

# OGUNQUIT ZONING ORDINANCE

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# ZONING ORDINANCE OF THE TOWN OF OGUNQUIT

## ARTICLE 1 – GENERAL

### 1.1 Purpose (Amended 11/4/08, Effective 4/1/09)

The purposes of this Ordinance are;

- A. to promote the general welfare of the Town and to protect the health of its inhabitants;
- B. to encourage the most appropriate use of land within the Town, and to conserve the value of said land;
- C. to fulfill all the purposes of zoning embraced in Maine Revised Statutes and the Town of Ogunquit Charter and Comprehensive Plan;
- D. to prevent and control water pollution;
- E. to protect fish spawning grounds, aquatic life, bird and other wildlife habitat;
- F. to protect buildings and lands from flooding and accelerated erosion;
- G. to protect archaeological and historic resources;
- H. to protect commercial fishing and maritime industries;
- I. to protect freshwater and coastal wetlands;
- J. to control building sites, placement of structures and land uses;
- K. to conserve shore cover, and visual as well as actual points of access to inland and coastal waters;
- L. to conserve natural beauty and open space; and
- M. to anticipate and respond to the impacts of development in shoreland areas.

### 1.2 Establishment of Zones (Amended 11/4/08, Effective 4/1/09)

To implement the provisions of this Ordinance, the Town of Ogunquit is hereby divided into the following zoning districts:

- A. One Family Residence District – OFR
- B. Residence District –R
- C. Rural Residential District 1 - RR1
- D. Rural Residential District 2 - RR2
- E. Downtown Business District –DB
- F. General Business District - GB1
- G. General Business District - GB2
- H. Limited Business District –LB
- I. Farm District – F

The following six districts are considered to be the Shoreland Zones, established pursuant to the Maine Department of Environmental Protection Shoreland Zoning Guidelines:

- J . Shoreland Limited Residential District - SLR
- K . Shoreland Limited Commercial District - SLC
- L . Shoreland General Development 1 – Ogunquit Beach – SG1
- M . Shoreland General Development 2 – Perkins Cove – SG2
- N . Stream Protection District -SP
- O . Resource Protection District -RP

The performance standards of Article 9.15 shall apply to any activities in these six Shoreland Zones. (Amended June 9, 2015).

### **1.3 District Boundary Locations: Zoning Map** (Amended 11/4/08, Effective 4/1/09)

The location and boundaries of the above districts are hereby established as shown on the map entitled, “Town of Ogunquit Official Zoning Map”, dated June 9, 2015, prepared under the direction of the Ogunquit Planning Board and filed in the office of the Town Clerk. The Official Zoning Map shall be drawn at a scale of not less than 1 inch equals 2000 feet, and shall be certified by the attested signature of the Municipal Clerk. Said map, with all explanatory matter thereon, shall be deemed to be, and is hereby made part of this Ordinance. When uncertainty exists with respect to district boundaries as shown upon such map, the following rules shall apply (Amended June 9, 2015):

- A. Unless otherwise indicated, district boundary lines are the center lines, plotted at the time of adoption of this Ordinance, of streets, alleys, parkways, waterways, or separate rights-of-way of public utilities and railroads or such lines extended. Where the boundary is indicated by a paved street or highway, the center line of the paved or traveled portion of the actual street or highway shall be used as the boundary rather than the center line of the of the right-of-way of the street or highway as shown in the deed(s), survey(s) or other relevant legal description(s).
- B. Other district boundary lines, which are not listed in the preceding paragraph, shall be considered as lines paralleling a street as indicated by the official zoning map on file in the office of the Town Clerk. In the absence of a written dimension, the graphic scale on the official zoning map shall be used.
- C Where a question arises in regard to the limits of any of the Shoreland Zoning Districts as they effect an existing or proposed land use, the applicant shall obtain a topographic land survey from a registered land surveyor based on the nearest U.S.G.S.benchmarks.
- D The Shoreland Zones shall be defined as being the land areas located within 250 feet, horizontal distance, of the:
  - 1. normal high water line of any great pond or river,
  - 2. upland edge of a coastal wetland, including all areas effected by tidal action, or
  - 3. upland edge of a freshwater wetland, and all land areas within 75 feet, horizontal ..

distance, of the normal high water line of a stream.

The jurisdiction of these zones shall also apply to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a freshwater or coastal wetland.

The Shoreland Zones shall be further divided into the following six distinct zones, as follows:

1. Shoreland Limited Residential District. The Shoreland Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Shoreland Limited Commercial District, or the Shoreland General Development Districts.
2. Shoreland Limited Commercial District. The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District, which should not be developed as intensively as the Shoreland Districts. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.
3. Shoreland General Development Districts – Ogunquit Beach & Perkins Cove. The General Development Districts include the following types of existing, intensively developed areas:
  - a. Areas of two or more contiguous acres devoted to commercial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
    - (1) Areas devoted to lodging, restaurant, retail trade and service activities, or other commercial activities; and
    - (2) Areas devoted to intensive recreational development and activities, such as, but not limited to trails and public beaches.
  - b. Areas otherwise discernible as having patterns of intensive commercial, recreational uses.
4. Stream Protection District. The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond, or river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.
5. Resource Protection District shall include the following areas when they occur within the limits of any shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Shoreland Limited Commercial or Shoreland General

Development need not be included within the Resource Protection District.

- a. In non-tidal shoreland areas, the land area below the upland edge or high water line of any freshwater wetland, river, or stream. In tidal shoreland areas, the Resource Protection District shall be defined as being the area below the Highest Annual Tide (HAT) as identified in the tide tables published by the National Ocean Service (Highest Annual Tide or HAT) as determined by a land surveyor based on the nearest USGS benchmark. (Amended 6/10/14 Effective 6/11/14' Amended 6-12-18)
- b. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of May 1, 2006. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.
- c. Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- d. Within the Shoreland Zones, areas of two or more contiguous acres with sustained slopes of 20% or greater.
- e. Within the Shoreland Zones, areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water. NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.
- f. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.
- g. Any significant wildlife habitat, including significant vernal pools, as defined in the Department of Environmental Protection, Chapter 335, Rules on Significant Wildlife Habitats, whether or not they are included on the official zoning map. The location of significant wildlife habitats shall be determined by field measurements, made at the expense of the landowner or applicant,

pursuant to Article 12 of this Ordinance.

- E. The depiction of the Shoreland Zoning Districts on the Official Zoning Map of the Town of Ogunquit is merely illustrative of their general location. The boundaries of these districts shall be determined by measurement of the distance indicated on the maps from the normal high water line of the water body or the upland edge of wetland vegetation, regardless of the location of the boundary shown on the maps.
- F. The area below the normal high water line of any Significant Vernal Pools shall be considered to be part of the Resource Protection District, regardless of whether or not the presence of the significant vernal pool is indicated on the Official Zoning Map. Vernal pools, which are not significant, shall not be considered to be part of the Resource Protection District. The normal high water line of any vernal pool shall be determined by field measurements, made at the expense of the landowner or applicant, pursuant to Article 12 of this Ordinance. In no event shall any vegetation clearing or land disturbance occur, or structure be placed or erected in a significant or non-significant vernal pool, or within 75 feet of its upland edge. Activities in or near vernal pools classified as significant vernal pools shall be governed by the rules of the Department of Environmental Protection, Chapter 335, and may be subject to additional setbacks and other required mitigation measures, beyond those required by the Town of Ogunquit.
- G. The Code Enforcement Officer shall be the municipal official responsible for making determinations regarding the location of District boundaries and interpreting the Official Zoning Map. Decisions of the Code Enforcement Officer regarding the location of district boundaries may be appealed to the Board of Appeals, pursuant to Article 5.2.A, Administrative Appeals. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

**1.4 Conformity** (Amended 11/4/08, Effective 4/1/09)

- A. No building or structure shall be erected, altered, enlarged, rebuilt, moved or used, and no land shall be used, and no new lot shall be created, unless in conformity with the provisions of this Ordinance, except:
  - 1. those existing at the time of adoption of this Ordinance, which by the provisions of this Ordinance become legally nonconforming, or
  - 2. unless a variance is granted by the Board of Appeals.
- B. The regulations specified by this Ordinance for each type of district shall be minimum requirements and shall apply uniformly within each type of district and to each kind of structure and/or land.
- C. Land within the right of way lines of a street on which a lot abuts shall not be considered as part of such lot for the purposes of meeting the area requirements of this Ordinance notwithstanding the fact that the fee to such land may be in the owner of such lot.
- D. Where a zoning district boundary line divides a lot or parcel of land in the same ownership of record at the time such line is established by adoption or amendment of

this Ordinance, the use regulations applicable to the less restricted portion of such lot may extend not more than 50 feet into the more restricted portion. This provision shall not, however, be applied when the more restrictive district is a Resource Protection District or the Shoreland Overlay District, nor when the less restricted portion lies within the Downtown Business District. The space and bulk regulations of the district shall apply to the land within those districts and are not subject to the 50-foot provision.

**1.5 Conflict with Other Ordinances** (Amended 11/4/08, Effective 4/1/09)

Whenever a provision of this Ordinance is in conflict with or is inconsistent with the requirements of any other lawfully adopted rules, regulations, statutes or ordinances, or with any other provision within this Ordinance, the most restrictive or that imposing the higher standards shall govern.

**1.6 Severability** (Amended 11/4/08, Effective 4/1/09)

In the event that any Article, subArticle or any portion of this Ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to effect the validity of any other Article, subArticle or other portion of this Ordinance; to this end, the provisions of this Ordinance are hereby declared to be severable.

**1.7 Availability** (Amended 11/4/08, Effective 4/1/09)

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.

**1.8 Effective Date and Abrogation** (Amended 11/4/08, Effective 4/1/09)

- A. This ordinance becomes effective upon adoption by the legislative body of the Town of Ogunquit.
- B. The Ogunquit Zoning Ordinance adopted August 20, 1991 and subsequently amended is hereby repealed.
- C. Automatic Repeal of Municipal Timber Harvesting Provisions.  
The municipal regulation of timber harvesting in any Shoreland Zone is repealed on the statutory date established under 38 M.R.S.A. Article 438-A(5), at which time the State of Maine Department of Conservation’s Bureau of Forestry shall administer timber harvesting standards in the Shoreland Zone within the Town of Ogunquit. On the date established under 38 M.R.S.A. 438-A(5), the following provisions of this Chapter are repealed or amended as follows:
  - 1. Table 702.1, Land Uses Permitted in Zoning Districts, delete the symbol “C” indicated in the Shoreland Limited Residential, Stream Protection, and Resource Protection Districts, next to the use “Timber Harvesting\*”, and replace with the symbol “BFP.” Amend the table key under Reviewing Authority to indicate that “BFP” means “Permit Required from Maine Bureau of Forestry”

## 1.9 Amendments (Amended 6/12/12 ATM)

- A. This Ordinance may be amended by a majority of the legislative body of the Town of Ogunquit, either at a regular or special town meeting, pursuant to the Town Charter and law, provided that a public hearing shall first be held. Amendments may be sent to the Town Attorney for review before any public hearing or before placement on a warrant, with the authorization of the Town Manager. A fee for placing an amendment request from a person, as defined by this Ordinance, on the Planning Board's agenda for consideration, shall be set from time to time in a fee schedule adopted by the Select Board. Petitioned requests for amendments, pursuant to the Town Charter and law, shall be exempt from a fee, as well as requests from Town staff, committees or Boards.
- B. The Planning Board must post notice of the public hearing required under subArticle A above, in the municipal office at least 14 days before the public hearing. The Planning Board must publish notice of the public hearing at least two times in a newspaper of general circulation in the municipality. The date of the first publication must be at least 14 days before the hearing and the date of the second publication must be at least seven days before the hearing.
- C. When a proposed amendment has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited, the notice must contain a copy of a map indicating the portion of the municipality effected by the proposed amendment. For each parcel within the municipality that is in or abutting the portion of the municipality effected by the proposed amendment, the notice must be mailed by first class mail at least 14 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. The Board of Selectmen shall prepare and file with the Town Clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. Notice is not required under this paragraph for any zoning ordinance adopted under the laws contained in 30-A M.R.S.A, §§43 12-4344, or the 38 M.R.S.A, §§435-449.
- D. Within ten days of the adoption of any amendment to any provisions enacted pursuant to the Mandatory Shoreland Zoning Act (38 M.R.S.A, § 435-449), the Town Clerk shall send a copy of the amendment to the Shoreland Zoning Coordinator within the Maine Department of Environmental Protection for review and approval by the Commissioner of the Department of Environmental Protection. Such an amendment shall not be effective until approved by the Commissioner or until 45 days from the date received by the Commissioner, whichever shall come first. Any application for a permit submitted to the Code Enforcement Officer, Board of Appeals, or Planning Board within the 45-day period shall be governed by the terms of the proposed amendment, if the amendment is ultimately approved by the Commissioner of the Department of Environmental Protection, or if the Commissioner fails to take action.
- E. If amendments are made in the district boundaries or other matter portrayed on the Official Zoning Map requiring review and approval of the Commissioner of the Department of Environmental Protection, such changes shall be made on the Official

Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner.

F. Contract or Conditional Zoning

1. Authority and Purpose

Pursuant to 30-A M.R.S.A, §4352, contract or conditional zoning is hereby authorized solely in the Farm District and only for Light Industry where, due to the unusual nature or unique location of the development proposed, the Town finds it necessary or appropriate to allow both flexibility for the development of the land and to be able to impose, by agreement with the property owner or otherwise, conditions or restrictions that will assure consistency with the Comprehensive Plan and that are not generally applicable to other properties similarly zoned. All rezoning under this Article shall be consistent with and complementary to existing and permitted uses within the Farm District. Use of the provisions of this Article shall be limited to requests by owners of the property to be rezoned or by applicants with a legal interest in the property. Nothing in this Article shall authorize an agreement for rezoning that is inconsistent with the Comprehensive Plan.

2. Conditions and Restrictions

Conditions and restrictions imposed under the authority of this Article shall relate only to the physical development and operation of the property and may include by way of example:

- a. Limitations on the number and types of uses permitted;
- b. Restrictions on space and bulk standards and on the scale and density of the development;
- c. Specifications for the design and layout of buildings and other improvements;
- d. Schedules for commencement and completion of construction;
- e. Preservation of open space and buffers, provisions for public access to shorelines, and protection of natural areas and historic sites;
- f. Performance guarantees securing completion and maintenance of improvements;
- g. Provision for enforcement and remedies for breach of any condition or restriction.

3. Approval and Process

- a. An application for rezoning under this Article shall be made to the Planning Board through the Code Enforcement Office with a fee as determined by the Board of Selectmen. Each such application shall be accompanied by the submissions required by Article 6.2 of the Town's "Standards for Reviewing Land Subdivisions and other Projects". The Planning Board may modify or waive any of these required pieces of information when it determines that,

because of the type or size of the project or circumstances of the site, such requirements would not be applicable or would be unnecessary for a complete understanding of the request for rezoning. Each application must also include a detailed description of the conditions and restrictions to be imposed on the applicant's use of the land and a copy of the proposed contract, if any.

- b. The application for rezoning shall include the following:
  - i. Statement of purpose;
  - ii. List of permitted uses in the proposed contract or conditional zone;
  - iii. Space and bulk standards that will apply in the rezoning; and
  - iv. A description of other conditions and restrictions that will apply.
- c. When the Planning Board and the applicant have reached tentative agreement on the wording and conditions attached to the contract or conditional rezoning, the public hearing procedure described in Article 1.8.E.3.d, below, shall commence. Lacking agreement between the Planning Board and the applicant, the Planning Board shall schedule a public hearing on the applicant's proposal within 120 days of the date of submission of a complete rezoning application. This time period may be extended by mutual agreement of the Planning Board and applicant. If any material changes are made to the proposal as a result of or following the public hearing, another public hearing shall be held consistent with the deadlines described in Article 1.8.E.3.d, below.
- d. Notice and Hearing. The Planning Board shall conduct a public hearing prior to any property being rezoned under this Article. Notice of this hearing shall be posted in the Town Clerk's office at least 14 days prior to the public hearing and shall be published in a newspaper of general circulation within the Town at least two times. The date of first publication shall be at least seven days prior to the hearing. Notice shall also be sent to the owners of the property to be rezoned and to the owners of all property within 500 feet of the effected lot(s) or parcel(s). This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.
- e. The Planning Board shall, within 30 days after the public hearing, approve, approve with conditions, or deny the application for rezoning. If approved, and after any conditions have been met and included in the rezoning document, the Planning Board shall make a written recommendation to the Board of Selectmen, including its findings of fact and conclusions, that the proposal be placed on a Warrant for action by the Legislative Body at its next Town Meeting.
- f. If the Board of Selectmen accepts the Planning Board's recommendation, the proposal shall be placed on the Warrant for action by the Legislative Body at its next Town Meeting.
- g. Upon adoption by a vote of Town Meeting, the language of the contract of

conditional zone shall be incorporated as an appendix or amendment to this Ordinance. In addition, the rezoning may consist of covenants and agreements, the details of which are not incorporated into the Ordinance itself but that are nevertheless conditions of the rezoning. Any such covenants and agreements shall be in a form that is recordable in the Registry of Deeds, and the Board, in its discretion, may require that such covenants and agreements be recorded.

- h. If the applicant fails to begin construction in a substantial manner and in accordance with an approved plan within two years of the effective date of the rezoning, the Planning Board may initiate rezoning to the original zoning classification.

