

# TOWN OF ELIOT, MAINE

## PLANNING BOARD AGENDA

TYPE OF MEETING: REMOTE  
PLACE: ZOOM ONLINE MEETING

DATE: Tuesday, March 16, 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.*

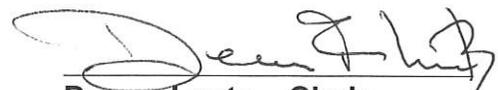
- 1) **ROLL CALL**
  - a) Quorum, Alternate Members, Conflicts of Interest
- 2) **PLEDGE OF ALLEGIANCE**
- 3) **MOMENT OF SILENCE**
- 4) **10-MINUTE PUBLIC INPUT SESSION**
- 5) **REVIEW AND APPROVE MINUTES**
  - a) February 9, 2021 – if available
  - b) March 2, 2021 – if available
- 6) **NOTICE OF DECISION**
  - a) 445 River Road (Map 33/ Lot 04) – if available
- 7) **PUBLIC HEARING**
  - a) Ordinance Amendments
    1. Marijuana Licensing and Marijuana Land Use Regulations
    2. Zoning Variances and Subdivision (Non-Zoning) Modifications and Waivers
    3. Auto Graveyards, Auto Recycling Operations, and Auto Hobbyists
    4. Accessory Dwelling Units
    5. Post-Construction Stormwater Management Applicability and Inspections
    6. Land Management Roads
  - b) 2022 Growth Permits: Draft Report and Proposed Allocation
- 8) **OLD BUSINESS**
- 9) **NEW BUSINESS**
- 10) **CORRESPONDENCE**
- 11) **SET AGENDA AND DATE FOR NEXT MEETING**
  - a) April 6, 2021
- 12) **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: **985 2227 3315 #**
  2. When prompted to enter Attendee ID **press #**
  3. When prompted enter meeting password: **948223 #**
- 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, Melissa Magdziasz – Vice Chair, Carmela Braun -  
4 Secretary, Dean Peschel, Jeff Leathe - Alternate.

5  
6 Also Present: Jeff Brubaker, Town Planner.

7  
8 Absent: Bill Olsen (excused), Mallory Strange – Alternate (excused).

9  
10 Voting members: Dennis Lentz, Melissa Magdziasz, Carmela Braun, and Jeff Leathe  
11 (appointed). Note: Mr. Peschel was not a voting member for tonight’s meeting.

12  
13 **ITEM 2 – PLEDGE OF ALLEGIANCE**

14  
15 **ITEM 3 – MOMENT OF SILENCE**

16  
17 **ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION**

18  
19 There was no public input.

20  
21 **ITEM 5 – REVIEW AND APPROVE MINUTES**

22  
23 Minutes of February 9, 2021 not available for tonight’s meeting.

24  
25 **Ms. Braun moved, second by Mr. Leathe, to approve the minutes of February 16,**  
26 **2021, as amended.**

27 **VOTE**  
28 **4-0**  
29 **Motion approved**

30 **ITEM 6 – NOTICE OF DECISION**

31  
32 **A. 7 MacLellan Lane (Map 37/Lot19) PB20-05.**

33  
34 **Ms. Braun moved, second by Ms. Magdziasz, that the Planning Board approve the**  
35 **Notice of Decision for PB20-05, as amended.**

36 **VOTE**  
37 **4-0**  
38 **Motion approved**

39  
40 **B. 62 Wildbrook Lane (Map 89/Lot 16) PB20-11**

41  
42 **Ms. Magdziasz moved, second by Ms. Braun, that the Planning Board approve**  
43 **PB20-11, as amended.**

44 **VOTE**  
45 **4-0**  
46 **Motion approved**

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**C. 290 Harold L. Dow Highway (Map 37/Lot 20) PB20-28**

**Ms. Braun moved, second by Ms. Magdziasz, that the Planning Board approve the Notice of Decision for PB20-28, with the understanding that the Public Hearing Fee of \$175 will be paid.**

**VOTE**  
**4-0**  
**Motion approved**

**D. 21 Foxbrush Drive (Map 50/Lot 19) PB20-27**

**Ms. Braun moved, second by Ms. Magdziasz, that the Planning Board approve the Notice of Decision PB20-27, as amended.**

**VOTE**  
**4-0**  
**Motion approved**

**ITEM 7 – PUBLIC HEARING**

**A. 445 River Road (Map 33/Lot 04), PB20-24: Shoreland Zoning Application to remove an existing deck and add a sunroom and new deck.**

Carolyn & Kenneth McGee (applicants/owners) were present for this application.

**Received: January 19, 2021**  
**1<sup>st</sup> Heard: February 16, 2021**  
**2<sup>nd</sup> Hearing: March 2, 2021**  
**Public Hearing: March 2, 2021**  
**Site Walk: N/A**  
**Approval: March 2, 2021**

Mr. Lentz explained the rules for the Public Hearing.

**7:42 PM      Public Hearing opened.**

Mr. Lentz commented that he was very pleased with all the letters of support for this project.

Ms. McGee agreed that we have a wonderful neighborhood and we do communicate a lot with each other. We want to take an existing deck, which is not in great shape and practically touches the border on one side, and we want to make the deck smaller and put a sunroom on top of it. We are bringing it in from the property line. So, basically we are doing a good thing in that way and getting a place where we can enjoy our river frontage year-round.

93 There were no public comments.

94

95 **7:45 PM Public Hearing closed**

96

97 Ms. Braun asked if the applicants have involved the DEP in this project or is it your plan  
98 to involve the DEP.

99

100 Ms. McGee said that we have not, as of yet. We understand that that might be something  
101 we need to do and we are perfectly willing to.

102

103 Ms. Braun confirmed that, after talking with our Planner, if you do need to then you will.  
104 We would get a copy of any permit for our file.

105

106 Ms. McGee said absolutely.

107

108 Mr. Lentz said that I think we had listed that as one of the conditions of approval.

109

110 Mr. Brubaker agreed.

111

112 Ms. Magdziasz discussed the size of the new deck from the Planner's memo. I am  
113 comfortable letting it be the 10'X8' and I don't understand why [reduction to 7'X8'].

114

115 Mr. Brubaker said that §45-194(c)(1) does allow some additional lot coverage for lots  
116 that are 10,000 square feet or less, as is the case with this lot. The wording is a little  
117 unclear, so we didn't initially convey this to the applicants. We felt that they had to  
118 exactly hold the line on lot coverage to not increase the non-conformity. But, after  
119 clarifying the language of this section with our attorney, I do think it's reasonable to  
120 abide by the ceiling of 2,000 square feet on lot coverage, which means that they can go  
121 from being not allowed to increase lot coverage to go up to 2,000 square feet. I still do  
122 believe that they need to hold the line in terms of no new impervious surface; so I don't  
123 think they can increase much but I do believe tiptoeing in between these different  
124 standards that they would be able to increase the deck from 7'X8" to 10'X8'. If you note,  
125 I put in some of those conditions, the Findings of Fact and one of the conditions will  
126 change a little bit based on what you decide. I do believe that, if they are increasing the  
127 deck size laterally (away from the river), which they are planning to do, I do believe they  
128 can have that larger deck size within the limits of our land use regulations.

129

130 Ms. McGee said that we had done the larger one and we brought it back because we  
131 thought we needed to. That is why we are going from one to the other. The original was  
132 for 10'X8'.

133

134 Mr. Brubaker agreed. When I demystified the language in this section, the CEO and I  
135 agreed they could go back to 10'X8'.

136

137 Ms. Magdziasz said that she was fine with 10'X8'.

138

139 Mr. Lentz agreed. With the conditions of approval, does the PB have a motion.  
140

141 Mr. Brubaker said that I just wanted to reflect that we did convey the CC comments to  
142 the applicants and a summary of how they are addressed are on pages 4 and 5.  
143

144 **Mr. Leathe moved, second by Ms. Braun, that the Planning Board approve the**  
145 **application for 445 River Road PB21-01, with the following conditions of approval:**

- 146 **1. The property may be developed and used only in accordance with the plans,**  
147 **documents, material submitted, and representations of the applicant made**  
148 **to the Planning Board. All elements and features of the use as presented to**  
149 **the Planning Board are conditions of approval and no changes in any of**  
150 **those elements or features are permitted unless such changes are first**  
151 **submitted to and approved by the Eliot Planning Board. Copies of approved**  
152 **permits from Maine DEP, Army Corps of Engineers, if applicable, and State**  
153 **shall be provided to the CEO before construction on this project may begin.**
- 154 **2. The permit is approved on the basis of information provided by the**  
155 **applicant in the record regarding the ownership of the property and**  
156 **boundary location. The applicant has the burden of ensuring that they have**  
157 **the legal right to use the property and that they are measuring required**  
158 **setbacks from the legal boundary lines of the lot. The approval of this**  
159 **permit in no way relieves the applicant of this burden. Nor does this permit**  
160 **approval constitute a resolution in favor of the applicant of any issues**  
161 **regarding the property boundaries, ownership, or similar title issues. The**  
162 **permit holder would be well-advised to resolve any such title problems**  
163 **before expending money in reliance on this permit.**
- 164 **3. The applicant authorizes inspection of premises by the Code Enforcement**  
165 **Officer during the term of the permit for the purposes of permit**  
166 **compliance.**
- 167 **4. Prior to the granting of a building permit, the applicant shall provide**  
168 **documentation of approval by the ME DEP or correspondence from the ME**  
169 **DEP that their approval is not needed.**
- 170 **5. The erosion and sediment control best management practices listed in §45-**  
171 **412 of the Town Code shall be implemented, as applicable, during any**  
172 **ground disturbance.**
- 173 **6. The applicant is encouraged to incorporate native plantings in the newly**  
174 **vegetated area, as documented in the Buffer Handbook Plant List or other**  
175 **applicable publication from the DEP.**
- 176 **7. The project is to be constructed in accordance with Article VI of Ch. 25 of**  
177 **the Town Code – Floodplain Management Ordinance. A flood hazard**  
178 **development permit shall be obtained from the Code Enforcement Officer**  
179 **prior to beginning construction.**
- 180 **8. Per §44-32(c)(1)(d), an approved plan for expansion of a non-conforming**  
181 **structure must be recorded by the applicant with the York County Registry**  
182 **of Deeds within 90 days of approval. The recorded plan must show the**  
183 **existing and proposed footprint of the non-conforming structure, the**  
184 **existing and proposed structure height, the footprint of any other structures**



231 **A. 100 Harold L. Dow Highway (Map 23/Lot 12), PB21-03: Site Plan Amendment**  
232 **to amend the days and hours of operation of a bulk propane storage facility.**  
233

234 Attorney Sandra Guay (representative) was present for this application.  
235

236 **Received: February 2, 2021**  
237 **1<sup>st</sup> Heard: March 2, 2021 (Site Plan Review)**  
238 **Public Hearing: N/A (Administrative Change)**  
239 **Site Walk: N/A**  
240 **Approval: March 2, 2021**  
241

242 Ms. Magdziasz asked if this would fall under administrative change.  
243

244 Mr. Lentz said that I think it could be a minor change, which means we don't have to go  
245 through the whole site plan review. He invited Attorney Guay to speak.  
246

247 Attorney Guay said that the PB may recall that last May we had a public hearing for the  
248 propane storage facility at 100 Harold L. Dow Highway. At the public hearing, there was  
249 a question asked about the hours of operation and, at that time, the tank consultant for the  
250 application responded with the hours and days that ended up in the Findings of Fact #18  
251 for that evening. That was actually misinformation but the applicant didn't catch that  
252 until the PB was reviewing the Findings of Fact. The PB may recall that we came that  
253 night and asked that they be changed that night. The PB was inclined not to do that, I  
254 think appropriately, and suggested that the way to correct that was to come back with a  
255 request to amend the application. The applicant just waited until it was all up and running  
256 and has been in operation, I think now, since the beginning of January. So now we've just  
257 submitted this to correct the hours of operation. In the application, I have put the hours  
258 they are requesting and the nature of the request. They are asking for a Monday through  
259 Saturday, 7AM to 6PM, explaining that the bobtails go out once in the morning, they  
260 come back mid-afternoon to re-load, and then come back in between 5PM and 6PM.  
261 Then, with limited operations on Sundays. They really only go on Sundays if somebody  
262 really needs propane on that day. They don't really operate on Sundays but they need the  
263 ability to go in there on Sundays to operate. Then, the ability for evening emergency  
264 deliveries and that would be if someone ran out of fuel and needed heat. That's the  
265 change they are requesting. Right now, the Findings of Fact say "...7AM to 5PM  
266 Monday through Friday, with potential for emergency truck delivery during the winter  
267 months." and, instead, we're asking for the Monday through Saturday 7AM to 6PM, with  
268 limited operations on Sunday and potential for emergency evening deliveries.  
269

270 Ms. Braun said that in your email to our Planner, the paragraph that starts with "*In*  
271 *general*, (but we do not want the approval limited to this)" needs clarification.  
272

273 Attorney Guay said that I talked with the applicant and he wanted me to convey to the  
274 Planner and the PB that Saturdays aren't necessarily year-round but it's hard to say; that  
275 it's really weather-dependent so they didn't want to limit it to a certain set of months. In  
276 my email, generally Saturday deliveries will be roughly between October and April but

277 they could go September through May. It really depends on weather conditions, mostly,  
278 and I think he was trying to convey just that. Saturday isn't going to be the same year-  
279 round use as the rest of the time but it would be very difficult to limit it to a specific  
280 timeframe.

281  
282 Ms. Braun said that you are more concerned with the months that you would be operating  
283 on a Saturday as opposed to anything else.

284  
285 Attorney Guay said correct.

