


## Town of Southwest Harbor

# Land Use Ordinance

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Attested True Copy:

Jennifer E LaHaye, Town Clerk

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## SECTION I: INTRODUCTION

A: Title, Authority, and Administration

1. This ordinance shall be known and may be cited as the "Southeast Harbor Land Use Ordinance of the Town of Southwest Harbor"

2. This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution, the provisions of M.R.S.A. 30-A §4301, et seq

3. This Ordinance shall be administered by the Planning Board and the Code Enforcement Officer of the Town of Southwest Harbor.

B. Purpose of the Ordinance

1. The Southwest Harbor Land Use Ordinance (LUO) seeks to maintain a safe, healthy, and attractive environment. It is intended to regulate the construction of buildings, roads, signs, etc., and the uses to which buildings are put, so as to ensure that they do not cause damage to their neighbors or to natural resources (such as ground water, wetlands, fish spawning grounds, aquatic life, bird and other wildlife habitat, etc.), and so that such developments do not create dangerous situations on the public roads or overload the public services of the Town. The LUO also seeks to protect buildings and lands from flooding and accelerated erosion, to protect archaeological and historic resources.

2. In addition, the LUO contains provisions to reflect the Southwest Harbor Comprehensive Plan, approved November 2, 2010.

3. To achieve these ends, the Ordinance sets out standards such as density; setbacks from roads, property lines, water bodies, and wetlands; height limits; buffering by means of planted areas; off-street parking requirements; etc. Some of these standards vary in the different zones and with different land uses.

4. Applicants for building permits are obliged to provide the Town with information, including site plans, sufficient to judge all the above factors. Generally, the Town is not concerned with maintenance work or alterations within a building, which do not affect its footprint, its location, height or use.

C. Planning Objectives

1. The existing pattern of Southwest Harbor is not one of exclusive residential, industrial and commercial areas. This Ordinance seeks to maintain a mixture of uses by allowing most land use activities in most areas of the Town. Several zones have been established. The difference between most zones is not in allowable land use activities, but rather in the allowable density of the activity. In the downtown zone, for example, the limitations on commercial building are less burdensome than in the other zones. Limitations differ depending upon whether town sewer is available or not, and in which zone the activity occurs.

D. Effective Date

(1) The effective date of this Ordinance is June 29th, 1992, or as amended thereafter. A certified copy of this Ordinance is filed with the Town Clerk and is accessible to any member of the public. Copies are available for reference and may be purchased for a reasonable fee to be determined by the Board of Selectmen. Certified copies of the relevant accompanying maps are filed in the Town Office.

E. Other Legislation

1. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance. The Town is obliged to notify applicants of the requirements of State and Federal legislation. Permits must be received for the regulated activity from the government body before the Town will approve a scheme. The Town may give the permission conditional on the receipt of the permit.
2. The Federal agencies: Army Corps of Engineers – concerned with rights in the water
3. The State agencies:
    a. Department of Environmental Protection (DEP) – Natural Resource Protection Act (development in or near streams, lakes, coastal waters, and coastal and freshwater wetlands)
    b. Maine Department of Transportation (MDOT) – Road openings and road/driveway entrances
    c. State Fire Marshal's Office – Fire safety & handicapped access.
    d. Local Plumbing Inspector (LPI) – New or altered plumbing or an increase in the number of bedrooms
    e. Maine Department of Transportation (MDOT) - Law concerning the protection of underground utilities (the so-called 'Dig Safe' law), M. R. S. A. 23, § 3360-A.

4. The Town Requirements:
    a. The Town is mandated to administer the State Shoreland Zoning Ordinance and the minimum requirements are contained in the Southwest Harbor Shoreland Zoning Ordinance
    b. The Town also administers the Floodplain Management Ordinance and any development in flood hazard zones must conform to this Ordinance.
    c. Other Town requirements are:
        1) Driveway/road entrance permit;
        2) Sewer permit and/or a water permit

F. Boundary Map

The "Town of Southwest Harbor Official Zoning Map" shall be drawn on a scale of not less than: 1 inch = 1000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

## SECTION II: GENERAL REGULATIONS AND STANDARDS

A. General Regulations

1. Any structure or property in the Town devoted to a lawful use at the time of adoption of this Ordinance may continue in such use until abandoned.

2. After the date of adoption of this Ordinance, all buildings, structures, land or parts thereof shall be erected, constructed, expanded moved or structurally altered in conformance with the land use, structure and performance standards herein specified for the zone in which they are located. All new lots shall be created in conformance with the lot size, structure, and performance standards herein specified for the zone in which they are located.

3. Normal repairs and maintenance do not need a permit from the Town as long as they do not involve expansion of a structure or use, or a change in use. This ordinance allows, without a permit the normal upkeep and maintenance of non-conforming uses and structures, including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state or local building and safety codes may require.

4. Each subdivision requires approval by the Planning Board in accordance with provisions of this ordinance and of the "Subdivision Ordinance of the Town of "Southwest Harbor". A building permit may be approved simultaneously for construction within the first year of subdivision approval.

5. Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

6. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

7. To be enforceable, this Ordinance must have been adopted by the Town of Southwest Harbor's legislative body and approved by the Commissioner of the Department of Environmental Protection.

8. The Code Enforcement Officer shall determine whether the property is in compliance with any applicable Ordinance and any previously issued permit. Any property deemed "not in compliance" shall not be issued any new permit until such time as the Code Enforcement Officer shall certify the property is in compliance.

B. GENERAL STANDARDS

1. STRUCTURE

   a. Definition

   The term structure is defined as anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of decks, patios, fences, poles, wiring and pedestals associated with service drops.

b. Setbacks

1) The structure setback standards for driveways, parking areas, roads, and signs are detailed in the following sections of the Ordinance:

Driveways.....page 25
Parking areas.....page 28
Roads.....page 31
Signs.....page 34

c. Structures and uses

1) If more than one structure or use, or combination thereof, is constructed, established or placed on a single lot, all structure standards shall be met for each structure or use except for minimum lot area per dwelling unit or use.

2) Dimensional requirements are specified within the structure standards for multi-family development.

d. Minimum residential floor space in all zones is Two hundred Fifty (250) sq. ft.

e. Flood hazard regulations

All openings or the equivalent to the first lowest floor elevation of all new construction or substantial improvement to existing buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood. (See Southwest Harbor's Floodplain Ordinance).

2. LOTS

a. Minimum lot area

1) Land below the normal high-water line of a water body or upland edge of a wetland shall not be included toward calculating minimum lot area.

2) Land beneath rights-of-ways providing access to the lots of the proposed subdivision or any subdivisions approved after 5/3/88 shall not be included in calculating minimum lot area.

3. ROADS AND DRIVEWAYS

The Planning Board may require a traffic impact analysis report by a registered professional engineer to show that (1) the roads giving access to the development and (2) the neighboring roads have adequate carrying capacity to accommodate the amount and types of traffic to be generated by the proposed use.

## SECTION III: NON-CONFORMANCE

A. PURPOSE

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance (June 29th, 1992) shall be allowed to continue, subject to the requirements set forth in this Section III. Except, as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

B. GENERAL

1. TRANSFER OF OWNERSHIP
Non-conforming lots, roads, driveways, structures, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming lot, road, driveway or structure, subject to the provisions of this Ordinance.

2. REPAIR AND MAINTENANCE
This Ordinance allows, without a permit pursuant to this Ordinance, the normal upkeep and maintenance of non-conforming roads, driveways, structures and uses including repairs or renovations that do not involve expansion of any part of the non-conforming use or structure.

3. MANDATED CHANGES
Any change in a non-conforming use or structure which does not comply with the provisions of this Ordinance, but which is mandated by Federal, State, or local building and safety codes shall be allowed with a permit.

C. NON-CONFORMING STRUCTURES

1. EXPANSIONS

a. Any addition to or expansion of a non-conforming structure must conform to the standards of this Ordinance, unless a variance is obtained from the Board of Appeals. In no case shall a structure be expanded in a manner that causes the structure to be more non-conforming.

EXCEPTIONS:

1) Single family residential structures in all zones and commercial structures in Zone A may be added to or expanded:
   (a) If there is no change outside the existing footprint of any non-conforming portion of the structure as it existed on the face of the earth on May 3rd, 1988, and
   (b) The increase in height of any non-conforming part of the structure is no greater than 12' during the lifetime of the building and no higher than the maximum elevation standard for the zone.

b. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure the structure and new foundation must be placed so that the set back and other dimensional requirements are met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section(C)(2)(c) Relocation, below, if:

The completed foundation does not extend beyond the exterior dimensions of the structure except for expansion in conformity with Section III (C).2.a below, and

The foundation does not cause the structure to be elevated by more than 3 additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered an expansion of the structure

2. RELOCATION

a. A non-conforming structure or part thereof may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all

setback and other dimensional requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules.

b. No structure or portion thereof which is less than the required setback from a property line, the road setback line or the centerline of a road, shall be relocated either toward or along the property line(s) or road(s).

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

3. RECONSTRUCTION OR REPLACEMENT

a. Any non-conforming structure or part thereof which is located less than the required setback from the property line, or which otherwise fails to meet the dimensional requirements of this Ordinance, and which is removed, or damaged or destroyed regardless of the cause, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the dimensional requirements to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. No structure or portion thereof which is less than the required setback from a property line, the road setback line or the centerline of a road shall be reconstructed or replaced either toward or along the property line(s) or road(s)..

4. CHANGE OF USE OF A NON-CONFORMING STRUCTURE

a. The use of a non-conforming structure may not be changed to another use unless the Planning Board after receiving a written application determines that the new use will have no greater adverse impact on the subject or adjacent properties and resources than the existing use.

b. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources.

D. <u>NON-CONFORMING USES</u>

1. EXPANSIONS

Subject to the following conditions, a non-conforming use may be expanded in compliance with the structure and performance standards of this Ordinance. The conditions:

a. Such addition or enlargement may not increase the total volume or area in use by more than Thirty (30%) of the volume or area existing at the time of passage of the Development Control Ordinance on May 3rd, 1988, or subsequent amendment, or the Land Use Ordinance on June 29th, 1992, or subsequent amendment.

b. The Planning Board shall require written certification of the area and volume of the use at the time the use became non-conforming.

2. RESUMPTION PROHIBITED

A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to that non-conforming use except that the Planning Board, may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding Five (5) year period.

3. CHANGE OF USE

a. An existing non-conforming use may be changed to another non-conforming use provided that the Planning Board finds after receiving a written application that the proposed use is equally or more appropriate to the area than the existing non-conforming use and has no greater adverse impact on the subject and adjacent properties and resources than the former use.

b. The determination of appropriateness shall be based on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use.

c. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual management, archaeological and historic resources.

E. NON-CONFORMING LOTS

1. VACANT LOTS

A vacant non-conforming lot of record as of the effective date of this Ordinance or amendment thereto be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.

2. BUILT LOTS

A non-conforming lot of record that was built upon prior to the enactment or subsequent amendment of this Ordinance is subject to the following restrictions:

a. The structure may be maintained or repaired, and may be enlarged in conformity with the standards of this Ordinance.

b. If the proposed enlargement cannot meet the dimensional requirements of this Ordinance, relief from the denial may be sought from the Board of Appeals (see SECTION IX).

c. If the primary use of a non-conforming lot is residential, and the residential lot is non-conforming because of its size, the CEO may issue a permit for one and only one accessory structure within three (3) feet of the lot line if all other LUO Performance Standards are met in addition to the following standards:

1) The accessory structure may be used for storage only and the use of the structure may not be changed.