## ARTICLE 2 – DEFINITIONS

Definitions found in a standard Webster’s Dictionary of the current decade on file in the Code Enforcement Officer’s office will apply to all words not already defined in this Zoning Ordinance. Words used in the present tense include the future, and the plural includes the singular; the word “lot” includes the word “plot”; the word “building” includes the word “structure”; the word “shall” is always mandatory; “occupied” or “used” shall be considered as though followed by the words “or intended, arranged, or designed to be used/occupied.”

### *Abutting Property*

Adjacent property which is contiguous with the subject property. However, when applied to any standard involving required notifications to “abutting properties,” the term shall include properties across a public right-of-way or waterway, within 200 feet of any part of the property line forming the boundary with said right-of-way or waterway. (Amended 6/12/12 ATM)

### *Accessory Use*

A use customarily incidental and subordinate to the principal use and located on the same lot with such principal use. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. (Amended 11/4/08, Effective 4/1/09)

### *Accessory Building or Structure*

A subordinate building or structure, which is incidental to the principal building. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure. Accessory Buildings or Structures shall meet all dimensional requirements of this Ordinance. (Amended 6/12/12 ATM)

### *Acre*

43,560 square feet of land area.

### *Active Recreation*

Recreation activities which necessitate some degree of structural or mechanical components for participation in the activity, such as ball fields, playgrounds, and tennis courts.

### *Affordable Housing*

Decent, safe and sanitary dwelling units that can be afforded by households with annual incomes no greater than 80% of the median household income in non-metropolitan York County, as established by the U.S. Department of Housing and Urban Development. A renter-occupied unit is affordable to such households if the unit's monthly housing costs, including rent and basic utility costs (the costs of heating and of supplying electricity to the unit plus the cost, if any, of supplying public water and public wastewater disposal service to the unit), do not exceed 30% of gross monthly income. An owner-occupied unit is affordable to such households if its price results in monthly housing costs that do not exceed 28% of gross monthly income for principal, interest, insurance, and real estate taxes. Estimates of mortgage payments are to be based on down payments and rates of interest generally available in the area to low and moderate income households.

(Amended 4-7-07 ATM)

*Affordable Housing Covenant*

Any agreement among one or more owners, one or more tenants of residential real estate and one or more qualified holders, or between one or more owners and one or more qualified holders, or between one or more tenants and one or more qualified holders, that permits a qualified holder to control, either directly or indirectly, the purchase price of residential housing for the primary purpose of providing that the housing remains affordable to lower income and moderate-income households. See also the definition of "qualified holder" in this Article. (Amended 4-7-07 ATM)

*Aggrieved party*

An owner of land whose property is directly or indirectly effected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance. (Amended 11/4/08, Effective 4/1/09)

*Agriculture*

The production, keeping or maintaining for sale or lease, of plants ~~and~~ or animals, including but not limited to: forages and sod crops, grains and seed crops, dairy animals and dairy products, poultry and poultry products, livestock, fruits and vegetables, and ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting or the sale of processed farm products, including, but not limited to, meat and poultry cuts, canned or preserved fruits and vegetables, and animal feed mixtures. (Amended 11/4/08, Effective 4/1/09)

*Amusement Center*

An indoor use consisting of not fewer than four and not more than 20 electronic or video games, pinball machines or devices of similar functions or description, which are activated by coins, tokens, discs, remote control or any other means for public amusement, patronage, recreation or entertainment. It shall not include fewer than four such devices. (Note: Other limitations and licensing requirements for amusement centers and incidental use are found in Chapter 3, Amusement Licensing Ordinance, of Title 9, Business Ordinance, Ogunquit Municipal Code.)

*Antenna*

Any exterior apparatus or collection of apparatus designed for telephone, radio, television, personal communications service, pager network, or any other communications through the sending or receiving of electromagnetic waves of any bandwidth, except for those used only for the reception of television or radio signals.

*Apartment*

A dwelling unit in a multifamily dwelling.

*Aquaculture*

The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species. (Amended 11/4/08, Effective 4/1/09)

*Arbor*

A shady garden shelter or bower, often made of rustic work or latticework on which vines, roses or other climbing plants may be grown. An arbor is not considered a structure and therefore is not required to meet setbacks under this Ordinance. (Amended 6/12/12, ATM)

*Average Finished Grade*

The average of the finished ground level elevations of the points located at each exterior corner of a building. (Amended 4/01/06 ATM)

*Awning*

A temporary cover and frame that is attached to the exterior wall of a building. Awnings shall not be subject to setback requirements unless they become permanent in nature.

*Basal Area*

The area of cross Article of a tree stem at diameter breast height (4.5 feet above the ground) and includes bark. (Added 4-7-07 ATM)

*Basal Area, Residual*

The total of the basal area of trees remaining on a harvest area. (Added 4-7-07 ATM)

*Basement*

An area below the first floor with a floor-to-ceiling height of 6 feet or more and having part but not more than one-half of its volume above average finished grade, as defined by this Ordinance. A basement shall not be used as a sole living quarters within a dwelling. A basement shall be counted as a story for the purpose of height measurement, if used for a dwelling unit or for business purposes; accessory use is permitted; (refer to definition of a “story”). (Amended 11/4/08, Effective 4/1/09)

*Boardinghouse*

Lodging accommodations in a building or buildings where a family lives on the premises acting as proprietor or owner, with the maximum number of guest accommodations limited by applicable dimensional requirements of this Ordinance, and the size of the site. Meals may be offered to overnight guests only in a common area, with only partial cooking facilities, as defined by this Ordinance, in any individual guest accommodation. The minimum stay shall be two (2) weeks, with no maximum stay. (Amended 4/01/06 ATM)

*Boat Launching Facility*

A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers. (Amended 11/4/08, Effective 4/1/09)

*Building*

Any structure having a rigid roof supported by columns or walls. Each portion of a building on separate lots and separated from other portions by a firewall, or a common wall shall be considered a separate structure.

*Bureau of Forestry (as referred to in Shoreland Zoning provisions)*

State of Maine Department of Maine Forest Service

(Amended 11/4/08, Effective 4/1/09; Amended 6-13-17, Effective 6-13-17; Amended 6-12-18)

*Campground*

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

(Amended 11/4/08, Effective 4/1/09)

*Canopy*

The more or less continuous cover formed by tree crowns in a wooded area. (Amended 11/4/08, Effective 4/1/09)

*Coastal Wetland*

All tidal and subtidal lands; all lands below any identifiable debris line left by tidal action, all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat, and any swamp, marsh, bog, beach, flat, or other contiguous low land which is subject to tidal action during the Highest Annual Tide (HAT) as identified in the tide tables published by the National Ocean Service (Highest Annual Tide or HAT, as determined by a land surveyor based on the nearest USGS benchmark, as defined by this Ordinance. Coastal wetlands include all areas effected by tidal action, not just those areas where salt marshes and salt meadows exist. Cobble and sand beaches, mudflats, and rocky ledges, below the Highest Annual Tide (HAT) are all considered to be coastal wetlands. Coastal wetlands may include portions of coastal sand dunes. (Amended 11/4/08, Effective 4/1/09, Amended 6/10/14 Effective 6/11/14; Amended 6/12/18)

*Code Enforcement Officer*

The person duly authorized by the Town to carry out the duties as prescribed herein and shall be used synonymously with the term Building Inspector.

*Commercial Recreation*

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

*Commercial use*

The use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units. (Amended 11/4/08, Effective 4/1/09)

*Communication Tower*

Any structure intended primarily for the support of antennae used in connection with transmission or receipt of radio or television signals, or any other spectrum-based

transmission/reception such as telephone or paging, except for those facilities which are used only for the reception of television or radio signals.

### *Conditional Zoning*

The process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned.

### *Contiguous Lot* (Adopted November 6, 2001)

For purposes of this Ordinance, a lot shall be considered to be contiguous if either or both of the following conditions exist:

1. The lots adjoin or are coterminous at any point or line or if two adjacent lots are separated at any point by a water body less than forty (40) feet wide; or
2. A lot line between adjacent lots that are, therefore, contiguous lots may be shown graphically as a solid line or as a dashed line or some other graphical representation.

### *Contract Zoning*

The process by which the property owner, in consideration of the rezoning of that person's property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

### *Corner Lot*

A lot which has frontage on two or more approved streets or private rights-of-way. Corner lots are subject to front setback requirements on all streets on which they have frontage.

### *Coverage, Building*

Outside of any shoreland zone, the sum of the area of the footprints of all existing or new buildings, as defined by this ordinance, compared to the total area of the lot on which the buildings are located, expressed as a percentage. The computation of building coverage includes all principal and accessory buildings, such as sheds and garages located on the lot. If the lot is located in more than one zoning district, the lot area within each zoning district shall be calculated, and the building coverage shall be computed separately for those building footprints located on each portion of the lot within each zoning district. Zoning district lines, other than Shoreland Zone boundaries, may be adjusted for the purposes of making calculations of building coverage, pursuant to Article 1.4.D of this Ordinance. (Amended 11/4/08, Effective 4/1/09)

Inside any Shoreland Zone, building coverage shall include, in addition to the areas indicated above, the total area of all other structures, parking lots and any other non-vegetated surfaces. (Amended 11/4/08, Effective 4/1/09)

### *Cross-Articleal area*

The cross-Articleal area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the

straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel. (Amended 11/4/08, Effective 4/1/09)

*DBH*

The diameter of a standing tree measured 4.5 feet from ground level. (Amended 11/4/08, Effective 4/1/09)

*Deck*

A flat-floored roofless and wall-less area adjoining a structure. An awning-covered deck shall not be construed as a porch (see also "Patio"). (Amended 11/4/08, Effective 4/1/09)

*Development*

A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring. (Amended 11/4/08, Effective 4/1/09)

*Dimensional requirements*

Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height. (Amended 11/4/08, Effective 4/1/09)

*Disability*

Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services. (Amended 11/4/08, Effective 4/1/09)

*Disruption of shoreline integrity*

The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-Article, and in the case of flowing waters, a profile and character altered from natural conditions. (Amended 11/4/08, Effective 4/1/09)

*Driveway*

A vehicular access-way serving not more than two dwelling units, or leading to the parking area of nonresidential uses on only one lot. Any vehicular access way that serves more than two dwelling units or leads to the parking areas of nonresidential uses on more than one lot shall comply with the street design standards of Article 10 of the Subdivision Regulations. Within any Shoreland Zones, driveways over five hundred feet (500') in length, or serving more than two dwellings, shall comply with the street design standards of Article 10 of the Subdivision Regulations. (Amended 11/4/08, Effective 4/1/09, Amended 6/10/14, Effective 6/11/14)(Amended and Effective June 14, 2016)

*Dwelling*

A building used, designed to be used or capable of being used for one or more dwelling units including but not limited to single family homes, duplexes, multi-family buildings, apartments, condominium, studios and efficiencies. Where this Ordinance permits “dwellings”, dwelling shall mean single family, detached buildings unless the Ordinance provides otherwise. “Dwellings” shall not include trailers or recreational vehicles. (Amended 11/4/08, Effective 4/1/09)

*Single-Family Dwelling*

A building containing only one dwelling unit for occupation by not more than one family.

*Two-Family Dwelling*

A building containing only two dwelling units, for occupation by not more than two families.

*Multi-Family Dwelling*

A building containing three or more dwelling units, such buildings being designed for residential use and occupancy by three or more families living independently of one another.

*Dwelling Unit*

A room or group of rooms used, designed to be used or capable of being used as a habitable unit for one family with facilities for living, bathing, sleeping, cooking and eating. A dwelling unit shall contain a minimum of 650 square feet of habitable floor space. Measurement shall be made using interior room dimensions. Any individual guest accommodation within a “transient accommodation,” as defined in this Article, which contains 650 square feet or more of habitable floor space shall be considered as a dwelling unit for the purposes of this Ordinance, regardless of whether or not cooking facilities are provided. The maximum number of persons in a family permitted to reside in a dwelling unit shall be determined by dividing the habitable floor space in square feet by the rate of 200 square feet per person. (Amended 4/01/06 ATM)

*Dumpster* (Adopted November 6, 2001)

A container specifically for the storage of trash, garbage or other waste disposal articles or recyclables.

*Emergency operations*

Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury. (Amended 11/4/08, Effective 4/1/09)

*Essential services*

Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall

not include service drops or buildings which are necessary for the furnishing of such services. (Amended 11/4/08, Effective 4/1/09)

*Expansion of a Structure*

An increase in the footprint, of a structure, including all extensions such as, but not limited to: attached decks, garages, porches, and greenhouses. (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

*Expansion of Use*

The addition of one or more months to a use's operating season; or the use of more footprint of a structure or ground area devoted to a use. (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

*Facade*

The front part of a building facing a street or most frequently-used public right-of-way. (Amended 6/12/12, ATM)

*Family*

One or more persons occupying a dwelling unit and living together as a single housekeeping unit where all occupants have common use and access to all living and eating areas, bathrooms, and food preparation and serving areas. (Amended 4/01/06 ATM)

*Farm*

The land, buildings and machinery used in the production of farm products with the intent that the farm products be sold or otherwise disposed of to generate income.

*Farm Product*

Those plants and animals useful to man, including, but not limited to, forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products.

*Farm Stand*

A structure for the display and sale of farm products, located on the farm on which the farm products are produced.

*Fence*

An artificially constructed barrier of any material or combination of materials erected to enclose or screen an area of land. Arbors may be part of fences, fence gates, or other gateways or may stand alone.

*Floodway*

The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height. (Amended 11/4/08, Effective 4/1/09)

*Floor Area, Gross*

The sum, in square feet, of the floor areas of all roofed portions of a building, as measured from the exterior faces of the exterior walls. (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

### *Floor Area, Net*

The total of all floor areas of all roofed portions of a building, in square feet, excluding the following: unenclosed porches, decks, stairwells and elevator shafts, equipment rooms, interior vehicular parking or loading, and floors below the first or ground floor except when used for human occupation. (Amended 11/4/08, Effective 4/1/09)

### *Footprint*

The ground area, in square feet, covered by the foundation of a building, plus any additional ground area covered by projections past the foundation walls, including, but not limited to, roof overhangs, decks, balconies, porches, steps, bulkhead-type basement entrances, and the like. (Amended 6/12/12, ATM)

### *Forest management activities*

Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, timber harvesting and the construction, creation or maintenance of roads. (Amended 11/4/08, Effective 4/1/09; Amended 6-13-17 Effective 6-13-17)

### *Forest Stand*

A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit. (Amended 11/4/08, Effective 4/1/09)

### *Forested wetland*

A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller. (Amended 11/4/08, Effective 4/1/09)

*Formula Restaurant* – See “*Restaurant, Type 6 - Formula Restaurant*”

### *Foundation*

The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material. (Amended 11/4/08, Effective 4/1/09)

### *Freshwater Wetland*

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

1. of 10 or more contiguous acres; or of fewer than 10 contiguous acres and which are adjacent to a surface water body, excluding any river, stream or brook, the combined surface areas of which are at least 10 acres; and
2. inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.
3. Freshwater wetlands may contain small stream channels or inclusions of land which otherwise do not conform to the criteria of this definition. (Amended 11/4/08, Effective 4/1/09)

*Frontage, Street*

The street frontage shall be the length of the front lot line, along its boundary with a street. If the street right-of-way is curved, the length of the street frontage shall be the length of the arc of the curve. (Amended 4/5/05 ATM)

*Functionally water-dependent uses*

Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water dependent use. (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

*“Grandfathered” lot, structure, or use*

See *“Nonconforming Development or Condition”* (Amended 6/12/12, ATM)

*Great pond*

Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner. (Amended 11/4/08, Effective 4/1/09)

*Great pond classified GPA*

Any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Article 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds. (Amended 11/4/08, Effective 4/1/09)

*Greenhouse*

A structure with transparent or translucent walls and roof used for the commercial propagation and growing of plants.

*Ground cover*

Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor. (Amended 11/4/08, Effective 4/1/09)

*Guest House*

See Inn.

*Habitable Floor Space*

An enclosed living area exclusive of porches, patios, decks, balconies and similar areas whether or not enclosed. For the purpose of this Ordinance, common area or percentage

of common area, may not be used to satisfy the square footage requirements herein.

### *Half Story*

A half story is the top of a building which: has habitable floor space not exceeding one half of the habitable contiguous floor space of the story immediately below, and which is located under a roof which pitches in two opposite directions, the rafters of which must touch the plates of the opposite sides of the floor below the half story, or the shoe of the floor of the half story. Finished habitable floor space of a half story is measured within the real or imaginary knee walls of 4 feet or the actual walls (if they are higher than 4 feet). (Amended 4/01/06 ATM)

### *Ham Radio Tower/Antenna*

Any communications tower or antenna owned and operated by a licensed HAM radio operator or Amateur Radio Service Operator. Considered a structure under this ordinance.

### *Harvest Area*

The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area effected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area effected by a harvest. (Amended 11/4/08, Effective 4/1/09)

### *Hazard Tree*

A tree with structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes, hurricane-force winds, tornados, microbursts, or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include: roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger. (Amended 6-12-18)

### *Height of Building or Structure*

Outside of the Shoreland Zone, the height of a building is defined as the vertical building measurement from the structure's highest point to the mean original (prior to construction) grade, which shall be computed as the average of the original ground level at the points located at each exterior corner of the building. This height shall not include features of the building or structure such as chimneys, decorative cupolas, or spires, photo-voltaic cells, solar water heaters, or similar non-habitable appurtenances that have no floor area.

Within the Shoreland Zone, the height of a building shall be defined as the vertical distance between the mean original (prior to construction) grade at the corners on the downhill side of the structure and the highest point of the structure. The highest point of

the structure shall be measured in the same manner as in non-Shoreland Zones.