286  
287 Ms. Braun said that it would be more seasonal, based on weather conditions, I would  
288 assume.

289  
290 Attorney Guay said right; that it's really hard to put a real specific timeframe on that.  
291 They prefer not to operate on Sundays if they don't have to. They do operate on  
292 Saturdays and, obviously during when it's cold, there is a lot more need for heat and fuel  
293 and, so, they're delivering more often.

294  
295 Ms. Braun asked, when the bobtails come in at 6PM, they park at that point.

296  
297 Attorney Guay said that they come in between 5PM and 6PM, depending on where  
298 they're coming from their deliveries and park and leave it for the night until the next  
299 morning.

300  
301 Ms. Braun said that they are doing that noise, now, but an hour earlier than what you  
302 requested.

303  
304 Attorney Guay said that I think they're trying to get back there by 5PM but frankly it's  
305 closer to 5:30; that it's hard to time exactly when they get in there.

306  
307 Mr. Lentz asked if there were any other questions, comments. Will the PB consider this a  
308 minor site plan amendment.

309  
310 PB members were comfortable with this application as a minor site amendment.

311  
312 Mr. Lentz said that, if that's the case, there would be some conditions. No, we didn't  
313 come up with any conditions.

314  
315 Ms. Braun said that, on page 3 of the Planner's memo, he does have a motion template.  
316 I'm assuming that is how he would like the motion to be read.

317  
318 Mr. Brubaker said that those templates are always just suggestions. I didn't have any  
319 specific condition suggestions for this.

320  
321 **Ms. Braun moved, second by Mr. Leathe, that the Planning Board approve PB21-3**  
322 **as a Minor Site Plan Amendment to amend the days and hours of operation of the**

323 **bulk propane storage facility to 7AM to 6PM, Monday through Saturday, with**  
324 **limited operations on Sundays and with the potential for emergency evening**  
325 **deliveries. The Planning Board finds that the proposed revisions are minor and do**  
326 **not result in any substantial changes to the approved development or further impact**  
327 **abutters. With the following conditions of approval:**

- 328 1. **The property may be developed and used only in accordance with the plans,**  
329 **documents, material submitted, and representations of the applicant made**  
330 **to the Planning Board. All elements and features of the use as presented to**  
331 **the Planning Board are conditions of approval and no changes in any of**  
332 **those elements or features are permitted unless such changes are first**  
333 **submitted to and approved by the Eliot Planning Board. Copies of approved**  
334 **permits from Maine DEP, Army Corps of Engineers, if applicable, and State**  
335 **shall be provided to the CEO before construction on this project may begin.**  
336 2. **The permit is approved on the basis of information provided by the**  
337 **applicant in the record regarding the ownership of the property and**  
338 **boundary location. The applicant has the burden of ensuring that they have**  
339 **the legal right to use the property and that they are measuring required**  
340 **setbacks from the legal boundary lines of the lot. The approval of this**  
341 **permit in no way relieves the applicant of this burden. Nor does this permit**  
342 **approval constitute a resolution in favor of the applicant of any issues**  
343 **regarding the property boundaries, ownership, or similar title issues. The**  
344 **permit holder would be well-advised to resolve any such title problems**  
345 **before expending money in reliance on this permit.**  
346 3. **The applicant authorizes inspection of premises by the Code Enforcement**  
347 **Officer during the term of the permit for the purposes of permit**  
348 **compliance.**

349 **VOTE**

350 **4-0**

351 **Motion approved**

352  
353 Mr. Lentz said that the application stands approved and there is a 30-day period from  
354 which the PB decision can be appealed by an aggrieved person or parties – move forward  
355 but move forward cautiously.  
356

357 **B. 28-32 Brook Road (Map 37/Lot 02-03), PB21-02: Shoreland Zoning Permit**  
358 **Application, Site Plan Amendment Application, and Change of Use: Adult Use**  
359 **Marijuana Cultivation and Manufacturing – sketch plan review.**  
360

361 Michael Sudak, E.I.T (Attar Engineering) and Randy Townsend (BMT Enterprises) were  
362 present for this application.  
363

364 **Received: January 25, 2021**

365 **1<sup>st</sup> Heard: March 2, 2021 (Sketch Plan Review)**

366 **2<sup>nd</sup> Heard: \_\_\_\_\_, 2021**

367 **Public Hearing: \_\_\_\_\_ 2021**

368 **Site Walk: \_\_\_\_\_**

369 **Approval: \_\_\_\_\_, 2021**  
370

371 Mr. Lentz said that, yesterday, we received several changes. We have submission  
372 deadlines and I don't want to spend a lot of time talking about these revisions tonight  
373 because I don't know how many of the PB members have had a chance to look through  
374 these and note what changes are what. You can go ahead and explain and we will try to  
375 get into this as much as we can. But in the future, we have submission guidelines that  
376 give everybody a fair chance of being able to respond and, also, for the PB members to  
377 be able to react, and one or two days is just not sufficient.  
378

379 Mr. Sudak said that I understand and thank you for your input on that. I think our take-  
380 away for the evening is, because of the proposed use of this site, it will be subject to a full  
381 site plan application in addition to the Shoreland permit and site plan amendment.  
382 Tonight would just be to gauge the PB's comfort level with what you have before you  
383 and see if there are any substantial changes we need to make prior to our submitting our  
384 site plan application in earnest.  
385

386 Mr. Lentz thanked Mr. Sudak for his understanding. I'm in agreement. This is part of a  
387 sketch plan review and I will leave up to the PB whether we're ready to go into the full  
388 site plan, at this point.  
389

390 Mr. Sudak shared his screen and discussed the project. This is the project site. It is 5 acres  
391 off of Brook Road at the west end of Route 236. The existing use is commercial and  
392 industrial – Island Seafood. The change of use associated with this would be to take the  
393 three existing buildings and convert them into a combination of Adult Use Marijuana  
394 Cultivation, Manufacturing and Retail. The revised sketch plan depicts how the co-  
395 location of all three of those will be spread throughout the three existing buildings. As far  
396 as the remaining on-site elements, there is existing on-site septic, on-site water. None of  
397 the utilities will be changing for this project.  
398

399 Ms. Braun asked which building would have the Retail.  
400

401 Mr. Sudak said that Building 1 has a 10'X60' Retail space.  
402

403 Mr. Townsend said that, in 1998, my partner and I started Island Seafood on Badger's  
404 Island in Kittery. Things went well for us and we expanded, buying some property in  
405 2002 here in Eliot. I've been in front of the PB a number of times: in 2002 to finish the  
406 first building, 2004 for a second building and 2007 for the third building. In 2007, we  
407 also got the DEP approval for site plan review. What has happened to the lobster  
408 industry, with the tariffs in China and then with the tariffs in Europe, it's given the  
409 Canadians a big advantage in the lobster industry. So, it's greatly reduced our business;  
410 so, what we would like to do, with the Town's approval, is put to use our current  
411 buildings in a different capacity which seems to have a significant demand. We do not  
412 plan to do any exterior changes, at least from what the site plan has been originally  
413 approved. The parking that already exists is primarily what you see here that was  
414 approved in 2007. All of the re-fitting is just going to be to the interior of the buildings.

415 Currently, we run between 18 to 20 employees here right now. I hope, with these re-  
416 fittings, we will keep the same number of employees, keep everyone going. We are  
417 currently inspected by the FDA on a quarterly basis. We are inspected by the State of  
418 Maine Department of Agriculture on a quarterly basis. We're inspected by the US  
419 Custom Service and Homeland Security, through TSA, does a quarterly inspection of our  
420 sites. So, we always try to comply with any State requirements so I wouldn't be asking  
421 for anything different. I expect to be able to go along with any State requirements for  
422 cannabis growth, also. Your Planner has been very helpful helping me put some of this  
423 together and we also have some guys at Attar that have helped us; that they have helped  
424 us in the past through some PB meetings. That's kind of where we are. I appreciate your  
425 time and consideration. We are looking for a change of use application but I do realize  
426 that, based on the Town's marijuana regulations, that they are looking for a full site plan  
427 review.

428  
429 Mr. Lentz said that you won't be required to have a full site plan review because of the  
430 subject that you are going to be dealing with. One of the things I would say right offhand  
431 is that, at this sketch plan stage that we're at, if I look at the application, there are about  
432 15 or 20 different items, which are required, and none of them being checked off. I don't  
433 know what you have in the package without going through it and measuring it against the  
434 ordinance. That is one of the things that I would require; that that checklist be in the  
435 package and we check them off so that we know what we're dealing with. When we get  
436 to the site plan review, there are check blocks and subjects to be covered in the  
437 application, also. I think that, if you follow those, I think you will find that a lot of what  
438 we're going to ask for is right there at your fingertips, once you finish that checklist.

439  
440 Ms. Braun said that she had a question on the ADA parking. I noticed that there would  
441 only be two in front of what I believe would be the retail building. If you have employees  
442 that are handicapped, would they be required to utilize those two spaces and then bring  
443 themselves wherever they need to go. Or, are you going to be putting in ADA parking for  
444 employees.

445  
446 Mr. Townsend said that we would certainly put in whatever parking is necessary for any  
447 handicap access that would be required.

448  
449 Ms. Braun said that it just seems that it's pretty far away for employees, especially if  
450 someone is parked there in the retail section, that would cut that individual out.

451  
452 Mr. Townsend said okay. I guess for some of those things, I would have Attar speak to  
453 that sort of thing, what we're doing on-site.

454  
455 Mr. Sudak said that wherever provision need to be made for ADA access, if it is indeed  
456 for all three buildings, then we would certainly provide that.

457  
458 Mr. Lentz said that we have conditional licenses.

459  
460 Mr. Townsend agreed that I have all the conditional use licenses.

461  
462 Mr. Brubaker agreed.

463  
464 Setbacks are noted on the map.

465  
466 Mr. Sudak said that I have the PB packet in front of me for the items I believe everyone  
467 on the PB is familiar with and I just wanted to touch on hopefully getting the PB's  
468 opinion on a couple of the headed items within our section, if I can go by the pages of the  
469 full document, pages 61 and 62 (Planner memo) for "Zoning and previous Planning  
470 Board Actions" and "Nonconforming uses in the Shoreland Zone". If there's any  
471 considerations that we need to discuss ahead of the full site plan application for either of  
472 those.

473  
474 Mr. Brubaker said that it's in the C/I District and it is mostly in the Limited Commercial  
475 Shoreland District. There's also a freshwater wetland resource. The Limited Commercial  
476 District pretty much engulfs the property. Typically, industrial uses are not allowed in the  
477 Limited Commercial Shoreland District (LC) but, in this case, there does seem to be a  
478 clear record of previous approvals given by previous PBs to specifically industrial uses. I  
479 detail that a little bit more in the bottom of page 2. I just wanted to note that special case  
480 for this property. Regarding nonconforming uses in the Shoreland Zone, there is a  
481 provision that is there, shown and described further, on page 3 about switching from one  
482 non-conforming use to another. I believe that those parts of our Town Code will be  
483 applicable as this application progresses forward.

484  
485 Mr. Lentz asked Mr. Sudak if he was clear as far as what Mr. Brubaker was explaining

486  
487 Mr. Sudak said that I am. I just wanted to see if any of the PB members had any  
488 additional comments. If you agree with the Planner or if there is any additional comment.

489  
490 Ms. Braun said that, in Mr. Brubaker's report on Nonconforming Uses in the Shoreland,,  
491 there's a provision there that you need to provide written documentation. Are you folks  
492 prepared to do that.

493  
494 Mr. Sudak said yes; that that all looks standard. I certainly didn't mean to undermine any  
495 of Mr. Brubaker's suggestions. I just wanted to see if there were any additional  
496 expectations.

497  
498 Ms. Braun asked if Mr. Sudak would be getting in touch with the DEP to see what else  
499 might be required.

500  
501 Mr. Sudak said yes. We have the permit associated with the 2007 approval. What is  
502 required for this application we will certainly run through the DEP, as needed. SAs we  
503 have both stated, the existing footprints is what will be utilized for this application  
504 change of use/site plan amendment.

505  
506 Ms. Braun asked if they had to update that permit with the DEP.

507  
508 Mr. Sudak said that a separate review letter was worded in such a way that, yes, we have  
509 to provide, at least narratively, our conversation with the DEP on the intended update to  
510 this site.

511  
512 Mr. Brubaker clarified that it does look like previously DEP did say that no PBR form  
513 was necessary. My suggestion was mainly just dotting I's and crossing T's to make sure  
514 that nothing has change because the humans at DEP and the policies at DEP have  
515 changed.

516  
517 Ms. Braun said that we are looking for confirmation of that from the DEP.

518  
519 Mr. Brubaker said yes.

520  
521 Mr. Lentz asked if we are clear on the number of trips that are generated, if we need any  
522 kind of information there.

523  
524 Mr. Sudak said that I'm clear with the necessity of it with the future application and I'll  
525 make sure that that is provided.

526  
527 Mr. Lentz asked what would be in Building #2.

528  
529 Mr. Sudak said that there will be adult use marijuana uses in all three buildings. Building  
530 #1 will be a combination of cultivation and retail (600 +/- square feet). Building #2 will  
531 be exclusively adult use manufacturing. Then the rear building (#3) will be exclusively  
532 adult use cultivation.

533  
534 Ms. Braun asked, with the manufacturing, will you be producing edibles.

535  
536 Mr. Townsend said yes.

537  
538 Ms. Braun said that you would need a commercial kitchen and a commercial kitchen  
539 license.

540  
541 Ms. Magdziasz said that this is on septic, correct.

542  
543 Mr. Townsend said yes.

544  
545 Ms. Magdziasz asked if all the buildings have bathrooms in them.

