing facade, roof pitch, siding, and windows.
  - b. Exterior stairs are restricted to the rear or sides of the structure.
- (13) Occupancy of an ADU shall be limited to the following: No more than two persons may occupy a unit of 300 to 400 square feet of gross floor area; no more than three persons in a unit ranging from 401 to 600 square feet of gross floor area; and no more than four persons in a unit of 601 square feet or greater of gross floor area.
- (14) One off-street parking space must be provided for the accessory dwelling unit in addition to the off-street parking required for the principal dwelling unit.

- (15) An occupancy permit must be issued by the CEO prior to occupancy of an accessory dwelling unit created or modified pursuant to this section 45-459.
- (16) The CEO shall prepare a biennial report to the planning board on accessory dwelling units which will include: (a) the number of units established; (b) the geographic distribution of the units; and (c) the average size of the units. The planning board shall reassess the provisions of this section allowing accessory dwelling units every five years or sooner if records show that 20 percent of single family homes have ADUs.
- (17) The code enforcement officer may inspect an accessory dwelling unit, with or without complaint with a minimum of 48 hours of receipt of notice of inspection to the property owner to ensure compliance with the section. Any property owner found in violation of this section shall have 30 days from the date of written notice to correct such violation. Failure to correct the violation shall result in the revocation of the accessory dwelling unit certificate of occupancy, as well as subjecting the property owner to the remedies and penalties provided in sections 45-101 and 45-102.

(T.M. of 3-16-02, (art. 4); T.M. of 6-10-03; T.M. of 6-14-05)

**ACCESSORY APARTMENTS: AN AFFORDABLE HOUSING STRATEGY**  
**MAINE MUNICIPAL ACCESSORY DWELLING UNIT (ADU) PROVISIONS**  
**OVERVIEW**

[Educational Brief- Accessory Apartments: An Affordable Housing Strategy](#)

COMMUNITY	ADU SIZE	OWNER OCCUPIED PRINCIPAL OR ACCESSORY UNIT	DETACHED UNIT ALLOWED	OTHER
ALFRED	40% of total building or 800 Sf whichever is smaller	Yes	No	
BAR HARBOR	No more than 1/3 gross floor area of principal single family (SF) dwelling		Yes	
BELFAST			Yes	
BRUNSWICK	Not greater than 750 Sf or 35% of floor area of principal structure, whichever is greater		Yes	
CAPE ELIZABETH	In SF dwelling that is >1500 SF; no greater than 25% of structure floor area; ADU not <300 Sf or >600 Sf	Single family dwelling and ADU must have same ownership	No	Close personal relationship with residents of main dwelling; 1 parking space
FALMOUTH Accessory Apartments	At least 360 Sf; the floor area of an accessory apartment shall not exceed the percentage of floor area of the SF dwelling unit to which it is attached as follows: <b>SF Dwelling Unit</b> <2000 Sf AA 40% <b>SF Dwelling Unit</b> 2000- <3000 Sf AA 35% or 800 Sf, whichever is greater <b>SF Dwelling Unit</b> 3000 – <5000 Sf AA 30% or 1050 Sf, whichever is greater <b>SF Dwelling Unit</b> >5000 Sf AA 20% or 1500 Sf, whichever is greater		Yes	Rental or in-law

Sf = square feet  
SF = single family  
DU=dwelling unit

**ACCESSORY APARTMENTS: AN AFFORDABLE HOUSING STRATEGY**  
**MAINE MUNICIPAL ACCESSORY DWELLING UNIT (ADU) PROVISIONS**  
**OVERVIEW**

Accessory Cottage	At least 360 Sf; not more than 100% of floor area of single family dwelling or 850 Sf, whichever is less			
GORHAM	800 Sf	Yes		# of ADU occupants limited to 2
HARPSWELL	Not >750 Sf or 50% of total Sf of primary dwelling, whichever is more restrictive	Yes	w/in SF dwelling or accessory bldg	
KITTERY	Not smaller than 400 Sf or larger than 800 Sf	Yes	Yes	May be rented; only 10 ADU permits a year
LEWISTON	Not >900 Sf and no more than 2 bedrooms		No	In-Law apartment = occupant must be relative of principal occupant of single family dwelling; joint entrance require, not separate entrance; 1 additional parking space
MECHANIC FALLS	At least 300 Sf but not >600 Sf	Yes	No	