(Amended 11/4/08, Effective 4/1/09)

#### *Home Occupation*

An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit and which is clearly incidental and secondary to the use of the dwelling for residential purposes. (Amended 11/4/08, Effective 4/1/09)

#### *Increase in nonconformity of a structure*

Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in property line, water body, tributary stream or wetland setback distances, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which meet the dimensional standards shall not be considered to increase nonconformity of a structure. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures. (Amended 11/4/08, Effective 4/1/09, Amended 6-12-18)

#### *Individual Private Campsite*

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

#### *Industry, Light*

The manufacture, within enclosed structures, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding storage of raw materials, basic industrial processing and semi-finished manufacturing.

#### *Institutional*

A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes. (Amended 11/4/08, Effective 4/1/09)

#### *Junk Yard*

A lot or part thereof in any way exposed to the elements, which is used for the sale or for the storage of secondhand products or materials, or for the storage of two or more

automobiles or trucks which cannot pass the State inspection test in their existing conditions and/or are inoperable.

*Land Management Road*

A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads. (Amended 11/4/08, Effective 4/1/09)

*Licensed Forester*

A forester licensed under 32 M.R.S.A. Chapter 76. (Amended 11/4/08, Effective 4/1/09)

*Lodging House*

See Inn.

*Lot*

A parcel of land for which a description has been recorded at the York County Registry of Deeds or described in a lease of no less than ten years duration.

*Lot Area (for lots not created by a subdivision as defined by this Ordinance)*

The area of land enclosed within the boundary lines of a lot, minus land below the normal high water line of a water body or upland edge of a wetland, and areas beneath public or private streets serving more than two lots. (Amended 4/5/05 ATM)

*Lot Area (for a lot or lots where a subdivision is created, as defined by this Ordinance)*

The area of land enclosed within the boundary lines of a lot, minus land not suitable for development, pursuant to the definition of “net residential area” in Article 2 of this Ordinance, and to Article 9.8 of the Ogunquit Subdivision Regulations. (Added at 4/5/05 ATM)

*Lot Line*

The lines bounding a lot as defined below:

*Front Lot Line*

Any lot line separating the lot from a public or private street right-of-way. (Amended 4-7-07 ATM)

*Rear Lot Line*

The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than 10 feet long, lying farthest from the front lot line.

*Side Lot Line*

Any lot line other than the front lot line or rear lot line.

*Manufactured Housing*

Single family homes, transportable in two or fewer Articles, which were constructed in a manufacturing facility and transported to a building site, and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein, and which have a pitched roof and do not have smooth or corrugated metal siding.

### *Marina*

A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities. (Amended 11/4/08, Effective 4/1/09)

### *Market Value*

An estimate of the price a property will bring in the open market and under prevailing market conditions in a sale involving an arm's length transaction between a willing seller and an informed buyer, both conversant with the property and with prevailing price levels. (Amended 11/4/08, Effective 4/1/09)

### *Mechanized Recreation*

Recreation activities which require the use of motors or engines for the operation of equipment or participation in the activity.

### *Mineral Exploration*

Methods used to determine the nature or extent of mineral resources which create minimal disturbance to the land, including hand sampling or test boring, and reasonable measures to restore the land to its original condition.

### *Mineral Extraction*

The removal of more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location within any 12 month period, if the material is removed from the extraction site, unless conducted as part of construction activity authorized by a permit.

### *Mobile Home*

A manufactured housing unit which was built prior to June 15, 1976.

### *Mobile Home Park*

A parcel of land under unified ownership designed or used to accommodate three or more single-story manufactured housing units.

### *Native*

Indigenous to the local forests. (Amended 11/4/08, Effective 4/1/09)

### *Net Residential Area*

As of the April 2, 2005 effective date of this provision, the net residential area of a lot or lots subject to subdivision review shall be calculated by taking the total area of the lot and subtracting, in order, the following areas not suitable for development:

1. Land within street rights-of-way, or below low, medium or high volume driveways
2. Portions of the lot which, because of existing land uses or lack of access, are isolated and unavailable for building purposes or for use in common with the remainder of the lot.
3. Portions of the lot shown to be in a 100-year floodplain as defined by the most recent Federal

- Emergency Management Agency Flood Insurance Rate Maps.
4. Portions of the lot which are unsuitable for development in their natural state due to topographical, drainage or subsoil conditions such as, but not limited to:
    - a. slopes greater than 33%.
    - b. organic soils.
    - c. wetland soils.
    - d. coastal sand dunes.
  5. Portions of the lot subject to any other rights of way, if the use of the land for development is restricted.
  6. Portions of the lot located in the resource protection zone.
  7. Portions of the lot covered by surface waters, or vernal pools.
  8. Portions of the lot utilized for storm water management facilities.

For a lot or lots not contained within or constituting a subdivision, the *net residential area* shall equal the *lot area for lots not created by a subdivision*, as defined by this ordinance. (Amended 4-7-07 ATM)

#### *Nonconforming Development or Condition*

A lot, structure, or use that does not meet all of the applicable performance standards, which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect. Colloquially, this is often referred to as a “grandfathered” lot, structure, or use. (Amended 6/12/12, ATM, Amended 6-12-18)

#### *Nonconforming Lot*

A lot which lawfully existed at the effective date of adoption or amendment of this Ordinance, and does not meet the area, frontage or width requirements of the district in which it is located.

#### *Nonconforming Structure*

A structure or portion thereof, lawfully existing at the time of adoption or amendment of this Ordinance, that does not conform to the setback, height, lot coverage, or footprint, regulations of this Ordinance, which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect. (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

#### *Nonconforming Use*

A use of land, building, premises, or structure or parts thereof, lawfully existing at the time of adoption or amendment of this Ordinance, that is not permitted in the district in which it is located, which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect. (Amended 11/4/08, Effective 4/1/09)

#### *Non-Native Invasive Species of Vegetation*

Species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine Ecosystems and not native to Maine Ecosystems. ; (Amended 6-12-18)

#### *Normal High Water Line*

That line which is apparent from visible markings, changes in the character of soils due

to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers, the normal high water line is the upland edge of the wetland and not the edge of the open water. In the case of land adjacent to tidal waters, the normal high water line shall be considered to be the Highest Annual Tide (HAT) as identified in the tide tables published by the National Ocean Service (Highest Annual Tide or HAT), as determined by a land surveyor based on the nearest USGS benchmark. (Amended 11/4/08, Effective 4/1/09, Amended 6/10/14 Effective 6/11/14; Amended 6-12-18)

*Original Grade*

The elevation of the ground surface prior to the time at which a permit application was submitted or construction or earth moving was commenced. (Amended 11/4/08, Effective 4/1/09)

*Outdoor Sales*

Display of goods, food or beverages for sale to the public on any portion of a lot outside a structure. Vending or buyer operated retail devices are included in outdoor sales.

*Outlet Stream*

Any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the National Map, that flows from a freshwater wetland. (Amended 6-12-18).

*Parking Area*

The portion of a lot used to provide space for the parking of motor vehicles for the employees or patrons of non-residential uses or the residents of dwellings located on that lot.

*Parking Lot*

The principal use of a lot for the parking of motor vehicles.

*Partial Cooking Facilities*

Partial Cooking Facilities in a transient accommodation shall be limited only to the provision of one or more of the following items: Microwave Oven, Under-the-counter refrigerator, Coffee-maker, Kitchen Sink, Counter-top Hot Plate, Counter-top Toaster Oven. (Amended 4/01/06 ATM)

*Passive Recreation*

Outdoor recreational activities which involve no structural or mechanical components or facilities, or earth moving, such as hiking, fishing, hunting, etc.

*Patio*

A floored, roofless and wall-less structure except that a patio which does not extend more than three inches above original ground level shall not be considered a structure nor shall it be subject to setback requirements (see also “Deck”) except that, in the Shoreland Overlay District, patios as defined herein shall meet the setback requirements contained Table 703.1.

*Pergola*

A garden structure built up over a path or narrow terrace, lined with spaced columns or posts that support a framed roof without sheathing. Often vines are trained around the framework of the pergola, and the pergola may lead from one building to another. For the purposes of this ordinance, a pergola is a structure that is subject to setback requirements. (Amended 6/12/12, ATM)

*Person*

An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity. (Amended 11/4/08, Effective 4/1/09)

*Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland*

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

(Amended 11/4/08, Effective 4/1/09)

*Porch*

A floored roofed area attached to the exterior of a building.

*Principal Structure*

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

*Principal Use*

A use other than one which is wholly incidental or accessory to another use on the same lot. (Amended 6-12-18).

*Public motor vehicle right-of way*

A public right-of-way which allows motor vehicle travel.

*Public Use or Public Facility*

Any building, facility, or use held, used or controlled exclusively for public purposes by any governmental body or department or branch of government, including, but not limited to: federal, state, county or municipal. (Amended 11/4/08, Effective 4/1/09)

*Public Utility*

As defined in 35-A M.R.S.A, §102 as amended.

*Qualified Holder:*

A governmental entity empowered to hold an interest in real property under the laws of Maine or the United States or a nonprofit organization whose purposes include the provision of affordable housing or the increasing of affordable housing opportunities for lower income or moderate-income households, including governmental or quasi-governmental entities such as public housing authorities, community action agencies, or other similar nonprofit or governmental entities committed to providing opportunities for

lower income or moderate income households to obtain affordable housing. (Amended 4-7-07 ATM)

*Recent floodplain soils*

The following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Alluvial	Cornish	Charles
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

(Amended 11/4/08, Effective 4/1/09)

*Recreational facility*

A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities. (Amended 11/4/08, Effective 4/1/09)

*Recreational Vehicle*

A vehicle or an attachment to a vehicle designed to be towed, and designed or intended for use as temporary sleeping or living quarters for one or more persons, including pick-up campers, travel trailers, tent trailers, camp trailers and motor homes. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles. (Amended 11/4/08, Effective 4/1/09)

*Replacement system (wastewater)*

A system intended to replace:

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

(Amended 11/4/08, Effective 4/1/09)

*Residual basal area*

The average of the basal area of trees remaining on a harvested site. (Amended 11/4/08, Effective 4/1/09)

*Residual Stand*

A stand of trees remaining in the forest following timber harvesting and related activities. (Amended 11/4/08, Effective 4/1/09)

*Restaurant, Type 1*

An establishment where meals are prepared and served to the public for consumption, which meets all of the following characteristics:

- (1) food or beverages (either alcoholic or nonalcoholic) are served to persons seated only at indoor seating on the premises;

- (2) where food or beverages are not served to pedestrians from an exterior opening or counter, and
- (3) where the design of the facilities, advertising, signage or packaging procedures does not promote the consumption of food or beverages outside the enclosed building. (Amended 4/01/06 ATM)

*Restaurant, Type 2*

An establishment where meals are prepared and served to the public for consumption, which meets all of the following characteristics:

- (1) food or beverages (either alcoholic or nonalcoholic) are served to persons seated at either indoor or outdoor seating on the premises;
- (2) where food or beverages are not served to pedestrians from an exterior opening or counter, and
- (3) where the design of the facilities advertising, signage or packaging procedures does not promote the consumption of food or beverages off the premises. (Amended 4/01/06 ATM)
- (4) when located in the Limited Business Zone, the restaurant must also meet the following additional standards:
  - a. The exterior seating area shall be limited in size to no more than 600 square feet;
  - b. Outdoor serving shall not begin before 7:00 a.m. and no outdoor serving is allowed after 9:00 p.m.:
  - c. There shall be no outside music or outside entertainment allowed at any time;
  - d. Type 2 Restaurant use in the Limited Business Zone is limited to lots that abut Shore Road (Effective June 9, 2015).

*Restaurant, Type 3*

An establishment where food and/or beverages (either alcoholic or nonalcoholic) are prepared and served to the public, which meets all of the following characteristics:

- (1) where food and/or beverages are served for consumption on or for takeout off the premises,
- (2) where food and/or beverages are not served to pedestrians from an exterior opening or counter, nor to occupants in motor vehicles;
- (3) where exterior loudspeakers are not used; and
- (4) where alcoholic beverages may be served only within an enclosed area for on-premise consumption. (Amended 4/01/06 ATM)

*Restaurant, Type 4*

An establishment where food and/or only non-alcoholic beverages are prepared and served to the public, which meets all of the following characteristics:

- (1) where food and/or only non-alcoholic beverages are served for consumption on or for takeout off the premises; and

- (2) where food or beverages may be served to pedestrians from an exterior opening or counter. (Amended 4/01/06 ATM)

*Restaurant, Type 5*

An establishment where food and/or only non-alcoholic beverages are prepared and served to the public, which meets all of the following characteristics:

- (1) where food and/or only non-alcoholic beverages are served for consumption on or for takeout off the premises;
- (2) where food or beverages may be served to pedestrians from an exterior opening or counter and to occupants in motor vehicles whether parked or in a drive-thru lane or similar arrangement; and
- (3) where exterior loudspeakers may be used. (Amended 4/01/06 ATM)

*Restaurant, Type 6 - Formula Restaurant*

Formula Restaurant shall mean a restaurant that stands alone as a principal use or with another use as an accessory use, and which prepares food or beverages on site for sale to the public, and which is required by contractual or other arrangements to maintain any one or more of the following standardized features, which causes it to be substantially identical to other restaurants, regardless of the ownership or location of those other restaurants: name, menu, food preparation and presentation format; decor, employee uniforms, architectural design, signage; or any other similar standardized features. (Amended 4-01-06 ATM)

*Riprap*

Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less. (Amended 11/4/08, Effective 4/1/09)

*River*

The Ogunquit River and the Josias River, within the boundaries of the Town of Ogunquit. The portions of these rivers that are subject to tidal action shall be regulated as coastal wetlands. (Amended 11/4/08, Effective 4/1/09)

*Road*

A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined. (Amended 11/4/08, Effective 4/1/09)

*Roof*

A permanent protective overhead exterior cover of a structure.

*Salt marsh*

Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed. (Amended 11/4/08, Effective 4/1/09)

*Salt meadow*

Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three-square occurs in fresher areas. (Amended 11/4/08, Effective 4/1/09)

*Sapling*

A tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level. (Amended 6-12-18)

*Seedling*

A young tree species that is less than four and one half (4.5) feet in height above ground level. (Amended 6-12-18)

*Service drop*

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

1. in the case of electric service
  - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
  - b. the total length of the extension is less than one thousand (1,000) feet.
2. in the case of telephone service
  - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
  - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

(Amended 11/4/08, Effective 4/1/09)

*Setback (from Water or Wetland)*

The minimal horizontal distance from the normal high water line of a water body or tributary stream, or the upland edge of a wetland, to the nearest part of the structure, road, parking space or other regulated object or area. (Amended 11/4/08, Effective 4/1/09)

*Setback, Front*

The horizontal distance from the front lot line to the nearest part of a structure, including any roof eaves, soffits or overhangs. (Amended at 4/5/05 ATM)

*Setback, Rear*

The horizontal distance from the rear lot line to the nearest part of a structure, including any roof eaves, soffits or overhangs. (Amended at 4/5/05 ATM)

*Setback, Side*

The horizontal distance from the side lot line to the nearest part of a structure, including any roof eaves, soffits or overhangs. (Amended at 4/5/05 ATM)

### *Shore Frontage*

The width of the lot as it fronts the shore of a water body or wetland, as measured in a straight line between the points of intersection of the side lot lines with the shoreline at normal high water line. (Amended 11/4/08, Effective 4/1/09)

### *Shoreland Zone*

The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a coastal wetland, including all areas effected by tidal action; within two hundred and fifty (250) feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high water line of a stream. Includes the Shoreland Limited Residential District, the Shoreland Limited Commercial District, the Shoreland General Development Districts, the Stream Protection District, and the Resource Protection District (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

### *Shoreline*

The normal high-water line, or upland edge of a freshwater or coastal wetland. (Amended 11/4/08, Effective 4/1/09)

### *Sign*

Unless exempted in Article 8.12.A.3, any structure or part of the structure attached thereto or painted or represented thereon or therein, regardless whether it is located out-of-doors or inside, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement and which is intended for or effectively achieves the result of announcing, directing and/or advertising to the out-of-doors public. The word “sign” does not include any structure or part of a structure, building or part of a building in existence on December 31, 1930, that is necessary to preserve its historical, architectural and neighborhood significance.

For the purposes of this ordinance there are three types of regulated signs:

1. **Business Sign**

A Business Sign is a sign which identifies the name of a non-residential use or the name of a multifamily development or multifamily dwelling.

2. **Advertising Sign**

An Advertising Sign is a sign which identifies the goods or services available at a business or provides information about those goods and services.

3. **Residential Sign**

A Residential Sign is a sign erected at a single-family residence which identifies names of the occupants of the residence or the name of the property.  
(Amended 6/12/12, ATM)

### *Sign, off premises (amended 06-08-10)*

A sign that is not located on the same contiguous lot or leasehold as the principal use for which it is advertising or directing attention.

### *Skid Road or Skid Trail*

A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation. (Amended 11/4/08, Effective 4/1/09)

*Slash*

The residue, e.g., treetops and branches, left on the ground after a timber harvest. (Amended 11/4/08, Effective 4/1/09)

*Storm-Damaged Tree*

A tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event. (Amended 6-12-18)

*Story*

That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between such floor and ceiling next above it. A basement shall be counted as a story for the purpose of height measurement, if used for a dwelling unit or for business purposes; accessory use is permitted; (refer to definition of basement).

*Stream*

A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams, as depicted on the most recent, highest resolution version of the national Hydrography Dataset available from the United States Geological Survey on the website of the United States Geological Survey or the National Map to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream. (Amended 6-12-18)

The following additional water bodies, or portions thereof, also shall be considered as “streams,” for the purposes of this Ordinance:

High Rock Stream – Those portions above ground, as depicted on the Official Zoning Map.