546  
547 Mr. Townsend said no. Building #3 does not have a bathroom in it. That's the farther  
548 building that's just for growth. It would be my hope that in the future the Town's sewer is  
549 going to come up Brook Road and we could hook up to that.

550

551 Ms. Magdziasz said that I am just curious. It doesn't have any bearing on this but I am  
552 curious if the State doesn't oversee any of that stuff for employees to have proper  
553 facilities to use.

554  
555 Mr. Townsend said that we get inspected quarterly where they look at our bathroom  
556 facilities. They check for cleanliness and then they do a full write-up for sanitation.

557  
558 Ms. Magdziasz asked if the State did that with cannabis, as well.

559  
560 Mr. Townsend yes; that I believe their inspections are more unannounced but, yes, they  
561 do inspections for that sort of stuff, also.

562  
563 Mr. Lentz said that, as we go forward, we are going to start to ask some questions that  
564 you can get out of the Planning Office the answers to. We're going to talk about odor,  
565 odor control. We're going to talk about security, camera set-up, lighting. I would hope  
566 that those are the things that you would start to put together and I think you can get most  
567 of those things out of the ordinances, themselves.

568  
569 Mr. Sudak agreed that those are all very standard facets of the full site plan application. I  
570 understand that that will be required for the approval process.

571  
572 Mr. Lentz said that, if the PB believes that you have finished with the sketch plan, the  
573 next time we sit down I would expect that's where we're going.

574  
575 Mr. Sudak said that that's our hope, as well.

576  
577 Mr. Lentz asked the PB where they want to go with this application, at this point. Do we  
578 have enough information to say the sketch plan is complete. Is there more information  
579 you would like to have.

580  
581 Ms. Magdziasz said that I think it is. They checked all the boxes in #1 on what a sketch  
582 plan is.

583  
584 Mr. Lentz said that, hearing no other PB comments, we will continue this. Do we need to  
585 vote on whether this is complete.

586  
587 Mr. Brubaker said that no formal vote is needed for a non-subdivision sketch plan. This is  
588 just an opportunity to ask for information, and so forth.

589  
590 Mr. Lentz said that we will move forward and see you at the next scheduled meeting. As  
591 far as we are concerned, I believe the PB is saying that the sketch plan material is  
592 sufficient and we'll start to look at the site plan. Does anyone have an objection to that.  
593 Hearing none, Mr. Brubaker and I will look at the calendar and see when we can schedule  
594 you for the next round. In the meantime, we can absorb some of the information you've  
595 given us.

596

597 Mr. Brubaker said that I will work with Mr. Sudak and the applicant to make sure that all  
598 the boxes are checked on the relevant applications. For the applicant and the PB, I did  
599 reach out to the Town's consultant who is working on the water and sewer project on  
600 Route 236. I called them last week to ask them about more details for what's going on  
601 with Brook Road and I haven't heard back from them. I will make sure to include that  
602 information, assuming I hear back from them, in the next review.

603  
604 Mr. Lentz asked if we contacted the Conservation Commission on this application.

605  
606 Mr. Brubaker said that I believe it has been shared with the Chair of the Conservation  
607 Commission.

608  
609 Ms. Magdziasz asked if CMP ever need to be involved with this stuff. It's not about this  
610 application but in general. These businesses need a lot of power. Do you think CMP will  
611 ever come back and say Route 236 isn't built for this.

612  
613 Mr. Townsend said, just so you know, we have 3-phase power down here and in all three  
614 buildings. So, currently, we have quite a bit of usage down here already because we run  
615 the filter systems for the lobsters, and like that. We pretty much don't need any more  
616 power than we already have.

617  
618 **C. Route 236 Traffic and Safety Study – Review of conceptual review option**  
619 **(roundabout) for the Route 236/Depot Road/Cedar Road intersection.**

620  
621 Mr. Brubaker said that both Mr. Lee and I wanted to get the SB's and PB's input on this.  
622 Giving some background information, this is one of several intersections being looked at  
623 right now by a Route 236 Traffic and Safety Study that is being done by the consultants  
624 **Gar** Palmer and being sponsored by SMPDC so we're glad to have them as a  
625 partner here. If you recall, they did the previous section from the Kittery town line to  
626 Beech Road a few years ago. Now, they're back for round two from Beech Road to the  
627 South Berwick town line, just about up at the Dover/Goodwin Road intersection. It's all  
628 recommendations for improving traffic and safety on Route 236. This particular  
629 intersection at Depot is just one of a set of recommendations they'll be making so there  
630 will potentially be more to come from the consultants on the other intersections. We're  
631 mainly facilitating their request to get more local input on the roundabout concept for the  
632 depot Road intersection, which would also include Cedar because it's very close to the  
633 intersection. This is somewhat different than the proposal from the ME DOT back in  
634 2016 and we included that old concept as a reference. That was a 2-lane roundabout and  
635 it got a lot of negative input, Mr. Lee said, and the school board was not particularly  
636 supportive of it. That is no longer being proposed. In the new concept, the consultant has  
637 proposed two options. One would be a purely single-lane roundabout with a sidewalk that  
638 connects across Route 236 to the school and the second one would be what's called a  
639 hybrid roundabout, which is mostly single lane but, in order to accommodate a little bit  
640 more northbound peak traffic, there are two lanes going out towards South Berwick.  
641 Again, this is proposed by SMPDC and the consultant and they are very aware that this is  
642 very conceptual. They're just trying to get some basic Town feedback. I'm happy to

643 facilitate that but just know that it's the consultant's concept. I happen to have a  
644 background in transportation and I worked directly on some roundabout-related things, so  
645 I can speak from my own background if you have any questions about the roundabout.  
646 You may see that the consultant included a pretty basic fact sheet about roundabouts.

647  
648 Ms. Braun asked if the hybrid, with two lanes only going to the north, was to facilitate the  
649 flow of traffic, especially during peak time from the shipyard.

650  
651 Mr. Brubaker said yes.

652  
653 Ms. Braun asked if that will also have the sidewalk connection like the single lane.

654  
655 Mr. Brubaker said that both will have that single crosswalk and sidewalk spur from  
656 approximately Cedar to the school.

657  
658 Mr. Lentz said that I'm looking at the current concepts. The walkway is across Route 236  
659 by the school. I can see that on the drawing but I can't see it coming from Cedar Road,  
660 across Depot Road.

661  
662 Mr. Brubaker said that I don't think it extends the entire way. It just goes a little bit down  
663 Depot Road and then stops.

664  
665 Mr. Lentz said that that's lined with traffic in the morning and the evening, where that  
666 particular walkway is. I don't know how they would get across Cedar, if there are  
667 walkers in that area.

668  
669 Mr. Brubaker said that I think the general idea is that there aren't any sidewalks on any of  
670 the streets approaching the school. There is kind of a crosswalk, now, although it's not  
671 compliant with current standards. They're just looking at that minimum to improve that a  
672 little bit knowing that the streets, as you get away from the intersection, don't have that  
673 sidewalk activity, as a lot of rural areas don't have that kind of sidewalk activity.

674  
675 Mr. Lentz asked if, in essence, they are looking for the PB's recommendation.

676  
677 Mr. Brubaker said yes or just informal feedback, whatever you would care to give. He  
678 shared his screen to show the new concepts.

679  
680 Mr. Lentz said that neither one takes away anything from the school parking area, like the  
681 old one did. There will be no traffic lights, so, crossing over Route 236 on that crosswalk  
682 could be somewhat complicated.

683  
684 Ms. Braun said that it could be dangerous, nevermind complicated.

685  
686 Mr. Brubaker said that I know there's a lot of different opinions about roundabouts and  
687 they don't work for every intersection. But they do have a pretty strong safety record if  
688 they're designed properly, and that does apply to pedestrian safety, as well. That is

689 especially true for single-lane roundabouts. What you see there is a design that would  
690 encourage every entering vehicle to slow down to about 15MPH to 25MPH. Also, the  
691 crosswalk is splitter by a separator island (green golf tee shape) that allows pedestrians to  
692 cross in one direction at a time. Cars are going pretty slowly and there's a lot of visibility.  
693 So, in general, roundabouts have a pretty good safety record for pedestrians.

694  
695 Ms. Braun asked if they would have signage that would say to stop with pedestrians in  
696 the road, or something to that effect.

697  
698 Mr. Brubaker said that there is some supplemental signage that you could put that has  
699 crosswalk warning signs. Roundabouts typically almost always have yield signs. They  
700 never have stop signs for vehicles entering the circle but there are all sorts of warning  
701 signage that could be installed at the crosswalk to let vehicles know that they are  
702 approaching a place where pedestrians might be crossing. There are even some  
703 enhancements that you can make to the crosswalk, like rapid flashing beacons that are  
704 only activated when a pedestrian is crossing; that those really catch the eye of motorists  
705 to help them know to stop for pedestrians.

706  
707 Ms. Braun said that I think that would be advisable because people are walking all the  
708 time, especially now that we're all living in hibernation. There are people out everywhere  
709 and sometimes drivers are not always aware.

710  
711 Mr. Brubaker agreed.

712  
713 Ms. Magdziasz asked if this intersection was identified by the MDOT as one of the  
714 problems on Route 236. Why this intersection.

715  
716 Mr. Brubaker said that that's a really good question. This has been identified as having  
717 some potential peak-hour traffic problems in the future, no matter what happens. Whether  
718 it's a roundabout or an improved, signalized intersection or doing nothing. It's not the  
719 highest crash intersection in this study; that that would go to the Dover/Route  
720 236/Goodwin Road intersection. I believe it's mainly traffic-based and, also, I think when  
721 an engineer looks at an intersection like this and sees a closely-spaced street like Cedar,  
722 they see the existing situation as being a little bit awkward for vehicles entering onto  
723 Cedar from Depot. I'm sure that everyone here could speak to their own personal  
724 experience with that intersection, as it is currently. I think that's the background, the  
725 motivation, for the consultants and ME DOT proposing this.

726  
727 Ms. Magdziasz said that I feel like we need one here and then by the Eliot Vet (Rt.  
728 236/Dover Rd.), and at Bolt Hill.

729  
730 Mr. Brubaker said that Mr. Lee and I have been tapping SMPDC on the shoulder about  
731 Bolt Hill Road. SMPDC knows that that's a priority for us as well as  
732 Dover/Goodwin/Route 236. Their previous study covered Bolt Hill. Of course, there's no  
733 consensus on a traffic signal but their previous study did have some improvements at Bolt

734 Hill. This study does have, and you will see in the future, recommendations for the  
735 Dover/Goodwin intersection.

736  
737 Mr. Lentz said that maybe I'm missing this. I know that it's a State road and they call it a  
738 through-road. They don't want people stopping. They want to keep traffic constantly  
739 moving. On the bigger picture, if they're not going to do something like this at every one  
740 of the other intersections, I think it kind of defeats the purpose. You're going to back  
741 them up at one place or the other unless they're all using the roundabout kind of a pattern.

742  
743 Mr. Brubaker said that you make a good point. Any solution that would be considered at  
744 this intersection would have to consider its effects on traffic and congestion. Level of  
745 service and delay is something the consultant has looked at for this intersection and this  
746 particular solution – the roundabout. I don't have those numbers in front of me, but I can  
747 certainly get those to the PB when they're finalized. They certainly are looking at what  
748 this would do in terms of traffic flow.

749  
750 Ms. Lemire said that one of my concerns are side streets. When you are dealing with  
751 morning and evening commutes, there is no room, there are no breaks, so what happens  
752 to those side streets. State Road is used, now, as a backup and very busy. Goodwin Road  
753 is a big secondary choice for drivers to avoid what's going on out on Route 236. Those  
754 times when commuter traffic is going through there is almost no break. It's just constant  
755 from the Kittery Circle all the way up towards Berwick. So, what happens to all the side  
756 streets, if the roundabout was built.

757  
758 Mr. Brubaker said that roundabouts kind of allow side street traffic to edge into the circle  
759 to make their turning movement because the traffic in the circle is going slow enough.  
760 There are some delays to roundabouts, of course, and I can get that specific data from the  
761 consultant when it's ready.

762  
763 Ms. Magdziasz said that I think the single-lane roundabout makes sense only because I  
764 don't feel like anyone in New England actually knows how to use one of these things.  
765 The double-lane one concerns me. My only other feedback is that the speed limit is so  
766 important to those side street nudgers as I'm sure we can all attest to the Kittery Circle  
767 where you get that one or two that are going around like it's a nascar track. It's supposed  
768 to be a zipper, one after the other. This is probably a total waste of taxpayer money but  
769 have police sitting there for the first however long and just start popping people on tickets  
770 until they realize they need to be going 10MPH, or whatever. That's the magic to the  
771 roundabout – people approaching at an appropriate speed to let everybody in.

772  
773 Mr. Brubaker said that I think you make a good point. I think it is something that would  
774 help.

775  
776 Mr. Lentz said that the one thing I wanted to say to Ms. Lemire's point and Ms.  
777 Magdziasz's, that traffic pattern changes so much from morning to evening. I watch what  
778 comes through Town on Route 103 in the late afternoon. They come out of Town on 103.  
779 They turn onto Depot Road and that traffic gets backed up on Depot right where that

780 traffic circle would be. Today they have a light that allows a good string of them to get  
781 out at a time. I'm not sure how that would work because you would have a full line  
782 coming up Route 236, heading north in the evening, plus they're trying to feed from  
783 Depot Road. Then in the morning, it kind of changes. It's a whole different pattern and I  
784 don't know how you figure that out to know what the pattern really is and how many cars  
785 you have going at what particular times.

