


*Town of Harpswell Maine 2026*

# Basic Land Use Ordinance

# Town of Harpswell

## Basic Land Use Ordinance

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Replaces Land Use Ordinance adopted February 3, 1994

**BASIC LAND USE ORDINANCE**

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## SECTION 1. PURPOSE

The purpose of this Ordinance is to provide for reasonable and orderly development within all areas of the Town while protecting the health, safety, and welfare of its citizens.

This Ordinance seeks to preserve the character of Harpswell as a residential, fishing, and vacation community with clean waters, healthy wetland functions and wildlife habitats, scenic attractiveness and a sense of openness. It seeks also to preserve to the maximum extent possible, traditional rights of landowners to use their lands as they desire, while at the same time protecting nearby residential owners from excessive conflicting uses that might degrade property values and damage the attractiveness of the community to the detriment of all.

## SECTION 2. AUTHORITY

This Ordinance is adopted under powers granted to the town by 30-A M.R.S.A. §§ 3001 and 4352, as may be amended from time to time.

Throughout this Ordinance there are "Citizen's Notes". These notes shall not be considered part of this Ordinance as adopted by the Town, but shall only be considered as aids for citizens to use this Ordinance and as guides to the intent of Ordinance provisions and their proper interpretation.

Section Titles of this Ordinance do not constitute official ordinance language. These Titles shall only be considered as an aid for citizens using this Ordinance.

## SECTION 3. APPLICABILITY

This Ordinance applies to all dwellings, accessory structures, and uses that are not subject to Shoreland Zoning. The provisions of this Ordinance pertaining to nonconformance apply to all nonconforming, nonresidential structures, developments, and uses not subject to the Shoreland Zoning Ordinance. In addition, the procedural and administrative provisions contained in this Ordinance govern the administration of all the Town's land use ordinances. Insofar as this Ordinance is inconsistent with state law as it relates to mobile home parks, the provisions of 30-A M.R.S.A. § 4358, as may be amended from time to time, shall prevail.

***Citizen's Note**: For creation of subdivisions, see Subdivision Ordinance. For activities in the Shoreland Zone requiring permits, see Shoreland Zoning Ordinance. Multi-family dwellings and nonresidential development, wherever located, are also subject to the provisions of the Site Plan Review Ordinance.*

## SECTION 4. EFFECTIVE DATE

The effective date of this Ordinance is September 15, 1997.

## SECTION 5. AVAILABILITY

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

## SECTION 6. SEVERABILITY

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

## SECTION 7. CONFLICTS WITH OTHER ORDINANCES

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 unless state law provides otherwise.

## SECTION 8. AMENDMENTS

Amendments may be made by a majority vote of the Town at any Harpswell Town Meeting and shall take effect upon enactment unless otherwise specified.

Amendments may be initiated by a majority vote of the Planning Board, by a majority vote of the Board of Selectmen or by written petition signed by a number of registered voters equal to ten percent (10%) of Harpswell voters voting in the last gubernatorial election.

## SECTION 9. LAND USE REQUIREMENTS

Except as hereinafter specified, no structure or land shall hereafter be used or occupied, and no structure or part thereof shall hereafter be erected, constructed, expanded, moved, altered, replaced and no new lot shall be created except in conformity with all of the regulations herein specified for the area or district in which it is located, unless a variance is granted by the Board of Appeals.

## SECTION 10. NONCONFORMANCE

**10.1. Purpose.** It is the intent of this Ordinance to promote land use conformities, except that lawful nonconforming conditions that existed before September 15, 1997 and the effective dates of any amendments to this Ordinance creating new nonconforming conditions shall be allowed to continue, subject to the requirements set forth in this section.

***Citizen's Note****: Nonconformance should not be considered illegal or unacceptable. Nonconformance means lots of record or uses that are grandfathered because they were in conformance with the standards in effect before the adoption of this Ordinance or any*

*amendments creating new nonconforming conditions. The concerned party is encouraged to read through this Ordinance and contact a town official should a question arise. If the property is located in the Shoreland Zone, see the relevant provisions in the Shoreland Zoning Ordinance.*

**10.2. General.**

**10.2.1. Transfer of Ownership.** Nonconforming structures, lots and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Ordinance.

**10.2.2. Repair and Maintenance.** This Ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures including repair or renovations that do not involve expansion of the nonconforming use or structure, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

***Citizen's Note:*** *See Definitions Addendum for the definitions of nonconforming structures, nonconforming uses, and nonconforming lots.*

**10.3. Nonconforming Structures**

**10.3.1. Expansions.** A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure. For the purposes of this Ordinance, an increase to the nonconformity of the structure shall mean:

- any expansion towards a property line or road that decreases the shortest existing nonconforming setback distance from property line or road, or

- any expansion which would cause the total area covered by the structures, driveways, parking lots, and other impermeable surfaces to exceed twenty percent (20%) of the total lot area, or

- any expansion which would cause the structure to exceed the height limits of this Ordinance.

The shortest existing nonconforming setback distance from a property line or a road may not be measured from an existing area, such as a small patio, terrace, landing, or small set of stairs, used mainly for access to a structure.

***Citizen's Note:*** *It should be understood that small patios, terraces, landings, or small sets of stairs within minimum setbacks do not change the setback of the adjacent structure and cannot be used to justify expansion of any other part of the structure into that setback.*

**10.3.1.1.** After September 15, 1997, or the effective date of any amendment to this Ordinance creating any new nonconforming conditions, if any portion of an existing structure is less than the required setback from the road or property line, that portion of the structure shall not be expanded in floor area or volume, by more than thirty percent (30%), during the lifetime of the structure.

**10.3.1.2.** Construction of a foundation beneath an existing building that is nonconforming as to setbacks shall not be considered an expansion of the structure provided that:

**10.3.1.2.1.** The foundation shall not extend beyond the exterior dimension of the building as it existed on September 15, 1997 or the effective date of any amendment to this Ordinance creating any new nonconforming condition, or as expanded in accordance with Section 10.3.1.1.

***Citizen's Note**: Disputed decisions may be appealed to the Board of Appeals.*

### 10.3.2. Relocation, Reconstruction, or Replacement

**10.3.2.1. Relocation.** A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the CEO, and provided that the applicant demonstrates that the present sub-surface wastewater 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. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming. Any relocation approved by the CEO pursuant to this subsection shall be endorsed in writing by the CEO.

**10.3.2.2. Reconstruction or Replacement.** Any nonconforming structure that is located less than the required setback from a property line or road and which is removed, damaged, or destroyed by more than fifty percent (50%) of the assessed value of the structure, as adjusted by the Town's assessment ratio as most recently certified by the Assessors to the State of Maine, before such damage, destruction, or removal, as determined by the Assessors or their designee in consultation with the CEO, may be reconstructed or replaced provided that a permit is obtained within one (l) year of the date of said damage, destruction, or removal, and provided such replacement or reconstruction is in compliance with the setback requirements to the greatest practical extent as determined by the CEO in accordance with the purposes of this Ordinance; provided, however, that any nonconforming structure that is located less than the required setback from a property line or road and that is damaged or destroyed by fire or any cause other than the willful act or negligence of the owner or the owners agent may be reconstructed on the same footprint as the structure that was destroyed. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. Any reconstruction or replacement approved by the CEO pursuant to this subsection shall be endorsed in writing by the CEO.

**10.3.2.3 Authority of Planning Board to Exercise Jurisdiction over an Application.**
Except as provided for below, for any application for relocation of a nonconforming structure, or for the reconstruction or replacement of a nonconforming structure that was removed, damaged, or destroyed by more than fifty percent (50%) of the adjusted assessed value of the structure, made under Section 10.3.2, the CEO shall provide written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town's most recent assessing records that a relocation, reconstruction or replacement application has been received and is being reviewed. The opportunity for the Planning Board to take jurisdiction under this provision and to receive notice shall not apply in the following situations:

(a) The relocation, replacement, or reconstruction will be carried out such that the structure complies with all applicable setback requirements, or

(b) The structure being relocated is an accessory structure that meets all the following requirements:

1) The floor area of the existing nonconforming structure is less than two hundred (200) square feet,
2) The floor area or volume of the structure will not be increased,
3) The structure is and will continue to be accessory to the principal use of the property,
4) The structure will not be served by water, and
5) The structure has not been and will not be used for human habitation.

(c) The structure being reconstructed or replaced is an accessory structure that meets all of the following requirements:

1) The floor area of the existing nonconforming structure is less than two hundred (200) square feet,
2) The floor area and volume of the replacement or reconstructed structure will not be larger than one hundred fifty percent (150%) of the floor area and volume of the existing structure,
3) The existing structure is accessory to the principal use of the property and the replacement or reconstructed structure will continue to be so,
4) The replacement or reconstructed structure will not be served by water, and
5) The replacement or reconstructed structure will not be used for human habitation.

During that forty (40) day time period, the Planning Board may elect to exercise jurisdiction over the relocation, reconstruction or replacement application. The Planning Board's review, if any, shall be governed by the same review standards as govern the CEO review. The CEO shall not issue any permit under this Section until the earlier of (a) forty (40) days after the date that the CEO provides such written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town's most recent assessing records or (b) the date the Planning Board declines to exercise jurisdiction over the application. Any relocation, reconstruction or replacement application approved by the Planning Board pursuant to this subsection shall be endorsed in writing. Failure of any property owner to receive the notice sent under this subsection does not invalidate any action taken by the CEO or Planning Board.