Josias Branch - as depicted on the Official Zoning Map.

Leavitt Stream –As depicted on the official zoning map. (Amended 6/10/14 Effective 6/11/14)

Ocean Meadows Stream - as depicted on the Official Zoning Map.

Moody Pond and Moody Pond Outlet - as depicted on the Official Zoning Map.

North Village Stream - as depicted on the Official Zoning Map.

Quarry Stream - as depicted on the Official Zoning Map. (Amended 11/4/08, Effective 4/1/09)

*Street*

A public or private way providing frontage to a lot, which meets the standards of Article 10 of the Ogunquit Subdivision Regulations, or if legally nonconforming, is recorded on

a plan of a subdivision at the Registry of Deeds, or accepted by the municipal legislative body. (Amended at 4/5/05 ATM)

*Local Residential Street*

A street servicing a lot or lots containing less than fifteen (15) dwelling units.

*Collector Streets*

Any street servicing a lot or lots containing at least fifteen (15) dwelling units, or lots with commercial or industrial development. A collector street carries traffic between the arterial streets and the local residential streets or between arterial streets and commercial or industrial uses.

*Arterial Streets*

Major traffic routes connecting communities or substantial portions of communities. Route One, Shore Road and Berwick Road are the arterial streets in Ogunquit.

*Street Line*

The exterior line of a street right-of-way, which separates it from abutting lots.

*Structure*

Anything constructed or erected, the use of which requires a fixed location on or in the ground, or an attachment to something having a fixed location on the ground, including buildings, commercial park rides and games, satellite receiving dishes, small wind energy systems, carports, decks, arbors, pergolas, and other building features. Outside of any Shoreland Zone, the following items shall be exempted from the definition of a structure: signs, sidewalks, walkways, heat pumps, emergency generators, fences, walls, flagpoles less than 35 feet in height, patios, driveways, and parking lots including accessory bumpers and wheel stops.

Within any Shoreland Zone only the following items shall be exempted from the definition of a structure: fences, heat pumps, poles, wiring and other aerial equipment normally associated with service drops as well as guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, Article 4201, subArticle 5; geothermal heat exchange wells as defined in M.R.S.A. Title 32, Article 4700-E, subArticle 3-C; or wells or water wells as defined in M.R.S.A. Title 32, Article 4700-E, subArticle 8. Within any Shoreland Zone, the term structure shall include structures temporarily or permanently located such as decks, patios, and satellite dishes. (Amended 11/4/08, Effective 4/1/09, Amended 6/10/14, Effective 6/11/14; Amended 6-12-18)

*Structural Alteration*

As applied to a building or structure, any change, modification, reconstruction, or improvement of any wall, ceiling, floor, exit facility, structural part, or commercial equipment, whether or not that alteration effects the external dimensions of the structure.

*Subdivision*

As defined in Ogunquit Subdivision Standards.

*Substantial start*

Completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost. (Amended 11/4/08, Effective 4/1/09)

*Subsurface Sewage Disposal System*

A collection of treatment devices, including one or more tank, disposal areas, holding tanks and ponds, surface spray systems, cesspools, wells, surface ditches, alternative toilets, or other devices and associated piping, designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 M.R.S.A, §414, any surface wastewater disposal system licensed under 38 M.R.S.A, §4 13, Sub-§ 1-A, nor any public sewer nor a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S.A, Chapter 13, subchapter 1.

*Sustained slope*

A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area. (Amended 11/4/08, Effective 4/1/09)

*Tenting*

The use of a tent or other similar temporary shelter, not designed for transport on wheels, by a property owner and/or the property owner’s family members or house guests for the purpose of recreational shelter or overnight sleeping. This use shall not include any such tent or shelter that serves as a replacement for or alternative to non-recreational housing, nor any ground development as defined in “individual private campsite.” (Amended 11/4/08, Effective 4/1/09)

*Tidal waters*

All waters effected by tidal action during the highest annual tide (HAT) levels as identified in the tide tables published by the National Ocean Service (Highest Annual Tide or HAT), as determined by a land surveyor based on the nearest USGS benchmark. (Amended 11/4/08, Effective 4/1/09, Amended 6/10/14 Effective 6/11/14; Amended 6-12-18)

*Timber Harvesting*

The cutting and removal of timber for the primary purpose of selling or processing forest products. “Timber Harvesting” does not include the cutting or removal of vegetation within the Shoreland Zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Article 9.15.M, *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*. (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

*Timber harvesting and related activities*

Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. (Amended 11/4/08, Effective 4/1/09)

### *Transient*

A person visiting the community, and staying at a place that does not constitute his or her permanent residence or usual dwelling unit. The term “transient” shall not include seasonal workers who are staying at a place while employed in the area. (Amended 4/01/06 ATM)

### *Transient Accommodation (Amended 4/01/06 ATM)*

An establishment providing temporary lodging for transients, as defined by this Ordinance. The maximum area of individual guest accommodations shall be less than 650 square feet, and measurement shall be made using interior room dimensions. Any individual guest accommodations containing 650 square feet or more, regardless of whether or not cooking facilities are provided, shall be considered as a dwelling unit for the purposes of this Ordinance, and subject to all applicable dimensional and net residential area per dwelling unit requirements. Transient Accommodation shall be divided into the following categories for the purposes of this Ordinance:

#### *Transient Accommodation Type 1 (TA-1) – Weekly Private Home Rental*

Lodging accommodations in a dwelling unit, which is rented to a family for its exclusive use when the usual owners or tenants are not present. The minimum stay shall be seven (7) days. (Amended 4/01/06 ATM)

#### *Transient Accommodation Type 2 (TA-2) — Bed-and-Breakfast*

Lodging accommodations in the year-round single family dwelling unit of the family who lives on the premises acting as proprietors or owners, with one (1) to eight (8) guest accommodations. Breakfast shall be the only meal offered and shall be offered to overnight guests only, with provision of only partial cooking facilities, as defined by this Ordinance, in any individual guest accommodation. The minimum stay shall be one night, and the maximum stay shall be twenty-eight (28) days. (Amended 4/01/06 ATM)

#### *Transient Accommodation Type 3 (TA-3) — Inn*

Lodging accommodations in a building or buildings where a family lives on the premises with one (1) to nine (9) guest accommodations. The provision of only partial cooking facilities, as defined by this Ordinance, shall be permitted in any individual guest accommodation. Entrance to individual guest accommodations shall be made through a lobby or other common room. An onsite restaurant type 1 or 2, as defined by this ordinance, may be permitted, subject to meeting all applicable standards in addition to those required for a TA-3 Inn. The minimum stay shall be one (1) night, and the maximum stay shall be twenty-eight (28) days. (Amended 4/01/06 ATM)

#### *Transient Accommodation Type 4 (TA-4) — Motel/Hotel*

Lodging accommodations in a building or buildings where a family may live on the premises acting as proprietor or owner, along with staff, with the maximum number of guest rooms limited by applicable dimensional requirements of this Ordinance, and the size of the site. The provision of only partial cooking facilities, as defined by this Ordinance, shall be permitted in any individual guest accommodation. Entrance to

individual guest accommodations may be made through a lobby or other common room or directly from the outside of the building or buildings. An onsite restaurant type 1 or 2, as defined by this ordinance, may be permitted, subject to meeting all applicable standards in addition to those required for a TA-4 motel/hotel. Accessory services and facilities may be permitted onsite, including, but not limited to, newsstands, gift shops, or personal grooming facilities. The minimum stay shall be one (1) night, and the maximum stay shall be twenty-eight (28) days. (Amended 4/01/06 ATM)

#### *Tree*

A woody perennial plant with a well defined trunk(s) at least two (2”) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10’) feet at maturity. (Amended 6-12-18)

#### *Tributary Stream*

A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial, upland vegetation or the presence of aquatic vegetation and a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term “stream” as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland. Water setback requirements apply to tributary streams within the Shoreland Zones. Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. (Amended 11/4/08, Effective 4/1/09)

#### *Undue Hardship*

As defined in Title 30-A M.R.S.A, §4353, as amended. (Amended 4/01/06 ATM)

#### *Upland Edge of a Wetland*

The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide (HAT) levels as identified in the tide tables published by the National Ocean Service (Highest Annual Tide or HAT), as determined by a land surveyor, whichever is higher, based on the nearest USGS benchmark. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20) feet) tall or taller. (Amended 11/4/08, Effective 4/1/09, Amended 6/10/14 Effective 6/11/14; Amended 6-12-18)

#### *Variance*

As defined in Title 30-A M.R.S.A, §4353, as amended. (Amended 4/01/06 ATM)

#### *Vegetation*

All live trees, shrubs, ground cover, and other plants without limitation, regardless of their diameter. (Amended 11/4/08, Effective 4/1/09)

#### *Velocity zone*

An area of special flood hazard extending from offshore to the inland limit of the primary

frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. (Amended 11/4/08, Effective 4/1/09)

*Vending or Buyer Operated Retail Device*

All coin operated or buyer operated devices including, but not limited to, soda vending machines, ice machines, gum ball dispensers, snack vending machines and the like. For the purposes of this Ordinance, buyer operated newspaper machines, gasoline pumps, automatic teller machines that are connected to a building, pay telephones, and automated multispace parking meters, are exempted from this definition, and therefore are not regulated by Article 9.19. (Amended 6/12/12, ATM; Amended 6-13-17 Effective 6-13-17)

*Vernal Pool*

A vernal pool, also referred to as a seasonal forest pool, is a natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools have no permanent inlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp (*Eubranchipus* sp.), as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species. A vernal pool intentionally created for the purposes of compensatory mitigation is included in this definition. (Amended 4-7-07 ATM)

*Vernal Pool, Significant*

A vernal pool, meeting the criteria for significance as set forth in DEP Rules, Chapter 335, Significant Wildlife Habitat. (Amended 4-7-07 ATM)

*Volume of a structure*

The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof. (Amended 11/4/08, Effective 4/1/09)

*Water Body*

Any great pond, river, stream or tidal area. (Amended 11/4/08, Effective 4/1/09)

*Water Crossing*

Any building, structure, device or object extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland, whether under, through or over the water course or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines and cables, as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities. (Amended 11/4/08, Effective 4/1/09)

*Wetland*

A freshwater or coastal wetland.

*Wind Energy System, Small*

A wind energy conversion system consisting of a wind turbine, a tower, and associated

control or conversion electronics, which has a rated capacity of not more than 100 kilowatts and which is intended to primarily reduce onsite consumption of utility-provided electrical power. (Amended 4-7-07 ATM)

*Windfirm*

The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage. (Amended 11/4/08, Effective 4/1/09)

*Wireless Communication Facility*

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

*Woody Vegetation*

Live trees or woody, non-herbaceous shrubs. (Amended 11/4/08, Effective 4/1/09)

## ARTICLE 3 – NONCONFORMANCE

### 3.1 General (Amended 11/4/08, Effective 4/1/09)

#### A. Continuance, Expansion, Reconstruction

It is the intent of this Ordinance to promote land use conformities. Any use of land, or any building, structure, or parts thereof, legally existing at the time of the adoption of this Ordinance, or at the time a zone or regulation is changed by amendment hereafter, which does not conform to the use requirements of this Ordinance or its amendments, may continue, but may not be expanded, reconstructed, structurally altered, or permitted to become more non-conforming in any way, except as specified below.

#### B. Transfer of Ownership

Ownership of lots, structures and uses which remain lawful but become nonconforming by the adoption or amendment of this Ordinance 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.

#### C. Maintenance and Repairs

This ordinance allows, without a permit, the normal upkeep and maintenance of nonconforming uses and structures; repairs, renovations, or modernizations which do not involve expansion of the nonconforming use or nonconforming portion of a structure; and such other changes in a nonconforming use or structure as Federal, State, or Local building and safety codes may require. A building permit is not required for painting or general maintenance, provided there are no repairs or replacement of structural components. Check with the Code Enforcement Office if your project is questionable. (Amended 6/12/12, ATM; Amended 6-12-18)

### 3.2 Nonconforming Uses (Amended 11/4/08, Effective 4/1/09)

#### A. Nonconforming Use Defined

A use of land, building, or structure lawfully existing at the time of adoption or amendment of this Ordinance, which is not permitted in the district in which it is located.

#### B. Resumption Prohibited

A lot, building or structure in or on which a nonconforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a nonconforming use, even if the owner has not intended to abandon the use. Except however, the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. The burden of proof shall be upon the property owner, who must provide the Town with sales tax, licensing, advertising or other business records, should a dispute arise over whether a nonconforming use has been discontinued. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.

(Amended 6/12/12, ATM)

C. Nonconforming Use of Part of a Building

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

D. A Structure Nonconforming as to Use

Except for single family dwellings, a structure, nonconforming as to use shall not be enlarged unless the nonconforming use is terminated. Within any Shoreland Zone, non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Article 3.3.H.1 below.

E. Nonconforming Use of Land

A nonconforming use of land may not be extended into any part of the remainder of a lot of land. A nonconforming use of land which is accessory to a nonconforming use of a building shall be discontinued at the same time the nonconforming use of the building is discontinued.

F. Change of Use

A legally existing nonconforming use may be changed to another nonconforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, than the impact of the former use as determined by the Planning Board. The determination of appropriateness shall require written findings on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use. The performance standards in Articles 8 and 9 of this ordinance shall apply to such requests to establish new nonconforming uses. In addition, within any Shoreland Zone, the determination of no greater adverse impact shall be made according to criteria listed in Article 3.3.H.4 below.

### **3.3 Nonconforming Structures**

A. Nonconforming Structure Defined

A structure or portion thereof, lawfully existing at the time of adoption or amendment of this Ordinance, that does not conform to the setback, height, or lot coverage regulations of this Ordinance.

B. Maintenance Permitted

A nonconforming building or structure may be maintained or repaired but no alterations which alter the essential use, density, footprint or facade shall be made except those required or permitted by law or Ordinance.

C. Enlargements Controlled (Amended 6/12/12, ATM)

1. A nonconforming structure shall not be added to or enlarged unless such addition

or enlargement conforms to all the regulations of the zone in which it is located.

2. Horizontal and/or vertical extension of walls or any portions of buildings that increase the building volume that is already in violation of setback requirements shall be considered as a prohibited expansion of a nonconforming structure. Within any Shoreland Zone, such horizontal or vertical expansion of structures, that are nonconforming as to water body, tributary stream, or wetland setbacks, shall be permitted, provided that it complies with Article 3.3.H. (Amended 6-12-18)
3. The addition of an open patio with no structures elevated more than three inches above original ground level shall not constitute the expansion of a nonconforming structure as of January 28, 1991.
4. The addition of steps or the enclosure of an existing porch shall not constitute the expansion of a nonconforming structure. But the addition of a deck does constitute the expansion of a nonconforming structure and therefore the deck shall meet all the dimensional requirements of this Ordinance.
5. Construction or enlargement of a foundation under an existing dwelling shall not be considered an expansion provided that:
  - a. the construction or expansion does not expand the habitable space of the structure; and
  - b. the completed foundation does not extend beyond the exterior dimensions of the structure.

Construction or enlargement of a foundation shall be subject to the Municipal Plumbing Laws (30-A M.R.S.A, Chapter 185, Subchapter III) requiring new soils documentation.

#### D. 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 and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and Rules.

#### E. Reconstruction (Amended 6/12/12)

Any nonconforming structure which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or the owner's agent, may be restored, rehabilitated or reconstructed, provided that the restoration, rehabilitation or reconstruction shall not enlarge the overall floor space, or height of the building, or cause the building to become more nonconforming. A permit for such reconstruction must be obtained and actual reconstruction must be commenced within 12 months and completed within 24 months of the damage or destruction. Nothing in this Article shall prevent the demolition of the remains of any building so damaged or destroyed, or shall prevent the reconstruction or rehabilitation of accessory site features exempted from the definition of structure in this Ordinance.

F. Discontinuance

Discontinuance of the use of a legally existing non-conforming structure shall not constitute abandonment of the structure. Conforming uses of the structure may be revived at any time provided that the conforming uses comply with the requirements of Articles 8 and 9.

G. Nonconforming Structures, Lack of Required Parking or Loading Space

A structure which is nonconforming as to the requirements for off-street parking space shall not be enlarged or altered unless off street parking space is provided for the original structure sufficient to satisfy the requirements of this Ordinance and unless additional off street parking space is provided for such enlargement or alteration of the original structure sufficient to satisfy the requirements of this Ordinance. A structure which is nonconforming as to requirements for off-street loading space shall not be enlarged or altered unless off-street loading space is provided for the original structure or use sufficient to satisfy the requirements of this Ordinance and unless additional off-street loading space is provided for such enlargement or alteration of the original structure sufficient to satisfy the requirements of this Ordinance. Article 3.3.G shall not apply to changes in a permitted use that will not require additional parking nor to alterations that will not require additional parking.

H. Additional Requirements in any Shoreland Zone (Amended 11/4/08, Effective 4/1/09)

1. Expansions

All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Table 703.1. A nonconforming structure made 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 and is in accordance with subparagraphs a, b, c, and d below.

- a. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
- b. Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Article 3.3.H.1.

(i) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.

c. All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Article 3.3.H.1 or Article 3.3.H.1.a above.

(i) For structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(ii) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Article 3.3.H.1.b. (i) and Article 3.3.H.1.c.(i) above.

(iii) In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal highwater line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Article 3(H)(1)(b)(i) and Article 3(H)(1)(c)(i) above.

d. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the nonconforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

2. Foundations

Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Article 3.3.H.3.