2) The accessory structure shall be no greater than eighty (80) square feet in footprint area.
3) The height of the building shall be no greater than ten (10) feet and there shall be no utilities in the structure.
4) No noise shall be allowed to emanate from the accessory structure other than what would be considered residential in nature.

3. CONTIGUOUS BUILT LOTS

a. If 2 or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot-size Law (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

b. If two (2) or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced standards are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this ordinance.

4. CONTIGUOUS LOTS – VACANT OR PARTIALLY BUILT

If 2 or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance and if all or part of the lots do not meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lands involved shall be considered to be a single parcel for the purposes of this Ordinance 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.

## SECTION IV: DEFINITION OF ZONES

For the purpose of this Ordinance the Town of Southwest Harbor is hereby divided into eight zones. The zones are shown on a map entitled "Town of Southwest Harbor Zoning Map, Dated May 4, 2020, and as amended. (A reduction of this map is included in the Appendix.) The Town of Southwest Harbor has mapped its natural resources, roads, and utilities on GIS (Geographical Information System) Maps. When the density limitation within a zone and the density limitation on the map "Town of Southwest Harbor, Maine, Subsurface Sewage Disposal, Soil Suitability/State Plumbing Code" are in conflict, the more restrictive density shall apply. These maps, certified by the attested signature of the Municipal Clerk, are hereby made part of this Ordinance, and copies shall remain on file in the Town Office.

ZONE A The most densely built up and developed Town area. Most lots are served by the Town Sewer and Water. It includes areas of mixed, light commercial and residential uses.

ZONE B Less densely developed than Zone A, this area is either served by the Town Sewer and Water or is in such a location as to be able to connect into them. It includes areas of mixed, commercial, industrial and residential uses.

## SECTION V: STANDARDS FOR THE ZONES

**ZONE A** (See applicable General Regulations and Standards)

A. LAND USE STANDARDS

1. The following uses are not permitted:
   a) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
   b) Non-maritime industry

2. All other uses are permitted subject to lot, structure and performance standards.

B. LOT STANDARDS

1. Lot area minimum: 6500 square feet.

C. STRUCTURE STANDARDS

1. Set-backs (minimum):
   a) 10' from edge of paved roadway; sidewalks must be provided (standards in Southwest Harbor Road Ordinance)
   b) 10' from lot lines
   EXCEPTION: Construction permitted either on the lot line as an agreed common firewall, or set back at least 5' from the lot line, provided a firewall is used.

2. Height:

   a) 40' maximum

3. Lot coverage:

   a) no limit

**ZONE B** (See applicable General Regulations and Standards

A. LAND USE STANDARDS

All uses are permitted.

B. MINIMUM LOT STANDARDS AREA

Note: Minimum lot area requirements based on availability of utilities to the site

1. Minimum lot size:
   a. 40,000 sq. ft. (If Structures are serviced by Private Well and Private Septic System)
   b. 30,000 sq. ft. (If Structures are service by Public Water and Private Septic System)
   c. 20,000 sq. ft. (If Structures are serviced by Private Water and Public Sewerage)
   d. 15,000 sq. ft (If Structures are serviced by Public Water and Public Sewerage)

C. STRUCTURE STANDARDS

1. Minimum set-backs for all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks and signs:
   a) Lot lines – 15'
   b) State road – 55' from the centerline
   c) Town road – 20' from the edge of the right-of-way but not less than 35' from the centerline
   d) Private road – same as Town road if service to three or more lots

   EXCEPTION: A 6' minimum setback from the edge of a vehicular way on a driveway.

2. Height:
   a) 40' maximum

3. Individual Lot coverage: Includes structures only
   a. 10% if structures are serviced by private well and private septic system
   b. 12% if structures are serviced by public water and private septic system
   c. 15% if structures are serviced by private water and public sewerage
   d. 3,000 sq ft or 20%, whichever is greater, if structures are serviced by public water and public sewerage

EXCEPTION:

a.40% lot coverage by structures for commercial uses
   1. May include multi-family structures in excess of three dwelling units.
   2. Seasonal cottages with occupancy less than six months.
   3. Property to be in common ownership
   4. No condos or condo associations allowed
      1. All performance standards must apply

**SECTION VI: PERFORMANCE STANDARDS**

A. BUFFERING

1. PURPOSE

The Ordinance allows a mixture of land uses to occur in all zones. For this reason, a buffer is required to protect residential properties from adjoining unlike uses or activities. The buffer is required to minimize the impact of buildings and/or activities that could cause a nuisance; to block or soften lights (including car lights or reflections of the sun); to reduce noise; to preserve privacy; and to reduce smells and dust. The depth of the screen and the nature of the planting required will depend upon the potential impact of a development on its neighbors. Activities which may cause a nuisance include but are not limited to the movement and parking of heavy equipment, trucks, dumpsters, and cars; loading and off-loading; exterior bulk storage such as lumber or gravel; and the sheer size of very large buildings, such as storage sheds.

The amount of buffering required depends on the impact the new use is likely to have on neighbors – low, medium or high.

2. REQUIREMENTS
   a. Plantings shall be permanent. They shall be arranged and maintained so as not to obscure the vision of traffic.
   b. Buffering is required in the following situations:
      1) Non-residential and multi-family residential uses and structures (including parking areas, driveways, and roads) shall be buffered from adjacent residential and/or vacant lots.
      2) With the exception of development in Zone A, all existing and proposed non-residential and multi-family residential uses and structures (including parking areas) which occupy an aggregate of more than 4,000 square feet of land shall be buffered from roads. If the building is less than 2,500 square feet and is closer to the road than the parking, the building itself does not need to be buffered from the road. Free standing signs do not need to be buffered from roads.
      3) Any increase in impact/activity as described in the "purpose" paragraph above caused by the expansion of an existing use or structure shall require buffering of the expansion.
      4) Mining, sand and gravel extraction, landfills, timber harvesting operations, bulk storage areas, mobile home parks, electrical substations, and storage or collection of discarded automobiles will be buffered from all adjacent lots and roads in all zones.

   c. When a buffer is required, a landscaping plan must be submitted as part of the general site plan or as a separate drawing. This shall include:
      1) Owner's name, lot number, date, scale, north arrow
      2) Existing and proposed buildings, structures, roads, driveways, and parking areas
      3) Adjoining roads and land uses
      4) Existing and proposed planted areas accompanied by a description of the trees, hedges, ground vegetation and other plant material including number and layout of trees, common or botanical names of plants, intended fully-grown heights above ground, distances between trees planted for screening purposes, and types of ground covering vegetation.
      5) Details of the construction of any fences, trellises, walls, berms or sunken fences (ditch-and-wall) must be included.

3. IMPACT OF USE
   a. Definition of Impact Level:
      1) Level 1 – Low: The impact of the proposed activity on adjoining properties will be minimal. Consequently, buffering is called for only around parking areas and driveways.
      2) Level 2 – Medium: There will be increased impact in terms of noise, lights and loss of privacy. Therefore a greater depth of buffering is called for to screen all areas where the new activity is to take place.
      3) Level 3 – High: Activities which have serious impact on the quality of adjoining residential properties. These may include the following: New construction of large (or tall) buildings, parking lots, uses that are likely to increase traffic movement, frequent use of large trucks, or exterior storage of

goods. In such cases, greater buffering will be required, (both for buildings and for parking lots and driveways), and will have to be deeper or more dense than what is called for under Levels 1 and 2.

b. Determination of Level of Impact

The Planning Board will determine the level of impact based upon the completed applications. In making this determination the Planning Board will consider several factors including, but not limited to: The use, the number of parking spaces, size of structure, hours of operation, number of employees and impact of vehicular traffic.

4. STANDARDS

a. A buffer should be deep enough, high enough, and sufficiently dense to meet the objectives described in 1 (Purpose). Note that the purpose includes not only screening traffic and other activities on the applicant's site, and large buildings, but also preserving the privacy of adjoining residents (or potential residents), composed of one or more of the following:

(1) Natural features such as topography, stand of trees, shrubbery, or rock outcrops. When such natural features do not exist, or are insufficient to provide the required screening, other kinds of screening defined in this section must be provided.

(2) Evergreen trees planted in two staggered rows (spaced a maximum of seven (7) feet apart) spaced a maximum of eight (8) feet on center. All screening trees shall be installed at a minimum height of five to six feet (5'-6') and have a minimum expected mature spread of eight feet (8').

(3) An earthen berm topped by evergreen plantings. The berm shall be a minimum of 5 feet high (5'). Evergreen plantings shall be installed at a minimum height of three to four feet (3'-4"), spaced at a maximum of four feet on center (4'), and hacve a minimum expected mature spread of six feet (6').

(4) Install suitable fencing a minimum height of six feet (6') in height or the height the Planning board deems appropriate.

b. In the case of existing natural tree growth, this may therefore need to be supplemented by additional low-level planting, hedges, fences or berms. Existing low-level growth may need to be supplemented by trees.

c. The buffer may include fences, hedges or berms designed to ensure that the purpose is met. It is not intended that landscaped buffering should be required in situations where it would interfere with neighbors' views of the water.

d. Note that the combined screening effect of trees, low-level planting, hedges, fences or berms is intended to be effective all year round. Plant material should not all be of deciduous types. Recommended varieties of trees and shrubs include white cedar, pine, spruce, hemlock, columnar arborvitae and juniper. Illustrations of plant materials and buffering designs are available in the Town Office.

5. EXECUTION AND MAINTENANCE

a. All buffers shall be installed in accordance with the requirements specified in Section VI. A. before commencement of the normal activities of use for which the site was intended.
If winter conditions prevent the installation of plantings, activities at the site may Commence but installation of plantings shall proceed at the earliest opportunity in the immediately following spring and be completed by July 1 of the same year.

b. The ongoing maintenance of the approved landscape plan is the responsibility of the property owner. If any of the trees, shrubs, or other plantings constituting the buffer should die, the owner of the property shall replace them within six months (6) at a ratio of one-to-one for each tree, shrub, or planting loss. The replacement plantings shall be comparable in size to those that had died or meet the minimum criteria specified in Section VI. Fencing and screenings shall be durable and properly maintained at all times by the owner. The signature of the applicant on the permit application denotes agreement to this requirement.

6. CONSERVATION COMMISSION

The Planning Board may refer landscaping plans to the Conservation Commission for their opinion before granting approval.

B. DRIVEWAY AND DRIVEWAY OPENING STANDARDS

1. A driveway is a vehicular way within a lot. There may be more than one driveway on a lot.
2. The width of the vehicular way shall be designed to accommodate adequately the volume and character of vehicles anticipated to be attracted to the development.

a. RESIDENTIAL DRIVEWAY:

1 – 2 dwelling units no minimum
3 – 10 dwelling units 9 feet
Over 10 dwelling units 18 feet

b. NON-RESIDENTIAL DRIVEWAY minimum width: 18' (10' for one-way flow)

EXCEPTION: 10' wide driveways are permissible for 2-way traffic when the driveway is not longer than 50', it provides access to not more than 6 spaces, and sufficient turning space is provided so that vehicles need not back into a public street.

c. Any driveway serving non-residential uses shall have a junction to the road conforming to the Road Standards in the Southwest Harbor Road Ordinance, SECTION VII, C.