**10.3.2.4. Greatest Practical Extent Setback Factors.** In determining whether the building relocation, reconstruction or replacement meets the setback to the greatest practical extent, the CEO or Planning Board, as applicable, 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 systems and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

## 10.4. Nonconforming Lots

**10.4.1.** Nonconforming lots whether located in legal subdivisions or elsewhere are subject to the provision of this section.

**10.4.2. Nonconforming Lots.** A nonconforming lot of record as of September 15, 1997 or the effective date of any amendment to this Ordinance creating any new nonconforming conditions may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot size and frontage are met; provided, further, that reduced setback requirements may be applicable to those lots that meet the criteria set forth in Section 10.4.2.1. Variances relating to setback or other requirements not involving lot size or frontage shall be obtained by action of the Board of Appeals.

The status of a nonconforming lot of record shall not change as a result of realigning a common boundary line with the owner of a contiguous parcel of land, provided that (a) neither lot ends up more nonconforming after the transaction than it was prior to the transaction, as evidenced in writing by a land surveyor licensed to practice in Maine; (b) the parties cause copies of the recorded deeds to be submitted to the CEO within thirty (30) days of the recording of the deeds at the registry; and (c) no permits or approvals relating to such nonconforming lot shall be issued unless or until the applicant complies with subsections (a) and (b) herein.

**10.4.2.1. Setback Reduction for Small Nonconforming Lots.** The setback of structures from lot lines may be reduced to five (5) feet and the setback of structures from traveled ways may be reduced to ten (10) feet in order to allow the expansion or construction of a structure to be used solely for one-unit residential purposes or an accessory structure appurtenant to it, provided that the following conditions are met:

(a) The nonconforming lot in question was lawfully created prior to September 15, 1997 and is evidenced by a recorded deed or subdivision plan;

(b) The lot meets the following size requirements:

(i) less than one-quarter (¼) acre (i.e., less than 10,890 square feet) in size; and

(ii) if, as determined by the Code Enforcement Office, less than one-half (1/2) of the eligible owner(s) of lots under Section 10.4.2.1(b)(i) do not apply for the reduced setback described herein within two (2) years of the adoption of this subsection, then owner(s) of lots less than one-half (1/2) acre (i.e. less than 21,780 square feet) in size may apply for the reduced setback established herein; provided, however, that no more than fifty percent (50%) of the total number of eligible lots will be permitted the reduced setbacks described herein;

(c) The lot is not located in whole or in part within the Shoreland Zone;
(d) There exist two (2) or more other nonconforming lots meeting the size requirement then applying under Section 10.4.2.1(b) that have been improved with one-unit residential uses within a five hundred (500) foot radius of the lot in question;
(e) Neither Section 10.4.3 nor Section 10.4.4 apply to the lot; and
(f) The owner or owners of the property located along the boundary line adjacent to which the setback reduction is requested consents in writing to the reduction; and
(g) That any new structure constructed pursuant to this Section is consistent with the character of the local area in which it is to be situated, as determined by the Planning Board.

If a reduced setback is approved pursuant to this Section on previously unimproved lots, the impermeable surface coverage requirements set forth in Section 11.1.1 shall continue to apply.

If a reduced setback is approved pursuant to this Section on lots that have been previously improved with a structure, that structure shall not be expanded in floor area or volume, by thirty percent (30%) or more, during the lifetime of the structure, and the impermeable surface coverage requirement set forth in Section 11.1.1 shall not apply.

**10.4.3. Contiguous Built Lots.** If two (2) or more contiguous lots or parcels are in a single or joint ownership of record as of September 15, l997 or the effective date of any amendment to this Ordinance creating any new nonconforming conditions 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 nonconforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with.

If two (2) or more principal uses or structures existed on a single lot of record as of September l5, l997 or the effective date of any amendment to this Ordinance creating new nonconforming conditions, each may be sold as a separate lot, provided that State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with. When such lots are divided, each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

**10.4.4. Contiguous Lots - Vacant or Partially Built.** If two (2) or more contiguous lots or parcels are in single or joint ownership of record at the time of or since September l5, l997 or the effective date of any amendment to this Ordinance creating new nonconforming conditions, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one (1) or more of the lots are vacant or contain no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two (2) or more contiguous lots, at least one (1) of which is nonconforming, owned by the same person or persons as of September 15, 1997 or the effective date of any amendment to this Ordinance creating new nonconforming conditions and recorded in the Registry of Deeds, if the lot is served by the public sewer, or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Rules and:

**10.4.4.1.** Each lot contains at least one hundred (100) feet of road frontage and at least twenty thousand (20,000) square feet of lot area; or

**10.4.4.2.** Any lots that do not meet the frontage and lot size requirements of subparagraph 10.4.3. Are reconfigured or combined so that each new lot contains at least one hundred (100) feet of road frontage and twenty thousand (20,000) square feet of lot area.

**10.4.5. Creation of Nonconforming Lot(s) for Preservation or Conservation Purposes**
An existing conforming lot or a nonconforming lot may be divided so as to create not more than two (2) lots, one (1) or both of which are nonconforming lots, provided that the Harpswell Planning Board finds that the following conditions are met:

**10.4.5.1.** One (1) of the resulting lots is conveyed to a governmental body or a nonprofit tax exempt organization (preservation grantee) for conservation or preservation purposes.

**10.4.5.2.** The division does not create or exacerbate a public health or safety problem on the nonconforming lot not to be conveyed to a preservation grantee (the remaining lot) to the extent that the remaining lot does not have adequate (as defined by the appropriate code) well and septic waste disposal options.

**10.4.5.3.** If the lot conveyed to the preservation grantee is undeveloped land, or is to be returned to an undeveloped state, the deed or instrument of conveyance shall contain restrictions which require that the land be preserved or maintained in its natural state (although not necessarily "forever wild") in perpetuity for one (1) or more generally recognized purposes which benefit the natural, cultural, or architectural history of the Town or which preserves a diminishing or threatened place, parcel of land, resource, or habitat.

**10.4.5.4.** If the lot conveyed to the preservation grantee contains a pre-existing structure or improvement, the structure or improvement must have a demonstrable historic, cultural or architectural importance and the deed or instrument of conveyance shall contain restrictions which require that the land and the improvements thereon be preserved and maintained so as to protect and preserve said historic, cultural or architectural importance. No structure on the lot conveyed to a preservation grantee pursuant to this section may be inhabited as a dwelling.

## SECTION 11. STANDARDS

### 11.1. Minimum Lot Standards

AREAS OF TOWN NOT SUBJECT TO SHORELAND ZONING[1,2&3]

| | AREAS LOCATED OUTSIDE OF A SUBDIVISION | AREAS LOCATED WITHIN A SUBDIVISION[4] |
|---|---|---|
| **MIN. LOT SIZE (S.F.) PER DWELLING UNIT** | 40,000 | 80,000 |
| **ROAD FRONTAGE (FT)** | 150[3] | 150[5] |
| **PROPERTY LINE SETBACK (FT)** | See Section 11.3.1 | See Section 11.3.1 |
| **ROAD SETBACK (FT)** | See Section 11.3.1 | See Section 11.3.1 |
| **STRUCTURE HEIGHT (FT)** | 35 | 35 |

1. For uses in the Shoreland Zone, see Sections 15.1 and 15.2 of the Shoreland Zoning Ordinance and the Site Plan Review Ordinance.
2. Nonresidential development in these areas is governed by the Site Plan Review Ordinance.
3. For any road serving more than two (2) lots or dwelling units, the road must comply with the requirements of the Town of Harpswell Road Ordinance. For any lot to which access is only by one (1) or more roads terminating at the lot, no minimum road frontage is required provided that access to any development on the lot is wide enough to accommodate emergency vehicles but in no event less than twelve (12) feet in width.

4. The minimum lot size and road frontage requirements may be reduced for lots in subdivisions developed in accordance with the Flexible Lot Size Subdivision provisions of the Subdivision Ordinance.

5. The frontage requirement for lots on a hammerhead or T-shaped turnaround for dead end roads in a subdivision may be reduced to fifty (50) feet where no future road is either feasible or provided for on the subdivision plan, provided that all of the requirements of the Town of Harpswell Road Ordinance are met.

6. Notwithstanding the minimum lot size per dwelling unit requirement in the table, an existing one-unit residential structure with three or more bedrooms may be converted to a two-unit residential structure with a total number of bedrooms equal to or less than the number of bedrooms in the existing structure even if it is nonconforming with respect to the minimum lot area requirement if all of the following conditions are met:

a. The structure is located on a lot that is not part of a subdivision;
b. The one-unit residential structure was in existence on the lot as of April 1, 2024;
c. Written evidence shall be provided to the Plumbing Inspector before the issuance of any permits needed to reconfigure the structure that a subsurface wastewater disposal system(s) to serve both units is or will be sized to meet the design sewage flows for the two units in accordance with the Maine Subsurface Wastewater Disposal Rules; and
d. If an existing subsurface wastewater disposal system will be used, written evidence that the system is properly functioning shall be submitted to the Plumbing Inspector prior to the issuance of any permits needed to reconfigure the structure

**11.1.1.** The total area covered by all structures, driveways, parking lots, and other impermeable surfaces shall not exceed twenty percent (20%) of the total area of the lot with the following exceptions:

**11.1.1.1.** Lots in Flexible Lot Size subdivisions that have a lot area of less than 40,000 square feet may have up to 7,500 square feet of impermeable surface.

**11.1.1.2.** Lots with a principal residential use utilizing green infrastructure and low impact development (LID) techniques may have up to twenty-five (25%) percent impermeable surface.