786  
787 Mr. Brubaker said that the consultant did some basic calculations in terms of how much  
788 delay those vehicles would face; that once they're finalized, I can share them with the  
789 PB. The gold standard now is that they have traffic simulation programs that actually  
790 show, in 3D, the actual traffic flow in a modelling scenario. I don't think we can ay the  
791 consultant to have that done but they do have excel spreadsheet data on that.

792  
793 Mr. Lentz said that it is a through-road and, if it's not going to be a through-road all the  
794 way then I think to put a roundabout in the middle of two intersections that have traffic  
795 lights is defeating the purpose of the roundabout, and it's certainly not going to make it  
796 flow through. The other point is that I'm extremely concerned about the safety of kids  
797 trying to cross at that crosswalk. They come down from Cedar Road, also, so they would  
798 have to cross from Cedar Road over Depot Road to get to the crosswalk and I don't see  
799 cars stopping for those poor kids coming across that little island that's there.

800  
801 Mr. Brubaker said that you are saying that, ideally, there is another crosswalk across  
802 Depot to Cedar.

803  
804 Mr. Lentz said that I think so,

805  
806 Ms. Braun said that there would definitely have to be some alerting system, too, that there  
807 are children, aka pedestrians, in the walkway.

808  
809 Mr. Lentz agreed, suggesting that it might be one of those flashing lights that, when you  
810 push a button, the light goes off. You see those all over the place, now.

811  
812 Ms. Braun said that the rate of speed people drive on Route 236 is unbelievable.

813  
814 Mr. Lentz agreed, especially coming up that straightaway past the junior high. They are  
815 doing 50 or 55MPH.

816  
817 Ms. Braun asked if all of this is a result of the study they did on the impact of the  
818 shipyard on traffic and parking.

819  
820 Mr. Brubaker said that it's related but it's a separate study. Certainly, they have in mind  
821 what the shipyard traffic is when they are making these recommendations. As part of the  
822 joint land use study going on right now, they have some interesting graphs of what  
823 percentage of the traffic on Route 236 is shipyard and what is non-shipyard. It was pretty  
824 interesting.

825

826 Ms. Braun said that anything you can do about Bolt Hill Road would be vastly  
827 appreciated.

828  
829 Mr. Brubaker said that I've been hearing that; that White Heron Coffee talked with me  
830 about that, too.

831  
832 Ms. Braun said that you have older folks trying to deal with getting out onto Route 236  
833 and it's not pretty.

834  
835 Mr. Leathe said that anything that is done in that intersection is going to dramatically  
836 change how the school children and school buses interact in that environment. Have the  
837 school administrators been involved in this discussion, so far.

838  
839 Mr. Brubaker said that Mr. Lee did share it with John Caverly so I do know that the  
840 school board will have a chance to weigh in on this.

841  
842 Mr. Leathe said that I wonder about driving a bus around through that in prime time. I do  
843 live around there and see kids trying to cross there; that it's scary enough as it is and, to  
844 me, this just complicates it.

845  
846 Mr. Brubaker said that there are certainly other options that could be considered,  
847 including a 'no-build scenario', as they call it.

848  
849 **D. Review of Draft 2022 Growth Permits Report.**

850  
851 Mr. Brubaker said that, as you are familiar with, this is an annual report and the PB needs  
852 to consider and set the number of growth permits to be allocated for the year 2022. The  
853 data is there. We're still waiting to get all the results from the surveys of Town staff. I  
854 explain the formula we use, and we would be going up from 26 to 27. This is an initial  
855 draft and will be back on the 16<sup>th</sup> and, by then, I hope to have compiled all of the survey  
856 responses.

857  
858 Mr. Lentz asked how many of the available did we use this year.

859  
860 Mr. Brubaker said that we used 14 single family and 2 elderly housing unit. I don't  
861 believe these are counted in growth permits but there were 3 ADUs, as well. We get 27  
862 from the 10-year average of single-family dwellings plus elderly housing units, which  
863 gives you 25.4. When you multiply that by 105% and round up, you get 27.

864  
865 Mr. Lentz asked if there are any issues that the PB sees with what the Planner has put  
866 together.

867  
868 Ms. Braun asked if the Planner thought he would get all the surveys back in time for the  
869 next meeting.

870  
871 Mr. Brubaker said yes. Also, this will go on the June Warrant.

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**ITEM 10 – CORRESPONDENCE**

There was no correspondence.

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

Growth Permits Warrant  
Public Hearings for proposed ordinances

Mr. Lentz said that there is a land management road. Did everybody get an explanation of that or have an understanding of basically what that is.

Ms. Braun said that I would like an explanation of what that is.

Mr. Brubaker said that that is very basic. It's coming right from DEP to meet the DEP's guidelines for the Shoreland Zoning Chapter. We have to strike 'land management roads' from our land use table. That's a complement to an earlier action, which was to strike 'timber harvesting' from our land use table. That's just the DEP staffer saying they noticed this in our ordinance and asking that we change it.

Mr. Lentz said that those were primarily logging roads, or farming roads.

Mr. Brubaker said yes.

Mr. Lentz said that I will say something about the ADUs. I don't know if you have heard the feedback but, the SB, when viewing the ADU ordinance, decided that they didn't agree with our work and they changed it. Instead of 800 square feet, it went to 1,000. The one that kind of got me is that they eliminated the 30-day minimum rental, which we believed were important things. I won't push back on that. I asked Mr. Brubaker to think about how we could push back on that.

Ms. Magdziasz said that we didn't all feel that way.

Mr. Lentz said that I understand your point and I think we voted on that.

Ms. Braun asked if they gave any reasoning for making those changes.

Mr. Lentz said no. I don't understand what their logic was or what their reasons were.

Ms. Braun said that the way that I look at it is, if the purpose is to bring affordable housing to Eliot, by eliminating that minimal rental period, you're just encouraging people to come in from the big city to rent for a short term. So, the people that come to work in our businesses for the season have no place to live because they can't afford it.

918 Mr. Lentz said that I can go with either version. I think the point is that there was no  
919 explanation. We were asked to do a public hearing. We were asked to do a  
920 recommendation and we did that. I think we put a lot of work into it and I don't think  
921 it's right that they just killed it and put something else in there.  
922

923 Mr. Leathe said that there was an article, and I'm not sure who circulated it, relating to  
924 Kittery and the ADU discussions that have been going on there. I was looking at that  
925 and they had similar discussions around tenancy times, and I think they settled on 30  
926 days; that they got to that, moved away from it, and came back to it. I think, from what I  
927 read, that was probably one of the most important pieces of that article in Kittery.  
928

929 Mr. Lentz said that I thought it was. I don't understand why they did what they did.  
930

931 Ms. Braun said that I don't, either. I would love to see their reasoning.  
932

933 Mr. Lentz said that maybe we will see that in their minutes. But we will have the  
934 opportunity to go over it, again, on the 16<sup>th</sup> and I will let my feelings be known.  
935

936 Mr. Peschel was welcomed to the PB.  
937

938 Mr. Leathe said that I have not ever been in a marijuana growing/cultivation facility or a  
939 retail store and it would help me to actually see some, or even one, of these facilities to  
940 have a better idea of what the facilities look like and the differences in layouts between  
941 the different types of uses. I wanted to know if it would be a good idea to try to arrange  
942 a site visit in Eliot to see one of these facilities that is up and running for future reference  
943 when we have applications coming through.  
944

945 Mr. Lentz said that Mr. Brubaker and I talked about that a couple weeks ago. I started to  
946 do some research and then I got kind of held up. I stared with Attorney Rines. I asked  
947 him if he thought that would be acceptable, would they allow a tour into that facility. He  
948 said if you do it this week, yes, but if you do it after that, no. I guess you aren't allowed  
949 into any of those buildings if you don't have a license.  
950

951 Ms. Magdziasz said that you have to be authorized to be in there and wear special  
952 uniforms because everything is so hygienic. It's not like a regular greenhouse or a brew  
953 pub, or something like that. So, I'd be shocked of anyone let anyone from the general  
954 public do that.  
955

956 Mr. Lentz said that I expected some push-back but I didn't get any. He said that that's a  
957 great idea, and he would really welcome that, but the timing was really bad. He said that,  
958 if we can organize that in a week, we'd be glad to show you through it but, after that, he  
959 said forget it because you would have to have the clearance and dressed in all the gear  
960 that they wear. So, I didn't go any further with that but maybe I can push it a little with  
961 Mr. Lee perhaps.  
962

963 Ms. Magdziasz said that there are video tours all over the place on Google.

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The next regular Planning Board Meeting is scheduled for March 16, 2021 at 7PM.

**ITEM 13 – ADJOURN**

There was a motion and a second to adjourn the meeting at 9:21 PM.

\_\_\_\_\_  
**Carmela Braun, Secretary**  
Date approved: \_\_\_\_\_

**Respectfully submitted,**  
**Ellen Lemire, Recording Secretary**



# TOWN OF ELIOT MAINE

PLANNING OFFICE  
1333 State Road  
Eliot ME, 03903

POSTED  
3/01/21  
KJW

## PUBLIC HEARING NOTICE

**AUTHORITY:** Eliot, Maine Planning Board  
**PLACE:** Remote Zoom Meeting  
**DATE OF HEARING:** March 16<sup>th</sup>, 2021  
**TIME:** 7:00PM

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- Amendments of Chapter 1 – General Provisions, Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations
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- Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads
- Establishing the Maximum Number of Growth Management Permits for 2022 (*Chapter 29 of the Municipal Code of Ordinances of Eliot, Maine*)
  - *[Draft]* Shall the Town of Eliot allocate a maximum of 27 growth permits for new residential dwelling units for calendar year 2022, as recommended by the Eliot Planning Board, in accordance with §29-5 of the Growth Management chapter of the Municipal Code of Ordinances of Eliot, Maine?\*

*\*Note: In the event this article does not pass, the number of growth permits allocated in 2022 will be 105% of the mean number of permits issued for new residential dwelling units during the previous ten years, as required by M.R.S.A. 30-A §4360. That number is estimated to be 17.*

Interested persons may be heard and written communication received regarding this application at this hearing. The application is on file and available for review in the Planning Office at Eliot Town Hall, 1333 State Road, Eliot, ME 03903. The meeting agenda and information on how join the remote Zoom meeting will be posted on the web page at [eliotmaine.org/planning-board](http://eliotmaine.org/planning-board).

## Upgrades

Continued from Page 1A

As for the whale mural, which faces the city owned Worth Lot, “through inappropriate preparation and application of paints, the mural has significantly deteriorated the facade of the building,” Wilson said.

The three-story building was initially owned by Margeson Bros. Furniture Co. and later became home to Cabot Furniture, Wilson said.

The inside of the building, “although retaining some very worthwhile architectural features and wide open space with high ceilings etc., is laden with asbestos and other environmental contaminants which must be removed and remediated,” according to Wilson.

## Enhance and renovate

As now constructed, the building presents “a very monolithic and unappealing facade that does not enhance its surroundings, promote its history or engage the pedestrian at the street level,” he added.

Company employees have already begun remediating the environmental hazards inside the building, Wilson said.

“The revitalization and adaptive reuse of this building will require a minor reconfiguration of parking spaces, installation of curbing, brick sidewalks and landscaping in and adjacent to the Worth Lot,” he said. “It will thus require the support and approval of the city. The results ...will be profoundly positive for the Worth Lot and Vaughan Mall.”

The proposed mixed-use project also calls for the

“creation of significant green space annexed to the Vaughan Mall and completion of the pedestrian connection from Hanover St., Maplewood Ave., Worth Lot to the Vaughan Mall.”

The development team also proposes to “reactivate the existing infilled windows with new windows and doors being added to the previously blank wall (along the Worth Lot side of the building) with an emphasis on maintaining the historic value in form and function on all sides of the building,” he said.

He added that the proposed new fourth story will “go a long way to correct the monolithic box like form of the building and add a third dimension to the building and a softening of its form.”

The HDC’s Zoom meeting is scheduled to begin at 6:30 p.m. Wednesday.

## Forum

Continued from Page 1A

Community Mental Health; Benjamin Hillyard, a licensed critical mental health counselor at the Center for Collaborative Change at Aloft Integrated Wellness, and former Chief Justice of the New Hampshire Supreme Court John Broderick.

Guiding the discussion will be Paul Steinhauser, a Newfields resident and political reporter with Fox News who also contributes to New Hampshire news outlets, including Seacoastonline.

“We want to emphasize the mental health crisis we’re facing is a stand-alone conversation beyond whatever your opinion is on the schools reopening,” said parent Melissa Hanlon. “We’ve had a number of parents reach out to us, and so many of their stories have been heart-breaking because people feel isolated and alone.”

Hanlon recently started a petition with fellow parent Susan Shanalaris urging the SAU 16 administration and Exeter Region Cooperative School Board to commit to an action plan that will spell out the specific process for returning students to fulltime, in-person learning at Exeter High School, the Cooperative Middle School and the larger elementary schools in Exeter and Stratham.

Shanalaris said they have yet to receive a response from the administration or board members on the petition. She said, however, the forum was put together to rally the community to put its collective heads together in the interim period to help struggling students until the schools fully reopen.

“We’re asking everyone to look beyond their own individual circumstances,” Shanalaris said. “It seems like with COVID we worked together to flatten the curve, we masked up to protect others, now what are we going to do to protect kids in the community?”

Kim said the largest logistical hurdle to fully reopening schools is the Centers for Disease Control and Prevention recommendation calling for six feet of physical distancing between students and teachers in classrooms, a standard, he argues, that only 4% of New Hampshire’s schools can meet. He said the CDC’s six-foot guidance is based on what he believes is a flawed understanding of how COVID-19 is unlikely spread through droplet particles in the air that can travel up to six feet.