3. SETBACK STANDARDS:

a. No part of any driveway surface shall be located within a minimum of Six feet (6') of a side property line. The Planning Board may permit a driveway serving adjacent sites to be located within the 6' area of the side property line between the sites.
b. The driveway surface shall be set back at least One Hundred feet (100') from the normal high-water line of a great pond, Seventy Five feet (75') from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland;

EXCEPTION: If the Planning Board determines that no reasonable alternative exists, the One Hundred feet (100') and Seventy Five feet (75') setbacks may be reduced to Fifty feet (50'), but appropriate techniques to prevent sedimentation must be approved (the installation of settling basins, the effective use of additional ditch relief culverts and/or turnouts placed to avoid sedimentation of the water body, tributary stream or wetland).

c. On slopes of greater than 20% the driveway setback shall be increased by 10' for each 5% increase above 20%. This paragraph shall not apply to approaches to water crossings, to driveways that provide access to permitted structures, or to facilities located nearer to the shoreline due to an operational necessity.

4. CURB CUT STANDARD
There shall be not more than one ingress and one egress in any One Hundred feet (100') of a lot's road frontage.

5. Any driveway over 500' in length may be required to be of greater width and/or include turn-outs as recommended by the Fire Chief of Southwest Harbor.

6. Any new driveway opening onto a Town way must obtain a "Road Opening" permit from the Town. A new driveway opening onto a State road must obtain the necessary permits from the State, or a letter from the State saying that the permits are not needed.
   a. The Town and State roads must be returned to their original condition upon completion of the driveway opening construction.
   b. Specifications for the required storm water drainage culvert size are contained in Southwest Harbor's Road Ordinance. The property owner is responsible for the first culvert. The Town will maintain and replace them.
   c. The Town Road Superintendent shall be notified of the date of construction of the driveway opening on both a Town and a State Road.

7. Any new driveway opening off a private road may require a culvert as determined by the CEO or Public Works Director, sized accordingly to the SWH Road Ordinance standards. The owner of the property being served by the driveway shall be responsible for the installation, maintenance and future replacement. (5-4-10)

   a. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with Section VI (D) Erosion and Sedimentation Control Standards.

C. EROSION and SEDIMENTATION CONTROL STANDARDS

1. All activities which involve filling, grading, excavation or other similar activities which result in un-stabilized soil conditions shall require a soil erosion and sedimentation control plan in accordance with the current Maine Erosion & Sediment Control BMP'S (Best Management Practices). That plan shall be submitted to the permitting authority for approval, and shall include, where applicable, provisions for:
   a. mulching and re-vegetation of disturbed soil
   b. temporary runoff control features such as hay bales, silt fencing or diversion ditches
   c. permanent stabilization structures such as retaining walls or riprap (5-4-10)

2. Development shall be designed to fit with the topography and soils of the site, so as to create the least potential for erosion. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily stabilized as soon as possible, but no later than one (1) week from the time it was last actively worked, and permanently stabilized within nine months of the initial date of exposure by use of riprap, sod, seed and mulch, or other effective measures. In addition:
    a. Where mulch is used, it shall be applied at a rate of at least l bale per 500 sq.ft. and shall be maintained until a catch of vegetation is established.
    b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
    c. Additional measures shall be taken where necessary in order to minimize siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a 25 year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

D. EXTERIOR LIGHTING STANDARDS

1. Exterior lighting shall be designed to minimize the adverse impact on neighboring properties and the traveling public.
2. Exterior lights shall be appropriately shielded to prevent direct light from being visible outside the property line. Luminance will not exceed 0.1 foot candles at the property line.
3. Parking area lighting, display lighting, and spotlight type fixtures attached to buildings shall be shielded, and located and maintained so as not to create or constitute a hazard or nuisance.

E. FILL and EXCAVATION STANDARDS

1. A fill or excavation permit is not required for the movement of less than 100 cubic yards on a site in any twelve (12) month period.
2. A fill or excavation permit is required for the moving of 100 cubic yards or greater of inert fill if the operation is not associated with permitted construction.
3. Upon completion of work, the permit shall require the site to be properly graded (not steeper than 2:1 or such lesser slope as may be necessary to prevent erosion) and to be re-vegetated.

F. FIRE PROTECTION STANDARDS

Plans for transient accommodations, marinas, nursing homes, convalescent centers, multi-family developments, hospitals, schools, theaters, mercantile developments over 3000 sq.ft., business occupancy of 2 or more stories, etc. shall be approved by the State Fire Marshal's Office.

G. FLOOD HAZARD AREA STANDARDS

1. A Flood Hazard Development Permit must be obtained from the Town before any change caused by individuals or entities to improved or unimproved real estate begins within any areas of special flood hazard identified on the Federal Insurance Rate Maps (FIRM) for Southwest Harbor.
2. The definition of "any change" includes but is not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; the storage, deposition, or extraction of materials; public or private sewage disposal systems or water supply facilities; and the placement of manufactured homes.

H. HANDICAPPED ACCESS STANDARDS

Plans for public accommodation (places of public congregation and/or employment as defined in Title 5 MRSA Paragraph 4553) and public housing shall be approved by the State Fire Marshal's Office.

I. HEAVY COMMERCIAL or INDUSTRIAL POLLUTANT STANDARDS

1. Dangerous materials to be subject to State of Maine codes and regulations.
2. Dust, dirt, fly ash, smoke, gases, fumes, radiant heat and glare shall not be emitted so as to endanger public health and safety, enjoyment of other property, or to constitute air pollution.

J. NOISE STANDARDS

1. No noise which is objectionable due to volume, intermittence, beat frequency or shrillness shall be transmitted outside the lot where it originates with the exception of time signals, vessels, and warning devices and noise necessarily involved in the construction or demolition of buildings and other structures.
2. The Planning Board reserves the right to determine if noise from a proposed project or an expansion of a use will be "objectionable". A majority vote of the Board is required for this determination.
3. The Code Enforcement Officer may determine that noise from an approved project has become a nuisance.

K. PARKING and LOADING STANDARDS

1. GENERAL STANDARDS FOR PARKING SPACES
    a. The parking standards in this ordinance are to be satisfied by off-street parking (on-site or off-site).
    b. Standards for additions to a use or a change in use.
        1) New commercial uses in Zone A may be added without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Existing commercial uses in Zone A may be expanded or changed without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Elimination of any parking spaces or any changes in shape or size of the structure footprint(s) will require full compliance with all parking standards.

2) Except for commercial uses in Zone A, any additions to a use or a change in use, will require compliance with the parking and/or loading standards for the existing use, the addition or the change in use. Those land uses which are unable to comply with the above will provide as much of the parking and loading for the existing use as they can, and all the additional parking and loading required by the addition or use change.

2. STANDARDS FOR PARKING SPACE(S) BY USE

a. Automobile shops (sales, parts, body, rental):
1 space per 200 sq. ft. of sales area plus
3 spaces per service bay plus
1 space per 3 employees plus
1 space for each 3,000 sq. ft. of open sales lot area devoted to the sale, display and rental of vehicles

b. Health Institutions:
1 space per 3 beds
1 space per 2 employees

c. Hotels, inns, cabins, cottages, etc:
1 space per 1 sleeping room
1 space per 2 employees

d. Maritime activities – commercial and recreational:
1 space per 4 boat berths and/or 1 space per 4 moorings;
1 space per 4 boat passengers of the rated passenger capacity of vessels carrying passengers for hire;
1 space per 2 employees; and
1 space per 20 berths and moorings for dedicated drop-off areas required at Dockside
Maritime activities – industrial:
1 space per 2 employees

e. Nursery or Greenhouse
1 space per 1,000 sq. ft., of floor area, plus one space per 2,000 sq. ft. of land area used for retail sales

f. Offices (including medical) and public buildings:
Zone A and Shoreland Zones – 1 space per 500 sq. ft. of gross floor area
All other zones – 1 space per 200 sq. ft. of gross floor area

g. Residential Unit:
Single family unit – 2 spaces per unit
Single family unit with accessory residential unit – 3 spaces
Multi-family units – 2 spaces per unit

h. Restaurants, other eating and drinking establishments:
Zone A and Shoreland Zones – 1 space per 6 seats; 1 space per 4 employees
All other Zones – 1 space per 4 seats; 1 space per 2 employees

i. Retail stores including service (Laundromats, etc.):
Zone A and Shoreland Zones – 1 space per 500 sq. ft. of floor area accessible to the public
1 space per 4 employees
All other zones – 1 space per 200 sq. ft. of floor area accessible to the public
1 space per 2 employees

j. Schools:

1 space per classroom and 1 space per 2 employees

k. Theaters, churches, and other assembly places:
Zone A – 1 space per 200 sq. ft. of gross floor area
All other zones – 1 space per 100 sq ft of gross floor area

l. Warehouses and storage facilities:
1 space per employee
1 space per 10 storage units

m. Any use whose parking standards are not specifically detailed shall provide parking equivalent to that use whose characteristics are most similar.

3. LOADING BAY STANDARDS

a. Loading facilities shall be located entirely on (or as close as possible to) the same lot as the building or use to be served, so that trucks, trailers, and containers for loading or storage shall not be located upon any Town way.

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

| | |
|---|---|
| less than 2000 sq. ft. = | not required |
| 2000 – 15,000 sq. ft. = | 1 bays |
| 15,001 – 30,000 sq. ft. = | 2 bays |
| 30,001 – 50,000 sq. ft. = | 3 bays |
| more than 50,000 sq. ft. = | 4 bays |

c. Minimum loading bay size: 12' wide by 50' long by 14' high.

4. PARKING AREA DESIGN STANDARDS

a. Specifications for layout of parking areas shall be similar to those found in the most recent "Architectural Graphic Standards" or a similar publication.

b. The minimum parking space shall be 9 1/2' by 18'. (Spaces for a vehicle and boat trailer and/or a recreational vehicle shall be 40 feet long.) The spaces must be delineated for all but single family uses.

c. Aisle width: 24' two way
16' one way only for 60 degree parking
12' one way only for 45 & 30 degree parking

d. The layout and design of vehicular and pedestrian ways, including walkways, interior drives, and parking spaces, shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, and loading areas.

e. Required setbacks for parking areas:

1) In all zones the lot line setback is that which is necessary to satisfy the design standards, but no parking area shall be closer to the lot line than 6' except abutting non-residential parking areas in Zone A.

f. Non-residential and multi-family residential off-street parking and loading areas, where not enclosed within a building, shall be buffered as described in SECTION VI. Paragraph A. Buffering and Landscaping.

g. Parking areas shall be planted with canopy trees and shrubs within the area. There shall be one tree planted for every 8 spaces. This requirement applies to all spaces when an area is expanded.

h. The site layout shall provide for adequate location, number, and control of access points and shall incorporate adequate site distance and turning lanes where justified by existing and projected traffic flow. There shall be not more than one ingress and one egress in any 100' of road frontage. The ingress and egress shall meet the

standards of the Maine Department of Transportation. When required, MDOT Entrance Permits must be obtained before approval.

i. Access points from a public road shall be so located as to minimize traffic on local streets of a primarily residential character.

j. All parking area entrances and exits shall be kept free from visual obstructions higher than 3 feet above street level for a distance of 25 feet measured along the intersecting entrance/exit and street lines in order to provide visibility for entering and leaving vehicles.

k. Provision shall be made for providing and maintaining convenient and safe emergency vehicle access at all times.

l. The areas shall be designed to prevent storm water runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.

m. Parking areas shall be arranged so that vehicles do not back onto any road.

n. Parking spaces shall be delineated and planted as required and made available for use prior to the commencement of the permitted use.