**11.1.1.3.** Lots with a principal nonresidential use utilizing green infrastructure and low impact development (LID) techniques may have up to fifty (50%) percent impermeable surface.

**11.1.2.** Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

**11.1.3.** The following land shall not be included in the calculation of the area of a lot for the purposes of meeting minimum lot size or other density or dimensional requirements:

**11.1.3.1** Land below the minimum high water line of a great pond, stream, or tributary stream,

**11.1.3.2** Land below the HAT of a coastal wetland,

**11.1.3.3** Land below the upland edge of a freshwater wetland with a contiguous are of more than twenty thousand (20,000) square feet,

**11.1.3.4** Land which is part of a road, or a transportation right-of-way, or easement serving more than two (2) lots, except rights-of-way or easements used exclusively for pedestrian access, and

**11.1.3.5** Land created by the filling or draining of a great pond, stream, tributary stream, or coastal or freshwater wetland.

## 11.2. Minimum Lot Frontage

**11.2.1. Off-Shore Island.** Lots on off-shore islands not covered by Shoreland Zoning will be exempt from Frontage requirements.

## 11.3. Principal and Accessory Structures

**11.3.1. Setback.** All principal structures and expansions of existing principal structures shall be set back at least forty (40) feet from the edge of the traveled way and at least twenty (20) feet from all lot lines; provided, however, that if more than one (1) traveled way abuts a lot, the dwelling need only be set back from the traveled way that serves as access to the driveway for the lot. All accessory structures shall be set back at least twenty (20) feet from all lot lines or the edge of a traveled way, whichever is more restrictive. If the location of a property line along a traveled way is unknown, the setback for accessory structures shall be forty (40) feet from the edge of the traveled way.

**11.3.1.1.** One accessory structure not to exceed eighty (80) square feet and not to exceed ten feet six inches (10'6") in height may intrude up to ten (10) feet into a sideline or rear setback without the need for a variance if the CEO determines that the proposed location meets the setback requirements to the greatest practical extent as described in Section 10.3.2.4, has been consented to in writing by the property owner(s) abutting the lot line in question, and will meet all other requirements of the ordinance.

**11.3.1.2.** One accessory structure not to exceed eighty (80) square feet and not to exceed ten feet six inches (10'6") in height may intrude up to fifteen (15) feet into a sideline or rear setback without the need for a variance if the CEO determines that the structure will be accessory to a principal structure listed on the National Register of Historic Places, that the intrusion into the setback has been determined by the Maine Historic Preservation Commission to be necessary to maintain the historic character of the property, that the intrusion has been consented to in writing by the property owner(s) abutting the lot line in question, and the accessory structure will meet all other requirements of the ordinance.

**11.3.2. Height of Structures.** All principal and accessory structures shall not exceed thirty-five (35) feet in height. All expansions of principal and accessory structures that increase the footprint of the structure shall not exceed thirty-five (35) feet in height. For any principal or accessory structure existing as of March 10, 2007 that lawfully exceeds thirty-five (35) feet in height, such structure may be expanded without the need for a variance provided that (a) the expansion does not increase the footprint of the structure; and (b) the expansion does not exceed the greatest height of the existing structure. Expansions of nonconforming structures must comply with all other expansion limitations of this Ordinance. The CEO shall review any proposed expansion of a structure and shall determine, in writing, whether the requirements of this subsection are met prior to the issuance of any permit. This subsection does not apply to structures having no floor area, such as transmission towers, windmills, antennas and similar structures.

The height of a structure shall be determined by using the definition of height in the Definitions Addendum. Notwithstanding the preceding sentence, cupolas or similar portions of a structure

having no floor area and exceeding any of the following dimensions (a) a side wall of sixteen (16) square feet; (b) a side wall of four (4) feet in height; (c) sixteen (16) square feet of horizontal area; or (d) a twelve/twelve (12/12) roof pitch, shall be included in the measurement of the height of a structure.

If the measurement cannot be made from the original grade where the structure is to be located, the CEO shall establish a reasonable approximation of original grade for the purposes of determining height.

**11.3.3. Accessory Temporary Living Accommodation.** During the construction or reconstruction of a one-unit residential use, a property owner may place an accessory temporary living accommodation on the lot in conformance with this section. Prior to installing the accessory temporary living accommodation on the lot, the property owner must obtain a temporary certificate of compliance from the Code Enforcement Officer (CEO). The CEO shall issue the temporary certificate only if he/she finds that all of the provisions of this section have been met. The temporary certificate of compliance shall be for a period of not more than twelve (12) months. The owner may apply for up to two (2) twelve (12) month renewals of the temporary compliance permit and the CEO shall approve such renewals only if he/she finds that the property owner is in compliance with all of the provisions of this section.

The placement and use of the accessory temporary living accommodation shall conform to all of the following requirements:

**11.3.3.1.** The accessory temporary living accommodation shall be a travel trailer, recreational vehicle, tent, or other similar enclosure that is not permanently attached to the ground.

**11.3.3.2.** The temporary living accommodation shall have a maximum of three hundred (300) square feet of area that can be occupied.

**11.3.3.3.** The accommodation shall be used only for the temporary living quarters of the property owner and her/his immediate family while construction is in progress on the home.

**11.3.3.4.** The temporary living accommodation shall be located on the lot in full conformance with the shoreland and property line setbacks.

**11.3.3.5.** The temporary living accommodation shall not be located on any type of permanent foundation and if the accommodation is a travel trailer, recreational vehicle, or similar mobile enclosure with integral wheels, the wheels shall remain on the vehicle while it is on the lot.

**11.3.3.6.** The owner shall prepare a written sewage disposal plan describing the proposed method and location of provisions for sewage disposal. The plan must be approved by the local plumbing inspector. When disposal is off-site, written authorization from the receiving facility or land owner is required.

A property owner who has been issued a temporary certificate of compliance for the placement of an accessory temporary living accommodation on the lot shall remove the temporary living accommodation within fifteen (15) days of being notified by the CEO in writing that the use is not in compliance with the standards and/or that the temporary certificate of compliance has expired, or shall disconnect the unit from all permanent utilities and sewage disposal provisions within fifteen (15) days of receiving a certificate of compliance for the new or replacement home. Failure to remove the accessory temporary living accommodation or disconnect it from all permanent utilities and sewage disposal provisions as required shall constitute a violation of this Ordinance subject to the penalties described in Section 13.6 herein.

## 11.4. Subsurface Waste Disposal

**11.4.1.** All subsurface wastewater disposal systems shall be permitted and installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules and to minimize adverse impacts on ground water quality.

**11.4.2.** All new, replacement, renovated, or expanded structures or uses generating waste, shall provide evidence of the type specified in Section 13.3.4 that an adequate wastewater disposal system can be constructed or that an adequate wastewater disposal system already exists.

**11.4.3. Existing Use - Continuation of Use.** The use of any legal system that exists on the effective date of this Ordinance, or which had previously been approved for installation, may be continued without change except as may be specifically covered by the Maine State Plumbing Code or deemed necessary by the plumbing inspector, for the general safety and welfare of the occupants and the public.

**11.4.4. Change in Use -** It shall be unlawful to make any change in the use of any system, or to erect, enlarge, or change the use of a structure that uses an existing system without the approval of the plumbing inspector and certification that such change does not result in any hazard to public health, safety, and welfare.

**11.4.5.** The minimum setback for new subsurface wastewater disposal fields shall be not less than one hundred (100) horizontal feet from the maximum high water line of a perennial water body. The minimum setback distance from the water body for new subsurface wastewater disposal fields shall not be reduced by variance.

**11.4.6.** Replacement systems shall meet the standards for replacement systems as contained in the Maine Subsurface Wastewater Disposal Rules.

**11.4.7.** The owner of the proposed system may locate the system or components partially on property not owned or controlled by the owner of the system, provided that the owner of the property where the system is to be located executes an easement in perpetuity for the construction, operation, replacement, and maintenance of the system, giving the system's owner authorization to cross any land or right-of-way between the two parcels. The easement shall be filed and cross-referenced in the Registry of Deeds and the Code Enforcement Office prior to issuance of a

disposal system permit. The easement shall provide sufficient buffer around the disposal field and fill material extensions for future replacement and maintenance of the system.

***Citizens Note**: The Town recommends that all owners of new and replacement systems install low-flow flushes and shower heads.*

**11.5. Roads and Driveways.** Roads serving more than two (2) lots or dwelling units must comply with the requirements of the Town of Harpswell Road Ordinance.

***Citizen's Note**: Roads in the Shoreland Zone are also governed by the Shoreland Zoning Ordinance. Any owners of lots fronting on State Route 123, State Route 24, the Cundy's Harbor Road, or the Mountain Road are encouraged to share driveways to reduce curb cuts and improve safety. A curb cut must be approved by Maine DOT and the Town Road Commissioner.*

**11.6. Storm Water Runoff**

**11.6.1.** All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural pre-development conditions. Where possible, green infrastructure and low impact development (LID) techniques (rain gardens, infiltration planters, bioswales), as well as existing natural runoff control features (berms, swales, terraces, and wooded areas) shall be retained in order to reduce runoff and encourage infiltration of stormwater.

**11.6.2.** Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

**11.7. Campgrounds.** Campgrounds shall be subject to the same provisions as those set forth in Section 15.4 of the Shoreland Zoning Ordinance, as may be amended from time to time.