3. Relocation

a. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the property can be connected to the public sewer, or that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

b. In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, and (if not served by public sewer service) the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

c. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board or its designee shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance of Article 9.15.O. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

(1) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- (2) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

#### 4. Reconstruction or Replacement

- a. Any non-conforming structure which is located less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland and which is removed, or is damaged or destroyed, regardless of the cause, by more than 50% of its market value of the structure before such damage, destruction or removal, may be reconstructed or replaced, provided that a permit is obtained within 18 months of the date of said damage, destruction or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Article 3.3.H.1 above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Article 3.3.H.3 above.
- b. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.
- c. In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent, the Planning Board shall consider, in addition to the criteria in Article 3.3.H.3 above, the physical condition and type of foundation present, if any. (Amended 6/12/12, ATM)

## 5. Change of Use of a Non-conforming Structure

- a. The use of a structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.
- b. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses. (Amended 6-12-18)

### 3.4 Nonconforming Lots (Amended 11/4/08, Effective 4/1/09)

#### A. Nonconforming Lots Defined

A lot which lawfully existed at the effective date of adoption or amendment of this Ordinance, and does not meet the area, frontage or width requirements of the district in which it is located.

#### B. Vacant Lots

A nonconforming vacant lot 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 minimum lot area, minimum net residential area per dwelling unit, shore frontage, and street frontage can be met. Variance of yard or other requirements not involving minimum lot area, minimum net residential area per dwelling unit, shore frontage or street frontage shall be obtained only by action of the Zoning Board of Appeals.

#### C. Built Lots

A legally nonconforming lot, which does not meet the lot area or street frontage requirements, or both, that was built upon prior to the enactment or subsequent amendment of this Ordinance is subject to the following restrictions. The structure(s) or use(s) on such lots may be repaired, maintained, improved, enlarged, changed or relocated only in conformity with all other dimensional requirements of this Ordinance besides those requirements of lot area, or street frontage which made the lot nonconforming. If the proposed changes or enlargement of such structure(s) cannot meet the dimensional requirements of this Ordinance besides lot area or street frontage, a variance must be obtained from the Board of Appeals in accordance with Article 5.2.B, prior to any approval process. (Amended 4/5/05 ATM)

#### D. "Improved" Lots in Subdivisions

For purposes of this Article, lots shown on a subdivision plan approved by the Planning Board and recorded in the Registry of Deeds shall not be treated as lots held

in common ownership if the owner or his predecessor has substantially improved each lot by the paving of streets and the installation, where available, of public sewer and of utility services.

E. Contiguous Built Lots

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

F. Contiguous Lots: Vacant or Partially Built

If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots is vacant or contains no principal structure, the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Article 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area

G. Functional Division of a Nonconforming Lot with Two or More Single-Family Dwellings

If two or more year-round single-family houses existed on a single lot of record as of September 23, 1971, each may be sold on a separate lot, subject to review and approval by the Planning Board, provided that each resulting lot shall:

1. Be as conforming as possible to the dimensional requirements of this Ordinance;
2. Be at least 20,000 square feet if served by an on-site subsurface wastewater sewage disposal system; and
3. Be served by a public water supply system unless an on-site water well can meet

all State and municipal requirements.

**3.5 Nonconforming Transient Accommodations, Type 4 (TA-4, Motel/Hotel)**  
(Amended 6/12/12, ATM)

With the rapid expansion of transient accommodation type 4 uses in recent years, hotels and motels now take up a disproportionate share of the town's land area. To promote the health, safety and welfare of Ogunquit citizens, to comply with the most recent amendments to the Comprehensive Plan adopted in 2004, to mitigate parking, traffic and congestion problems, and to preserve community quality, hotels and motels are no longer permitted uses in the Town of Ogunquit, except in the General Business District-2 (GB2). Any TA-4 Motel/Hotel use outside of the GB2 District, legally existing at the time of the adoption or amendment of this Ordinance may continue, but shall only be permitted to expand, be reconstructed or be structurally altered within the owner's lot of record or contiguous lots of record in a manner that meets all of the following criteria:

1. The expansion, reconstruction or structural alteration shall be subject to a Site Plan Review, and shall meet all the current standards of this ordinance, including all provisions of Article 9.8, Transient Accommodation Type 4 - Motel/Hotel (TA-4).
2. The expansion, reconstruction or structural alteration shall be accessory to the TA-4 use.
3. The expansion, reconstruction or structural alteration shall not increase the overall number of individual guest accommodations. Enlargements of individual guest accommodations shall be permitted.
4. The expansion, reconstruction or structural alteration involving a TA-4 use, shall only be utilized for an accessory use that serves the patrons at the facility, such as a laundry room, pool or fitness center.
5. Expansion of restaurant, retail, or office uses located on a property with an existing, nonconforming TA-4 use, shall not be considered an expansion of the TA-4 use, and shall be allowable in those Districts indicated in Table 702.1 with Site Plan Review, and subject to the all provisions of this ordinance, including, but not limited to, parking requirements.

**3.6 Vested Rights**

Nonconforming use rights cannot arise by the mere filing of a notice of intent to build, an application for Planning Board subdivision, site plan review, or design review approval, an application for required building permits, or an application for required state permits and approvals. Such rights arise only when a complete application for a building permit has been filed with the Code Enforcement Officer, or in the case of an application pending before the Planning Board, the Board has found the application complete.  
(Amended 4/01/06 ATM)

## ARTICLE 4 – ADMINISTRATION

### 4.1. **Enforcement Officer** (Amended 11/4/08, Effective 4/1/09)

- A. There is hereby established the position of Code Enforcement Officer. The Code Enforcement Officer shall be appointed or reappointed by the Town Manager, annually by July 1st. The Town Manager may also appoint a deputy or assistant Code Enforcement Officer. Reference to the Code Enforcement Officer includes a deputy or assistant. It shall be the duty of the Code Enforcement Officer to administer and enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
- B. The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall investigate all instances of possible violations, with or without complaint, and shall take appropriate action if a violation exists.
- C. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.
- D. Cease and Desist Order. (Amended 6/12/12, ATM)

Upon a finding that any of the provisions of this Ordinance are being violated, the Code Enforcement Officer shall immediately (within three business days) notify by Certified Mail the person(s) responsible for such violation(s), indicating the nature of the violation(s), and ordering the action necessary to correct it. The Code Enforcement Officer shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal activity; order work to be stopped; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

- E. Consulting Services

Where the Code Enforcement Officer cannot determine that a violation exists because of technical complexity or need to use equipment not available to the Town, the Code Enforcement Officer may, after consulting with the property owner and affording the property owner the opportunity to take action, consult with such independent experts or agencies as necessary to determine if a violation exists. If a violation exists, the Code Enforcement Officer shall notify the violator of such violation, order appropriate corrective action, and require the violator to reimburse the Town for any consulting services. If no violation exists, the Town shall pay for consulting services.

**4.2. Legal Actions and Violations** (Amended 11/4/08, Effective 4/1/09)

- A. Any violation of this Ordinance shall be deemed to be a nuisance. When a violation of any provision of this Ordinance is found to exist, the attorney for the Town, upon notice from the Town Manager or Code Enforcement Officer as directed by the Selectmen, is hereby authorized and directed to institute any and all actions and proceedings either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary for the enforcement of the provisions of this Ordinance, the same to be brought in the name of the Town.
- B. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

**4.3. Fines** (Amended 11/4/08, Effective 4/1/09)

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance, on conviction thereof, shall be penalized pursuant to 30-A, M.R.S.A, §4452.

**4.4. Building Permit and Certificate Of Occupancy** (Amended 11/4/08, Effective 4/1/09)

The Code Enforcement Officer shall be consulted before any buildings or other structure is erected, demolished, moved, replaced, or additions are made. This includes work done internally or externally. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

**A. Permit Required**

- 1. An application shall be submitted to the Code Enforcement Officer for the following activities and these activities shall not commence without a permit being issued in accordance with this Article.
  - a. Construction or alteration of a structure;
  - b. Construction of an addition or expansion to an existing structure;
  - c. Demolition of a structure;
  - d. A change in use; or establishment of a new use,
  - e. renewal of a discontinued nonconforming use, and
  - f. Installation of a drinking water well.
- 2. Only the following activities shall not require a permit:
  - a. repairs, replacement, and/or normal maintenance not effecting structural elements,
  - b. decorative changes in existing structures provided that the activity is not required to obtain Design Review approval pursuant to Article 11, and is in

conformance with Federal, State or local laws and does not involve any other physical modifications or changes otherwise requiring a permit under this ordinance.

- c. archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
  - d. replacement of an existing road culvert as long as:
    - (1) The replacement culvert is not more than 25% longer than the culvert being replaced;
    - (2) The replacement culvert is not longer than 75 feet; and
    - (3) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
3. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

#### **4.5. Permit Application** (Amended 6/12/12, ATM)

- A. All applications for building permits shall be accompanied by plans showing the actual dimensions and shape of the lot to be built upon; and the exact sizes, locations and dimensions of the proposed structure(s) or alterations and any existing structures. The application shall include such other information as lawfully may be required by the Code Enforcement Officer to determine conformance with, and provide for the enforcement of, this Ordinance. A copy of the approved building permit shall be displayed at the job site from commencement of work until a certificate of occupancy is obtained, within view of the nearest public way or street.
1. All applications shall also include:
    - a. The name and address of the property owner.
    - b. The name, address and telephone number of the person, firm, or firms involved in the construction on the property.
    - c. The value of the proposed construction.
    - d. A statement of the proposed use for any new or moved structure or altered portion of an existing structure.
    - e. Any other information the applicant wishes to furnish.
    - f. Any other information requested by the Code Enforcement Officer to make the application intelligible, and to determine whether the proposed construction will conform to this ordinance, other local ordinances and state law.
    - g. A certification that the information in the application is complete and correct to the best of the applicant's knowledge and belief.
  2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or

contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.

3. All applications shall be dated, and the Code Enforcement Officer shall note upon each application the date of its receipt.
- B. Wherever on-site subsurface disposal is contemplated, the approval of building permit applications shall be subject to evidence of satisfactory subsurface soil conditions for drainage and sewage disposal and shall be subject to prior issuance of a plumbing permit. Such evidence shall include a site evaluation in compliance with the Maine Subsurface Wastewater Disposal Rules.
- C. The installation of an on-site water supply shall require the approval of the Code Enforcement Officer and shall be subject to satisfactory evidence that the proposed drinking water well will be located no less than 100 feet horizontal distance from any existing subsurface wastewater disposal system on the same or an abutting lot.
- D. Within two business days of the receipt of a permit application the Code Enforcement Officer shall decide whether the information in the application is sufficient to determine whether, under the ordinance, the permit should be issued, or if the application is otherwise inadequate. If the Code Enforcement Officer feels the application is insufficient or inadequate, the Code Enforcement Officer shall at once notify the applicant in writing, indicating what necessary information is required to correct the application. If the application is not so corrected, it shall be denied. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.
  1. When an application conforms to the provisions of this ordinance and other codes and ordinances of the town, upon payment of the required building permit fees, and any outstanding planning board or consultant review fees, the Code Enforcement Officer shall within 14 working days of its receipt issue the permit, stating any conditions of approval in writing. The Code Enforcement Officer shall notify the Tax Assessor and keep a copy of the application/permit in a permanent file in code enforcement office.
  2. If the application does not conform, the Code Enforcement Officer shall, within 14 working days, deny the permit in writing, stating the reasons for such denial. In the event the proposed building or structure is so constructed or is of such usage as to require a review of the application by other authorities or boards, as determined by reference to the land-use regulation file, the Code Enforcement Officer shall refer the applicant to the appropriate authority or board for review, approval or denial. Upon receipt of the decision of the reviewing authority or board, in writing, and if such decision is an approval, the Code Enforcement Officer shall issue the permit with any conditions prescribed by the reviewing authority or board. The Code Enforcement Officer shall not issue any building permit if the Code Enforcement Officer has knowledge that a particular structure would be located in an unapproved subdivision, and/or if the Code Enforcement Officer has knowledge that the structure would be in violation of a particular State law for which the municipality has enforcement responsibilities, or local ordinance. In denying any permit under these circumstances, the Code

Enforcement Officer shall state in writing the reasons for the denial.

No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.

E. Additional Criteria for Construction or Activities in Any Shoreland Zone

After the submission of a complete application to the required reviewing authority, no permit or approval shall be issued for any construction or activities within the Shoreland Zone unless the review authority makes a positive finding based on the information presented that the proposed use:

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will not adversely effect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
- (8) Will avoid problems associated with floodplain development and use;

F. Following the issuance of a building permit if no substantial start is made on the construction within six months of the date of the permit, it shall lapse and become void. Thereafter no further work on such construction can be made until a new application has been made and approved. The fee for such permit shall be charged as a renewal fee.

1. A permit shall expire-six months after the date of issuance of the permit if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within six months of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.
2. Upon expiration of a permit, the property owner shall remove any incomplete structures for which Certificate of Occupancy have not been issued. Nothing shall prohibit the property owner from applying for a new permit, to be reviewed under the provision of this ordinance in place at the time of application.

G. Wherever an activity that consumes, generates, or handles hazardous wastes, as defined in 38 M.R.S.A, § 1303, hazardous matter as defined in 38 M.R.S.A, §13 17 or oil as defined in 38 M.R.S.A, §542, or low-level radioactive waste storage or disposal as defined in 38 M.R.S.A, § 1451 is contemplated, the applicant shall provide the Code Enforcement Officer and Planning Board with detailed information concerning the nature and extent of such activity. In addition to other action which the CEO may take pursuant to this Ordinance, the CEO may refer the hazardous activity to the appropriate local or state agency as he deems appropriate.

- H. Any permit issued which is not in conformity with the provisions of this ordinance confers no rights and is void.
- I. Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

**4.6 Special Exceptions for Single Family Homes in Resource Protection** (Amended 11/4/08, Effective 4/1/09)

The Planning Board may approve a permit for a single family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

- A. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
- B. The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District.
- C. All proposed buildings, sewage disposal systems and other improvements are:
  - 1. Located on natural ground slopes of less than 20%; and
  - 2. Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.

- D. The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance. (Amended 6-12-18)
- E. All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the

flood-plain, and its proximity to moderate-value and high-value wetlands.

#### **4.7 Certificate of Occupancy Required**

- A. A certificate of occupancy issued by the Code Enforcement Officer is required in advance of the use or occupancy of:
  - 1. Any lot, or change of the use thereof
  - 2. A structure hereafter erected or a change in the use of an existing structure;
  - 3. Any addition to an existing structure; or
  - 4. As the building code requires.
- B. No Certificate of Occupancy shall be issued unless the lot or building or structure complies with all the provisions of this ordinance. A record of all Certificates of Occupancy shall be kept on file in the Code Enforcement Office, and a copy shall be furnished, on request, to any person having a proprietary or tenancy interest in the structure or land involved. A duplicate copy shall be filed in the office of the Tax Assessor and the Certificate of Occupancy shall state specifically the uses which it permits.
- C. The Code Enforcement Officer shall maintain a public record of all Certificates of Occupancy.
- D. Failure to obtain a Certificate of Occupancy shall be a violation of this Ordinance.

#### **4.8 Fee**

Application for a permit shall be accompanied by a fee which shall be established by the Board of Selectmen. If an activity which requires a permit is commenced prior to the issuance of a permit a penalty shall be added to the Building Permit Fee. (Amended April 8, 2002)

#### **4.9 Performance Bond**

Construction of any residence, commercial or industrial building or other structure requires the posting of a Performance Bond in an amount to be specified by the Town Manager. The Town Manager's determination shall be based upon consultation with the Road Commissioner, Police Chief, and Fire Chief. The Performance Bond amount shall be based on an estimate of the potential responsibility and/or liability effecting town property and town services and those aspects of the development which are anticipated to be open to the public.

## ARTICLE 5 – APPEALS

### 5.1 Board of Appeals (Amended 11/4/08, Effective 4/1/09)

- A. A Board of Appeals, hereafter in this Article designated as the “Board” is hereby established. The Board shall consist of five full members and two alternate members who shall be residents and registered voters of the Town of Ogunquit, and shall be appointed by the Board of Selectmen of the Town. The term of office of the members of the Board shall be three years, except that the five full members first appointed shall serve respectively for one term of one year, two terms of two years, and two terms of three years. The term of office of alternate members shall be one year. The vacancy in the office of a member shall be filled for the unexpired term only. Mid-term vacancies in the office of full members shall be filled first by the first associate then by the second associate. Each member’s term of office shall expire at the first regular Selectmen’s meeting following the regular ATM of the year in which the member’s term ends, except that a member may continue to serve until reappointed or until a successor has been appointed to the position. When a member is unable to act because of conflict of interest, physical incapacity or otherwise unable to participate, the Chairman shall designate an associate to act in his stead. No business of the Board shall be transacted under this Ordinance unless three members thereof are present and participating. Any member of the Board may be removed for cause as determined by the Board of Selectmen upon written charges and after a public hearing, for which at least 10 days’ notice shall be given in the same manner as other public municipal meetings are noticed. The Board shall annually elect a Chairman and Secretary from its own membership, and shall adopt and annually revise or renew Bylaws setting forth procedural rules, regulations and guidelines governing the conduct of the Board, its members, employees and other interested parties who regularly appear before the Board. These Bylaws may be amended from time to time throughout the year and may include such rules and regulations as the Board deems necessary to clarify its duties set forth in this Ordinance.
- B. The Board shall keep minutes of its proceedings, and shall create a written decision of its findings and conclusions, including a recording the vote of each member upon each matter coming before the Board for vote, and indicating the absence or failure to vote, as the case may be, of any member. The minutes of the Board’s proceedings, decisions, application files, and all the writings required by this Ordinance to be made by the Board, shall be kept at its office, and shall be a public record.
- C. A municipal officer or spouse thereof shall not serve as a member.
- D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a vote of the members, except the member who is being challenged.
- E. In no case may an appeal carry without at least three members voting in its favor. Members must vote on all issues unless excused for cause by the Board.