5. OFF-STREET/OFF-SITE PARKING shall be considered accessory to the principal use and shall be permitted only when parking requirements cannot be met on-site. The following criteria shall apply to an off-site area:

a. All of the requirements for an on-site parking area.

b. The distance between the proposed off-site parking area must be a reasonable and convenient distance for the proposed user.

c. The proposed access route between the off-site parking area and the site must provide for safe pedestrian and vehicle traffic.

d. Drop-off areas shall be provided at the site and the off-site parking area.

## L. ROAD STANDARDS

1. PURPOSE

Provision shall be made for vehicular access and circulation in such a manner as to safeguard against hazards to traffic and pedestrians on existing roads and within a development, to avoid traffic congestion on any road, and to provide safe and convenient circulation.

2. ROAD DESIGN STANDARDS

a. Any road intended for adoption by the Town as a public road shall be designed and constructed to the specifications of the Road Ordinance of the Town of Southwest Harbor, 1990 and as amended.

b. New private roads shall be designed according to one of the following standards.

1) Access to one single family residential use on a second lot
Right-of-way: 12' minimum
Vehicular way: 9' minimum

2) Access to residential uses only, including rental cottages
Right-of-way: 24' minimum
Vehicular way: 9' minimum to access not more than 10 residential units
18' minimum for access to more than 10 residential units

3) Access to all uses
Right-of-way: 30' minimum (36' minimum if the vehicular way is to be 24' wide) Vehicular way: 20' minimum (not more than 15% of the vehicles or combination of vehicles of gross weight of more than 12,000 pounds.)*

24' minimum (if more than 15% of the total traffic generated by any commercial and/or industrial use are vehicles or combination of vehicles of gross weight of more than 12,000 pounds, the way must meet the road construction specifications as described in the Southwest Harbor Road Ordinance)

*The Planning Board reserves the right to make the determination that if more than 15% of the total traffic generated by all existing uses on the street plus the new use are vehicles or combination of vehicles of gross weight of more than 12,000 pounds, the proposed use will be permitted only if the street is improved to meet the Town's road construction standards.

c. Existing roads or new roads where they are sited on a right-of-way existing as of May 2, 1994 must comply with the following standards.
   1) If the right-of-way is less than 16', only one single family residential use is permitted per undeveloped lot of record as of May 3,1993. If there is existing development, on the right-of-way, only additional single family residential use is permitted. The vehicular way shall have a 9' minimum width.
   2) If the right-of-way is 16' or greater, but no wider than 26', only residential expansion, is permitted. The vehicular way shall be as specified under 2.b.2) above.
   Exception: In Zone A only. Public parking areas may be accessed by Town roads provided that:
      1) R. 0. W. is a minimum of 22' in width
      2) Travel way is a minimum of 16' in Width
      3) If the right-of-way is 26' or wider, then all development can occur and the vehicular way shall be as specified under 2.b.3) above.

d. All private roads except the road providing access to a single family residential use on a second lot must meet the design specifications in the Southwest Harbor Road Ordinance, Section VII.B.

e. Road banks shall be no steeper than a slope of 2:1, and shall be graded and stabilized in accordance with the standards for erosion and sedimentation control contained in Section VI (D), Erosion and Sedimentation Control Standards.

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

g. Ditches, culverts, bridges, dips, water turnouts, catch basins and other storm water runoff control installations associated with roads shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch and shall be maintained on a regular basis to assure effective functioning.

h. Ditch relief (cross drainage) culverts, drainage dips and water turnouts in the Shoreland Zone shall be installed in a manner effective in directing drainage onto un-scarified buffer strips before the flow gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:
   1) Ditch relief culverts, drainage dips and associated water turnouts shall be

spaced along the road at intervals no greater than indicated in the following table:

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

2) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
3) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road.
4) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

3. SETBACK STANDARDS

a. Right-of-way setbacks from structures

Town and Private Roads: 20' minimum – (the centerline of the road must be a minimum of 35' from the structure).

EXCEPTION: 6' minimum for a right-of-way which provides access to one single family residential use on a second lot.

b. Road surface setback

1) No part of any roadway surface shall be located within 6' of a side property line, or the right-of-way lines except road surface providing access to a single family residential use on a second lot.
2) If the road surface is within 15' of the lot line of a residential use, a buffer must be provided (See BUFFERING STANDARDS, Paragraph A. of this SECTION).

The Planning Board will determine the adequacy of the buffer as a deterrent for noise and dust in relation to the use of the road.

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

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

4) Any new road opening onto a Town road must obtain a "Road Opening" permit from the Town. A new road opening onto a State road must obtain the necessary permits from the State or a letter from the State saying the permits are not needed.

a. The Town and State roads must be returned to their original condition

upon completion of the road opening construction.

b. Specifications for the required storm water drainage culvert size are contained in Southwest Harbor's Road Ordinance. The property owner is responsible for the first culvert. The Town will maintain and replace them.

c. The Town Road Superintendent shall be notified of the date of construction of the road opening on both a Town and a State Road.

M. SEWAGE DISPOSAL STANDARDS

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

a) Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and

b) A holding tank is not allowed for a first-time residential use in the shoreland zone.

NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

2. When the public sewer system is to be used, a permit must be obtained from the Southwest Harbor Water & Sewer District (the District). This permit plus payment must be filed in the Town Office before a building permit can be issued. The sewer permit certifies compliance with the District policy.

N. SIGN REGULATION STANDARDS

1. No person, firm or corporation shall hereafter erect, hang, place, or alter the size or shape of an existing sign or sign structure of any kind without a permit having been issued in conformance with the provisions of this Ordinance.

The following signs are exempt from the provisions of this Ordinance:

a. Any sign which was lawfully in existence prior to June 29th, 1992; provided, however, any change in size, construction, location, or lighting of said sign shall constitute a new sign and such change shall be governed by the terms of this Ordinance.

b. Customary holiday decorations.

c. House addresses, family name signs, and no trespassing signs.

d. Traffic control signs.

e. Public safety signs.

f. A flag signifying that a business is open, or a national flag, provided it does not cause a hazard.

g. Directional signs solely indicating ingress and egress placed at driveway locations, containing no advertising material and having a display area not exceeding three (3) square feet.

h. An identification sign erected over or by the doorway or entrance to the building which does not exceed 10% of the area doorway or entrance.

i. Real estate signs, not to exceed six (6) sq.ft. in area, attached to a building or free standing, may be erected advertising the sale, lease, or rental of a premises and shall be removed by the owner or agent when the property is sold or leased. (No larger Real Estate sign is permitted by this Ordinance.)

j. One development or construction sign not to exceed 32 square feet in area attached or free standing, may be erected provided such sign shall be limited to a general identification of the project and shall be removed within thirty days after completion of the project.

k. Permanent signs on vehicles regularly and customarily used to transport persons or property for the business.

2. Temporary signs excluding street banners, sandwich signs and signs within vehicles, are allowed without a permit for a period not to exceed thirty (30) days in any one calendar year for any one commercial premises or use, provided they comply with the Ordinance.
   a. The size of such sign may not exceed twelve (12) square feet.
   b. The sign or signs are to be promptly removed by the person posting them.
   c. Street banners for special events may be posted upon receipt of a written permit. The size of a street banner shall be no larger than 2' in height and 50 sq.ft. in area. The applicant shall provide evidence of liability insurance protection for any damage resulting from the placement of said street banner. The applicant shall remove the street banner upon termination of the permit.
3. No existing or new sign shall be permitted to cause a sight, traffic, health or welfare hazard, or to result in a nuisance due to illumination, placement, or manner of construction. The sign must be kept clean, neatly painted.
4. All signs which no longer advertise a bonafide business, product sold, activity or campaign being conducted, or public notice, shall be taken down and removed by the owner, agent or person having the beneficial use of the building or premises upon which such sign may be found.
5. Awnings are allowed without a permit, but they must be at least 7' above sidewalks and cannot extend over a road surface. Signs with lettering no greater than 6" are permitted on the "fringe" of the awnings, but a sign permit from the Town must be obtained. Each sign counts towards the total of permitted signage. No illuminated awnings are permitted.
6. STANDARDS:

NUMBER OF SIGNS

a. Free-standing signs shall be limited to one (1) per site.

b. A business may have 6 signs with a maximum total area of 72 sq.ft. (EXCEPTION: limited to 50 sq.ft. if the name of the business also appears on a free-standing owner/tenant/lessee sign)

c. A home occupation shall have only one (1) sign and it shall not exceed six (6) square feet.

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SIGN AREA

a. No single sign shall have a sign area exceeding 24 square feet on any one side. .

b. No combination of signs on a free-standing structural support system shall have a sign area exceeding 32 square feet on any one side.

c. On-building sign area may not be more than 10% of the total wall area to which it is attached.

HEIGHT OF SIGN

a. No free standing sign shall extend higher than 10' above the ground, unless it is a

multi-tenant sign for over 6 businesses.

b. No sign attached to a building shall extend higher than the roof line.

c. Roof signs may have a height of 2' or less and the top of the sign must not exceed the elevation of the top of the roof line upon which the sign is erected. No roof sign shall obscure the view of a natural vista as seen from any public park or public right-of-way.

d. A sign attached to a structure by a bracket, which overhangs a public sidewalk or pedestrian walkway, must have a minimum clearance of 10' over the sidewalk and no part of the sign or bracket shall be any closer than 18" to the edge of the road.

SETBACKS

a. No sign may be within a road right-of-way or a sidewalk.

b. A sign must be set back 5' of the edge of the pavement, sidewalk, and/or lot lines.

ILLUMINATION OF SIGNS

a. Signs shall only be illuminated by shielded non-flashing lights.

b. No sign shall have blinking, moving, glaring, neon, or internal illumination, except those giving only public service information such as time, date, temperature, weather, or similar information

EXCEPTION: One (1) internally illuminated sign, displayed in a window, of any shape which fits within an area of 30" x 18" shall be permitted for commercial use within Zone A only. This sign may only be illuminated during the open hours of the business.

LEASEHOLDER SIGNS

For sites with an owner and tenant(s) and/or leaseholders, the following criteria applies:

a. If there are not more than five tenants or lease holders (including the owner), a single free-standing sign may have a maximum height of 10', a maximum sign area of 24' for the general logo, plus as many 4' x 1' individual name signs below the logo as there are tenants/lease holders.

b. For six tenants or lease holders (including the owner) or more, the single free-standing sign may have a maximum height of 15', a maximum sign area width of 8', a maximum sign area of 24' for the general logo, plus as many 4' x 1' individual name signs below the logo as there are tenants/lease holders.