**11.8. Individual Private Campsites and Temporary Residential Use.** Individual private campsites and temporary residential uses shall be subject to the same provisions as those set forth in Section 15.5 of the Shoreland Zoning Ordinance, as may be amended from time to time.

**11.9. Agriculture.** Agriculture shall be subject to the same provisions as those set forth in Section 15.13 of the Shoreland Zoning Ordinance, as may be amended from time to time.

**11.10. Earth Moving, Erosion and Sedimentation Control.** Earth moving, erosion and sedimentation control shall be subject to the same provisions as those set forth in Section 15.16 of the Shoreland Zoning Ordinance, as may be amended from time to time.

**11.11. Water Quality Protection.** No activity shall deposit on or into the ground or discharge to the water 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 a water body.
No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances.

**11.12. Accessory Dwelling Unit (ADU).** One accessory dwelling unit (ADU) may be added to any lot with a principal one-unit residential structure without having to meet the minimum lot area per dwelling unit requirement for the ADU, provided that it meets all of the following standards:

(a) The owner of the property shall occupy either the principal dwelling unit or the ADU;
(b) Any ADU within or attached to the principal structure or within an accessory or freestanding structure shall have a maximum of seven hundred fifty (750) square feet of floor area;
(c) If the ADU is located within or attached to the principal structure, the design of the ADU, including its entrance from the outside, shall maintain the appearance of a one-unit residential structure;
(d) Any addition to the principal structure or an accessory structure to create the ADU shall comply with the property line and road setbacks. If the principal or accessory structure is nonconforming with respect to any setback, the addition shall not increase the nonconformity;
(f) The location of a freestanding structure on the property for use as an ADU shall comply with the property line and road setbacks and shall not obscure the front of the principal structure;
(g) Written evidence shall be provided to the Plumbing Inspector before the issuance of any permits needed to create the ADU that a subsurface wastewater disposal system(s) to serve both the principal unit and the ADU is or will be sized to meet the design sewage flows for the two units in accordance with the Maine Subsurface Wastewater Disposal Rules; and
(h) If an existing subsurface wastewater disposal system will be used, written evidence that the system is properly functioning shall be submitted to the Plumbing Inspector prior to the issuance of any permits needed to create the ADU.

**11.13. Utilities and Essential Services.** Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors and above ground facilities must be located so as to avoid crossing open areas and scenic views as identified in the Comprehensive Plan.

**11.14. Soils.** All land uses shall be located on soils in or upon which proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses shall require a soils report based in an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, and Maine State Certified Geologists. The report shall include an analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

**11.15. Vegetative Buffers**. Within seventy-five (75) feet, horizontal distance, from the maximum high water line of a tributary stream, the clearing of existing vegetation in areas other than the Shoreland Zone, shall be conducted in accordance with the following provisions.

**11.15.1.** There shall be no clearcut openings greater than two hundred fifty (250) square feet in the forest canopy as measured from the outer limits of the tree crown, and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained. Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained.

**11.15.2.** No accumulation of slash shall be left within fifty (50) feet of the maximum high water line of a tributary stream. Slash shall either be removed or disposed of in such a manner that it lies on the ground and no part of it extends more than four (4) feet above the ground. Any debris that falls below the maximum high water line of a tributary stream shall be removed.

**11.15.3.** Cleared openings legally in existence as of March 10, 2001 may be maintained, but shall not be enlarged, except as permitted by this Ordinance.

**11.15.4.** Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

**11.16. Home Occupations.** All home occupations are subject to the provisions of Section 15.20 of the Shoreland Zoning Ordinance setting forth performance standards for home occupations regardless of whether they are located within the Shoreland Zone.

**11.17. Archeological and Historic Sites.** All proposed land use activities shall be designed to protect archeological and historic sites that have been identified in the Town's Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service. Any proposed land use activity involving structural development or soil disturbance on sites listed on the National Register of Historic Places shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) business days prior to action being taken by the applicable Town permitting authority; provided, however, that the CEO may, in the event of an emergency as determined by the CEO, take appropriate action to allow only such limited land use activity as is necessary to protect the public health, safety and welfare in order to cure the emergency situation. The Town permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

**11.18. Workforce Housing**

**11.18.1. Purpose**

The 2005 Harpswell Comprehensive Plan sets forth the need in Harpswell for the availability of Workforce Housing to maintain the diversity of Harpswell's population. To that end, this Section is intended to provide and promote the acquisition and construction of housing that is affordable for current and future generations of Harpswell residents.

**11.18.2. Applicability**

**11.18.2.1. Single Lot Development Standards**

Notwithstanding any other provision of this Ordinance to the contrary, a Workforce Housing Unit may be built upon a lot, located outside of the shoreland zone and in lawful existence as

of March 13, 2010 but that does not meet the Section 11.1 minimum lot size requirements, subject to an acceptable soils test and an engineering design for a one-unit residential subsurface wastewater disposal system approved by the CEO of the Town of Harpswell and the following requirements:

a. Lot Size
   A lot with a minimum area of twenty thousand (20,000) square feet may be used for a single Workforce Housing Unit.

b. Road Setback
   If there is a predominate pattern of development in the immediate neighborhood with respect to the relationship of the principal structure to the road as determined by the CEO, the Workforce Housing Unit must be located on the lot so that it has a similar relationship to the road as other neighboring principal structures on the same side of the road. If this requires the Workforce Housing Unit to be closer to the front lot line than the required front yard setback, the Workforce Housing Unit may encroach into the front setback area and no variance is required.

c. Property Line Setback
   If there is a predominate pattern of development in the immediate neighborhood with respect to the relationship of the principal structure to the property lines to the side of the structure as determined by the CEO, the Workforce Housing Unit must be located on the lot so that it has a similar relationship to the side property lines as other neighboring principal structures on the same side of the road. If this requires the Workforce Housing Unit to be closer to the property line(s) to the side of the structure than the required property line setback, the Workforce Housing Unit may encroach into the setback area(s) and no variance is required.

Prior to issuance of a building permit for a single Workforce Housing Unit, the Workforce Housing Lot shall be subjected to a Workforce Housing Covenant as set forth in Section 11.18.3.5 and that is recorded at the Cumberland County Registry of Deeds. The applicant shall provide a copy of the recorded instrument to the CEO.

**11.18.2.2. New Subdivisions**
Applications for new subdivisions may provide permanently restricted Workforce Housing Lots or Units by means of one or more of the following, as determined by the Planning Board:

a) Provide one (1) or more permanently restricted Workforce Housing Lots or Units within the project; or
b) Provide one (1) or more off-site permanently restricted Workforce Housing Lots or Units.

**11.18.2.3**. Notwithstanding any other provision of this ordinance to the contrary, two (2) or more Workforce Housing Lots or Units may share a subsurface wastewater disposal system, subject to review and approval of the CEO.

**11.18.2.4.** An applicant who is qualified to purchase a Workforce Housing Lot or Unit under this Section at the time of purchase of such Lot or Unit shall not be required to vacate such Lot or Unit due to a subsequent increase in income, provided that said applicant otherwise remains in compliance with this Section and any rules and regulations adopted by the Board of Selectmen for its management.

### 11.18.3. Standards for Development of Workforce Housing Subdivisions

**11.18.3.1. Density Bonus Provisions**. If a subdivision application provides Workforce Housing Lots or Units, the subdivision shall be eligible for a density bonus of one (1) additional market rate lot or unit for each moderate income Workforce Housing Lot or Unit and two (2) additional market rate lots or units for each low or very low income Workforce Housing Lot or Unit. Non-bonus lots shall meet all requirements of this ordinance and the Subdivision Ordinance. The reduced minimum lot size of twenty thousand (20,000) square feet, as allowed in Section 11.18.2.1a, shall apply only to the creation of Workforce Housing Lots or bonus lots in a new subdivision. No density bonus shall be applied where offsite Workforce Housing Lots or Units are provided.

The following chart illustrates calculations under this subsection:

| Proposed Units/Lots in subdivision | # of Market Rate Units or Lots | # of Moderate Income Workforce Housing Units/Lots | # of Low/Very Low Income Workforce Housing Units/Lots | Bonus Market Rate Units/Lots Allowed | Total # of Units/Lots Possible |
|---|---|---|---|---|---|
| 3 | 2 | 1 | 0 | 1 | 4 |
| 5 | 4 | 0 | 1 | 2 | 7 |
| 5 | 3 | 1 | 1 | 3 | 8 |
| 6 | 5 | 1 | 0 | 1 | 7 |
| 6 | 5 | 0 | 1 | 2 | 8 |
| 10 | 8 | 2 | 0 | 2 | 12 |

For example, if developer/applicant proposes a three (3) lot subdivision and one (1) of those lots is affordable at the moderate income level, a bonus market rate lot would be allowed and then the total number of lots allowed would be four (4). If the developer/applicant proposes a five (5) lot subdivision and one (1) of those lots is affordable at the low income level, then the developer/applicant gains two (2) additional or "bonus" lots which may be market rate for a total of seven (7) lots. The same analysis and calculations apply to units.

**11.18.3.2. Plan Notations and Recorded Documentation of Affordability.** A note shall be added to all subdivision plans designating the lots or units that shall be permanently restricted Workforce Housing Lots or Units. The Workforce Housing Covenant shall be recorded in the Cumberland County Registry of Deeds concurrently with the recording of the approved plan. A copy of the recorded instrument shall be provided to the CEO within thirty (30) days after recording. Any deed or conveyance of title to a Workforce Housing Lot or Unit shall include

reference to the recorded Workforce Housing Covenant imposed upon the initial approval of such Unit or Lot and failure to do so shall constitute a violation of this ordinance.