Sf = square feet  
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**OVERVIEW**

NEW GLOUCESTER	Maximum 540 Sf and no more than 2 bedrooms	Yes		One of accessory unit occupants must be member of extended family of principal structure owner; # of occupants limited to 2
OGUNQUIT	No larger than 40% of total area of single family dwelling or 800 Sf, whichever is smaller	Yes	No	Renting allowed
PORTLAND	Minimum 400 Sf and no more than 30% of gross floor area of principal dwelling unit	Yes	Yes	Principal dwelling unit on lot no less than 4000 Sf and no more than 6000 Sf; detached ADU in structure w. ground coverage > 250 Sf and in existence on Jan 1, 1940
SACO	SF dwelling must have at least 900 Sf after creation of accessory apt	Yes	No	Rental not less than monthly; at least 3 off street parking spaces
SCARBOROUGH	Accessory unit (AU) living space maximum is % of SF dwelling:	Yes	Yes – no further than	Principal structure or

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**ACCESSORY APARTMENTS: AN AFFORDABLE HOUSING STRATEGY**  
**MAINE MUNICIPAL ACCESSORY DWELLING UNIT (ADU) PROVISIONS**  
**OVERVIEW**

	<p><b>SF dwelling</b> &lt;2000 Sf AU 40% or 750 Sf whichever is greater</p> <p><b>SF dwelling</b> 2000 – 3000 Sf AU 35% or 750 Sf</p> <p><b>SF Dwelling</b> 3000 – 5000 Sf AU 30% or 1050 Sf</p> <p><b>SF Dwelling</b> &gt;5000 Sf AU 20% or 1050 Sf</p>		100 ft from nearest point of principal structure	accessory may be seasonal; neither principal or accessory can be rented for less than 28 continuous days; # of occupants limited to 2; 1 off street parking for AU
SOUTH BERWICK	Not > 30% of total living area of existing DU	Yes	No – no external expansion of existing structure	Existing DU at least 2000 Sf of living area
SOUTH PORTLAND	No more than 40% of living area of principal DU nor more than 800 Sf nor less than 300 Sf	Yes	No	No more than 2 bedrooms; 2 parking spaces on site in addition to principal parking
WELLS	No more than 3 rooms and bathroom; not > 600 Sf net habitable floor area; not more than 35% of habitable floor area of bldg.		No	Annual permit
WESTBROOK	Maximum 800 Sf	Yes		# of occupants limited to 2
WINDHAM	Maximum 600 Sf	Yes	No	Maximum # of occupants = 3

Sf = square feet  
SF = single family  
DU=dwelling unit

**ACCESSORY APARTMENTS: AN AFFORDABLE HOUSING STRATEGY**  
**MAINE MUNICIPAL ACCESSORY DWELLING UNIT (ADU) PROVISIONS**  
**OVERVIEW**

YARMOUTH	Not > 900 Sf	Yes	Yes – added on to or created w/in SF home or associated accessory structure	1 parking space for studio/1 bedrm; 2 parking spaces for 2 bedrm; no more than 2 bedrooms
YORK				
ADU	Gross floor area not > 50% of total GFA of principal residence or 750 Sf, whichever is more restrictive	Yes	Yes – in existing bldg. or in bldg. accessory to principal DU	May be rented; not for short-term (less than 12 months); 1 parking space for 1 bedrm; 2 parking spaces for 2 bedrm
Accessory Residential Unit	No greater than 50% of GFA of principal residence or 750 Sf whichever is less			To care for relatives w/illness, disability, or of old age; no more than 2 persons

Sf = square feet  
SF = single family  
DU=dwelling unit