OFFICIAL BUSINESS DIRECTIONAL (OBD) SIGNAGE

a. State Law regulates the location of OBD signs within the width of the right-of-way of any road.

b. Within Southwest Harbor, OBD signs are only allowed within the right-of-way of State roads (Route 102 and 102A).

c. OBD signs must be non-reflective white on blue and 4' x 1'.

O. SOIL STANDARDS

1. All land uses shall be located on soils in or upon which the proposed uses or structure can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction.

2. The Planning Board may determine that proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, may require a soils report based on an on-site investigation and may require it prepared by state-certified

professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties.

3. The report may be based upon any of the following relevant criteria:
   a. The analysis of the characteristics of the soil and surrounding land and water areas;
   b. Maximum ground water elevation;
   c. Presence of ledge;
   d. Drainage conditions; and
   e. Other pertinent data which the evaluator deems appropriate.
4. On-site soils testing by state-certified professionals shall be required prior to issuance of any permit under this Ordinance for land uses within a half mile of any site listed as an "uncontrolled site" on the Maine Department of Environmental Protection's Division of Remediation Site List. Such testing shall include at minimum all known substances that have been previously identified as migrating offsite from the uncontrolled site above recommended thresholds for remedial action, whether in soil, air, or water. If soil testing finds contaminants at levels above state recommendations for remedial action, the site shall be remediated to conform with such recommendations prior to any permit being issued under this Ordinance.
5. The soils report may include recommendations for a proposed use to counteract soil limitations where they exist.
6. Reference shall be made to the State of Maine GIS maps of Southwest Harbor soils and wetlands.

P. STORM WATER RUNOFF STANDARDS

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Whenever possible, on-site absorption of run-off waters shall be utilized to minimize off-site discharge.
2. Adequate provision shall be made so that surface waters shall not adversely affect neighboring properties, downstream water quality, potential for soil erosion, or the public storm drainage system. When necessary, the best available technology shall be used to minimize off-site storm water runoff, increase on-site storm water runoff, increase on-site infiltration, encourage natural filtration functions, simulate natural drainage systems, and minimize off-site discharge of pollutants to ground and surface water. The best available technology may include measures such as retention basins, recharge trenches, porous paving and piping, contour terraces, and swales.
3. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
4. Storm water runoff systems shall be maintained as necessary to ensure proper functioning.

NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed

area

Q. STREAM STANDARDS (perennial and non-perennial streams)
Existing vegetation within 25' of the stream edge shall remain undisturbed.

R. VIBRATION STANDARDS
If inherently and recurrently generated, it shall be imperceptible without instruments at lot boundaries. (This shall not apply to vibration resulting from activities aboard a vessel, on a pile supported pier, or involved in the construction or demolition of buildings.)

S. WATER QUALITY STANDARDS

1. No activity shall deposit on the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.
2. The following activities require a permit under the Natural Resources Protection Act (NRPA) from the Department of Environmental Protection if performed in, on or over any freshwater or coastal wetland, great pond, river or stream, or adjacent* to said natural resources such 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;
   d. Any construction, repair or alteration of any permanent structure.

   *DEP has defined "adjacent" to mean any land within the floodway of a river, stream or brook; or any land area within 100' of the NHL or upland edge of a coastal wetland, freshwater wetland, river, stream or brook.

T. WATER SUPPLY STANDARDS
When the Town water supply is to be used, a permit must be obtained from the Town of Southwest Harbor's Water Department. This permit plus payment (or a letter of intent to pay) must be filed in the Town Office before a building permit can be issued. The water permit certifies compliance with the Southwest Harbor Water Ordinance.

## SECTION VII: STANDARDS FOR SPECIAL ACTIVITIES

A. AGRICULTURE

1. Spreading or disposal of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001.
2. Manure shall not be stored or stockpiled within 100' of a great pond or within 75' of other water bodies, tributary streams, or wetlands. All manure storage areas must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

B. ARCHAEOLOGICAL and HISTORICAL SITES

1. Southwest Harbor has 6 prehistoric archeological sites and 2 listed historic buildings (the Claremont Hotel and "Raventhorp" house on Greenings Island). These sites are located on maps available in the Town Office.

2. Any proposed land use activity involving structural development or soil disturbance on or adjacent to these sites shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the permitting authority.
3. The Planning Board shall consider comments received from the Commission prior to rendering a decision on the application.

C. BED and BREAKFAST

1. Definition: An owner occupied dwelling in which lodging or lodging and breakfast is offered to lodgers for compensation.
2. As a home occupation, it can have no more than three (3) bedrooms devoted to lodging purposes.
3. If more than three (3) bedrooms are used for lodging, the use is commercial.

D. CAMPGROUND

1. A Campground is defined as a plot of ground upon which two or more campsites are located, established or maintained for occupancy by recreational vehicles, tents or other camping units of the general public as temporary living quarters for recreational, educational or vacation purposes.
2. Campgrounds are subject to the minimum requirements imposed under State licensing procedures and the following specific limitations.

   a. Inland campgrounds:

   | | |
   |---|---|
   | Minimum lot size: | 5 acres |
   | Minimum site size: | 2,500 sq.ft. (net area) |
   | Parking: | 200 sq.ft. for each site |

3. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of One Hundred feet (100') from the normal high-water line of a great pond, Seventy Five feet (75') from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland. Their setback shall be a minimum of 30' from lot lines and this setback area shall be a buffer.
4. The Planning Board may issue an approval of a campground conditional on the State license approval.

E. CAMPSITE

1. A campsite is defined as an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but may not be limited to a gravel pad, parking area, fireplace or tent platform.
2. The following must be met.
   a. One campsite per lot existing on the effective date of this Ordinance.

   b. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicles shall not be located on any type of permanent foundation except a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
   c. A plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.

d. When a recreational vehicle, tent or similar shelter is placed on-site for more than One Hundred-Eighty (180) consecutive days per year, all requirements for residential structures shall be met, including either a State approved subsurface sewage disposal system or public sewage facilities.

F. ESSENTIAL SERVICES

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
2. The installation of essential services is not allowed in a Resource Protection Zone nor within Seventy Five feet (75') of a stream, except to provide services to a permitted use withinthe Zone, or where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

G. HEALTH INSTITUTION

1. A facility for the aged or infirmed which provides living quarters and on-site staff providing care.
2. This is a commercial use.

H. HOME OCCUPATION

1. Home occupations are limited to those uses which must be conducted within a principal residential dwelling or one structure customarily accessory to this dwelling with the exceptions as noted below. All uses including the exceptions must be incidental and secondary to the use of the property for dwelling purposes and not change the essential residential character or appearance of such property.
   EXCEPTIONS: the seasonal sale of firewood and agricultural products.
2. Vehicular/motor repairs must not be carried out open to view. The outside storage of vehicles and parts associated with the business is not allowed.
3. Objectionable conditions such as noise, vibration, smoke, dust, odors, heat, glare, or electrical disturbances interfering with a neighbors' radio, television, etc. shall not be permitted of the home occupation.
4. The home occupation shall be carried on by any members of the family residing on the property and have no more than two additional non-residential employees.
5. The parking performance standards must be satisfied for both the residential use and the home occupation.
6. The home occupation shall not involve the parking of commercial vehicles. Overnight parking of refrigerated trucks is prohibited.

I. MARITIME ACTIVITIES NOT LOCATED ON LAND

Those activities which have their principal use not located on land, must have their accessory uses which are on land comply with the applicable land use, structure, and performance standards of the zone in which they are located.

J. MINERAL EXPLORATION and EXTRACTION

1. A permit shall not be required for mineral exploration to determine the nature or extent of mineral resources if it shall be accomplished by hand sampling, test boring, or other

methods which create minimal disturbance of less than 100 sq. ft. of ground surface. Mineral exploration is prohibited within 75 feet, horizontal distance, of the normal high-water line of a stream.

2. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitation.
3. All excavations, including test pits and holes shall be immediately capped, refilled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.
4. Mineral extraction may be permitted under the following conditions:
   a. A reclamation plan shall be filed with, and approved by, the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of d. Below.
   b. Mineral exploration and extraction shall conform with the Erosion and Sedimentation Control and Storm Water Runoff Standards contained within this Ordinance.
   c. Extraction operations shall not be permitted within Seventy Five feet (75') of any property line, without written permission of the owner of such adjacent property.
   d. Within 12 months following the completion of extraction operations at any extraction, site, which are deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12 month period, ground levels and grades shall be established in accordance with the reclamation plan required herein, and the following:
      1) All debris, stumps, and similar material shall be removed for disposal in an approved location or buried on site. Only materials generated on-site may be buried or covered.
      2) The final graded slope shall be 2:1 or flatter.
      3) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
5. In addition to the above, the Planning Board may impose such conditions as necessary to minimize the adverse impacts associated with mineral extraction operation on surrounding uses and resources.

K. MOBILE HOME PARK

1. The regulations for mobile home parks under Title 30-A, MRSA Section 4358 shall apply to all areas of Southwest Harbor.
2. Park lot size:
   a. The area reserved for road rights-of-way, the area for buffer yards, plus the area of all mobile home park lots.
   b. If the Park is on Town sewer, an additional 10% of the above total Park size must be included for open space.
3. Mobile home lot size:
   a. Sewered – 6500 sq.ft.
   b. Un-sewered: individual on site-subsurface septic system – 20,000 sq.ft.
   c. Un-sewered: central on-site waste water system – 12,000 sq.ft.
   (the gross density of the park must be 20,000 sq.ft./lot)
4. Buffering: See SECTION VI. A. Buffering and Landscaping
5. All mobile homes manufactured before June 15, 1976, or not built according to the National Manufactured Housing Construction and Safety Standards Act of 1974, US Code, Title 42,

Chapter 70, shall be required to meet the safety standards for older mobile homes as adapted and listed in Appendix A, Maine's New Mobile Home Park Law. (Source: A Guidebook for Local Officials, Office of Comprehensive Planning.

L. MOTEL, HOTEL, BOATEL, CABINS, COTTAGES, etc.

1. Definition: A building or group of buildings containing rooms which are used or rented for sleeping purposes by transients.
2. Motels, hotels, boatels are principal commercial uses. Cabins and cottages may be considered as principal commercial uses, or as accessory commercial uses to a principal residential or commercial use.
3. Efficiency Unit – Includes a food preparation area only serving that unit. If the occupant of the unit is in residence for more than 6 months, the unit must meet the minimum residential floor space requirement for each Zone and, except in Zone A the minimum lot size requirement under multi-family. (5-4-10)

M. TRAILER, CAMPER, or OTHER RECREATINAL VEHICLE

1. None shall be used for recreational use unless it is in a campground or private campsite which has been established in accord with the provisions of this Ordinance.
2. The CEO may issue a permit authorizing their use for residential purposes (see Campsite, Paragraph E, this Section).