**11.18.3.3. Location.** Workforce Housing Lots and Units shall, to the greatest extent possible, be geographically dispersed throughout the subdivision or, if developed offsite, throughout the town.

**11.18.3.4. Neighborhood Compatibility.** The appearance and design of Workforce Housing Units on Workforce Housing Lots shall be compatible with the appearance and design of dwellings in the remainder of the subdivision. Exterior designs of the outside facades of both the market rate units and Workforce Housing Units shall be submitted to the Planning Board during the subdivision review process.

**11.18.3.5. Workforce Housing Covenant.** During the Planning Board review process and prior to final approval of a subdivision that includes Workforce Housing Lots or Units, the applicant shall submit to the Board of Selectmen, for approval on behalf of the Town, an executed Workforce Housing Covenant agreement that preserves the long-term affordability of the Workforce Housing Lots or Units to very low, low and moderate income households. The agreement must be in a form acceptable to the town and include, at a minimum, provisions for the following:

a) Permanent affordability for low and moderate income buyers;
b) A formula for accruing limited equity recapture to the owner of a Workforce Housing Lot or Unit which includes approved physical improvements;
c) Enforcement provisions;
d) Administrative costs to the Town; and
e) Supervision of the agreement.

The Planning Board shall not grant final subdivision approval until the Board of Selectmen has approved the Workforce Housing Covenant agreement.

**11.18.3.6. Development of Workforce Housing Lots.**
For subdivisions for which the applicant chooses not to develop the Workforce Housing Unit or Workforce Housing Lot, the applicant may convey the Unit or Lot to a nonprofit corporation recognized under state and federal law as qualified to accept funding for the development of Workforce Housing. The nonprofit corporation shall complete the Unit or Lot pursuant to the provisions of this Section.

**11.18.3.7. Off Site Option.**
The Planning Board is authorized to allow acquisition and construction of Workforce Housing Lots or Units offsite. If the applicant chooses to utilize the offsite option for Workforce Housing Lots or Units, the applicant may join with others to provide the units through new off site construction or renovation of existing offsite structures.

Any deed or conveyance of title to an offsite Workforce Housing Lot or Unit shall include reference to the recorded Workforce Housing Covenant imposed upon the initial approval of such Lot or Unit and failure to do so shall constitute a violation of this ordinance.

**11.18.3.8. Administration of Workforce Housing.**
The Town may contract with a qualified individual or entity for the administration of Workforce Housing Lots or Units for the screening of qualifying potential purchasers and the long term monitoring and administration of this Section. The costs for administration of the Workforce Housing provisions of this ordinance shall be paid for out of the Workforce Housing Fund.

**11.18.4. Qualified Buyers.**
Preference for buyers of Workforce Housing Lots or Units shall be given to Town residents, persons employed in the Town, persons with family members or relatives in Town, and former Town residents who wish to re-establish Town residency.

**11.19. Swimming Pools.** All swimming pools, as that term is defined in 22 M.R.S.A. § 1631(2), shall comply with the fence enclosure requirements set forth in 22 M.R.S.A. §§ 1631-1632, as may be amended from time to time. Failure to do so shall constitute a violation of this Ordinance.

**11.20. Wheelchair Ramps and Other Accessibility Structures**
Notwithstanding any other setback provision of this Ordinance to the contrary, the CEO may issue a permit to allow a wheelchair ramp or other structure necessary for access to or egress from a structure within a required setback provided that the following standards are met:

(1) The wheelchair ramp or other structure necessary for access to or egress ("accessibility structure") from a structure is only for the purpose of making a structure accessible to a person with a disability who resides in or regularly uses the structure;
(2) The accessibility structure is designed to limit the encroachment into the required setback to the greatest practical extent;
(3) The design, construction and location of the accessibility structure is appropriate to the context of the existing structure and neighborhood; and
(4) All of the requirements of this Ordinance, with the exception of setback requirements, are met.

All permits issued pursuant to this Section shall contain a condition of approval shown on the face of the permit as follows: "This permit approval is limited to the duration of the disability or the time that the individual requiring the accessibility structure resides in or regularly uses the structure. The encroachment into the setback shall be removed when the individual requiring the accessibility structure no longer resides in or regularly uses the structure. The permit shall be renewed within five (5) years from its issuance."

For the purposes of this Section, the term "structure necessary for access to or egress from a structure" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the accessibility structure, and the term "disability" has the same meaning as a physical or mental disability under 5 M.R.S.A. § 4553-A, as may be amended from time to time.

## SECTION 12. ADMINISTRATION

### 12.1. Administrative Bodies and Agents

**12.1.1. Code Enforcement Officer (CEO).** A CEO shall be appointed or reappointed annually by March 31.

**12.1.2. Powers and Duties.** The CEO shall enforce the provisions of the Town's land use ordinances and monitor all activities within the jurisdiction of the Town's land use ordinances. The CEO shall follow up all building permits to ascertain compliance with any conditions or restrictions imposed on the permittee by the CEO, Planning Board, Board of Appeals, or the Town's land use ordinances. The CEO shall also investigate all complaints of alleged violations of the Town's land use ordinances. He or she shall enforce the Town's land use ordinances, as defined in his or her job description, for which purpose he or she shall establish reasonable procedures.

The CEO shall have all of the duties, responsibilities, and powers set forth in the State statute or local ordinance, including but not limited to the power to issue "stop work" orders, notices of violation of the Town's land use ordinances, and orders to cease violations. He or she shall also have the authority to revoke building permits as a result of violations of the Town's land use ordinances by the permit holder or his or her agents or contractors, noncompliance with conditions of building permits, or other sufficient cause under the Town's land use ordinances.

**12.1.3.** The CEO shall keep a complete written record of all essential transactions of his or her office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. Such records shall be available for inspection by the public.

On a biennial basis, a summary of this record for the shoreland districts shall be submitted to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

**12.1.4.** The CEO shall maintain a list of permits granted by his or her office, the Board of Appeals and the Planning Board. Permits will remain on the list as long as they are active.

**12.1.5.** The CEO shall report to the Board of Selectmen any changes that may be needed in the Town's land use ordinances and prepare a file for review by the Selectmen and appropriate town boards and committees for future action.

**12.2. Planning Board.** A Planning Board is created in accordance with the provisions of State law.

**12.2.1. Appointment.**

**12.2.1.1.** Appointment to the Board shall be made by the Selectmen as terms expire and/or as vacancies occur. Terms shall be for three (3) years.

**12.2.1.2.** The Board shall consist of five (5) members and two (2) associate members.

**12.2.1.3.** Associate members shall be appointed annually for one (1) year terms.

**12.2.1.4.** Resignations from the Board shall be filled by appointments for the unexpired terms.

**12.2.2. Organization and Rules.**

**12.2.2.1.** The Board shall elect a chairman and a secretary from its members and create and fill such offices as it may determine. The term of all offices shall be one (1) year, with eligibility for re-election.

**12.2.2.2.** When a member is unable to act because of conflict of interest, physical incapacity, absence, or any other reason satisfactory to the chairman, the chairman shall designate an associate member to sit in his stead.

**12.2.2.3.** An associate member may attend all meetings of the Board and participate in its proceedings, but may vote only when he has been designated by the chairman to sit for a member.

**12.2.2.4.** Any question as to whether a member shall be disqualified from voting shall be decided by a majority vote of the members except the member who is being challenged.

**12.2.2.5.** The Chairman shall call at least eight (8) regular meetings of the Board each year.

**12.2.2.6.** Four (4) persons shall be a quorum of the Board.

**12.2.2.7.** The Board shall adopt rules for the transaction of business and the secretary shall keep a record of its resolutions, transactions, correspondence, findings, and determinations. All records shall be deemed public and may be inspected at reasonable times.

**12.2.2.8.** The Selectmen may appoint a replacement for any member with two (2) or more consecutive unexcused absences from regularly scheduled meetings.

**12.2.3. Duties and Powers.**

**12.2.3.1.** The Board shall perform such duties and exercise such powers as are provided by Town Ordinances and State Law.

**12.2.3.2. Notification to Abutters.** Owners of properties, any part of which is located within two hundred fifty (250) feet of the nearest boundary of any property on which a development requiring Planning Board approval is proposed shall be notified by the Municipal Office, at the applicant's expense, by first class mail, of the date on which the application will be considered by the Planning Board. Failure of any property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Planning Board.

**12.2.3.3. Technical Review Fee.**
In addition to the application fee, every applicant to the Planning Board may also be required by the Planning Board to pay a technical review fee to defray the Town's legal and technical costs of the application review. This fee must be paid to the Town and shall be deposited in an individual trust account, which is separate and distinct from all other Planning Board and Town accounts. When a technical review fee is required, the application will be considered incomplete until evidence of payment of this fee is submitted to the Planning Board. If the initial fee proves to be insufficient to meet the Town's legal and technical costs of reviewing the application, the Planning Board may assess an additional fee(s) to cover such legal and technical costs.

The technical review fee may be used by the Planning Board only to pay reasonable costs incurred by the Board, at its discretion, which relate directly to the review of the application pursuant to the review criteria. Such services may include, but need not be limited to, consulting, engineering or other professional fees, attorney fees, recording fees, and appraisal fees. The Town shall provide the applicant, upon written request, with an accounting of his or her account and shall refund all of the remaining monies, including accrued interest, in the account after the payment by the Town of all costs and services related to the review. Such payment of remaining monies shall be made no later than sixty (60) days after the approval of the application, denial of the application, or approval with conditions of the application. Such refund shall be accompanied by a final accounting of expenditures from the fund. The monies in such fund shall not be used by the Board for any enforcement purposes.