### 5.2 Powers and Duties (Amended 11/4/08, Effective 4/1/09)

Appeals from the decision of the Code Enforcement Officer shall go to the Board and

from the Board to the Superior Court in accordance with Maine Law. The Board shall have the following powers and duties:

- A. Administrative Appeals: To hear and decide administrative appeals on a de novo basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit or other application under this Ordinance. When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision. The action of the Code Enforcement Officer may be affirmed, modified or reversed by the Board by vote of the Board.

Any notice of violation, or any related order, stop work order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals. Such enforcement actions are appealable only to the Courts as allowed by law and rules of civil procedure. (Amended 6/12/12, ATM)

B. Variance Appeals:

1. Standards Applicable to all Variance Appeals. Any of the following types of variances set forth below in subArticle 2, may be permitted only under the following conditions:

- a. The board may grant a variance only from the dimensional requirements relating to lot area, lot coverage, frontage, height and setback requirements of this ordinance, subject to the specific limitations and restrictions found below in this Article.
- b. Establishments or expansions of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconforming uses in the particular district or adjoining district.
- c. The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- d. For cases involving any shoreland zone, a copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the Code Enforcement Officer 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.

2. Three Types of Variances Allowable and Standards for Each

The Board of Appeals may only grant three types of variances, as set forth below:

- a. Relaxed Dimensional Standards Variance, Available Outside of Shoreland Zones. For structures located outside of any Shoreland Zones, the Board may grant a variance only from those dimensional standards listed in subArticle B.1.a. above, and only when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist.
  - i. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
  - ii. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally effect the use or market value of abutting properties;
  - iii. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
  - iv. No other feasible alternative to a variance is available to the petitioner;
  - v. The granting of a variance will not unreasonably adversely effect the natural environment; and
  - vi. The property is not located in whole or in part within the shoreland zone.

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

- b. Dimensional Standards Variances for Structures Located in Shoreland Zones. For structures located in any Shoreland Zones, the Board may grant a variance only from those dimensional standards listed in subArticle B.1.a. above, and only when strict application of the terms of this Ordinance would result in undue hardship. The words "undue hardship" as used in this subArticle, when evaluating a variance application for any structure in any Shoreland Zone, shall mean:
  - i. That the land in question cannot yield a reasonable return unless a variance is granted;
  - ii. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - iii. That the granting of the variance will not alter the essential character of the locality; and
  - iv. That the hardship is not the result of action taken by the applicant or a prior owner.
- c. Disability Variances. 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 subArticle 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 subArticle, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A, §4553 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.

- C. Written decisions shall be issued, including a statement of findings and conclusions, as well as the reasons or basis therefore.

### **5.3 Appeal Procedure** (Amended 11/4/08, Effective 4/1/09)

- A. In all cases where the Code Enforcement Officer renders a written decision to a party, any aggrieved party may file an administrative or variance appeal within 30 calendar days of the date of the official, written decision. The Board of Appeals may grant exceptions to this 30-day rule only where, in its sole and exclusive judgment, extraordinary circumstances have been shown which would result in a flagrant miscarriage of justice unless the said 30-day time period is extended. The appeal application shall be filed with the Board of Appeals on forms to be approved by the Board, and the application shall include:
  - 1. A concise written statement indicating what relief is requested and why the administrative appeal or variance should be granted.
  - 2. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- B. Following the filing of a completed application for an administrative appeal or variance, the Land Use Office shall notify the Code Enforcement Officer, the Board of Selectmen, and the Planning Board, and shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from. The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application with all supporting materials, unless this time period is extended with the consent of both the Board and the applicant.
- C. The Board shall hold a public hearing prior to making a decision on an appeal. In all appeals, the Board of Appeals shall send a notice by first class mail at least ten (10) days prior to the hearing, to the appellant and to the owners of all abutting properties. Notification shall include the nature of the appeal, and the time and place of the public hearing. The Land Use Office shall prepare a written certification of the date, time, and location when and where notices were mailed. Notice of all appeals shall also be posted in at least three prominent public places within the Town at least ten (10) days prior to the hearing. A notice shall also be published twice in a newspaper of local circulation, with the first advertisement appearing at least seven (7) days prior

to the hearing date. (Amended 6/12/12, ATM)

- D. For the purpose of this Article, the owners of property should be considered to be the parties listed by the Tax Assessor for the Town as those against whom taxes are assessed.

Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Board.

- E. The Code Enforcement Officer shall attend all hearings, and shall present to the Board all plans, photographs or other material he deems appropriate for an understanding of the appeal.
- F. The appellant's case shall be heard first. The aggrieved party may appear by Agent or attorney. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. The person filing the appeal shall have the burden of proof. All persons at the hearing shall abide by the order of the Chairman. Hearings may be continued to other times.
- G. Within 35 days of the close of the hearing, the Board of Appeals shall make findings of fact, and grant, grant with conditions, or deny the appeal. Written notice of the decision of the Board shall be sent to the appellant, the Code Enforcement Officer, the Planning Board, and the Board of Selectmen within seven days of the decision. For appeals or variances in any Shoreland Zone, the Board shall cause written notice to be mailed to the Department of Environmental Protection within seven days of the Board's decision. Decisions shall be in writing, and shall contain a statement of findings and conclusions, as well as the reasons or basis therefore. Decisions shall be sent to the appellant via certified mail.
- H. If the board grants a variance under this Article, 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 York County registry of deeds within 90 days of the date stated on the written approval or the variance is void. The variance is not valid until recorded as provided in this subArticle. Appeals granted under the provision of this Article by the Board shall expire if the work or change involved is not commenced within six months of the date on which the appeal is granted, and/or if the work or change is not substantially completed within one year of the date on which such appeal is granted, unless as otherwise provided for in the appeal.
- I. If the Board shall deny an appeal, another appeal of a similar nature shall not be brought before the Board within one year from the date of the denial, unless in the opinion of a majority of the Board, substantial new evidence shall be brought forward, or unless the Board finds, in its sole and exclusive judgment, that an error or mistake of law or misunderstanding of facts shall have been made.
- J. The appellant shall pay a fee to the Town of Ogunquit to cover the costs of notification and advertisements concerning an appeal. These fees are to be determined by the Board of Selectmen.

- K. Appeal to Superior Court. Except as provided by 30-A M.R.S.A. Article 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.
- L. Reconsideration. In accordance with 30-A M.R.S.A. Article 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

## **ARTICLE 6 – PLANNING BOARD**

### **6.1. Purpose**

The purpose of this Article is to establish the organization, authority and responsibilities of the Ogunquit Planning Board.

### **6.2. Authority**

The Ogunquit Planning Board, hereinafter referred to as the “Board”, is established pursuant to the laws of the State of Maine as amended.

### **6.3. Organization and Rules** (Amended 11/04/08 ATM)

- A. The Board shall consist of five appointed full members and two appointed alternate members, pursuant to Article 803 of the Town Charter. When a member is unable to act because of conflict of interest, physical incapacity or otherwise unable to participate, the Chair shall designate an alternate to act in that member’s stead. The Board shall annually revise or render Bylaws setting forth procedural rules, regulations and guidelines governing the conduct of the Board, its members, employees and other interested parties who regularly appear before the Board. These Bylaws may be amended from time to time throughout the year and may include such rules and regulations as the Board deems necessary to clarify its duties set forth in this Ordinance.
- B. The Board shall keep minutes of its proceedings, recording the roll call of members present and the vote of each member upon each matter coming before the Board for vote, and indicating the absence or failure to vote, as the case may be, of any member. The minutes of the Board’s proceedings, and all the writings required by this Ordinance to be made by the Board, may be kept by a professional secretary who is not a member of the Board. A tape recorder may be used to record the proceedings of Board meetings and public hearings. The minutes, all other writings, correspondence and tape recordings made by the Board shall be kept at its office, and shall be a public record.
- C. A municipal officer or spouse thereof shall not serve as a member.
- D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a vote of the members, except the member who is being challenged
- E. In no case can a motion carry without at least three members voting in its favor. Members must vote on all issues unless excused for cause by the Board.

#### **6.4 Powers and Duties** (Amended 4/01/06 ATM)

The Planning Board shall have the powers and duties outlined in this Article 6.4. The Planning Board may call upon the Town Planner or a professional Planning Consultant and the Code Enforcement Officer, to assist it in the administration of its following powers and duties:

- A. Subdivisions: To review and approve, approve with conditions, or deny subdivision plans in accordance with the criteria established in 30-A M.R.S.A, §4404, the Town's Zoning Ordinance, and the Planning Board's Subdivision Regulations.
- B. Site Plan Reviews: To review and approve, approve with conditions, or deny site plan reviews in accordance with the Town's Zoning Ordinance.
- C. Design Certificates To review applications for Design Certificates in accordance with the provisions of Article 11 of this Ordinance.
- D. Ordinances: To write, revise and update the Zoning Ordinance, the zoning map, the Subdivision Regulations, the Flood Plain Management Ordinance and such other Ordinances or Regulations dealing with planning and land use as may be considered by the Town in the future, consistent with the Town's Comprehensive Plan.
- E. Comprehensive Plan: To write, revise and update the Comprehensive Plan for consideration at public hearings and decision by the voters. As determined by the Board of Selectmen, the full Board, or a subcommittee of the Board in combination with other municipal officials and citizens, may act as a comprehensive planning committee, pursuant to 30-A M.R.S.A 4324.
- F. Impact Fees: To assess impact fees on applications as specifically set forth in this Ordinance, in accordance with 30-A M.R.S.A 4354.
- G. Long Range Planning: To initiate and direct specialized, long range planning studies of the town, consistent with the Comprehensive Plan, that will aid decision-making on specific issues.
- H. Cooperation with other Boards or Departments: The Board may provide assistance and recommendations to any municipal department on matters effecting the Comprehensive Plan, Ordinances, or Regulations. Each officer and department of the town shall give all reasonable aid, cooperation and information to the Board.
- I. Review Fees: The Board of Selectmen shall have the authority to charge reasonable fees to applicants to cover the cost of reviewing applications. A schedule of fees shall be determined from time to time by the Board of Selectmen.

#### **6.5. Administration and Enforcement**

- A. Enforcement: Decisions of the Planning Board shall be enforced by the Code Enforcement Officer.
- B. Appeal of Planning Board Action: Any appeal from an action of the Planning Board in administering the provisions of this Ordinance shall be made to the Superior Court in accordance with state law.

## 6.6 Procedures for Site Plan Review (Amended 4/01/06 ATM)

- A. No permit for any new use or structure indicated as requiring a Site Plan Review in Table 702.1 shall be issued by the Code Enforcement Officer until a Site Plan Review approval is obtained from the Planning Board. The applicant shall have the burden of proving that its Site Plan Review application is in compliance with the requirements of this Ordinance. If the proposed use or structure requires Design Review by Article 11 of this Ordinance, the Design Review application may be reviewed concurrently with the Site Plan Review application.
- B. Changes to Existing Uses or Structures Requiring Site Plan Review - A use or structure which is listed as subject to site plan review in Table 702.1 may not be changed to another use or structure requiring site plan review, nor may the use or structure be expanded or altered unless a site plan approval is obtained from the Planning Board. Expansion shall be defined as:
1. Any increase in floor area or land area devoted to a use requiring Site Plan Review or
  2. In the case of a restaurant use, the addition to any indoor or outdoor seating capacity; or
  3. In the case of a transient accommodation project classified other than TA-1, any additional rooms or units; or
  4. Any additional parking spaces devoted to a use requiring Site Plan Review.

No changes of any kind shall be made in any previously approved Site Plan without approval of such changes by the Planning Board.

- C. Application Procedure.
1. Fees. A person informed by the Code Enforcement Officer that a proposed use requires Site Plan Review approval shall file an application for the permit with the Planning Board on forms provided for the purpose. The applicant shall be responsible for a filing fee, which covers administrative and legal advertisement costs. Filing Fees for site plan review shall be set annually in a fee schedule adopted by the Board of Selectmen.

In complex cases requiring extensive use of the Town's planning, legal, and/or engineering consultants, the applicant may be required by the Planning Board, after its initial review of the application for completeness, to pay an additional technical review fee to be deposited in a special account designated for that site plan application, to be used by the Board for hiring independent consulting services to review the application. The amount of the technical review fee shall vary according to the complexity and scope of the proposed project.

If the balance in this special account is drawn down by 75%, the Board shall notify the applicant, and require that an additional amount equal to the original deposit be paid by the applicant. The Board shall continue to notify the applicant and require an additional deposit be paid as necessary, whenever the balance of the account is drawn down by 75% of the original deposit. Any balance in the account remaining after a decision on the site plan review application by the Board shall be returned to the applicant.

2. Notification of Town Departments. The Land Use Office shall notify the director of public works, police chief, and fire chief of the proposed site plan application. The Board shall request that these officials review the application and comment upon the adequacy of their department's existing capital facilities to service the proposed development. The Land Use Office shall also notify the Conservation Commission of the application, request comments on whether the application meets the standards of the Town ordinances with respect to environmental matters, and invite the Commission to participate in any scheduled hearings.
3. Application Submission Requirements. Fifteen copies of all application materials shall be submitted to the Land Use Office no less than fourteen days prior to a regularly scheduled Planning Board meeting in order to be placed on the Board's agenda. Unless a submission waiver is granted, pursuant to Article 4 below, all plans for Site Plan Review presented for approval under this Article shall be drawn at a scale of not smaller than one inch equals 20 feet and shall show or be accompanied by the following information, unless a submission waiver is granted, pursuant to procedure of sec. 4 below:
  - A. A completed Site Plan Review Application Form, Site Plan Review Submissions Checklist, and the required filing and technical review fees.
  - B. A Site Plan Title Block and Legend, with the proposed name of the project, and the address of the owner and/or applicant, the name and address of the preparer of the site plan and the date the plan was prepared, north point, and graphic map scale.
  - C. The Assessor's Map and Lot numbers for the subject and adjoining properties.
  - D. Right, Title or Interest. Verification that the applicant has sufficient right, title or interest in the property by deed, purchase and sales agreement, option to purchase, or some other proof of interest. A copy of the most recently recorded deed shall be provided with a copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently effecting the property.
  - E. Survey. A standard boundary survey of the parcel, giving complete descriptive data by bearings and distances, dated, made and certified by a registered land surveyor licensed in Maine, showing total acreage.
  - F. Depiction of existing and proposed building footprints, parking lots, drives, walkways, roads, landscaping, and areas of proposed grading or clearing or areas to remain undisturbed.
  - G. The location and size of existing and proposed utilities, sewers, water mains, culverts, and stormwater management features on or adjacent to the site.
  - H. Existing and proposed topographic contours at an interval of 2 feet, in relation to Mean Sea Level,
  - I. The location of all wetlands, rivers, streams, brooks, vernal pools and other water bodies within or adjacent to the proposed site plan, as well as any other prominent natural features. (Amended 4-7-07 ATM)

- J. For undeveloped, vacant areas not served by public water or sewer, a high intensity soil survey by a Certified Soil Scientist.
- K. The zoning district in which the proposed site plan is located and the location of any zoning boundaries effecting the site plan.
- L. If any portion of the site is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation, as depicted on the municipality's Flood Insurance Rate Map, shall be delineated on the plan.
- M. Proposed Deed Restrictions: A copy of any proposed deed restrictions intended to cover all or part of the subject property.
- N. An indication of the type of sewage disposal to be used at the site.
  - i. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the sewer district shall be submitted indicating that the district has the capacity to collect and treat the wastewater, and has reviewed and approved the sewerage system design.
  - ii. When sewage disposal is to be accomplished by subsurface waste water disposal systems, a septic system design, prepared by a Licensed Site Evaluator or Professional Engineer, shall be submitted.
- O. An indication of the type of water supply system(s) to be used at the site.
  - i. When water is to be supplied by an existing public water supply, a written statement from the servicing water district shall be submitted indicating the district has reviewed and approved the water system design. A written statement shall be submitted from the fire chief approving all hydrant locations or other fire protection measures deemed necessary.
  - ii. Written statement from the Fire Chief approving hydrant locations or other fire protection measures deemed necessary.
  - iii. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.
- P. The location, names, and present widths of existing streets, highways, easements, building lines, parks and other open spaces on or adjacent to the site.
- Q. The width and location of any streets, public improvements or open space shown upon the official map and the comprehensive plan, if any, within the site.
- R. The location of any open space to be preserved and a description of proposed ownership, improvement and management.
- S. A hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer, experienced in hydrogeology, when the site is not

served by public water and sewer and where site considerations or development design indicate greater potential of adverse impacts on ground water quality. Such considerations may include, but shall not be limited to, extensive areas of shallow to bedrock soils, or the proposed use of shared or common subsurface waste water disposal systems.