## SECTION VIII: PERMIT REVIEW

A. APPLICABILITY

1. The property owner must secure approval for the following activities from either the Planning Board or the Code Enforcement Officer subject to the appropriate standards of this Ordinance, unless a variance is obtained:
   a. Any building, structure or part thereof to be erected, constructed, reconstructed, externally enlarged, converted, moved, or demolished;
   b. Any area for a road or driveway, or area for parking or loading, to be established or expanded;
   c. Any fill and/or excavation of over 100 cubic yards;
   d. Any sign to be erected or enlarged;
   e. Any new use, expansion of an existing use, or change of use; and

2. No local building permit is needed for the following activities, but they must be performed in conformance with the provisions of this Ordinance:
   a. Repair, maintenance, and alterations to a structure which do NOT affect its footprint, location, height, or use;
   b. A weekend use such as garage sales and yard sales provided the use occurs only once in any month;
   c. Occasional activities, such as children's roadside stands, school fund raisers;
   d. Detached structures, such as dog kennels, tool sheds, which are less than eighty (80) square feet; no permanent foundation allowed however must be anchored to the location
   e. Clearing for development or timber harvesting which is compliant with the Performance Standards; and

f. A track", an access formed for brush clearing and such purposes with no stone or gravel material introduced and which does not give access to a separate lot.

B. REVIEW AUTHORITY

1. The Code Enforcement Officer (CEO) will have the authority to review the following:
   a. All single family or two family residential construction
   b. All commercial additions of 1,000 sq.ft. of total floor area or less subject to definitive performance standards.
   c. Creation or expansion of driveways up to 200 ft. In length
   d. Placement of signs
   e. Demolition of buildings and structures
   f. Relocation of residential buildings and structures
   g. The moving or excavation of 100 – 500 cubic yards of inert fill in any 12 month period otherwise planning board review is required.
   h. Piers, docks, and wharfs serving a residential use

2. The Planning Board will have the authority to review the following:
   a. Multi-family residential construction
   b. All commercial principal buildings and additions greater than 1,000 square feet
   c. Relocation of non-residential buildings and structures
   d. Piers, docks, wharves, etc. For non-residential uses
   e. Institutional and governmental activities
   f. Creation or expansion of roads, and driveways over 200 feet in length
   g. Changes of use
   h. The moving or excavation of more than 500 cubic yards of inert fill
   i. Any land use or building activity not specified. (5-4-10)

3. The CEO may request the advice and concurrence of the Planning Board on any application which raises unusual questions, and shall refer any application to the Board for decision, which in the CEO's judgment requires a public hearing or otherwise requires action by the Planning Board.

C. PERMIT APPLICATION

1. Application forms:
   a. The form shall be as prescribed by the Town.
   b. Review by the Code Enforcement Officer: the original application shall be retained by the Town and filed with a copy of the permit.
   c. Review by the Planning Board:
      1) The original application form and eight copies shall be submitted with the plans for the project.
      2) The original application shall be retained by the Town and filed with a copy of the permit.
2. All applications shall be signed by an owner or individual who can show evidence or right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
3. Applications for approval under this Ordinance must include evidence that all appropriate local, State, and Federal agencies have been requested to determine if additional permits must be sought from them. Final approval may be given conditionally upon receipt of these permits if they are required.

4. Plans:
   a. The applicant shall submit a project key plan and a site plan. Plans for new buildings and/or structures are also required. These may be preliminary or final plans. In addition, eight (8) copies of the plan(s) reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches shall be submitted with applications to the Planning Board.
   b. A key map must show the entire project; its relation to surrounding properties; and names of the property owners. A copy of the assessing map showing the property is available in the Town Office.
   c. A site plan, drawn to a scale of not less than one (1) inch equals forty (40) feet, or a scale acceptable to the CEO or Planning Board, shall include the following, as applicable:
      1) Scale, north arrow, and names of abutting property owners
      2) Dimensions and area of each lot to be built upon or otherwise used
      3) Location of any wells on the lot or within 100' of property lines
      4) Name and location of any abutting water body
      5) Location of any streams, brooks, and wetlands
      6) Areas to be cleared and areas of any cut, fill, grading, or other earthmoving activity
      7) Size, shape and location of existing and proposed buildings and/or structures including dumpsters, piers, docks and floats, noting setbacks from lot lines, rights of ways, water bodies, etc.
      8) Outdoor lighting and signs: existing and proposed locations
      9) Sewer & water facilities & connections: existing and proposed
      10) Location and layout of parking areas, and all existing and proposed parking spaces (including spaces for commercial vehicles) measured to the standards in the Ordinance. Legally non-conforming spaces must be noted.
      11) Location of existing and proposed roads/driveways and the distance of each from nearest lot lines
      12) Name and location of existing or proposed rights of way and easements on the site, or abutting the property
      13) Existing grades and any proposed changes in grades
      14) A soil erosion and sedimentation control plan.
   d. Structure plans must show access, height, and dimensions
   e. A buffering/landscape plan, if required as described in SECTION VI. A
   f. A map of the property showing any freshwater wetlands and hydric soils on the site (available on the Southwest Harbor GIS Maps).
   g. Any additional information requested by the CEO or Planning Board for determining whether the proposed structure and uses of the site conform to the requirements and objectives of this Ordinance, including but not limited to sketch plans or renderings of proposed structures.
5. The CEO and the Planning Board shall ensure that the drawings and specifications meet all applicable codes and ordinances.

6. The Planning Board may also require the following:
   a. Bonds, letters of credit, or other securities to insure the installation of improvements.
   b. Agreement in writing by the applicant to all conditions of approval.

D. PERMIT APPROVAL PROCEDURE

1. Upon receiving an application, the Town shall note the date of receipt on the application, issue a dated receipt to the applicant if requested, and direct the application to the appropriate review authority.
2. The CEO shall act upon applications according to the following procedure:
   a. Within 35 days from the date of receipt of the application, the CEO shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete.
   b. When the CEO has determined that the application is complete, the date shall be so noted on the application form. A dated receipt may be issued if so requested.
   c. Within 7 days after the application has been accepted as complete, the CEO shall direct the Town to notify the abutters of the project.
   d. No sooner than 7 days from the date of notification (except as noted below) and within 35 days from receiving a complete application, the CEO shall approve, approve with conditions, or deny in writing on the conformity of those uses established in Section VIII.B.1. to the land use, structure, and performance standards within this Ordinance.
      EXCEPTIONS:
      1) For applications for a deck, shed, garage or similar accessory residential structures and/or the addition to or other improvement of a conforming residential structure, the total size of which is no more than 600 square feet of floor area, the CEO may act without waiting 7 days for the required notification to be effective. This exception would not apply to new dwelling units or driveways.
      2) For applications for the demolition of a building or structure, the CEO must wait fourteen (14) days for the required notification to be effective, unless for health and safety reasons the building or structure should be removed immediately.

3. The Planning Board shall act on applications presented to it according to the following procedure:
   a. Upon receipt of the application, the Town will decide whether the information in the application is sufficient for review. If the application is insufficient or inadequate, the Town will notify the applicant within fifteen (15) business days, in writing, of additional information required. Once all necessary information is provided, as determined by the Town, the application will be issued a date of receipt. Within thirty-five (35) days from the date of receipt of the application, the Town shall have notified the applicant of the date, time and place of the Public Hearing on this application and cause this information to be published in a newspaper of local circulation at least seven (7) days in advance of the Hearing and similarly notify the abutters to the applicant by mail. A copy of the stamped envelopes to the abutters and the printed newspaper notification shall be maintained in the file of the applicant.
   b. The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the application. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.
   c. At the Hearing, the Planning Board shall first determine if the application is a complete application or specify the additional material needed to make it complete.

When requested additional material is delivered to the Town Office, the Hearing will be rescheduled.

d. After submission of a complete application, the Planning Board shall either approve, approve with conditions, or deny the application in writing within thirty-five (35) days from the Public Hearing at which the application was ruled complete, or within another time limit as may be otherwise mutually agreed to by the Board and the Applicant.

e. If the permit is denied, the denial shall include a written statement of Findings of Fact and of reasons in support of the decision

f. Completed applications shall be approved only by a decision of the majority of the full Board that the proposed use is in conformance with the land use, structure, and performance standards of this Ordinance. The approval may include a statement of Findings of Fact.

4. In issuing approval, the CEO/Planning Board may attach such restrictions and conditions as it deems necessary to ensure compliance with the Ordinance.

5. An appeal to the Board of Appeals from an approval or denial of a permit application shall be made within 30 days of the approval or denial.

E. MODIFICATION to an APPROVED PERMIT

1. The permit shall have been approved within the last eighteen months.

2. The modification shall be minor (as determined by the CEO); if the CEO determines that the modification is not minor, the applicant shall apply to the appropriate review authority with a new application.

3. The CEO shall be the permitting authority for the modification. The CEO will request the advice and concurrence of the Planning Board if the modification raises unusual questions or if, in the CEO's judgment, a public hearing should occur.

4. The procedure for a modification shall be the same as for the original permit except that the scope of review shall be limited to those portions of the plan which are proposed to be changed.

F. RECONSIDERATION/REVOCATION

1. Reconsideration

a. This is a procedural rule to get a subject back onto the table for substantive discussion.

b. A motion to reconsider a previous decision shall only be made by a Board Member voting on the prevailing side of the original decision. The motion must be offered either at the Meeting at which the original decision was made or at the next regularly scheduled Board Meeting (unless the Board calls a Special Meeting for the reconsideration prior to the regularly scheduled time), but in no case more than 30 days from the date of the original decision.

c. The applicant and any one offering verbal or written testimony at the Board's original hearing on the original application shall be given direct notice of the proposed reconsideration.

2. Revocation

a. This is a jurisdictional rule and deals with the substance of the issues and vested rights.

b. Any decision to revoke approval must be made by the Board or Official who granted the approval. The decision must be preceded by written notice and opportunity for a Hearing.

c. The revocation process may occur upon discovery that the Board or Official granted approval without authority or that the applicant made false statements material to the decision to approve the application, provided the applicant has not acquired a vested right.

d. To determine whether a vested right exists, the Planning Board or Official must make a positive finding on each of the following criteria:
   1. Applicant exercised due diligence to comply with the law;
   2. Applicant demonstrated good faith throughout the proceedings;
   3. Applicant expended substantial unrecoverable funds in reliance on the Board's (or Official's) approval;
   4. Appeal period has expired; and
   5. Insufficient evidence to prove that individual property rights or public health, safety or welfare would be adversely affected by the project as approved.

G. FEES

1. Each application for site plan review shall be accompanied by an administrative fee and a public notice fee, if applicable. These fees shall, from time to time, be set by the Southwest Harbor Board of Selectmen. No application for review shall be deemed complete until the applicant has paid all fees as required.
2. An approved application shall become subject to permit fees. These fees shall be set, from time to time, by the Southwest Harbor Board of Selectmen. A fee schedule is available in the Town Office.
3. Each After-the-Fact application submitted for review shall be accompanied by a late fee which shall, from time to time, be set by the Southwest Harbor Board of Selectmen.

H. ISSUANCE of the BUILDING PERMIT and the LIFE of the PERMIT

1. The CEO shall issue a Building Permit upon Site Plan approval.
2. The Permit shall be effective from the date of approval for a period of three years.
   a. The permit is vested upon substantial start.
   b. If no substantial start in construction, and/or site operations are not completed within three years, the permit may be renewed at a fee as allowed in Section VIII, subsection G, provided renewal is within thirty (30) days of expiration.
   c. Permit will be void for failure to renew as required in item (b) above.

I. CERTIFICATE of OCCUPANCY

No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the Code Enforcement Officer (CEO) has issued a certificate of occupancy. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the land use ordinances or any other codes of jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of the land use ordinance or other codes of this jurisdiction shall not be valid.