**12.3. Board of Appeals.** A Board of Appeals is created in accordance with the provisions of State law.

**12.3.1. Powers and Duties.** The Board of Appeals has the following powers and duties:

**12.3.1.1. Administrative Appeals.** To hear and decide appeals, on an appellate basis, where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board under the Basic Land Use Ordinance, Floodplain Management Ordinance, Shoreland Zoning Ordinance, Site Plan Review Ordinance, Subdivision Ordinance, or Wireless Telecommunications Facilities Ordinance, and to hear and decide administrative appeals, on a *de novo* basis, where it is alleged that there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer in the administration of the Basic Land Use Ordinance, Floodplain Management Ordinance, Road Ordinance, Shoreland Zoning Ordinance, or Wireless Telecommunications Facilities Ordinance; provided, however, that decisions or determinations made by the CEO not to undertake an enforcement action shall not be appealable to the Board of Appeals. Other decisions made by the CEO or the Local Plumbing Inspector shall only be appealable to the Board of Appeals if expressly provided by statute, ordinance, or administrative regulation.

***Citizen's Note***: *Some decisions made by the Planning Board in administering the Subdivision Ordinance are not subject to appeal. See Section 14 of the Subdivision Ordinance.*

**12.3.1.2. Variance Requests.** To authorize variances upon request or otherwise, on a *de novo* basis, within the limitations set forth in the Town's land use ordinances.

**12.3.1.3. Boundary Line Determinations.** To hear and decide disputes, on a *de novo* basis, regarding the location of the boundary line for the Shoreland Zoning District.

**12.3.1.4. Notification to Abutters.** Owners of properties, any part of which is located within two hundred fifty (250) feet of the nearest boundary of any property subject to an administrative appeal, variance request, or dispute about the Shoreland Zoning District boundary line shall be notified by the Municipal Office, at the applicant's expense, by first class mail, of the date on which the appeal, request, or dispute will be heard by the Board of Appeals. Failure of any property owner to receive the notice sent as required under this subsection shall not necessitate another public meeting or invalidate any action taken by the Board of Appeals.

**12.4. Definitions.** For purposes of this Ordinance, certain terms or words used herein shall be defined as set forth in the Definitions Addendum attached hereto and made a part hereof.

## SECTION 13. PERMITS, APPROVALS AND CERTIFICATES OF COMPLIANCE REQUIRED

**13.1. Permits or Approvals.** After the effective date(s) of the applicable land use ordinance and amendments thereto, no person shall, without first obtaining a permit or approval, engage in any activity or use of land or structure requiring a permit or approval under the applicable Town land use ordinance governing the area in which the activity or land use would occur. Permits shall be posted on site in a manner that is readily visible within two (2) working days of issuance. Permits or approvals are required as noted in Table 1.

**13.2. Certificates of Compliance.** Prior to occupancy or use of any structure or land use requiring a permit or approval, the owner shall obtain a certificate of compliance from the CEO. No occupancy or use of a structure, development, or land use may occur without a certificate of compliance, unless specifically allowed by the conditions of an approval or permit. The CEO shall not issue a certificate of compliance until he or she has determined that the structure, development or land use has been completed in accordance with all of the Town’s land use ordinances and with any conditions of permits or approvals imposed under those ordinances. A certificate of compliance shall not be issued for any project located in the Shoreland Zone until the owner has submitted pictures documenting the work done on the lot including all planting and revegetation required by the Shoreland Zoning Ordinance.

**13.2.1. Temporary Certificates of Compliance.** Residing in a basement or foundation before the structure has been completed shall be permitted for a period of three (3) years from the date of issuance of a building permit subject to issuance of a one (1) year temporary certificate of compliance, renewable annually, provided the following conditions are met:

a. reasonable progress, as determined by the CEO, is being made toward completion of the structure as permitted;
b. nuisance conditions do not exist;

c. a valid plumbing permit has been issued and all conditions of that permit are being met;
d. dimensional requirements of the applicable ordinance are being met; and
e. all other applicable requirements of the Town's ordinances are being met.

## 13.3. TABLE 1. LAND USES AND ACTIVITIES

| Land Uses | Interior | Shoreland Districts | | | | | |
|---|---|---|---|---|---|---|---|
| | INT | RP | SR | SB | CFI | CFII | MFMB[16] |
| 1. Non-intensive recreational uses not requiring structures such as hunting, fishing, and hiking | Yes | Yes | Yes | Yes | Yes | Yes | Yes[15] |
| 2. Motorized vehicular traffic on existing roads and trails | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 3. Forest management activities except for timber harvesting | Yes | Yes | Yes | Yes | Yes | Yes | No |
| 4. *Timber Harvesting Note: Deleted | Yes | NA | NA | NA | NA | NA | NA |
| 5. *Clearing of vegetation for approved construction and other allowed uses | Yes | CEO | Yes | Yes | Yes | Yes | Yes |
| 6. Fire prevention activities | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 7. Wildlife management practices | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 8. Soil and water conservation practices | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 9. Mineral exploration | Yes | No | No | No | No | No | No |
| 10. Mineral extraction including sand and gravel extraction | PB | No | No | No | No | No | No |
| 11. Surveying and resource analysis | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| **Land Uses** | **Interior** | **Shoreland Districts** | | | | | |
| | **INT** | **RP** | **SR** | **SB** | **CFI** | **CF2** | **MFMB[16]** |
| 12. Emergency operations | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 13. *Agriculture | Yes | PB | Yes | Yes | No[1] | Yes | No |
| 14. Aquaculture | PB | PB | PB | PB | PB | PB | PB[16] |
| 15. Principal structures and uses | | | | | | | |
| 15.1 One and two–unit residential uses including driveways | CEO | PB[10] | CEO | CEO | No | CEO | No |
| 15.2 Multi-unit residential | PB | No | No | No | No | No | No |
| 15.3 *Commercial | PB | No[13] | No[13] | PB | PB[4] | PB[2] | PB[16] |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 15.4 *Industrial | PB | No | No | PB | No | No | PB[16] |
| 15.5 *Governmental and Institutional | PB | No[9] | PB | No | No | No | PB |
| 15.6 Small nonresidential facilities for marine, scientific or nature related purposes | PB | No | PB | PB | PB | PB | PB[17] |
| 15.7 Nonagricultural Fertilizer Use | | | | | | | |
| 15.7.1 Chemical fertilizer, sludge, and non-composted manure | No | No | No | No | No | No | No |
| 15.7.2 Organic fertilizer and composted manure | Yes[21] | Yes[21] | Yes[21] | Yes[21] | Yes[21] | Yes[21] | Yes[21] |
| 15.8 Community Shoreland Access | PB[20] | CEO | CEO | CEO | CEO | CEO | CEO |
| 16. Accessory structures and uses | CEO[11] | PB [11] | CEO[11] | CEO[11] | CEO[11] | CEO[11] | CEO |
| 17. Structural repair | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 17.1 Structural alteration/replacement: residential | CEO | CEO | CEO | CEO | CEO | CEO | No |
| 17.2 Structural alteration/replacement: nonresidential | CEO/ PB | CEO/ PB | CEO/ PB | CEO/ PB | CEO/ PB | CEO/ PB | CEO/PB |
| 18.1 *Noncommercial piers, docks, wharves, bridges and other structures and uses extending over or below the HAT, maximum high water line or wetland | Yes | PB[14] | CEO 14/18 | CEO 14/18 | CEO 14/18 | CEO 14/18 | CEO 14/18 |
| 18.2 *Commercial piers, docks, wharves, bridges and other structures and uses extending over or below the HAT, maximum high water line or wetland | Yes | CEO/ PB 14/19 | CEO/PB 14/19 | CEO/ PB 14/19 | CEO/PB 14/19 | CEO/PB 14/19 | CEO/ PB 14/19 |
| 18.3 Community piers, docks, and wharves | NA | PB | PB | PB | PB | PB | PB |
| 19. Conversions of seasonal residences to year round residences | Yes | No | LPI | LPI | No | LPI | No |
| 20. *Home occupations | Yes[8] | PB[8] | Yes[8] | Yes[8] | Yes[8] | Yes[8] | No |
| 21. Sewage disposal systems | LPI | PB[10]/ LPI | LPI | LPI | LPI | LPI | LPI |
| 22. *Essential services | Yes | PB | PB | PB | PB | PB | PB |
| 23. Service drop for allowed uses | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| 24. Public and private recreational areas involving minimal development, but no building | Yes[12] | PB | PB | CEO | CEO | CEO | CEO |
| 25. *Individual private campsites | Yes | CEO | CEO | CEO | No | CEO | No |
| 26. *Campgrounds | PB | No[5] | PB | PB | No | PB | No |
| 27. *Road construction | Yes[12] | No[6] | CEO | CEO | CEO[4] | CEO | CEO |
| 28. *Parking areas - residential | Yes | CEO/ PB | CEO | CEO | CEO | CEO | No |
| 29. *Parking areas – nonresidential | PB | No[9] | PB | PB | PB[4] | PB | PB |
| 30. *Marinas | PB | No | No | PB | PB[7] | PB[7] | PB[16] |
| 31. Boat Repair Facility | PB | No | No | PB | PB | PB | PB[16] |
| 32. Filling and earth moving < 50 cubic yards | Yes | CEO | Yes | Yes | Yes | Yes | Yes |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 33. Filling and earth moving > 50 cubic yards but less than 1,000 cubic yards[12] | Yes | PB | CEO | CEO | CEO[4] | CEO | CEO |
| 34. Filling and earthmoving > 1,000 cubic yards [12] | PB | PB | PB | PB | PB[4] | PB | PB |
| 35. *Signs | CEO | CEO | CEO | CEO | CEO | CEO | CEO |
| 36. Uses similar to allowed uses | CEO | CEO | CEO | CEO | CEO[4] | CEO | CEO |
| 37. Uses similar to uses requiring a CEO permit | CEO | CEO | CEO | CEO | CEO | CEO | CEO |
| 38. Uses similar to uses requiring a PB permit | PB | PB | PB | PB | PB[4] | PB | PB |
| 39. Projects which use more than 1000 gallons of water/day | CEO | CEO | CEO | CEO | CEO | CEO | PB |
| 40. Land Management Roads | Yes | PB | Yes | Yes | Yes | Yes | No |
| 41. Mobile Food Handlers | BOS | No | BOS | BOS | BOS | BOS | No |