David Ryan, superintendent for SAU 16, recently said the district will continue to follow the CDC’s health and safety protocols going forward. He noted the district also gathers COVID-19 information from other state and local resources such

as the Seacoast Public Health Network, the state Department of Health and Human Services, the state Department of Education to best create a “complete picture of community health conditions.”

Colby, the social worker on the parents’ forum panel, said “gaps” have arisen in educational and mental health professionals’ ability to pick up on signs of anxiety and depression in students because they are not regularly in school.

“When students are in school every day, it is more apparent when a child is struggling with anxiety or depression, as examples, and teachers can then engage parents and make recommendations for services,” Colby said. “As schools are more able to reopen and have children physically in the school more frequently, it will be important for schools to focus on the social-emotional component of learning. We need to approach every student with the understanding that this last year has been incredibly hard on them and it is likely every student could benefit from an increased focus on improving mental health.”

Hillyard said COVID-19 for the current generation students is their version of the Great Depression, World War II or the Great Recession. He said under normal circumstances suicides tick up between April and June, and the community needs to be prepared for a potential mental health crisis.

“The isolation has certainly exacerbated the problem but it’s also been a loss of predictability for kids, and that spans all students fully in-person, hybrid or remote learning,” Hillyard said. “We need to have mutual support of parents, teachers, and mental health and medical; providers with

**“We want to emphasize the mental health crisis we’re facing is a stand-alone conversation beyond whatever your opinion is on the schools reopening.”**

**Melissa Hanlon**  
Parent

comprehensive message to kids that we’re there for them and we want to help. The professionals aren’t the first people students reach out to, it’s their peers through social media, texts and group text messages, so we need to be able to better reach them in the ways in which they communicate.

Broderick has become a leading voice on eliminating the stigma surrounding the treatment of mental health. He has spoken to thousands of high school students in New England and beyond, sharing the story of his family’s own bout with mental illness after his oldest son, Christian physically assaulted him in 2002, and made na-

tional headlines.

Broderick last spoke to the SAU 16 community in the aftermath of a Cooperative Middle School student dying by suicide in the fall of 2019.

“Before COVID, anxiety and depression were widespread among young people. I know that from talking to almost 90,000 middle and high school students in northern New England these last four years,” Broderick said. “But the isolation, loss and disruption COVID has caused have made those conditions worse for many adolescents while others are experiencing them for the first time.”

Broderick said in holding the forum, he hopes it serves as a jumping off

point for the community to commit to supporting its students during this crisis.

“The only mistake we can make as a community is not to talk about it and not to help those affected. There’s no shame and no blame,” Broderick said. “No one asked to have their mental health challenge and no one deserves it. Help is possible.

These are all our kids and the entire community needs to engage.”

Kim did not immediately respond to a request for comment.

Registration for the forum is available at eventbrite.com/e/covid-19-how-the-pandemic-has-fueled-a-mental-health-crisis-for-our-youth-tickets-143231757041.

**Need to place a legal notice**  
in the Portsmouth Herald, Exeter News-Letter, Hampton Union, Foster’s Daily Democrat or Seacoast Sunday?  
Email your request to: [SeacoastLegals@gannett.com](mailto:SeacoastLegals@gannett.com)  
Please include: notice text, publication name and date to publish along with your contact info

**TOWN OF ELIOT MAINE**  
PLANNING OFFICE  
1333 State Road  
Eliot ME, 03903

**PUBLIC HEARING NOTICE**

**AUTHORITY:** Eliot, Maine Planning Board  
**PLACE:** Remote Zoom Meeting  
**DATE OF HEARING:** March 16<sup>th</sup>, 2021  
**TIME:** 7:00PM

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**WELCOME**  
Sheehan Phinney welcomes  
Jeff Bernarducci to the firm.



**Jeff Bernarducci**  
Shareholder  
617.897.5665  
[jbernarducci@sheehan.com](mailto:jbernarducci@sheehan.com)

Jeff works in the firm’s Boston and Portsmouth offices. He provides strategic counseling, risk management, litigation, and transactional services to clients in the construction, energy, and real estate sectors.

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DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

**Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations**

*FINAL DRAFT FOR PUBLIC HEARING, Planning Board, March 16, 2021*

**Article \_\_. Shall an ordinance entitled “Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations” dated 6/8/2021 be enacted?**

**Background and rationale – short**

Makes changes to marijuana licensing requirements and land use regulations. Better defines various medical marijuana uses under the term “medical marijuana establishment”. Brings medical marijuana establishments under Chapter 11 licensing requirements. Consolidates land use performance standards for medical and adult use marijuana under Section 33-190. Strengthens and better defines certain performance standards. Clarifies shoreland zoning allowability for marijuana establishments and medical marijuana establishments, while retaining their allowability only in the base Commercial/Industrial (C/I) zoning district.

**Background and rationale – long**

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) to prohibit marijuana manufacturing in all shoreland zones and allow other marijuana uses only within the Limited Commercial (LC) and General Development (GD) shoreland zoning districts, and subject to Planning Board review and approval. The amendments clarify that all marijuana uses are prohibited in the Resource Protection (RP), Stream Protection (SP), and Limited Residential

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

(LR) shoreland zoning districts. Shoreland zoning restrictions apply in addition to base zoning (e.g. the C/I zoning district). (While the amendments would technically allow marijuana manufacturing in the GD shoreland zoning district, there are few GD zones in town, and none overlapping with the C/I zoning district.) The amendments also add language requiring marijuana uses to be principal, and not accessory, uses.

Currently, there are two sets of land use performance standards for marijuana uses: Section 33-189 for medical marijuana and Section 33-190 for adult use marijuana. The amendments consolidate the two by repealing Section 33-189 and incorporating medical marijuana references into Section 33-190. This will result in similar rules for both medical and adult use marijuana land uses. The amendments also modify the language of several performance standards to make them clearer, stronger, and-or more consistent with state law.

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

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

**(New text underlined in bold)**

~~Deleted text in strikethrough~~

*[Note: section abridged to only show definitions proposed to be deleted by this ordinance amendment]*

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 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.

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use 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.~~

*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.

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

*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 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.**

***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.**

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

**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.

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

(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 chapters **33, 44 and 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 **or medical marijuana establishment**, including, but not limited to, a state license as defined by this article, a state retail certificate, or a state health license.

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

- (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.

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- (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, and the current version of the Maine Medical Use of Marijuana Program (MMMP) Rule (18-691 C.M.R., ch. 2) or other state implementing regulations, 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.**

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

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

**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.**

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

~~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\(3\)](#).)~~

Sec. 33-190. - 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.
  - a.** All signage and advertising for any marijuana establishment **or medical marijuana establishment** shall comply with **the signage, advertising, and marketing provisions in 22 M.R.S.A § 2429-B and 28-B M.R.S.A § 702, as may be amended, 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.
  - b.** **There is a compelling governmental interest to the Town of Eliot in marijuana establishments and medical marijuana establishments abiding by the signage, advertising, and marketing provisions in 22 M.R.S.A § 2429-B and 28-B M.R.S.A § 702, as may be amended, including, but not limited to, reducing the likelihood of reaching persons under 21 years of age, who may frequently ride in (or may be old enough to drive) vehicles upon streets, town ways, or public ways from which signage is visible and legible. Many persons in this age range may understand words such as "marijuana" and "cannabis", or any other word, phrase or symbol commonly understood to refer to marijuana. The use of these terms may increase the appeal or awareness of marijuana**

**establishments, medical marijuana establishments, or marijuana use to these persons. To reduce the likelihood of this appeal and awareness, no signage visible from a street, town way, or public way may use the word “marijuana” or “cannabis”, or any other word, phrase or symbol commonly understood to refer to marijuana.**

- (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 or waiver.**
  - 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 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))

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions; Chapter 11 – Marijuana Establishments, Chapter 33 – Planning and Development, and Land Use Regulations; Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Marijuana Licensing and Marijuana Land Use Regulations

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

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

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**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:					

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	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>a.</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>b.</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>

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	<b>c.</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>d.</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
(22)	<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><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>b.</b>	<b><u>Medical 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>c.</b>	<b><u>Medical marijuana caregiver retail 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>d.</b>	<b><u>Medical 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>e.</b>	<b><u>Medical 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>
(23)	Off-site parking		no	no <sup>7</sup>	no	no	no
<b>(24)</b>							
(24)	Public and private recreational areas involving minimal structural development		SPR	SPR	SPR	SPR	CEO
<b>(25)</b>							
<b>Accessory Structures or Uses</b>							
(25)	Structures accessory to allowed uses, not otherwise listed		SPR <sup>4</sup>	SPR	CEO	CEO	CEO
<b>(26)</b>							

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<del>(26)</del> <b>(27)</b>	Essential services	SPR 6	SPR 6	SPR	SPR	SPR
	a. Roadside distribution lines (34.5kV and lower)	CEO 6	CEO 6	yes 12	yes 12	yes 12
	b. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	SPR 6	SPR 6	CEO	CEO	CEO
	c. Non-roadside or cross-country distribution lines involving 11 or more poles in the shoreland zone	SPR 6	SPR 6	SPR	SPR	SPR
	d. Other essential services	SPR 6	SPR 6	SPR	SPR	SPR
<del>(27)</del> <b>(28)</b>	Fences	yes 11A	yes 11A	yes 11A	yes 11A	yes 11A
<del>(28)</del> <b>(29)</b>	Filling and earthmoving of < 10 cubic yards	CEO	CEO	yes	yes	yes
<del>(29)</del> <b>(30)</b>	Filling and earthmoving of > 10 cubic yards	SPR	SPR	CEO	CEO	CEO
<del>(30)</del> <b>(31)</b>	Home business	no 12A	no 12A	SPR 10A	SPR 10A	no
<del>(31)</del> <b>(32)</b>	Home occupations; regular and water-dependent	no	no	no	no	no
<del>(32)</del> <b>(33)</b>	Home Office	CEO	no	CEO	CEO	CEO
<del>(33)</del>	Individual, private campsites	CEO	CEO	CEO	CEO	CEO

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<b>(34)</b>						
<del>(34)</del> <b>(35)</b>	Land management roads	yes	SPR	yes	yes	yes
<del>(35)</del> <b>(36)</b>	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 <sub>11</sub>				
	b. Permanent residential	SPR	SPR	SPR	SPR	SPR
	c. Permanent commercial	SPR <sub>14</sub>	SPR <sub>14</sub>	SPR <sub>14</sub>	SPR	SPR
	d. Limited commercial	SPR <sub>5</sub>	SPR <sub>5</sub>	SPR <sub>5</sub>	SPR	no
<del>(36)</del> <b>(37)</b>	Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI
<del>(37)</del> <b>(38)</b>	Road and driveway construction	SPR	no <sup>8</sup>	SPR	SPR	SPR
<del>(38)</del> <b>(39)</b>	Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes
<del>(39)</del> <b>(40)</b>	Signs.	yes <sub>9A</sub>				
<del>(40)</del> <b>(41)</b>	Solar energy system	CEO <sub>15</sub>				

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<del>(41)</del> <b>(42)</b>	Small wind energy system	SPR 16	SPR 16	SPR 16	SPR 16	SPR 16
<del>(42)</del> <b>(43)</b>	Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO
<del>(43)</del> <b>(44)</b>	Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO
<del>(44)</del> <b>(45)</b>	Uses similar to uses requiring a SPR permit	SPR	SPR	SPR	SPR	SPR
<del>(45)</del> <b>(46)</b>	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.

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- 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>2019</sup>	no <sup>2019</sup>	no <sup>2019</sup>	no <sup>2019</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>2+20</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>20</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>49</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.~~19. See chapter 12 for additional regulations pertaining to the sale and use of fireworks.
- ~~21.~~20. Must conform to the requirements of section 33-190. **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 of Chapter 1 – General Provisions, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Zoning Variances and Subdivision (Non-Zoning) Modifications and Waivers**

*FINAL DRAFT FOR PUBLIC HEARING, Planning Board, March 16, 2021*

**Article [redacted]. Shall an ordinance entitled “Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Zoning Variances and Subdivision (Non-Zoning) Modifications and Waivers” dated 6/8/2021 be enacted?**

**Background and rationale – short**

Modifies provisions regarding zoning variances to make them consistent with state law. Removes Section 45-194 authorizations for the Code Enforcement Officer to permit a 25 percent reduction in certain dimensional standards and for the Board of Appeals to grant a “waiver” allowing a 50 percent reduction in certain dimensional standards, both of which are inconsistent with state law. Retains current Town Code variance criteria and labels it a “hardship variance”. Establishes an alternative “practical difficulty variance” option, as provided for in state law, where the Board of Appeals may review an appeal for a relaxation of certain dimensional standards of up to 50 percent for nonconforming lots of record. Clarifies language for a “disability variance”, which allows the relaxation of certain dimensional standards for the purpose of making a dwelling accessible to a person with a disability. Modifies language regarding waivers and modifications of subdivision standards (Ch. 41), removing the term “variance” from that chapter to avoid confusion because such modifications are different than zoning variances.

**Background and rationale – long**

Founded on recommendations by the Board of Appeals, 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.

Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 41 – Subdivisions, Chapter 44 – Shoreland Zoning, and Chapter 45 – Zoning, Related to Zoning Variances and Subdivision (Non-Zoning) Modifications and Waivers – DRAFT

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). 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 a limited 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: section abridged to only show definitions proposed to be added or changed by this ordinance]*

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.***

[...]

***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.***

[...]