1. Certificates Issued

After the code enforcement officer inspects the building or structure and finds no violation to the land use ordinance, land use ordinance permit or other applicable codes of this jurisdiction, the code enforcement officer shall issue a certificate of occupancy, which shall contain the following:

   a. The building permit number
   b. The address of the structure
   c. The name and address of the owner
   d. A description of that portion of the structure for which the certificate is issued.

e. A statement that the described portion of the structure has been inspected for compliance with the requirements of the land use ordinance, land use ordinance permit.
f. The name of the building official
g. Any special stipulations and conditions of the building permit.

2. Temporary Occupancy

The Code Enforcement Officer is authorized to issue one temporary certificate of occupancy, not to exceed six (6) months, before the completion of the entire work covered by the permit, provided that such portion of portions shall be occupied safely.

## SECTION IX: 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 Ordinance; 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 this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.

2. **Variance Appeals**: To authorize variances upon appeal, within the limitations set forth in this Ordinance.

B. **Variance Appeals**. Variances may be granted only under the following conditions:

1. 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 Ordinance.

3. The Board shall not grant a variance unless it finds that:

a. The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and

b. The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:

(1) That the land in question cannot yield a reasonable return unless a variance is granted;

(2) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

(3) That the granting of a variance will not alter the essential character of the locality; and

(4) That the hardship is not the result of action taken by the applicant or a prior owner.

4. Notwithstanding Section IV(B)( 3)(b) above, the Board of Appeals, or the code enforcement officer if authorized in accordance with 30-A MRSA §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in

or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

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 Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.

C. **Administrative Appeals**

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a "de novo" hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a "de novo" capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

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

D. **Appeal Procedure**

1. **Making an Appeal**

a. 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 IV(A)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

b. Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:

(1) A concise written statement indicating what relief is requested and why the appeal or variance should be granted.

(2) 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.

(3) 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.

(4) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

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 thirty (30) 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. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.

3. **Appeal to Superior Court**. Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

4. **Reconsideration**. In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including 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 fifteen (15) days after the decision on reconsideration.

## SECTION X: ENFORCEMENT

A. Any violation of this Ordinance shall be deemed to be a "nuisance".

B. Code Enforcement Officer

1. It shall be the duty of the Code Enforcement Officer (CEO) to enforce the provisions of this Ordinance. The CEO shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The CEO shall also investigate all complaints of alleged violations of this Ordinance.
2. If the CEO shall find that any provision of this Ordinance is being violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including an after-the-fact application for a permit; a modification of an approved permit; discontinuance of illegal use of land, buildings, structures, and work being done; removal of illegal buildings or structures; and abatement of nuisance conditions. The CEO shall require compliance with this written notice.
3. In cases where the alleged violator disputes the interpretation or order of the CEO, but discontinues the activity after CEO notice, the alleged violator may appeal the CEO action or decision to the Board of Appeals. No construction or other activity may be undertaken during this period other than the actions which may be necessary to protect property or the environment and as agreed to by the CEO and alleged violator (to allow erosion control measures or temporary tarp over open roof, etc.) The Board of Appeals shall consider such

cases as administrative appeals and it may instruct the Code Enforcement Officer to reconsider his decision.

4. A complete record of all essential transactions, including applications submitted, permits granted or denied, revocation actions, revocation of permits, appeals, variances granted or denied, alleged violations investigated, alleged violations found, court actions, and fees collected shall be maintained in the Town Office.

C. Legal Actions

1. When the above action does not result in the correction or abatement of the violation or nuisance directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town.
2. The Town officers, or their authorized agent, are hereby authorized to propose, negotiate, and enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering any costs, fines or penalty without Court action. Such agreements shall not allow an illegal structure or use to continue or remain unless there condition, the Town Officers or Town Manager, upon notice from the CEO, are hereby authorized and is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized Town official and there is no evidence that the owner acted in bad faith. The Town Officers may allow the illegal structure or use to remain if it is determined the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage. Nothing in this Ordinance shall be construed to allow the occupation or use of an illegal structure or the operation of an illegal use.
3. A decision by the Town Officers or Town Manager to proceed in a legal action against an alleged violator for violations of this Ordinance or any permit issued pursuant to this Ordinance is not appealable to the Board of Appeals. This Ordinance shall be enforced in accordance with Title 30-A MRSA Paragraph 4452.
4. Any person, including but not limited to a landowner, a landowner's agent, the entity in possession, or a contractor, who violates any provisions or requirement of this Ordinance shall be penalized in accordance with Title 30-A MRSA Section 4452 which specifies that monetary penalties shall be assessed on a per day basis, and that each day a violation exists constitutes a separate violation. The law provides for penalties ranging from a minimum of $100 to a maximum of $2500 per violation. The law also allows the Court to increase the maximum penalty above $2500 when it can be shown that the economic benefit to the landowner or costs avoided by violating a land use, structure or performance standard exceeds the applicable penalty. In the Resource Protection Zone the maximum penalty per day is increased to $5000.
5. The following factors will be taken into consideration in determining an appropriate fine:
    a. Any prior violations by the same party, person, or entity.
    b. The degree of environmental damage that cannot be abated or corrected.
    c. The extent to which the violation continued following a Town order to stop.
    d. The extent to which the Town contributed to the violation by providing the violator with incorrect information or by failing to take timely action.
    e. The amount of any economic benefit gained by the landowner or entity in possession as a result of the violation.

## SECTION XI: PROCEDURE FOR AMENDING THE ORDINANCE

A. This Ordinance may be amended by a majority vote of the legislative body present at any regular or special town meeting, or by local referendum ballot. Any changes including typographical, punctuation or other grammar edits must also be approved by the legislative body.

B. Any proposed amendment(s) must be submitted to the Planning Board not later than ninety (90) days before the regular or special Town Meeting.

C. The Planning Board shall have held a public hearing on the proposed change after a notice has been posted in the municipal office at least thirteen (13) days before the public hearing and the notice has been published at least two (2) times in a newspaper with local circulation. The date of the first publication must be at least twelve (12) days before the public hearing and the date of the second publication must be at least seven (7) days before the public hearing

D. If the ordinance is to be enacted by secret ballot, then the Selectmen shall hold a Public Hearing at least 10 days before the date of the referendum vote on the final draft of the ordinance changes. At this public hearing, the Planning Board shall report in writing its opinion on the desirability of the proposed change(s). Any alterations to the proposed ordinance changes would require the Selectmen to hold another public hearing.

E. Zoning ordinance changes have further requirements as detailed in State law. Unless more stringent requirements are expressly provided for in this section, all other notice, hearing and adoption requirements set forth in the Maine Statutes shall be complied with.

F. Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.

G. Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.

1. The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment. [1993, c. 374, §4 (NEW).]
2. For each parcel within the municipality that is in or abutting the portion of the municipality affected by the proposed amendment, the notice must be mailed by first class mail at least 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. Notice also must be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II.

Any action challenging the validity of an amendment to a zoning ordinance or map based on a municipality's failure to comply with paragraph B must be brought in Superior Court within 30 days after the adoption of the amended ordinance or map. The Superior Court may invalidate an

amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive a notice under paragraph B, that the municipality failed to send the notice as required, that the appellant had no knowledge of the proposed amendment to the ordinance or map and that the appellant was materially prejudiced by that lack of knowledge. Nothing in this subsection alters the right of a person to challenge the validity of any ordinance based on the failure of the municipality to provide notice as required in paragraph A and subsection C.

## SECTION XIII: DEFINITIONS

A. GENERAL

In reading and interpreting this ordinance the following definitional rules apply:

1. Words used or defined in one tense or form shall include other tenses and derivative forms.
2. The words "shall" and "must" are mandatory.
3. The words "may" and "should" are permissive.
4. The word "person" or "applicant" includes individuals, firms, corporations, associations, organizations, and other similar entities.
5. The word "town" means the Town of Southwest Harbor, Maine.

In the interpretation and enforcement of this Ordinance, all words other than those specifically defined herein shall have the meaning implied by their context in the Ordinance or their ordinarily accepted meanings as found in the dictionary in the Planning Office.

B. WORDS and TERMS DEFINED

ABUTTING: Having a common border with, or being separated from such a common border by an alley, easement, street, road, public way, or private way.

ACCESS: A means of approach or entry to or exit from property.

ACCESSORY USE: A use which is customarily both incidental and subordinate to the principal use on the same lot only. The term "incidental" in reference to the principal use shall mean both
a) subordinate and minor in significance to the principal use, and
b) attendant to the principal use. Such accessory uses, when aggregated by their combined square footage shall not subordinate the principal use of the lot.

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

AGRICULTURE: The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.

APPEAL: A means for obtaining review of a decision, determination, order or failure to act pursuant to the terms of this Ordinance as expressly authorized by the provisions of Section IX.

ATTIC: That part of a building which is immediately below, and wholly or partly within, the roof framing.

AUTOMOBILE GRAVEYARD: "Automobile graveyard" means a yard, field or outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. "Automobile graveyard" includes an area used for automobile dismantling, salvage and recycling operations.

BASEMENT: Any portion of a structure with a floor-to-ceiling height of 6' or more and having more than 50% of its volume below the existing ground level.

BED & BREAKFAST: An owner occupied, dwelling in which lodging or lodging and breakfast is offered to guests for compensation (refer to SECTION VII. C.)

BUFFER: A strip of land which may include planting, walls, fences and/or berms. It is intended to screen activities as well as buildings that could cause a nuisance, including lights, noise, movement of vehicles, glare, smells, dust, and to maintain privacy.

BUILDING: Any structure and its attachments such as porches and breezeways, which is built for the shelter or enclosure of persons, animals, or personal property.

BUILDING AREA: Total of areas taken on a horizontal plane at the main finished grade level of the building. All dimensions shall be measured between exterior faces of walls.

BUILDING FRONT LINE: Line parallel to the front lot line, transecting that point in the building face, which is closest, to the front lot line.

CAMPER (TRAILER, RECREATIONAL VEHICLE, OR MOBILE HOME TEMPORAY OR OLDER TYPE: A portable dwelling, such as a specially equipped trailer or automotive vehicle, for use during travel and camping, and includes any and all types of pickup camper, travel trailer, tent trailer, or motor home.

CAMPGROUND: A plot of ground upon which two or more campsites are located, established or maintained for occupancy by recreational vehicles or camping units of the general public as temporary living quarters for recreational, educational or vacation purposes.

CAMPSITES: Any plot or ground within a campground intended for the occupancy by a recreational vehicle or a camping unit.

CAMPSITE, INDIVIDUAL PRIVATE: An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas or tent platforms.

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

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

CONVERSION: Any alteration of the use of a building.

DAMAGED OR DESTROYED: A sudden, one-time catastrophic or accidental loss, not a gradual deterioration over time through an owner's inattention to his right to maintain a non-conforming structure.

DEMOLITION: The act of demolishing - to raze, to destroy

DEVELOPMENT: A change in land involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring. 05/09

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

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

DRIVEWAY: A vehicular way within a lot.

DWELLING UNIT: A room or group of rooms designed and equipped containing cooking, sleeping and toilet facilities exclusively for use as living quarters for only 1 family. The term includes manufactured housing and mobile homes, but not recreational vehicles, motel units, cabins or cottages, except in shoreland zone, the term dwelling unit shall include rental units that contain cooking facilities regardless of time rented. Each unit of a multi-family or condominium unit shall be considered a single dwelling unit.