Yes = Allowed (no permit required but the use must comply with all applicable land use standards)
No = Prohibited
BOS = License or other approval issued by the Board of Selectmen may be required under the Town's Mobile Food Handlers Ordinance or Mitchell Field use policies; site plan review and approval by the Planning Board may be required if a seating area for customers is provided.
PB = Requires land use permit issued by the Planning Board
HAT = Highest Annual Tide
LPI = Plumbing permit required
CEO = Permit required from Code Enforcement Officer
MHW = Maximum High Water
NA = Not Applicable
INT = Areas not in the Shoreland Zone
RP = Resource Protection Zone
SR = Shoreland Residential
SB = Shoreland Business
CFI = Commercial Fisheries I
CFII = Commercial Fisheries II

***Citizen's Note**: If you are uncertain about the activity you wish to conduct, that is not listed above, you are advised to contact the Code Enforcement Office for further details.*

## FOOTNOTES: Land Use Table

* For further information on the * uses in land use chart, see Section 15 of the Shoreland Zoning Ordinance.

1. No - except grandfathered properties.

2. Marine related services only. Retail stores limited to nine hundred (900) or less square feet in size.

3. No except limited Commercial Fishing activities.

4. Functionally water-dependent and accessory to Commercial Fishing uses only.

5. Except when area is zoned for resource protection due to flood plain criteria in which case a permit is required from the Planning Board.

6. Except to provide access to permitted uses within the district, or where no reasonable alternative route or location is available outside the RP area, in which case a permit is required from the Planning Board.

7. Primarily commercial fishing related use.

8. Home occupations that provide public restrooms and showers or serve food to the public require a CEO permit. All home occupations are subject to the provisions of Section 15.20 of the Shoreland Zoning Ordinance regardless of whether they are located within the Shoreland Zone.

9. Additions or expansions to existing Town Office Complex may be allowed with Planning Board approval

10. Only as provided in Section 13.1.1 of the Shoreland Zoning Ordinance.

11. When a structure is accessory to both residential and nonresidential uses, the provisions of the more restrictive ordinance shall apply.

12. May require site plan review approval. See Town of Harpswell Site Plan Review.

13. Except for other allowed commercial uses listed in the Table that are allowed in the respective district.

14. Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

15. Hunting is prohibited on all property at Mitchell Field that is owned by the Town of Harpswell.

16. At least forty-five percent (45%) of the gross leasable lot area within the district must be utilized for aquaculture, marinas, boat repair facilities, and/or functionally water-dependent uses as defined in the Definitions Addendum. Not more than fifteen percent (15%) of the gross leasable lot area in the district may be used for commercial or industrial uses that are not functionally water-dependent uses, aquaculture, marinas, and/or boat repair facilities nor other marine-related businesses as defined in the Definitions Addendum provided that these uses may not be located within two hundred fifty (250) feet of the HAT of the coastal wetland. Marine-related business uses are allowed within the district provided that the limitations set forth above are met. The use of the pier and the causeway leading to the pier is limited to activities involving public access and recreation and activities related to and in support of functionally water-dependent uses and marine related businesses that are located within the Mitchell Field

Marine Business District provided that the private use of these facilities does not unduly restrict reasonable public access to and use of the pier.

17. The limitation on the size of nonresidential facilities for marine, scientific, or nature related purposes shall not apply in the Mitchell Field Business Districts if the Planning Board finds that the scale and location of the facility are consistent with the objectives of shoreland zoning and the Mitchell Field Master Plan.

18. Permit applications for noncommercial, private piers, docks or wharves with a maximum width of six (6) feet as measured parallel to the shoreline and which do not extend below the low water line shall be reviewed and issued by the CEO. Noncommercial, private piers greater than six (6) feet wide as measured parallel to the shoreline or which extend below the low water line are prohibited.

19. Permit applications for commercial piers, docks or wharves with a maximum width of twelve (12) feet as measured parallel to the shoreline and which limit the length of the structure to the minimal amount necessary to provide access to the boats intended to use the facility shall be reviewed and issued by the CEO. Permits for commercial piers greater than twelve (12) feet wide as measured parallel to the shoreline or which exceed the minimum length necessary to provide access to the boats intended to use the facility shall be reviewed and issued by the Planning Board.
20. Only as provided in Section 13.1.2. of the Shoreland Zoning Ordinance.
21. Organic fertilizer and composted manure may not be applied within twenty-five (25) feet of the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland or the upland edge of a freshwater wetland as outlined in Section 15.21.1 of the Shoreland Zoning Ordinance.

***Citizen's Note****: Land use activity adjacent to protected natural resources requires a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A.§ 480-C, as may be amended from time to time. Please see CEO for more information.*

### 13.3. Permit and Approval Application

**13.3.1.** Every applicant for a permit or approval shall submit a written application including a scaled site plan on a form provided by the CEO to the appropriate administering body or agent. Application forms shall account for all aspects to which the Town's land use ordinances apply. If the application is for a project that is located in the Shoreland Zone, the application shall include pictures of the lot documenting the existing conditions on the lot including the area adjacent to a coastal or freshwater wetland, stream, tributary stream or great pond.

**13.3.2.** All applications shall be signed by the owner or owners of the property, certifying that the information in the application is complete and correct. If the person signing the application

is not the owner of the property, then that person shall submit a letter of authorization from the owner.

**13.3.3.** All applications shall be dated and the CEO shall note upon each application the date and time of its receipt.

**13.3.4.** A completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of a proposed structure would require the installation of a subsurface sewage disposal system. Whenever the nature of the proposed use includes any construction, installation, or alteration of plumbing facilities, the applicant shall provide one or more of the following, as appropriate, documenting that the structure or use will be served by an adequate wastewater disposal system:

- A valid plumbing permit or completed application for a plumbing permit, including the site evaluation approved by the plumbing inspector.

- A certificate of approval indicating the existing system was installed after July 1974 and was inspected and approved by the plumbing inspector.

- Documentation from the DEP showing that a licensed overboard discharge system exists in accordance with 38 M.R.S.A. § 413 and § 414, as may be amended from time to time.

- Written documentation, acceptable to the plumbing inspector that an adequate wastewater disposal system exists for the property.

The plumbing inspector may require that systems installed prior to 1974 be inspected and documented if the applicant cannot provide evidence that an adequate system exists. In lieu of this inspection, a replacement system may be designed for future installation.

### 13.4. Procedure for Administering Permits

**13.4.1.** With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board or CEO, as appropriate, shall examine all written applications for permits or other actions under the Town's land use ordinances and within thirty-five (35) days from the date of receipt of such written application, 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.

**13.4.2.** With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board may or CEO shall, as appropriate, within the thirty-five (35) day time frame, visit the site for which the permit is sought.

**13.4.3.** The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purpose and provisions of the Town's land use ordinances and any State or Federal law, regulation or rule.

**13.4.4.** With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board or CEO, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within thirty-five (35) days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty-five (35) days of the public hearing if one is held, or within thirty-five (35) days of the next regularly scheduled meeting at which the application is considered.

***Citizen's Note****: See Section 13.4.7 if Planning Board approval is required for activity in the Shoreland Zone.*

**13.4.5.** Permits shall be approved and approvals given when the proposed use or structure is found to be in conformance with the purposes and provisions of the applicable ordinance.

**13.4.6.** No permit or approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State law, or Federal law or regulation or rule, which the Town is responsible for enforcing.

**13.4.7.** The Planning Board shall approve, or approve with conditions, a request for a land use permit in the Shoreland Zone if the Board finds that the proposed use:

**13.4.7.1.** Will maintain safe and healthful conditions;

**13.4.7.2.** Will not result in water pollution, erosion, or sedimentation to surface waters;

**13.4.7.3.** Will adequately provide for the disposal of all wastewater;

**13.4.7.4.** Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

**13.4.7.5.** Will conserve shore cover and points of access to inland and coastal waters;

**13.4.7.6.** Will protect archaeological and historic resources as identified in the Town's Comprehensive Plan, or by the Maine Historic Preservation Commission or the National Park Service;

**13.4.7.7.** Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries I or II District;

**13.4.7.8.** Will avoid problems associated with flood plains development and use; and

**13.4.7.9.** Is in conformance with the provisions of Section 15, Land Use Standards of the Shoreland Zoning Ordinance.

If a permit or approval is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any State or federal law or regulation or rule which the municipality is responsible for enforcing.