- T. Estimate of Traffic Generated. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the most recent available edition of the *Trip Generation Manual*, published by the Institute of Transportation Engineers. Trip generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions. At the expense of the applicant, the Planning Board may obtain the services of a professional engineer for a peer review of any trip generation estimates, pursuant to Article 6.6.C.
- U. Traffic Impact Analysis. A traffic impact analysis, prepared by a Registered Professional Engineer with experience in traffic engineering, shall be submitted for any proposed project or proposed expansion of an existing project requiring 10 or more parking spaces or projected to generate more than 50 vehicle trips per day. Submission of a traffic impact analysis shall not be waived for proposed projects or expansions of existing projects requiring 30 or more parking spaces or projected to generate more than 150 vehicle trips per day. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site, neighboring streets and any Route 1 interArticle within one mile as measured by the actual travel distance from the proposed development which may be effected, and recommended improvements to maintain the desired level of service on the effected streets and interArticles. At the expense of the applicant, the Planning Board may obtain the services of a professional engineer for a peer review of any traffic impact analysis, pursuant to Article 6.6.C. Submission of a traffic impact analysis shall be required for any proposed project or proposed expansion of an existing project requiring 10 or more parking spaces or projected to generate more than 50 vehicle trips per day. Submission of a traffic impact analysis shall not be waived for proposed projects requiring 30 or more parking spaces or projected to generate more than 150 vehicle trips per day.
- V. Wildlife Habitat Areas. Areas within or adjacent to the proposed site which have been identified as having a high or moderate value wildlife habitat by the Maine Department of Inland Fisheries and Wildlife or within the Comprehensive Plan. If any portion of the site is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program or Maine Department of Inland Fisheries & Wildlife Beginning With Habitat Program, or as a significant vernal pool or other wildlife habitat governed by DEP Chapter 335 Rules, the plan shall indicate appropriate measures for the preservation of the values, which qualify the site

for such designation. (Amended 4-7-07 ATM)

- W. Historic or Archaeological Sites. All areas within or adjacent to the proposed site which are either listed on or eligible to be listed on the National Register of Historic Places or the Ogunquit Historic Register, or have been identified in the comprehensive plan as sensitive or likely to contain archaeological sites. If any such areas are located within or adjacent to the site, the applicant shall submit a copy of the site plan and a copy of any proposed mitigation measures to the Maine Historic Preservation Commission and the Ogunquit Historic Preservation Commission and submit any agency comments to the Board. (Amended 4-7-07 ATM)
- X. Parking, Driveway and Street plans, in sufficient detail to meeting the standards of this Ordinance.
- Y. A storm water management plan, prepared by a registered professional engineer in accordance with the *Maine Stormwater Best Management Practices Manual*, published by the Maine Department of Environmental Protection (2006). The Board may waive submission of the storm water management plan if the proposed site work will not involve grading which changes drainage patterns, and if the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the site. (Amended 4-7-07 ATM)
- Z. An erosion and sedimentation control plan prepared in accordance with the *Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices*, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, March 1991. The Board may waive submission of the erosion and sedimentation control plan if the proposed site work will not involve grading which changes drainage patterns and if the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the site.
- AA. If applicable, the location of any streets, public improvements, or open spaces shown in the Comprehensive Plan or capital improvements program, that fall within the boundaries of the proposed site.
- BB. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Written offers to convey title to the municipality of all public ways and open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be maintained shall be submitted. If proposed streets and/or open spaces or other land is to be offered to the municipality, written evidence that the Board of Selectmen is satisfied with the legal sufficiency of the written offer to convey title shall be included.
- CC. The location and method of disposal for land clearing and construction debris.
- DD. The construction items for which cost estimates and performance guarantees will be required as a prerequisite to the approval of the final plan, pursuant to

Article 4.8 of this Ordinance.

EE. Permits from State or Federal Authorities. If the Board is unsure whether a permit or license from a state or federal agency is necessary, the applicant shall be required to obtain a written opinion from the appropriate agency as to the applicability of their regulations. Upon written request of the applicant, the Board may consider accepting copies of permits granted by State or Federal authorities after the public hearing is held, but in no event shall any Site Plan Review be approved without such permits.

- i. Maine Department of Environmental Protection, under the Site Location of Development Act.
- ii. Maine Department of Environmental Protection, under the Natural Resources Protection Act or if a storm water management permit or a waste water discharge license is needed.
- iii. Maine Department of Human Services, if the applicant proposes to provide a public water system.
- iv. Maine Department of Human Services, if an engineered subsurface waste water disposal system(s) is to be utilized.
- v. U.S. Army Corps of Engineers, if a permit under Article 404 of the Clean Water Act is required.
- vi. Maine Department of Transportation Traffic Movement Permit, and/or Highway Entrance/Driveway Access Management Permit

4. Determination of Inapplicability of Submission Requirements for Site Plan Review. The Code Enforcement Officer shall review the submissions to make an initial determination of whether all required submissions have been made with a site plan application. The Code Enforcement Officer shall determine whether any submission requirement is not applicable to a specific application, including but not limited to submission requirements for subsurface wastewater disposal systems for properties that are served by public sewer, private well information for properties served by public water or open space information where none exists and none is proposed or required. The Code Enforcement Officer shall document any determination that one or more submission requirements is inapplicable and shall provide a copy of that determination to the Planning Board for consideration in the Board's determination of completeness of the application.

Waivers of Submission Requirements for Site Plan Review. Where the Planning Board finds that strict compliance with the required applicable application submissions would unduly burden the applicant or be excessive in light of the nature of the proposed structure or activity or where there are special circumstances of a particular plan, the Board may waive application submissions upon written request of the applicant, provided that such waivers will not have the effect of nullifying the intent and purpose of the Zoning Ordinance. (Amended and Effective June 14, 2016)

5. Completeness Review Procedure. The Planning Board shall review the application for completeness and note which submissions required by this Article

have been submitted which have been determined by the Code Enforcement Officer not to be applicable and which are missing. The Planning Board shall not schedule a public hearing on the Site Plan Review application until:

- A. The application and supporting materials contain all of the submission requirements other than those that have been determined by the Code enforcement Officer to be inapplicable, or
- B. The Planning Board has reviewed the written waiver requests that have been provided by the applicant for any missing submissions other than those that have been determined by the Code enforcement Officer to be inapplicable, and agrees that any missing submissions are either not applicable or necessary for the Site Plan Review. The applicant shall provide reasons and justifications for any requested waivers of applicable submission requirements, so that the Board may make findings pursuant to Article 4 above. (Amended and Effective June 14, 2016)

D. Public Hearing.

The Planning Board shall hold a public hearing on the site plan review application within 30 days of determining the application is complete. The Board shall notify the Code Enforcement Officer and Board of Selectmen, and shall twice publish notice of the time, place and subject matter of the hearing in a newspaper of local circulation, with the first advertisement appearing at least seven (7) days prior to the hearing date. (Amended 4/5/08 ATM)

- 1. The Board shall notify by regular U.S. mail, first class, the applicant and the owners of all property abutting the property subject to the application at least 10 days in advance of the hearing. The notice shall state the nature of the application and the time and place of the public hearing. The Land Use Office shall prepare a written certification of the date, time, and location when and where notices were mailed. In addition, the notice of the hearing shall be posted in at least three prominent public places within the municipality at least ten days prior to the hearing. (Amended 6/12/12, ATM)
- 2. The owners of property shall be considered to be those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the Planning Board.
- 3. The Code Enforcement Officer shall attend all hearings and may present to the Planning Board all plans, photographs or other material deemed appropriate for an understanding of the application.
- 4. The applicant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chair.

E. Decision.

1. Within 30 days of the public hearing the Planning Board shall prepare a detailed finding of facts and conclusions and shall reach a decision on the application. Within seven days of the decision, the Planning Board shall inform the applicant, the Code Enforcement Officer and Board of Selectmen of its decision in writing. Upon notification of the decision of the Planning Board, the Code Enforcement Officer, as instructed, shall immediately issue, issue with conditions prescribed by the Board, or deny a permit, provided the Code Enforcement Officer finds the permit application meets all provisions of this Ordinance.
2. Site Plan Review approval secured under the provisions of this ordinance by vote of the Planning Board shall expire if:
  - A. the work or change involved is not commenced within one year of the date on which the Site Plan is authorized; or
  - B. the work or change involved is not substantially complete within two years of the date on which the Site Plan is authorized.

An extension of one year from either deadline may be granted by the Board, upon a written request. A single, additional one-year extension from either extended deadline may be granted upon a further written request, but only upon a showing of special circumstances that are beyond the control of the applicant. This provision shall be effective for any Site Plan Review approved after June 8, 2010 or any prior Site Plan Review approval that had not expired, as of January 1, 2010. (Amended 06-08-10)

3. Any special exception permit issued prior to April 1, 2006, or use which received approval from the Planning Board under previous Article 405.6 shall lapse and become void after one year from the date of issuance, if no substantial start has been made on the construction.
4. An appeal may be taken to Superior Court within 30 days after a decision is rendered.

**6.7 Standards Applicable to Site Plan Reviews.** (Amended 4/01/06 ATM)

- A. It shall be the responsibility of the applicant to demonstrate that the proposed use meets all of the following criteria. The Board shall not approve the application unless it makes written findings that the proposed use or structure:
  1. will allow the orderly and reasonable use of adjacent properties;
  2. will not adversely effect the safety, the health and the welfare of the Town;
  3. will not create an undue increase of vehicular traffic congestion on public streets or highways;
  4. includes adequate and proper public or private facilities for the storage, treatment, handling, use of, removal, or discharge of sewage, refuse,

- hazardous material or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;
5. or materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot;
  6. will not cause disturbing emission of electrical discharges, dust, light, vibration or noise;
  7. and the operations in pursuance of the use will not cause undue interference with the orderly enjoyment by the public of parking or recreation facilities, existing, or proposed by the Town or by other competent governmental agencies;
  8. contains adequate, off-street parking in compliance with this Ordinance;
  9. does not create a hazard to life, limb or property because of fire, flood, erosion created by reason of use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot;
  10. will be sensitive to adjacent historic properties in compliance with Article 11.
  11. has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof;
  12. will be adequately screened and buffered from contiguous properties;
  13. will be constructed with adequate landscaping in compliance with this Ordinance, and provision for a storm water drainage system in compliance with the Ogunquit Subdivision Regulations; (Amended 4-7-07 ATM)
  14. will provide for adequate pedestrian circulation;
  15. anticipates and mitigates potential nuisance created by its location; and
  16. complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

## ARTICLE 7 – DISTRICT REGULATIONS

### 7.1 Purpose of Districts (Amended 11/4/08, Effective 4/1/09)

#### A. One-Family Residential District – OFR

To preserve the physical aesthetic and social quality of Ogunquit’s developed residential areas.

#### B. Residential District - R

To provide for areas within the Town of Ogunquit for future residential growth consistent with anticipated growth demands.

#### C. Rural Residential District 1 - RR1

To preserve the rural nature of large Articles of the Town and to discourage large scale development from occurring in areas of the Town of Ogunquit that cannot be readily serviced by public utilities.

#### D. Rural Residential District 2 - RR2

To preserve the rural nature of large Articles of the Town and to discourage large scale development from occurring in areas of the Town that cannot be readily serviced by public utilities.

#### E. Downtown Business District - DB

To provide general retail sales, services and business space within the downtown area of the Town of Ogunquit in locations capable of conveniently servicing community wide and/or regional trade areas and oriented primarily to pedestrian access.

#### F. General Business District 1 - GB1

To preserve the architectural character inherent in the district and to provide general retail sales, services and business space within the Town of Ogunquit in locations capable of conveniently servicing community wide and/or regional trade areas and oriented to automobile and pedestrian access.

#### G. General Business District 2 - GB2

To provide general retail sales, services and business space within the Town of Ogunquit in locations capable of conveniently servicing community wide and/or regional trade areas and oriented primarily to automobile access.

H . Limited Business District - LB

To preserve the architectural character inherent in the Limited Business District and thus to maintain the value of the property.

I . Farm District - F

To provide space for farming in the Town of Ogunquit in locations capable of conveniently servicing the needs of such establishments and preserving open space in rural areas of the community, without impacting negatively the established character of the Town or adjoining Zoning Districts (Amended June 9, 2015).

The following six districts are considered to be the Shoreland Zones, established pursuant to the Maine Department of Environmental Protection Shoreland Zoning Guidelines. The purposes descriptions of the following Shoreland Zones may be found in Article 1.3.D of this Ordinance.

J . Shoreland Limited Residential District - SLR

K . Shoreland Limited Commercial District - SLC

L . Shoreland General Development 1 – Ogunquit Beach – SG1

M . Shoreland General Development 2 – Perkins Cove – SG2

N . Stream Protection District - SP

O . Resource Protection District -RP

(Amended June 9, 2015)

**7.2 Land Use Controls** (Amended 11/4/08, Effective 4/1/09)

- A. All permitted uses, regardless of the reviewing authority, shall conform to the performance standards of Articles 8 and 9 of this Ordinance as applicable. No new permitted use shall be commenced, nor shall any existing use be changed to a different permitted use, until a permit or approval is received from the proper reviewing authority, according to Table 702.1. Uses omitted from Table 702.1 shall be prohibited. (Amended 4/01/06 ATM)
- B. All new lots, new structures and additions to structures shall meet the minimum dimensional requirements for the district in which they are located as detailed in Table 703.1. For a lot or lots contained within or constituting a subdivision, the Planning Board shall require a high intensity soil survey to assure that the amount of net residential area has been calculated in compliance with the definition of net residential area, as set forth in Article 2 of this

Ordinance. If more than one principal building is located on a lot, the buildings shall be separated by a distance equal to twice the minimum side setback for the district in which they are located. On lots owned by a condominium association with a number of principal buildings including, but not limited to, single-family dwellings, setbacks between the principal buildings must be at least twice the minimum side setback of the district. Except, clustered or planned unit developments that meet all the applicable requirements of Article 9.6 may deviate from the requirements of Article 7.2.B. (Amended 4/5/05 ATM)

C. Corner Clearances

For the purposes of traffic safety in all districts, no structure other than public utility structures and traffic control devices may be erected and no vegetation other than shade trees, may be maintained at a height higher than three feet above the plane through the curb grades of intersecting streets within a triangle two sides of which are the edges of the traveled public ways for 20 feet measured from their point of intersection or in the case of rounded street corners, the point of intersection of their tangents.

D. Lots with both Residential and Other Uses.

When a lot contains or is proposed to contain both residential use and commercial, industrial or institutional use, the residential density shall be calculated after subtracting the land area dedicated for the commercial use (including building coverage, parking areas, and required buffers) or the minimum lot area required for the district, whichever is larger, from the lot area.

E. Mixed Non-residential Uses (Amended 4/01/06 ATM)

No additional land area is required if a lot contains or is proposed to contain more than one principal non-residential use, either commercial, industrial, or institutional, as long as parking requirements, dimensional requirements, and all other requirements of this Ordinance are met by the collection of non-residential uses.

F. Accessory Structures and Uses. (Amended 4/01/06 ATM)

An accessory structure or use, as defined by this Ordinance, shall be permitted along with a principal structure or use, only in those zoning districts where the principal structure or use is permitted, according to Table 702.1. The review authority for an accessory structure or use shall be the same as the review authority indicated in Table 702.1 for a permitted principal structure or use.

G. Retail Marijuana Prohibition

For purposes of this ordinance, retail marijuana establishments, including retail marijuana stores, retail marijuana

cultivation facilities, retail marijuana products manufacturing facilities and retail marijuana testing facilities, and retail marijuana social clubs are defined as set forth in 7 M.R.S.A. § 2442.

Retail marijuana establishments, including retail marijuana stores, retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, and retail marijuana testing facilities, and retail marijuana social clubs, as either a principal use or an accessory use, are expressly prohibited in Ogunquit.

No person or organization shall develop or operate a business that engages in retail sales of marijuana or any retail marijuana-product, both as defined by 7 M.R.S.A. § 2442. (Amended 11-7-17 ATM)

**TABLE 702.1 – LAND USES PERMITTED IN ZONING DISTRICTS**

(Amended 6/12/12; 6/9/15; 6/14/16, ATM)

**KEY**

**District**

<b>OFR</b>	One Family Residential District
<b>R</b>	Residential District
<b>RR1</b>	Rural Residential District 1
<b>RR2</b>	Rural Residential District 2
<b>DB</b>	Downtown Business District
<b>GB1</b>	General Business District 1
<b>GB2</b>	General Business District 2
<b>LB</b>	Limited Business District
<b>F</b>	Farm District

**Shoreland Zones:**

<b>SLR</b>	Shoreland Limited Residential District
<b>SLC</b>	Shoreland Limited Commercial District
<b>SG1</b>	Shoreland General Development 1 – Ogunquit Beach
<b>SG2</b>	Shoreland General Development 2 – Perkins Cove
<b>SP</b>	Stream Protection District
<b>RP</b>	Resource Protection District

**Reviewing Authority**

<b>MFS</b>	Contact Maine Forest Service
<b>C –</b>	Permitted use with permit from Code Enforcement Officer
<b>SPR–</b>	Permitted use after Site Plan Review approval from Planning Board
<b>A –</b>	Allowed without a permit
<b>NA -</b>	Not Applicable
<b>NP –</b>	Not permitted
<b>SUB -</b>	Permitted after Subdivision Review Approval by Planning Board under Ogunquit Subdivision Regulations

See Footnotes at end of Table. All uses are subject to the general standards of Article 8.