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

ESSENTIAL SERVICES: Gas, electrical or communication facilities; steam, fuel electric power or water transmission or distribution lines, towers and related equipment; telephone cable or

lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; but no buildings necessary to furnish these services.

EXPANSION OF A STRUCTURE: An increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

EXPANSION OF USE: The addition of months to a use's operating season or the use of more floor area or ground area devoted to a particular use.

FAMILY: Any number of persons occupying a dwelling and living together as a single housekeeping unit.

FENCE: A structure commonly made of wooden or metal posts, boards, rails, bricks, stones, PVC, wire mesh, masonry, rocks, or similar materials, erected for the purpose of enclosing a yard or portion thereof, for screening or decoration, or for marking the general location of a lot boundary.

FIREWALL: A building wall which shall be constructed of noncombustible materials which have 3 hours fire resistance, such as solid concrete, block, brickwork, or metal.

FLOOR AREA: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, as measured from the exterior faces of these walls, plus the horizontal area of any unenclosed portions of a structure such as a deck.

FOOTPRINT: The area within the exterior walls of a structure including the decks and excluding steps or stairways.

FORESTED WETLANDS: A freshwater wetland dominated by woody vegetation that is 20' tall or taller.

FOUNDATION: The supporting substructure of a building or other structure including but not limited to basements, slabs, sills, posts or frost walls.

FREE-STANDING SIGN: A sign that is attached to, erected on or supported by some structure such as a pole, mast, frame, or other structure that is not itself an integral part of a building.

FRESHWATER WETLAND: freshwater swamps, marshes, bogs and similar areas which are:

1. Of ten or more contiguous acres; or less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition, but they do NOT include forested wetlands.

GREAT POND: Any inland body of water which in a natural state has a surface area in excess of 10 acres.

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

GROSS FLOOR AREA: The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

HEIGHT: In the Shore land zones, it's the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the roof. In all other zones, it's the vertical distance between the highest point of finished grade as measured from foundation of the structure and the highest point of the roof.

1. This applies to all structures except steeples, silos, water towers, transmission towers, and other such structures not intended for human habitation. 05/09

HOME OCCUPATION: Any occupation or profession which is carried on in the principal residential dwelling unit or one structure customarily accessory to this dwelling.
EXCEPTIONS: seasonal sale of firewood and agricultural products. (Refer to SECTION VII.H.)

HOTEL, MOTEL: A building or group of buildings where accommodations are provided for compensation, where a total of 16 or more bedrooms are provided at any one time. Accessory uses such as restaurants, cocktail lounges, gift shops, conference rooms, and recreational facilities such as swimming pools and game rooms may be included on the premises.

IMPERVIOUS SURFACE: Any hard-surfaced, man-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas, sidewalks and paved recreational facilities.

INDUSTRIAL: The assembling, fabrication, finishing, manufacturing, packaging or processing of goods or the extraction of minerals. Examples: warehousing, transportation terminals and yards, bottling plants, food manufacturing, machine shops, boat building yards, repair garages, assembly plants, open-lot storage, heavy machine tools, chemical works, explosives manufacturing, auto wrecking, etc. (Manufacturing and heavy industry.)

INN: A building or group of buildings where accommodations are provided for compensation, where a total of 15 or fewer bedrooms are provided at any one time. Typical accessory uses may be included on the premises.

INSTITUTIONAL: Public, governmental, educational, charitable, medical or similar purpose.

LOADING SPACE: An off-street space or berth on the same lot with a building for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon an appropriate means of access.

LOT: A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is currently recognized as a separate legal entity for purposes of transfer of title.

LOT AREA: The area of land enclosed within the boundary lines of a lot, minus land below the normal high water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots in the Shoreland Zone.

LOT, CORNER: A lot with at least two contiguous sides abutting a road right-of-way. 6/92; 5/96; 5/98; 5/99

LOT COVERAGE: Lot coverage includes only structures.

LOT OF RECORD: Any validly recorded lot which complied with all applicable laws, ordinances, and regulations at the time of its recordation.

LOT STANDARDS: Any provision that controls the maximum size or location of a structure and other controls required for each dwelling unit or principle structure including: lot area; frontage; height of structures; setback of structures from shorelines, property lines, and roads; and other lot coverage.

MANUFACTURED HOUSING: A structural unit or units designed for occupancy, constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. This includes:

1. Units constructed after June 15, 1976, commonly called "newer mobile homes", which the manufacturer certifies are constructed in compliance with HUD standards (structures transportable in 1 or more sections which in the traveling mode are 14 body feet or more in width and 750 sq. ft. or more in area and are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities).
2. Units commonly called "modular homes" which the manufacturer certifies are constructed in compliance with the rules adopted under Title 10, Chapter 951, Subchapter III (structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities).

MARITIME ACTIVITIES: Marinas and related services; sail lofts, chandleries, boat brokerage, boat building and repair, retail boat and motor sales, boat storage, and boat refueling; sale, manufacture, and/or installation or repair of engines and other electronic devices commonly used on boats; fabrication, storage, and repair of fishing equipment; recreational fishing and boating facilities; finfish and shellfish processing and wholesaling; manufacture or sale of ice, traps and nets; boat charters and excursions; bait buying, selling and storage facilities; facilities for dredging, pier construction, marine salvage; boat and vessel fueling and bunkering; facilities for marine pollution control; warehousing and storage of goods arriving by, or awaiting shipment via water-borne cargo carriers.

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

MINERAL EXTRACTION any operation within any 12 month period which removes more than 100 cubic

yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

MIXED USE: One lot under single ownership which has multiple uses on it; land use, structure and performance standards for the principal use shall apply when the building areas of the several uses are aggregated.

MOBILE HOME PARK: A parcel of land under unified ownership approved by the Town for the placement of 3 or more manufactured homes.

MOBILE HOME PARK LOT: The area of land on which an individual home is situated within the Park and which is reserved for use by the occupants of that home.

MOBILE HOME SUBDIVISION OR DEVELOPMENT: A parcel of land approved for the placement of manufactured houses on individually owned lots under the Subdivision Ordinance of the Town of Southwest Harbor.

MULTI-FAMILY: A residential containing two (2) or more dwelling units.

NON-CONFORMING LOT: A single lot of record which, at the effective date of adoption or amendment of Ordinance, did not meet the area, frontage, and/or width requirements of the zone in which it is located.

NATIVE: Indigenous to the local forests.

NON-CONFORMING CONDITION: Non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment(s) took effect.

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

NON-CONFORMING USE: The use of buildings, structures, premises, land or parts thereof which is not permitted allowed in the zone in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

NORMAL MAINTENANCE AND REPAIR: Any work necessary to maintain an improvement or structure in its original or previously improved state or condition. Normal maintenance and repair shall not include reconstruction, change in design, change in structure, change in uses, change in location, or change in size or capacity.

ONE HUNDRED YEAR FLOOD: The highest level of flood that, on the average, is likely to occur once every 100 years; i.e., that has a 1% chance in any year.

PERENNIAL STREAM: The USGS (US Geological Survey) perennial stream as depicted on the GIS (Geographic Information System) base map in the Southwest Harbor Town Office.

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

PIERS, DOCKS, WHARVES, BRIDGES: and other structures and uses extending over or beyond the normal high-water line or within a wetland:

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

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

PORTABLE SIGN: A sign not designed or intended to be permanently affixed into the ground or to a structure.

PRINCIPAL USE: The primary use on the lot.

PROJECTING SIGN: An outdoor sign, which is attached to a wall at an angle.

PUBLIC ACCOMMODATIONS: Place of public accommodation means any establishment which in fact caters to or offers its goods, facilities or services to, or solicits or accepts patronage from the general public.

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

RECONSTRUCT/REPLACE: To renew without increasing the exterior dimensions

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

RECREATIONAL VEHICLE: A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

REPLACE: See RECONSTRUCT/REPLACE above.

RESIDENTIAL: One or more dwelling units.

RIPRAP: Rocks, irregularly shaped, and at least 6" in diameter, used for erosion control and soil stabilization, typically used on ground slopes of 2:1 or less.

ROAD (PRIVATE OR PUBLIC): A vehicular way providing access to three or more lots.

ROAD CAPACITY: The maximum traffic density which will permit vehicles to travel at the assumed speed without appreciable delay. This capacity is affected by the following factors: lane width, number of lanes, traffic composition, speed, lateral clearances, intersections, and grades.

SCREEN: Planting providing a continuous view obstruction.

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

1. In the case of electric service, the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer service or upon a roadway right-of-way; and
2. In the case of telephone service, the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles.

SETBACK: The minimum horizontal distance from the center of the road, lot lines, and/or normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, recreational trail, parking space or other regulated object or area.

SIGN: An object, device or structure, or part thereof, situated outdoors or displayed in a window, visible from a public way, free standing or attached, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event, or location, by any means including words, letters, figures, design, symbols, advertising flags, fixtures, colors, illuminations or projected images. Each face of a sign shall constitute a separate sign except that a sign with two sign faces shall be counted as one sign.

SIGN AREA: The area of the square, rectangle, triangle, circle, or combination thereof, which encompasses the facing of a sign, including copy, insignia, background and borders. The structural supports of a sign are to be excluded in determining the signable area. Where a supporting structure bears more than one sign, all such signs on the structure shall be considered as one sign, and so measured. The area of one face of a two-sided sign shall be considered in determining the total area of the sign.

SIGNS TEMPORARY: Any sign or advertising displayed for a short period of time and not permanently mounted.

STREAM: Intermittent or perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15 minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland with the shore land area.

STREET BANNER: A temporary sign made of cloth, fabric, or flexible plastic attached on opposite sides of a street.

STRUCTURE: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of decks, patios, fences, poles, wiring and pedestals associated with service drops.

SUBSTANTIAL START: Completion of thirty percent of a permitted structure or use measured as a percentage of estimated total cost.

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

TEMPORARY STRUCTURE OR USE: A use or placement of a structure for a period of up to 7 months in one year. The land use, structure, and performance standards must be satisfied during this period.

TIDAL WATERS: All waters affected by tidal action during the maximum spring tide.

TRACK: Access formed for brush clearing and such purposes with no stone or gravel material introduced and which does not give access to a separate lot.

USE: The purpose or activity for which land or any building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

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

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

VELOCITY ZONE: An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

VOLUME OF A STRUCTURE: The volume of all portions of a structure as measured from its exterior faces.

WALL SIGN: An outdoor sign which is attached flat to, painted on, or pinned away from a building wall or part thereof, and does not project more than 18 inches from the wall.

WALL SIGN AREA: The area of the facade of a building up to the roof line.

WATER BODY: Any great pond, river or stream, or tidal area.

WATER CROSSING: Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer

lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

WETLAND: A freshwater or coastal wetland.

WOODY VEGETATION: Live trees or woody, non-herbaceous shrubs.

ZONE: A specified portion of the town, delineated on the official Zoning Map of the Town, within which certain limitations and performance standards apply under the provisions of this Ordinance.

# TOWN OF SOUTHWEST HARBOR
# OFFICIAL ZONING MAP

Attested By: _____

Date: _____