## 13.5. Fee and Time Limits

**13.5.1.** Unless otherwise provided by law, permits and approvals shall expire if substantial start of construction or other permitted or approved activity has not commenced within twelve (12) months from the date on which the permit or approval was granted. An extension of time to commence shall be granted upon application to and approval by the CEO, if reasonable need can be shown. A permit or approval is transferable unless otherwise specified.

**13.5.2.** Unless otherwise provided by local law, when a substantial start of construction, as defined in the Definitions Addendum, has been made in accordance with 13.5.1 and the Certificate of Compliance has not been issued by the Code Enforcement Office within five (5) years from the date on which the permit or approval was granted, the permit or approval shall expire. An extension of time to obtain a Certificate of Compliance may be granted upon applications to and approval by Board of Appeals, if reasonable need can be shown due to exigent circumstances. Exigent circumstances would include severe family, medical, or financial problems which prevented substantial completion of construction within the required five (5) year timeframe, as determined by the Board of Appeals.

**13.5.3.** A nonrefundable fee, in such amount as may be established by the Board of Selectmen from time to time, shall be charged for applications, permits and approvals required under the Town's land use ordinances, and a higher fee shall be charged for permit and approval applications that are filed by the applicant after the commencement of the activity for which the permit or approval is required.

**13.5.4.** When a permit or approval has expired, a new permit or approval must be obtained in order for construction to continue. Further construction must meet the requirements of the Town's land use ordinances in effect at the time the new permit or approval is sought.

**13.5.5.** The provisions of Sections 13.5.2 and 13.5.4. of this Ordinance apply only to permits and approvals issued on or after April 1, 1998

**13.5.6.** Failure of the Planning Board to act upon a request for action or upon an application for a permit or approval, or of the CEO to act upon a request for action or upon an application for a building permit, within thirty-five (35) days of the date of receipt of a complete application shall constitute denial of that request or application, unless the applicable ordinance provides otherwise.

## 13.6. Violation, Enforcement, Penalties, and Legal Actions

**13.6.1.** Any violation of the Town's land use ordinances shall be deemed to be a nuisance.

**13.6.2.** If the CEO finds that provisions of the Town's land use ordinances are being violated, he or she shall notify personally or in writing, if necessary by certified mail return receipt requested, the person responsible for such violation indicating the nature of the violation, and ordering the action necessary to correct it. He or she shall order the discontinuance of illegal use of land, structures, or work being done, removal of illegal structures, or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done or nuisance conditions; or shall take any other action authorized by this Article to ensure compliance with or to prevent violation of the provisions of the Town's land use ordinances. A copy of such notice shall be submitted to the Board of Selectmen and shall be maintained as a permanent record.

**13.6.3.** Any person, including but not limited to a landowner, a landowner's agent, or contractor who orders or conducts any activity in violation of the Town's land use ordinances shall be penalized in accordance with 30-A, M.R.S.A. § 4452, as may be amended from time to time.

***Citizen's Note**: Current penalties include fines of not less than one hundred ($100) dollars nor more than twenty-five hundred ($2,500) dollars. Fines may be assessed for each day the violation occurs.*

**13.6.3.1.** In addition to penalties provided herein, the Town may bring an action in the Superior Court or District Court to enjoin violators of the Town's land use ordinances, for collection of penalties, and for such other relief as may be provided by law.

**13.6.3.2.** Each day in which a violation is proved to exist shall constitute a separate offense under this Section.

**13.6.3.3.** In addition to the penalties provided above, any violation of Section 15.15.2. of the Shoreland Zoning Ordinance regarding clearing of vegetation within the seventy-five (75) foot shoreland setback must be remedied by replanting such that the standards of Section 15.15.2.2. of the Shoreland Zoning Ordinance for a well distributed stand of trees and other vegetation are met, unless the Selectmen find that the violation is minor, in which case they may determine such lesser penalty as law allows.

**13.6.4.** When notification and penalties for actions in violation of the Town's land use ordinances do not result in the correction or abatement of the violation or nuisance condition, the CEO shall advise the Board of Selectmen, who may institute any and all actions and proceedings either legal or equitable, to correct the violation, including seeking injunctions of violations, that may be appropriate or necessary for the enforcement of the provisions of the Town's land use ordinances in the name of the Town. The Board of Selectmen is authorized to

enter into administrative consent agreements for the purpose of eliminating violations of the Town's land use ordinances and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized Town official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

## SECTION 14. VARIANCES AND APPEALS

### 14.1. Variances.

Variances may be permitted only under the following conditions:

**14.1.1.** Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, and setback requirements.

**14.1.2.** Variances shall not be granted for establishment of any uses otherwise prohibited by the applicable ordinance.

**14.1.3.** A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the Board of Appeals or its designee to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals

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

**14.1.4.1.** The proposed structure or use would meet the requirements of the applicable Town land use ordinance except for the specific provision(s) which has created the nonconformity and from which relief is sought; and

**14.1.4.2.** Except as provided in subsections 14.1.4.3 and 14.1.4.4, and 14.1.4.5, the Board may grant a variance only if strict application of the ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

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.

**14.1.4.3. Disability Variance.** The Board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. 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. For the purposes of this subsection, a disability has the same meaning as a physical or mental disability under 5 M.R.S.A., § 4553, as may be amended from time to time, and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall, or roof systems necessary for the safety or effectiveness of the structure.

**14.1.4.4. Setback Variance for One-Unit Residential Uses.** The Board may grant a setback variance for a one-unit residential use. The Board may consider a variance from a setback requirement only when strict application of the zoning ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" in the subsection means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of an abutting property; and:
5. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance granted under this subsection is strictly limited to permitting a variance from a setback requirement for a one-unit residential use that is the primary year-round residence of the applicant. A variance under this subsection may not exceed twenty percent (20%) of a setback requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The Board may allow for a variance under this subsection to exceed twenty percent (20%) of the setback requirement, except for minimum setbacks from a water body, or the upland edge of a wetland, or a tributary stream within the Shoreland Zone, if the applicant has obtained the written consent of an affected abutting land owner.

**14.1.4.5. Practical Difficulty Variance.** The Board may grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the applicant and the applicant's property would cause a practical difficulty and when the following conditions exist:

1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
3. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
4. No other feasible alternative to a variance is available to the petitioner;
5. The granting of a variance will not unreasonably or adversely affect the natural environment; and
6. The property is not located in whole or in part within the Shoreland Zone.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage, and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district or area in which the property is located and results in significant economic injury to the applicant.

**14.1.5. Variance Recorded.** If the Board of Appeals grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local Registry of Deeds within ninety (90) days of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.

**14.1.6. Interpretation of Ordinance Requirements.** The Board of Appeals shall limit any variances granted as strictly as possible in order to insure 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.

**14.1.7.** A copy of all variances granted by the Board of Appeals in the Shoreland Zone shall be submitted to the Department of Environmental Protection within fourteen (14) days of the decision.

## 14.2. Appeals

**14.2.1. Administrative Appeal.** An administrative appeal may be taken to the Board of Appeals by an aggrieved party from a decision of the CEO, the Planning Board, or the LPI outlined in Section 12.3.1. Such appeal shall be taken within forty (40) days of the date of the decision appealed from, and not otherwise, except that the Board, upon showing of good cause, may waive the forty (40) day requirement.

**14.2.2.** Such appeal shall be made by filing with the Board of Appeals a written notice of appeal which includes:

1. A concise written statement indicating the decision of the Planning Board, CEO or Local Plumbing Inspector being appealed from, the specific provisions of the applicable ordinance, to which the decision is alleged to be in error, and what relief is requested.
2. A sketch drawn to scale showing lot lines, location of existing structures and other physical features of the lot pertinent to the relief sought.

**14.2.3.** Upon being notified of an administrative appeal, the CEO, Local Plumbing Inspector or Planning Board, as appropriate, shall transmit to the Board of Appeals all the papers constituting the record of the decision appealed from.

**14.2.4.** The Board of Appeals shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal request.

## 14.3. Decision by Board of Appeals

**14.3.1.** A majority of the Board shall constitute a quorum for the purpose of deciding an appeal, request, or dispute. A member who abstains shall not be counted in determining whether a quorum exists.

**14.3.2.** The concurring vote of a majority of the members of the Board of Appeals present and voting shall be necessary to reverse an order, requirement, decision, or determination of the CEO, Local Plumbing Inspector or Planning Board, or to decide in favor of the applicant on any matter on which it is required to decide, or to grant any variance, or to settle a dispute about the Shoreland Zoning District boundary. When acting in an appellate capacity, the Board of Appeals may reverse the decision of the Planning Board only when there is an error in the Planning Board's interpretation or application of specific provisions of the ordinance. When acting in a *de novo* capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence.

**14.3.3.** The person filing the variance application, administrative appeal or dispute about the Shoreland Zoning District boundary line shall have the burden of proof.

**14.3.4.** The Board shall decide all appeals, requests, or disputes within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.

**14.3.5.** All decisions shall become a part of the record and shall include a statement of findings and conclusions as well as the reasons or basis thereof, and the appropriate order, relief or denial thereof.

### 14.4. Appeal to Superior Court

Any aggrieved party who participated in the proceedings before the Board of Appeals may take an appeal to Superior Court as set forth in 30-A M.R.S.A. § 2691(3), as may be amended from time to time.

### 14.5. Reconsideration

The Board of Appeals may reconsider any decision as set forth in 30-A M.R.S.A. § 2691(3), as may be amended from time to time. The Board may conduct additional hearings and receive additional evidence and testimony.