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~~ **this chapter**. Any order, requirement, decision or determination made, or failure to act, in the enforcement of ~~the ordinance from which this chapter is derived~~ **this chapter** 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. 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 ~~section above~~ **undue hardship variance standards**, 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 of 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 nonconforming use where a party establishes that the strict application of this chapter will cause undue hardship and all of the same defining standards as in paragraph (3) above are met, except that no variance may be granted for any establishment or change to a 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 pursuant to Article II of this chapter, 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))

**Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 16 – Waste Recycling and Disposal, Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyists**

*Draft – March 2, 2021*

**Article \_\_. Shall an ordinance entitled “Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 16 – Waste Recycling and Disposal, Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyists” 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.

Principal auto recycling operations would be defined as taking up more than 25 percent of the lot. Under these amendments, they must comply with the new land use standards in Section 45-468.2 and the permitting requirements in Article II of Chapter 16. The existing definition of "limited" auto recycling operations – incidental to an auto repair garage or auto service station – would be modified to also specify that they use no more than 25 percent of the lot. These limited uses would need to comply with applicable land use standards in Section 45-468.2 but would not be subject to the permitting requirements in Article II of Chapter 16.

If these amendments are approved, anyone wishing to operate an auto graveyard or auto recycling operation, principal, 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.

**(New text underlined in bold)**

~~Deleted text in strikethrough~~

*[Note: section abridged to only show definitions proposed to be deleted by this ordinance amendment]*

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 three to five vehicles, or parts of such vehicles, included in the definition of auto hobbyist.**

[...]

*Auto recycling operation* 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 uses more than 25 percent of the area of a lot.**

*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 and uses no more than 25 percent of the area of the lot.** ~~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.~~

[...]

DRAFT

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	

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 16 – Waste Recycling and Disposal, Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyists

	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
	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, principal</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
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DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 16 – Waste Recycling and Disposal, Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyists

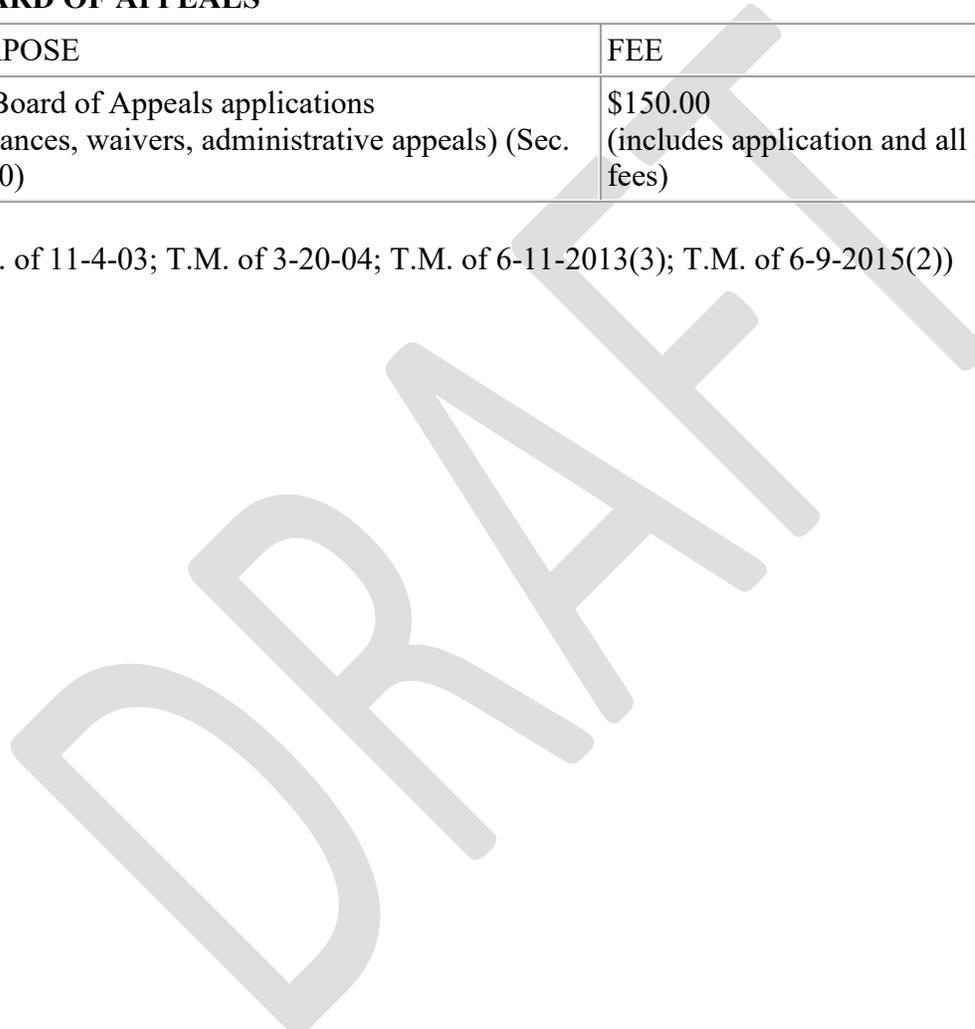
Site Plan Review (Sec. 33-128)	Rural, Suburban, Village, Commercial/Industrial Zoning Districts	General site plan review application (non Shoreland zone)	\$100.00 per acre up to 5 acres; \$50.00 each additional acre (minimum fee \$100.00)
		Change of use (no site changes or major structural changes or 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
<i>(Public hearing fees not included)</i>	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	

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions, Chapter 16 – Waste Recycling and Disposal, Chapter 44 – Shoreland Zoning; and Chapter 45 – Zoning, Related to Auto Graveyards, Auto Recycling Operations, and Auto Hobbyists

	Revisions to final subdivision plans after approval (Sec. 41-182)	\$200.00 per lot or dwelling unit affected by change
	Public hearing fees (includes abutter notification via certified mail and advertising in 2 local newspapers)	\$175.00

<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))



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, principal; 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, principal; or auto hobbyist storage area, all or part of which is within the town. It shall not apply to auto recycling operation, limited, uses, as such is defined in Section 1-2. However, auto recycling operation, limited, uses shall comply with the applicable requirements of Section 45-468.2. Unless otherwise noted, any generic references to "auto recycling operation(s)" in this article are intended to apply only to auto recycling operation, principal, uses.

- (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 town 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 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, or 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 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) 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. 16-20. – 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. 16-21. – Appeals**

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

**Sec. 16-22. – 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 \$100.00 and not more than \$1,000.00 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 three or more violations 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.

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

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:					

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	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
<b>(16)</b>	<b><u>Auto graveyard</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>
<b>(17)</b>	<b><u>Auto hobbyist storage area</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>
<b>(17)</b>	<b><u>Auto junkyard</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>
<b>(18)</b>	<b><u>Auto recycling operation</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>
<b>(19)</b>	<b><u>Auto recycling operation, limited</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>	<b><u>no</u></b>
<b>(15)</b> <b>[re#]</b>	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>	no <sup>17</sup>	no <sup>17</sup>	no <sup>17</sup>	no <sup>17</sup>
(20)	Gambling Casino	no	no	no	no	no
(21)	Marinas					
	a. Full service	no	no	no	no	SPR
	b. Limited	no	no	no	SPR	SPR
(22)	Nonprofit medical marijuana dispensary	no	no	no	no	no
(23)	Off-site parking	no	no <sup>7</sup>	no	no	no
(24)	Public and private recreational areas involving minimal structural development	SPR	SPR	SPR	SPR	CEO
<b>Accessory Structures or Uses</b>						
(25)	Structures accessory to allowed uses, not otherwise listed	SPR <sub>4</sub>	SPR	CEO	CEO	CEO
(26)	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 <sup>12</sup>	yes <sup>12</sup>	yes <sup>12</sup>
	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

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	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 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 <sup>5</sup>	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\(4\)](#) )

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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

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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	yes	yes	yes	yes
100 cubic yards or greater	SPR	SPR	SPR	SPR

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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

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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>
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

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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
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

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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 <sub>3</sub>	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 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 limited-term permit.
- (13) Hours of operation shall be limited to 8:00 a.m. through 5:00 p.m., five days a week, Monday through Friday.
- (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 of Chapter 45 – Zoning, Related to Accessory Dwelling Units**

*FINAL DRAFT FOR PUBLIC HEARING, Planning Board, March 16, 2021*

**Article \_\_. Shall an ordinance entitled “Proposed Town Code Amendments of Chapter 45 – Zoning, Related to Accessory Dwelling Units” dated 6/8/2021 be enacted?**

**Background and rationale – short**

Modifies Section 45-459 to provide more flexibility for the creation of accessory dwelling units (ADUs). Changes the maximum gross floor area of an ADU to be no greater than 50 percent of the principal dwelling unit (PDU), or 1,000 square feet, whichever is less, compared to the existing static maximum of 650 square feet. Removes the prohibition on both the PDU and ADU having a home occupation or home business as accessory uses. Modifies and simplifies ADU occupancy limits to 2 persons per bedroom, which may be increased after application and inspection, compared to the existing occupancy limits, which are pegged to ADU size.

**Background and rationale – long**

These amendments modify Section 45-459 of the Town Code to allow greater flexibility for accessory dwelling units (ADUs). The amendments increase the maximum gross floor area of an ADU from 650 sq. ft. to 1,000 sq. ft., or 50 percent of the principal dwelling unit (PDU), whichever is less. The 50 percent provision creates proportionality between the PDU and the ADU, preventing ADUs from being of greater, equal, or similar size as the principal dwelling unit. That type of situation would be contrary to the “clearly secondary” nature of the ADU (as described in its definition in Section 1-2). Increasing the overall area cap from 650 sq. ft. addresses Affordable Housing Strategy 1.1 in the 2009 Comprehensive Plan.

The amendments simplify ADU standards related to home occupations/home businesses and the maximum number of ADU occupants. Although it is somewhat unclear, paragraph (c)(6) appears to prohibit a situation where both the principal dwelling unit and the ADU have a home occupation or a home business. The amendments strike this paragraph to allow greater flexibility for both units to have home occupations or home businesses. Sections 45-455 (Home occupations) and 45-456.1 (Home businesses) already have limitations on the scale of these respective uses. Home occupations cannot exceed 25 percent of the total area of the principal residential or other structure. A single home business, or multiple home businesses collectively, cannot exceed 1,500 sq. ft. in total area. Paragraph (c)(13) currently pegs maximum ADU occupancy to various ADU size ranges. The amendments simplify this paragraph by prescribing a two-per-bedroom standard but allowing for a greater occupancy if approved by the Code Enforcement Officer and the Fire Chief (or their designees) after inspection.

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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~~ **The maximum gross floor area of an ADU shall be 1,000 square feet or 50 percent of the gross floor area of the principal dwelling unit, whichever is less. The minimum gross floor area of an ADU shall be or less than 300 square feet.** ~~;-An ADU shall not 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)~~**(6)** 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

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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)~~(7) 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)~~(8) 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)~~(9) 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)~~(10) 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)~~(11) 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)~~(12) 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~~

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~~persons in a unit of 601 square feet or greater of gross floor area.~~ **No more than two persons per bedroom are allowed, unless otherwise approved by the Code Enforcement Officer and the Fire Chief or their respective designees. Increased occupancy limits may be granted after application to the Code Enforcement Officer and inspection of the dwelling unit.**

- (14)(13) 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)(14) 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)(15) 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)(16) 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)

**Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 35 – Post-Construction Stormwater Management, Related to Post-Construction Stormwater Management Applicability and Inspections**

*FINAL DRAFT FOR PUBLIC HEARING, Planning Board, March 16, 2021*

**Article [REDACTED]. Shall an ordinance entitled “Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 35 – Post-Construction Stormwater Management, Related to Post-Construction Stormwater Management Applicability and Inspections” dated 6/8/2021 be enacted?**

**Background and rationale – short**

Makes technical modifications to Chapter 35 to maintain consistency with Maine’s Small Municipal Separate Storm Sewer Systems (MS4) General Permit. Updates the Section 1-2 definition of “Urbanized Area” to reference the latest applicable U.S. censuses. Modifies the inspection requirements for stormwater management facilities subject to a maintenance agreement with the Town, so that the property owner subject to the agreement must have annual inspections of their facilities conducted by a qualified professional (described in a new Section 1-2 definition) and certify back to the Town, instead of the Town being responsible for inspections.

**Background and rationale – long**

These amendments make changes to Chapter 35 of the Town Code, Post-Construction Stormwater Management, recommended by the technical consultant for the Southern Maine Stormwater Working Group, of which the Town of Eliot is a member. Chapter 35 provides for review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by federal and state law. It establishes methods for post-construction stormwater management in order to comply with minimum control measures requirements of the Federal Clean Water Act, of federal regulations and of Maine’s Small Municipal Separate Storm Sewer Systems (MS4) General Permit.

The amendments update the outdated definition of “urbanized area” in Section 1-2. The urbanized area is updated every decennial U.S. census and is the part of town in which the MS4 requirements apply. Part of Eliot is in an urbanized area and part is outside of it. The current Section 1-2 definition references the 2000 Census. The amendments also change the inspection requirements for stormwater management facilities subject to a maintenance agreement with the town, so that the property owner subject to the agreement must have annual inspections of their facilities conducted by a qualified professional (described in a new Section 1-2 definition) and certify back to the Town, instead of the Town being responsible for inspections. This will reduce

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the burden on Town staff while continuing to ensure that stormwater is being properly managed on-site.

Appendix 1 – Maintenance Agreement for Stormwater Management Facilities – includes modifications to reflect this self-inspection and certification process, and a new Appendix 2 comprises the certification form.

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

*[abridged to only show the parts of this section being changed]*

[...]

**Qualified Post-Construction Storm Water Inspector means a person who conducts post-construction inspections of Storm Water Runoff Systems and meets the following qualifications:**

- (1) The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property, and**
- (2) The Inspector shall also meet the following criteria:**
  - a. Someone who has received the appropriate training for such inspection from the Maine Department of Environmental Protection (DEP) and holds a valid certificate from DEP for such inspection, or;**
  - b. Someone who has a working knowledge of the most current DEP Storm Water Management Laws including but not limited to Chapter 500 and Chapter 502 Rules, Storm Water Management Rules and Maine’s Storm Water BMP Manual, has a college degree in environmental science, civil engineering, or comparable expertise, or any combination of experience and training; has a demonstrated practical working knowledge of Storm Water hydrology and Storm Water management techniques, including the maintenance requirements for Storm Water Runoff Systems; and has the ability to determine if Storm Water Runoff Systems are performing as intended.**

[...]

*Urbanized area ("UA") (chapter 35)* means the areas of the State of Maine so defined by the **cumulative area identified by the 2000 census and 2010 census** ~~latest decennial (2000)~~ census by the U.S. Bureau of the Census.

[...]

## Chapter 35 - POST-CONSTRUCTION STORMWATER MANAGEMENT

Footnotes:

--- (1) ---

**Cross reference**— Non-stormwater discharges, ch. 31 et seq.

Sec. 35-1. - Purpose.

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

(T.M. of 6-9-09(2))

Sec. 35-2. - Objectives.

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

- (1) Reduce the impact of post-construction discharge of stormwater on waters of the state; and
- (2) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through use of best management practices as promulgated by the Maine Department of Environmental Protection (MEDEP) pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

(T.M. of 6-9-09(2))

Sec. 35-3. - Applicability.

(a) *In general.* This chapter applies to:

- (1) Development or redevelopment that disturbs ~~more than~~ one acre **or more** of land within the ~~municipality~~ **Urbanized Area**; and
- (2) Development that disturbs less than one acre if the development is part of a larger common plan of development or sale **within the Urbanized Area**.

(T.M. of 6-9-09(2))

Sec. 35-4. - Post-construction stormwater management plan approval.

- (a) *General requirement.* No applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for development to which this chapter is applicable shall receive such permit or approval for that development unless the municipal permitting authority for that development also determines that the applicant's post-construction stormwater management plan for that development meets the requirements of this chapter.
- (b) *Performance standards.*
  - (1) The applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the development through a post-construction stormwater management plan. This post-construction stormwater management plan shall be designed to meet the standards contained in the MEDEP's Chapters 500 and 502 Rules and shall comply with the practices described in the manual Stormwater Management for Maine, published by the MEDEP, January 2006, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.
  - (2) The applicant may meet the quantity and quality design standards of Chapter 500 and Chapter 502 MEDEP Rules above either on-site or off-site, but where off-site facilities are used, the applicant must submit to the municipality documentation approved as to legal sufficiency by the municipality's attorney that the applicant has a sufficient property interest in the property where the off-site facilities are located—by easement, covenant or other appropriate legal instrument—to ensure that the facilities will be able to provide post-construction stormwater management for the development and that the property interest will not be altered in a way that interferes with the off-site facilities.
  - (3) Where the applicant proposes to retain ownership of the stormwater management facilities shown in its post-construction stormwater management plan, the applicant shall submit to the municipality documentation, approved as to legal sufficiency by the municipality's attorney that the applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the stormwater management facilities. Applications for development requiring stormwater management facilities that will not be dedicated to the municipality shall enter into a maintenance agreement with the municipality. A sample of this maintenance agreement is attached as Appendix 1 to this chapter.
  - (4) Whenever elements of the stormwater management facilities are not within the right-of-way of a public street and the facilities will not be offered to the municipality for acceptance as public facilities, the municipal permitting authority may require that perpetual easements not less than 30 feet in width, containing facilities necessary for post-construction stormwater management as approved by the municipal permitting authority and in a form acceptable to the municipality's attorney, shall be provided to the municipality allowing access for maintenance, repair, replacement and improvement of the stormwater management facilities. When an offer of dedication is required by the municipal permitting authority, the applicant shall be responsible for the maintenance of these stormwater management facilities under this chapter until such time (if ever) as they are accepted by the municipality.

- (5) In addition to any other applicable requirements of this chapter and the municipality's municipal code of chapters, any development which also requires a stormwater management permit from the MEDEP under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the municipal permitting authority. Where the standards or other provisions of such stormwater rules conflict with municipal chapters, the stricter (more protective) standard shall apply.
- (6) In addition, any persons required to enter into a maintenance agreement under this section of this chapter ~~will be inspected annually by the town's code enforcement officer or as designated by the board of selectmen~~ **shall use a Qualified Post-Construction Storm Water Inspector to conduct annual inspections of their stormwater management facilities and shall annually certify compliance with said agreement to the town by July 1 each year using a form similar to the Form in Appendix 2 to this chapter.** ~~and shall pay an annual fee to cover the inspection. The amount of the initial fee is included in the project application fees. The party to the maintenance agreement shall receive notices annually thereafter of the amount of the inspection fee.~~
- (7) Notice of BMP discharge to municipality's MS4. At the time of application, the applicant shall notify the municipal permitting authority if its post-construction stormwater management plan includes any BMP(s) that will discharge to the municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

(T.M. of 6-9-09(2))

Sec. 35-5. - Same—Compliance.

- (a) *General requirements.* Any person owning, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan under this chapter shall demonstrate compliance with that plan as follows.
  - (1) That person shall, at least annually, clean and maintain the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.
  - (2) That person shall repair any deficiencies found during their own, or the town's, inspection of the stormwater management facilities; **and provide notice to the Town they have completed the repairs within 60 days of said inspection or within a schedule approved by the Code Enforcement Officer.**
- (b) *Right of entry.* In order to determine compliance with this chapter and with the post-construction stormwater management plan and to conduct annual inspections, the code enforcement officer or town designee may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the stormwater management facilities.

(T.M. of 6-9-09(2))

Sec. 35-6. - Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this chapter or of the post-construction stormwater management plan. Whenever the code enforcement officer believes that a person has violated this chapter or the post-construction stormwater management plan, the code enforcement officer may enforce this chapter in accordance with 30-A M.R.S.A. § 4452.

- (1) *Notice of violation.* Whenever the code enforcement officer believes that a person has violated this chapter or the post-construction stormwater management plan, the code enforcement officer may order compliance with this chapter or with the post-construction stormwater management plan by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
  - a. The abatement of violations, and the cessation of practices, or operations in violation of this chapter or of the post-construction stormwater management plan;
  - b. At the person's expense, compliance with BMPs required as a condition of approval of the development, the repair of stormwater management facilities and/or the restoration of any affected property; and/or
  - c. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

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

- (2) *Penalties/fines/injunctive relief.* Any person who violates this chapter or the post-construction stormwater management plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this chapter or the post-construction stormwater management plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this chapter or the post-construction stormwater management plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.
- (3) *Consent agreement.* The municipal officers may enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this chapter or of the post-construction stormwater management plan for the purposes of eliminating violations of this chapter or of the post-construction stormwater management plan and of recovering fines, costs and fees without court action.

- (4) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the code enforcement officer to the board of appeals in accordance with chapter 45, article II of this Code.
- (5) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation the municipal officers, upon notice from the code enforcement officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the town.

(T.M. of 6-9-09(2))

Sec. 35-7. - Severability.

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

(T.M. of 6-9-09(2))

Sec. 35-8. - Basis.

The Town of Eliot enacts this "Post-Construction Stormwater Management Control Ordinance" (the "ordinance") pursuant to 30-A M.R.S.A. § 3001 (Municipal Home Rule Ordinance Authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems," has listed the Town of Eliot as having a regulated small municipal separate storm sewer system ("Small MS4"); under this general permit, listing as a regulated small MS4 necessitates enactment of this chapter as part of the municipality's storm water management program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction stormwater management in development").

(T.M. of 6-9-09(2))

**APPENDIX 1**

**Maintenance Agreement for  
Stormwater Management Facilities**

This Maintenance Agreement is made this \_\_\_ day of \_\_\_\_\_ 20\_\_ by and between \_\_\_\_\_ and the Town of Eliot, Maine.

The project name is \_\_\_\_\_ .

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 35 – Post-Construction Stormwater Management, Related to Post-Construction Stormwater Management Applicability and Inspections – June 2021

The location is: \_\_\_\_\_, Eliot, Maine.

The project's Tax Map and Lot Numbers are Tax Map Lot \_\_\_\_\_

The project is shown on a plan entitled " \_\_\_\_\_ " dated \_\_\_\_\_ and most recently revised on \_\_\_\_\_, approved by the \_\_\_\_\_ [Municipal Permitting Board] on \_\_\_\_\_ and recorded in the \_\_\_\_\_ County Registry of Deeds in Plan Book \_\_\_\_\_ Page \_\_\_\_\_ (the "Project").

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

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

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

1. \_\_\_\_\_, for itself, and its successors and assigns, agrees to the following:
  - (a) To **use a Qualified Post-Construction Storm Water Inspector to inspect the Stormwater Management Facilities; and to** clean, maintain, and repair the Stormwater Management Facilities, which includes, to the extent they exist, parking areas, catch basins, detention basins or ponds, drainage swales, pipes and related structures, at least annually, to prevent the build up and storage of sediment and debris in the system as described in the Post-Construction Maintenance Plan for the facilities;
  - (b) ~~To allow access by Town personnel or the Town's designee for annual inspection of the Stormwater Management Facilities for conformance with these requirements;~~ **To provide a certification of inspection to the Town by July 1 each year.**
  - (c) ~~To pay the Town of Eliot an annual fee to conduct the inspections;~~
  - (d)(c) To repair any deficiencies in the Stormwater Management Facilities noted during the annual inspection **and provide notice to the Town of the repairs within 60 days of identification or within a schedule approved by the Code Enforcement Officer;** and
  - (e)(d) For subdivisions, to create a homeowners' association for the purpose of maintaining the Stormwater Management Facilities.
2. For subdivisions, upon creation of the homeowners' association, the homeowners' association shall become responsible for compliance with the terms of this Agreement.
3. This Agreement shall constitute a covenant running with the land, and \_\_\_\_\_ shall reference this Agreement in all deeds to lots and/or units within the Project.

_____	By: _____ Its: _____
-------	-------------------------

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 35 – Post-Construction Stormwater Management, Related to Post-Construction Stormwater Management Applicability and Inspections – June 2021

Witness	TOWN OF ELIOT, MAINE
_____	By: _____
Witness	Its: _____
STATE OF MAINE _____, ss.	_____, 20__

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

	Before me, _____ Notary Public/Attorney at Law
Print Name:	_____
STATE OF MAINE _____, ss.	_____, 20__

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

	Before me, _____ Notary Public/Attorney at Law
--	--

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 35 – Post-Construction Stormwater Management, Related to Post-Construction Stormwater Management Applicability and Inspections – June 2021

Print Name:	<input type="text"/>
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DRAFT

*Add a new appendix to the end of Chapter 35:*

## APPENDIX 2

### Inspection Certification for Stormwater Management Facilities

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

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

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

3. I am (circle one):

a. a Qualified Post-Construction Stormwater Inspector hired by the person or party specified in #2, and have reviewed the approved Stormwater Management Plan for the facility and have inspected the Stormwater Management Facilities;

or,

b. the person (or a duly authorized representative of the party) specified in #2, and I have hired a Qualified Post-Construction Stormwater Inspector and received and reviewed a copy of their inspection report;

4. On \_\_\_\_\_, 20\_\_\_, the Stormwater Management Facilities were inspected, including but not limited to parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures required by the approved Stormwater Management Plan for the Property;

5. At the time of the inspection (check one and complete any required information):

a. \_\_\_ The Stormwater Management Facilities were adequately maintained and functioning as intended, or

b. \_\_\_ The Stormwater Management Facilities required maintenance, which was completed within the required 60-day time period, and were functioning as intended after maintenance was completed, or

DRAFT Proposed Town Code Amendments of Chapter 1 – General Provisions and Chapter 35 – Post-Construction Stormwater Management, Related to Post-Construction Stormwater Management Applicability and Inspections – June 2021

- c. \_\_\_\_ The Stormwater Management Facilities required maintenance which was not completed within the required 60-day time period. (Attach additional sheets as necessary to describe the maintenance required, proposed schedule for completion, and an appropriate contact person. The Code Enforcement Officer will contact them to confirm or adjust the schedule to complete the maintenance and any needed further course of action.)

Date: \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_ (Signature)

( Print Name\_

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

	Before me, _____ Notary Public/Attorney at Law
Print Name:	_____
STATE OF MAINE _____, ss.	_____, 20__

The Town of Eliot requires this form to be sent to the Code Enforcement Officer by July 1 each year.

**DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

**Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads – DRAFT**

*FINAL DRAFT FOR PUBLIC HEARING, Planning Board, March 16, 2021*

**Article   . Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads” dated 6/8/2021 be enacted?**

**Background and rationale**

This amendment removes “land management roads” from Section 44-34, the table of land uses in Chapter 44 – Shoreland Zoning, to be consistent with the Maine Department of Environmental Protection’s (DEP) Guidelines for Municipal Shoreland Zoning Ordinances. Currently, land management roads are allowable in the table as an accessory use. According to their definition in Section 1-2, land management roads are used primarily for timber harvesting and related activities. Timber harvesting has already been removed from the table per DEP Guidelines, but to complement this, DEP is also calling on the Town to remove land management roads. The result of the adoption of this amendment would be to defer regulation of land management roads in the shoreland zone to the state Bureau of Forestry, as is currently the case for timber harvesting.

**DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

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

*[In conjunction with other proposed amendments to this section proposed for the June 2021 Town 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:

**DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

*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

**DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

<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>	no <sup>17</sup>	no <sup>17</sup>	no <sup>17</sup>	no <sup>17</sup>	
(20)	Gambling Casino	no	no	no	no	no	

**DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

(21)	Marinas						
	a.	Full service	no	no	no	no	SPR
	b.	Limited	no	no	no	SPR	SPR
(22)	Nonprofit medical marijuana dispensary		no	no	no	no	no
(23)	Off-site parking		no	no <sup>7</sup>	no	no	no
(24)	Public and private recreational areas involving minimal structural development		SPR	SPR	SPR	SPR	CEO
<b>Accessory Structures or Uses</b>							
(25)	Structures accessory to allowed uses, not otherwise listed		SPR <sub>4</sub>	SPR	CEO	CEO	CEO
(26)	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 <sub>6</sub>	SPR <sub>6</sub>	SPR	SPR	SPR
(27)	Fences		yes <sub>11A</sub>				
(28)	Filling and earthmoving of < 10 cubic yards		CEO	CEO	yes	yes	yes

**DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

(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
<del>(35)</del> <b>(34)</b>	Piers, docks, wharves, bridges and other structures and uses 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
<del>(36)</del> <b>(35)</b>	Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI
<del>(37)</del> <b>(36)</b>	Road and driveway construction	SPR	no <sup>8</sup>	SPR	SPR	SPR
<del>(38)</del>	Service drops, as defined, to allowed uses	yes	yes	yes	yes	yes

**DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

<b><u>(37)</u></b>						
<del>(39)</del> <b><u>(38)</u></b>	Signs.	yes 9A	yes 9A	yes 9A	yes 9A	yes 9A
<del>(40)</del> <b><u>(39)</u></b>	Solar energy system	CEO 15	CEO 15	CEO 15	CEO 15	CEO 15
<del>(41)</del> <b><u>(40)</u></b>	Small wind energy system	SPR 16	SPR 16	SPR 16	SPR 16	SPR 16
<del>(42)</del> <b><u>(41)</u></b>	Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO
<del>(43)</del> <b><u>(42)</u></b>	Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO
<del>(44)</del> <b><u>(43)</u></b>	Uses similar to uses requiring a SPR permit	SPR	SPR	SPR	SPR	SPR
<del>(45)</del> <b><u>(44)</u></b>	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.

## **DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

- 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.

**DRAFT Proposed Town Code Amendments of Chapter 44 – Shoreland Zoning, Related to Land Management Roads**

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\(4\)](#))

DRAFT



# TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

## **Planning Board's Recommendation: 2022 Projected Growth**

*Draft for Planning Board review, 3/16/21*

### Overview

State law (30-A M.R.S.A. §4360) allows municipalities to enact rate of growth ordinances subject to conditions. Such ordinances allow municipalities to cap the number of annual building permits for new residential dwelling units. The municipality issues growth permits for dwelling units under the cap. Eliot's growth management provisions are included in Chapter 29 of the Land Use Regulations in the Town Code.

According to section 29-5, the Planning Board annually reviews the number of growth permits estimated to be issued for the following calendar year. Residents then vote on a warrant article to establish the maximum number of growth permits for that year (i.e. the growth permit allocation). Certain types of dwelling units – elderly, assisted living, and accessory – are exempt from the cap (section 29-3). For calendar year 2021, Eliot voters approved (on November 3, 2020) a maximum of twenty-six (26) growth permits. For 2022, the proposed growth permit allocation was calculated using the formula in subsection 29-5(a), which reads:

In accordance with 30-A M.R.S.A. § 4360, the number of building permits allocated each calendar year for new residential dwelling units must be 105 percent or more of the mean number of permits issued for new residential dwellings, not including permits for affordable housing, during the ten years immediately prior to the year in which the number is calculated. The mean is determined by adding together the total number of building permits issued, excluding permits issued for affordable housing, for new dwelling units for each year in the prior ten years and then dividing by ten. In addition, the minimum number of building permits allocated annually for new dwelling units meeting the definition of affordable housing shall be no less than ten percent of the number set forth above. If either number is a decimal, it shall be rounded to the nearest whole number. For the purposes of this chapter, 105 percent of the ten-year mean shall be the floor, or minimum number of building permits which must be allocated annually.

### Factors Considered by the Planning Board – Review of Annual Growth

The Planning Board generally considers the following factors when making recommendations regarding the number of growth permits to allocate annually:

- Number of permits issued for the previous, completed ten calendar years
- Input received from Town staff via the annual growth rate survey
- Length of the wait list for growth permits
- Other factors, as appropriate

### Annual Growth Rate Survey

The Annual Growth Rate Survey was sent to the following positions in accordance with the provisions of Section 29-5(b)(1): Town Manager, Town Clerk, Police Chief, Fire Chief, Code Enforcement Officer, Assessor, Planner, Public Works Director, ECSD Director, and Chief Operations Officer of MSAD35.

Previous surveys have used different "benchmark" permit allocations to gauge these staff members' estimates of the impacts on service levels should that amount of growth occur. The question below was asked with the three benchmarks of 27, 60, and 90.

In 2022, do you believe your department could reasonably handle the impacts of [27,60,90] new dwelling units without a decrease of service quality? • Yes • No

If no, please describe what measurable/notable impacts will be attributed to your department with [27,60,90] new dwelling units:

The survey also asks about whether the rate of new construction significantly impacted the respective departments' services in any of the past 10 years, and whether the type of housing (e.g. single family vs. senior housing) has any bearing on the benchmark allocation responses. Finally, the survey allows staff members to write in additional comments.

Below is a compilation of the survey results (two surveys were still outstanding as of March 9, 2021).

1. **The above chart indicates the number of new permitted dwelling units from 2011 to 2020. Over the last ten years do you recall any year(s) in which the rate of new construction significantly impacted or outpaced your department's ability to provide the necessary services and facilities to accommodate the increase in population?**

	#	%
<b>Yes</b>	0	0%
<b>No</b>	5	100%
<b>Total</b>	5	

- a. **If yes, please provide the years and describe any significant impacts to your department:**

[no write-in answers received]

2. **In 2022, do you believe your department could reasonably handle the impacts of 27 new dwelling units without a decrease of service quality?**

	#	%
<b>Yes</b>	5	71%
<b>No</b>	2	29%
<b>Total</b>	7	

- a. **If no, please describe what measurable/notable impacts will be attributed to your department with 27 new dwelling units:**

[no write-in answers received]

3. **In 2022, do you believe your department could reasonably handle the impacts of 60 new dwelling units without a decrease of service quality?**

	#	%
<b>Yes</b>	2	29%
<b>No</b>	5	71%
<b>Total</b>	7	

- a. **If no, please describe what measurable/notable impacts will be attributed to your department with 60 new dwelling units:**

“Would need additional staff” (x2)

“Would need more part time help”

“Too much for one CEO”

4. **In 2022, do you believe your department could reasonably handle the impacts of 90 new dwelling units without a decrease of service quality?**

	#	%
<b>Yes</b>	2	29%
<b>No</b>	5	71%
<b>Total</b>	7	

- a. **If no, please describe what measurable/notable impacts will be attributed to your department with 90 new dwelling units:**

“Would need additional staff” (x2)

“Would need more part time help”

“Too much for one CEO”

“Would require a total of 2 more employees & a total of 2 extra trucks”

5. **Considering the above questions, does the type of housing (single family; elderly; affordable) have any effect on the answers provided? For example, if 60 new dwelling units were to be constructed, would the impact(s) to your department be different if all the units were elderly housing versus single family housing?**

“I do not feel the effect would be different for our Department”

“No, concerned about too many inspections (regardless)”

6. **Please provide your additional comments about Eliot’s growth management program:**

“If the population goes over 7,000, we would be responsible for all the maintenance of Rt 236, requiring a fully rigged 10 wheel truck including all winter equipment and 1 added employee”

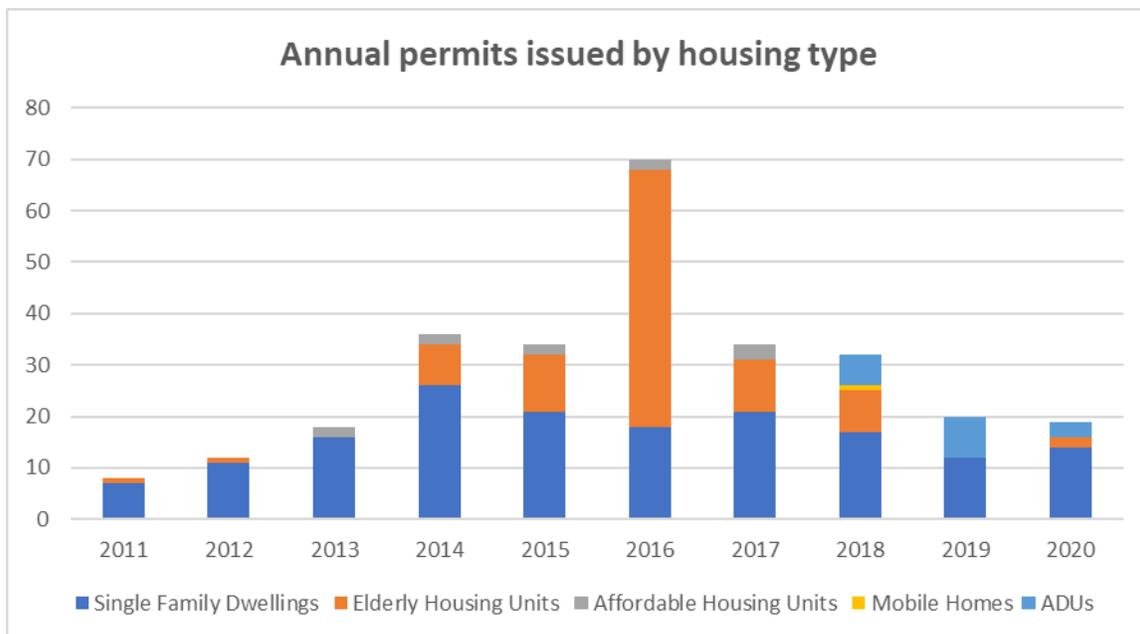
Review of Previous Permits Issued for the Past Ten Calendar Years

From 2011 to 2020, according to the Code Enforcement Officer's permit log, 163 permits were issued for single family dwelling units, 91 were issued for elderly housing units, 17 were issued for accessory dwelling units, 11 were issued for affordable housing units, and 1 was issued for a mobile home.

Year	Single Family Dwellings	Elderly Housing Units	Affordable Housing Units	Mobile Homes	ADUs
2011	7	1	0		
2012	11	1	0		
2013	16	0	2		
2014	26	8	2		
2015	21	11	2		
2016	18	50	2		
2017	21	10	3		
2018	17	8	0	1	6
2019	12	0	0	0	8
2020	14	2	0	0	3
<b>10-year total (2011-20)</b>	<b>163</b>	<b>91</b>	<b>11</b>	<b>1</b>	<b>17</b>
<b>10-year average (2011-20)</b>	<b>16.3</b>	<b>9.1</b>	<b>1.1</b>	<b>0.1</b>	<b>1.7</b>

Subsection 29-5(a) exempts affordable housing from the formula described above. For the purpose of this report, mobile homes and ADUs are also considered affordable housing. The 10-year average of single-family dwelling units plus elderly housing units is 25.4. Multiplying by 105% and rounding to the nearest integer, we arrive at an allocation of 27 for calendar year 2022, which is the presumed number in the draft warrant article. Previous warrant articles have also included a contingency allocation should the article not pass. At least in recent years, this appears to be 105% of the 10-year mean for single family dwelling units alone. Therefore, the difference between the allocation put to voters and the "fallback" allocation is the fact that the former accounts for the 10-year mean of elderly dwelling units. For the sake of continuity, this approach is continued for 2022.

The following chart shows a visual representation of the number of permits issued from 2011 to 2020.



The highest number of permits issued was 2016, mainly due to elderly housing units. Elderly housing built between 2014 and 2020 likely mostly includes units coming on line in the Village at Great Brook.

#### Wait List

As of the date of this memo, there is currently no wait list to obtain a growth permit with the Town.

#### Discussion

- Based on the Annual Growth Rate Survey, the benchmark of 27 permits was seen as reasonably manageable by most staff.
- All of the previous, complete 10 years (2011-20) had less than 27 single family dwelling unit growth permits. Year-to-year variability has come in the form of senior housing permits, primarily as units in the Village at Great Brook have come on line. A small amount of permits for affordable units, mobile homes, and ADUs have also been issued.
- An increase of 1 growth permit to 27, based on the “105% formula” represents a small increase that is likely to be manageable. Even then, this number represents the maximum of non-exempt growth permits. The actual number issued may fall well under this.
- Setting the cap at 60 (or especially 90) would have a significant impact on Town services given current staffing levels.

#### Planning Board’s Recommendation

[TBD]

#### Select Board

[TBD]



# TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

## Proposed Warrant Article for June 2021 Town Ballot

Establishing the Maximum Number of Growth Management Permits for 2022 (*Chapter 29 of the Municipal Code of Ordinances of Eliot, Maine*)

Shall the Town of Eliot allocate a maximum of 27 growth permits for new residential dwelling units for calendar year 2022, as recommended by the Eliot Planning Board, in accordance with §29-5 of the Growth Management chapter of the Municipal Code of Ordinances of Eliot, Maine?\*

*\*Note: In the event this article does not pass, the number of growth permits allocated in 2022 will be 105% of the mean number of permits issued for new residential dwelling units during the previous ten years, as required by M.R.S.A. 30-A §4360. That number is estimated to be 17.*