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
<b>OPEN SPACE AND RURAL USES</b>															
Active Recreation	NP	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Agriculture*	NP	NP	C	C	NP	NP	NP	NP	C	NP	NP	NP	NP	NP	NP
Animal husbandry for non-commercial purposes*	NP	C	C	C	NP	NP	NP	NP	A	SPR	NP	NP	NP	NP	NP
Animal husbandry for commercial purposes*	NP	NP	NP	NP	NP	NP	NP	NP	C	NP	NP	NP	NP	NP	NP
Aquaculture	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Campground	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Cemetery	NP	SPR	SPR	SPR	NP	NP	NP	NP	SPR	NP	NP	NP	NP	NP	NP
Clearing or removal of vegetation for activities other than timber harvesting	A	A	A	A	A	A	A	A	A	C	C	C	C	C	C
Emergency Operations	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Essential Services - Roadside distribution lines (34.5kV and lower)	A	A	A	A	A	A	A	A	A	A	A	A	A	C	C
Essential Services – Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone	NA	NA	NA	NA	NA	NA	NA	NA	NA	C	C	C	C	SPR	SPR

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Essential Services – Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone	NA	NA	NA	NA	NA	NA	NA	NA	NA	SPR	SPR	SPR	SPR	SPR	SPR
Essential Services – Other essential services – not included above	C	C	C	C	C	C	C	C	C	SPR	SPR	SPR	SPR	SPR	SPR
Filling and Earthmoving of Less than 10 cubic yards	A	A	A	A	A	A	A	A	A	C	C	C	C	C	C
Filling and Earthmoving of More than 10 cubic yards	C	C	C	C	C	C	C	C	C	C	C	C	C	SPR	SPR
Fire Prevention Activities	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Forest Management Activities	C	C	C	C	C	C	C	C	C	MFS	MFS	MFS	MFS	MFS	MFS

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Golf Course	NP	NP	SPR	SPR	NP	NP	NP	NP	SPR	NP	SPR	NP	NP	NP	NP
Individual private campsite*	NP	C	C	C	NP	NP	NP	NP	C	NP	NP	NP	NP	NP	NP
Mineral exploration*	NP	NP	C	C	NP	NP	NP	NP	C	NP	NP	NP	NP	NP	NP
Mineral extraction, including gravel pits (see definition)*	NP	NP	SPR	SPR	NP	NP	NP	NP	SPR	NP	NP	NP	NP	NP	NP
Parking lot (See standards in Article 8.10)	NP	NP	NP	NP	NP	SPR	SPR	NP	NP	NP	SPR	SPR	NP	NP	SPR <sup>7</sup>
Passive recreation	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Piers, docks, wharves, bridges & other structures extending over or below high water line or within a wetland, temporary or permanent*	NP	NP	NP	NP	NP	NP	NP	NP	NP	SPR	SPR	SPR	SPR	SPR	SPR

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones						
										SLR	SLC	SG1	SG2	SP	RP	
Service Drops, to allowed uses	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Soil and Water Conservation Practices	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Surveying and Resource Analysis	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Wildlife Management Practices	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<b>RESIDENTIAL USES</b>																
Dwelling accessory to business; above ground floor	C	C	C	C	C	C	C	C	C	C	NP	C	C	C	NP	NP
Manufactured housing unit	NP	NP	C	C	NP	NP	NP	NP	C	NP	NP	NP	NP	NP	NP	N P

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Mobile home park*	NP	NP	SPR	SPR	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	N P
Multi family dwelling*	NP	SPR	SPR	SPR	NP	SPR	SPR	NP	SPR	NP	SPR	NP	NP	NP	N P
Single family dwelling, <i>other than manufactured housing unit</i>	C	C	C	C	NP	C	C	C	C	C	C	C	C	NP	NP <sup>8</sup>
Two family dwelling	NP	C	C	C	NP	C	C	C	C	C	C	C	C	NP	NP
Clustered or Planned Unit Residential Development*	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB
Subdivision, as defined in the Ogunquit Subdivision Regulations	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB	SUB

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
<b>COMMERCIAL USES</b>															
Amusement center	NP	NP	NP	NP	NP	SPR	SPR	NP	NP	NP	SPR	NP	NP	NP	NP
Boarding house	NP	NP	NP	NP	SPR	SPR	SPR	SPR	NP	NP	SPR	SPR	SPR	NP	NP
Business & professional office	NP	NP	NP	NP	SPR	SPR	SPR	SPR	NP	NP	SPR	SPR	SPR	NP	NP
Commercial recreation	NP	NP	NP	NP	SPR	SPR	SPR	NP	NP	NP	NP	NP	NP	NP	NP
Day care center	NP	NP	NP	NP	NP	SPR	NP	SPR	NP	NP	NP	NP	NP	NP	NP
Funeral home	NP	NP	NP	NP	NP	SPR	SPR	NP	NP	NP	NP	NP	NP	NP	NP
Greenhouse	NP	NP	SPR	SPR	NP	SPR	SPR	NP	SPR	NP	NP	NP	NP	NP	NP

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Kennel, veterinary hospital*	NP	NP	NP	NP	NP	NP	NP	NP	SPR	NP	NP	NP	NP	NP	NP
Manufacturing	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Marina	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	SPR	NP	NP
Mechanized recreation	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Nursing home	NP	NP	NP	NP	NP	SPR	NP	SPR	NP	NP	NP	NP	NP	NP	NP
Outdoor sales, services & storage areas including gasoline stations	NP	NP	NP	NP	NP	NP	NP <sup>5</sup>	NP	NP	NP	NP	NP	NP <sup>10</sup>	NP	NP
Public utility facility, other than Essential Services or Service Drops	NP	NP	SPR	SPR	NP	SPR	SPR	NP	SPR	NP	NP	NP	NP	NP	NP

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Retail establishments not elsewhere listed <sup>1</sup>	NP	NP	NP	NP	SPR	SPR	SPR	SPR	NP	NP	SPR	SPR	SPR	NP	NP
Retail storage & sale of fuel for use on watercraft	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	SPR	NP	NP
Service establishments not elsewhere listed, including taxi or livery service dispatching offices <sup>1</sup>	NP	NP	NP	NP	SPR	SPR	SPR	SPR	NP	NP	SPR	SPR	SPR	NP	NP
Slaughterhouse/meat packing facility	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Theatres	NP	NP	NP	NP	SPR	SPR	SPR	NP	NP	NP	NP	NP	NP	NP	NP
Transient Accommodation Type 1 (TA-1) – Weekly Private Home Rental	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Transient Accommodation Type 2 (TA-2) — Bed-and-Breakfast*	NP	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	NP	NP
Transient Accommodation Type 3 (TA-3) — Inn*	NP	NP	NP	NP	NP	SPR	SPR	SPR	SPR	NP	SPR	NP	NP	NP	NP
Transient Accommodation Type 4 (TA-4) — Motel/Hotel <sup>4</sup> *	NP	NP	NP	NP	NP	NP	SPR	NP	NP	NP	SPR <sup>2</sup>	NP	NP	NP	NP
Type 1 Restaurant*	NP	NP	NP	NP	SPR	SPR	SPR	SPR	NP	NP	SPR	SPR	SPR	NP	NP
Type 2 Restaurant*	NP	NP	NP	NP	SPR	SPR	SPR	SPR	NP	NP	SPR <sup>6</sup>	SPR	SPR	NP	N P
Type 3 Restaurant*	NP	NP	NP	NP	SPR	SPR	SPR	SPR	NP	NP	SPR <sup>6</sup>	SPR	NP	NP	N P
Type 4 Restaurant*	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	SPR	NP	NP	NP

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Type 5 Restaurant*	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Type 6 Restaurant*	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Wholesale business	NP	NP	NP	NP	NP	NP	SPR	NP	NP	NP	NP	NP	NP	NP	NP
Wireless Communications Facility - Communications tower*	NP	NP	NP	NP	NP	NP	NP	NP	SPR	NP	NP	NP	NP	NP	NP
Wireless Communications Facility - Antenna*	NP	NP	NP	NP	SPR	SPR	SPR	SPR	SPR	NP	SPR	SPR	SPR	NP	N P
<b>GOVERNMENTAL, INSTITUTIONAL USES</b>															

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Houses of Worship	NP	NP	SPR	SPR	NP	SPR	SPR	SPR	SPR	NP	SPR	NP	NP	NP	NP
Schools, public & private	NP	NP	SPR	SPR	SPR	SPR	SPR	NP	SPR	NP	NP	NP	NP	NP	NP
Library	NP	SPR	NP	NP	NP	NP	NP	SPR	NP	NP	NP	SPR	SPR	NP	NP
Public Building, Structure or Use	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	NP	SPR <sup>7</sup>
Museum	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	SPR	NP
<b>ACCESSORY USES &amp; STRUCTURES, MISC. USES</b>															
Fence meeting the standards of Article 8.6	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Ham Radio tower/antenna*	C	C	C	C	C	C	C	C	C	C	C	C	C	NP	NP

Land Uses	OFR	RD	RR1	RR2	DB	GB1	GB2	LB	F	Shoreland Zones					
										SLR	SLC	SG1	SG2	SP	RP
Home occupation*	C	C	C	C	C	C	C	C	C	SPR	C	C	C <sup>3</sup>	NP	NP
Recreational Vehicles * 11	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Roads	C	C	C	C	C	C	C	C	C	SPR	SPR	SPR	SPR	SPR	SPR <sup>9</sup>
Roads, Land Management	C	C	C	C	C	C	C	C	C	C	C	C	C	C	SP R
Tenting	A	A	A	A	NP	A	A	A	A	A	NP	NP	NP	A	NP
Yard Sale, as defined in Town Code	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C

\*These uses have specific performance standards in Article 9

Footnotes:

- 1 No retail sales or services may be offered or solicited except inside of the buildings in which the retail sales or service establishment are located, except for those exceptions indicated in Footnotes 5 and 10, below. (Amended 6/14/11 ATM)
- 2 TA-4 is only allowed in those portions of the SLC District, immediately adjacent to the GB2 District.
- 3 Limited to storage of fishing and lobstering equipment, private tutoring of not more than two persons at any one time, home crafts, pursuit of the arts, activities or occupations which are conducted without customers or clients coming to the premises.
- 4 Expansions of legally nonconforming hotels/motels in all zoning districts in which new hotels/motels are prohibited shall meet all the-dimensional requirements of zones in which they are located according to Table 703.1, as well as the standards of Articles 3.5 and 9.8.

- 5 As an exception, the Ogunquit Playhouse may serve patrons beverages and snack food outdoors on the premises from one hour before, during and one hour after performances.
- 6 Type 2 and 3 Restaurants shall not be permitted in those portions of the SLC Zone immediately adjacent to the LB Zone.
- 7 Only permitted with Site Plan Review in RP Beach as indicated on the Official Zoning Map. Not permitted in all other portions of the RP District.
- 8 Not permitted unless a special exception is granted pursuant to Article 4.6.
- 9 See special Shoreland standards in Article 9.
- 10 As an exception, within the Shoreland General Development 2 - Perkins Cove – SG2 District, live lobsters landed in Perkins Cove may be sold from vehicles or boats, owned or operated by holders of Commercial Lobstering Licenses. However, any such sales from vehicles shall only be allowed from those vehicles parked within the “Bait Wharf II” Parking Area, directly adjacent to the Harbor Master’s Office. No signs advertising any such outdoor live lobster sales shall be permitted, and lobster sales shall be limited to live lobsters only, and any form of additional solicitation or promotion of other goods, products or services shall be prohibited (regardless of any other provisions of this Ordinance). (Amended 6/12/12 ATM, by a petitioned article)
11. Storage of recreational vehicles shall be exempt.



**TABLE 703.1 – DIMENSIONAL REQUIREMENTS OF EACH ZONING DISTRICT**

(Amended 11/4/08, Effective 4/1/09)

<b>MINIMUM LOT AREA (sq. ft.)</b>															
<b>DISTRICT</b>	<b>OFR</b>	<b>R</b>	<b>RR1</b>	<b>RR2</b>	<b>DB</b>	<b>GB1</b>	<b>GB2</b>	<b>LB</b>	<b>F</b>	<b>SLR</b>	<b>SLC</b>	<b>SG1</b>	<b>SG2</b>	<b>SP</b>	<b>RP</b>
With public sewer & water	12,500	12,500	30,000	30,000	None	10,000 <sup>1</sup>	20,000	10,000 <sup>1</sup>	N/A	30,000-tidal 40,000-non-tidal	40,000	None <sup>1</sup>	None	NP	NP
Without public sewer & water	30,000	30,000	60,000	60,000	N/A	N/A	20,000 <sup>3</sup>	N/A	200,000 <sup>4</sup>	30,000-tidal 40,000-non-tidal	N/A	N/A	N/A	NP	NP
<b>MINIMUM NET RESIDENTIAL AREA PER DWELLING UNIT (sq. ft.)</b>															
<b>DISTRICT</b>	<b>OFR</b>	<b>R</b>	<b>RR1</b>	<b>RR2</b>	<b>DB</b>	<b>GB1</b>	<b>GB2</b>	<b>LB</b>	<b>F</b>	<b>SLR</b>	<b>SLC</b>	<b>SG1</b>	<b>SG2</b>	<b>SP</b>	<b>RP</b>
With public sewer & water	12,500	12,500	30,000	30,000	12,500	12,500	20,000	12,500	N/A	30,000-tidal 40,000-non-tidal	40,000	12,500	NONE	N/A	N/A

Without public sewer & water	30,000	30,000	60,000	60,000	N/A	N/A	40,000	N/A	60,000	30,000-tidal 40,000-non-tidal	N/A	N/A	N/A	N/A	N/A
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**MINIMUM STREET AND SHORE FRONTAGE (feet)**

DISTRICT	OFR	R	RR1	RR2	DB	GB1	GB2	LB	F	SLR	SLC	SG1	SG2	SP	RP
With public sewer & water	75	75	100	100	none <sup>6</sup>	75	100	75	N/A	150-tidal 200-non-tidal	200	100	NONE	Note 2	Note 2
Without public sewer & water	100	100	100	100	N/A	N/A	100	N/A	250 <sup>4</sup>	150-tidal 200-non-tidal	Note 2	Note 2	Note 2	Note 2	Note 2

**SETBACKS (feet)**

DISTRICT	OFR	R	RR1	RR2	DB	GB1	GB2	LB	F	SLR	SLC	SG1	SG2	SP	RP
Front <sup>15</sup>	20	20	30	30	10 <sup>7</sup>	20	30	20	50 <sup>8</sup>	Note 2	Note 2	10 <sup>7</sup>	15	Note 2	Note 2
Side and Rear <sup>15</sup>	15	15	20	20	10 <sup>9</sup>	10 <sup>11</sup>	15 <sup>10</sup>	10 <sup>11</sup>	20	Note 2	Note 2	10 <sup>9</sup>	NONE	Note 2	Note 2

From vernal pools (significant or non-significant, see sec. 1.3.F)	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75
From water bodies & wetlands that meet the criteria for inclusion in the Shoreland Zone	75	75	75	75	75	75	75	75	75	75	75	50	50	75	75

**MAXIMUM BUILDING COVERAGE**

<b>DISTRICT</b>	<b>OFR</b>	<b>R</b>	<b>RR1</b>	<b>RR2</b>	<b>DB</b>	<b>GB1</b>	<b>GB2</b>	<b>LB</b>	<b>F</b>	<b>SLR</b>	<b>SLC</b>	<b>SG1</b>	<b>SG2</b>	<b>SP</b>	<b>RP</b>
With public sewer & water	30%	30%	20%	20%	NONE	30%	30%	30%	N/A	20 <sup>13</sup>	20 <sup>13</sup>	20% <sup>13</sup>	20% <sup>13</sup>	0%	0%
Without public sewer & water	20%	20%	10%	10%	N/A	N/A	30%	N/A	20%	20 <sup>13</sup>	N/A	N/A	N/A	0%	0%

**MAXIMUM BUILDING HEIGHT<sup>14</sup>**

<b>DISTRICT</b>	<b>OFR</b>	<b>R</b>	<b>RR1</b>	<b>RR2</b>	<b>DB</b>	<b>GB1</b>	<b>GB2</b>	<b>LB</b>	<b>F</b>	<b>SLR</b>	<b>SLC</b>	<b>SG1</b>	<b>SG2</b>	<b>SP</b>	<b>RP</b>
Feet	35	35	35	35	35	35	35	35	35	35	35	35	27	35'	35'
Stories	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½	2 ½

## NOTES TO TABLE 703.1

- 1 For a residential use, the minimum lot area shall be 12,500 square feet.
- 2 Same as nearest adjacent non-shoreland zone.
- 3 For residential use, the minimum lot area shall be 30,000 square feet.
- 4 For residential use, the minimum lot area shall be 60,000 square feet and the minimum street frontage shall be 100 feet.
- 5 As required by the underlying district.
- 6 Residential uses, except accessory dwelling units on the 2<sup>nd</sup> floor above a commercial use, shall require a minimum street front of 75 feet.
- 7 The minimum front setback for a structure existing on the effective date of this Article shall be ten (10) feet or the existing structure's front setback, whichever is less. (Amended 4-01-06 ATM)
- 8 The minimum front setback for a structure existing on the effective date of this Article shall be fifty (50) feet or the existing structure's front setback. (Amended 4-01-06 ATM)
- 9 The side and rear setbacks for a structure abutting a residential use shall be fifteen (15) feet. The minimum side and rear yards for a structure existing on the effective date of this Article shall be the setback indicated above or the existing structure's setback, whichever is less. (Amended 4-01-06 ATM)
- 10 The side and rear setbacks for a structure abutting a residential use shall be twenty-five (25) feet. The minimum side and rear yards for a structure existing on the effective date of this Article shall be the setback indicated above or the existing structure's setback, whichever is less. (Amended 4-01-06 ATM)
- 11 The side and rear setbacks for a structure abutting a residential use shall be fifteen (15) feet.
- 12 There shall be a natural buffer of seventy-five (75) feet maintained between the Ogunquit River and any structure and tilling.
- 13 In the Shoreland Zones, the total area of all buildings, structures, parking lots and any other non-vegetated surfaces shall be included in the computation of maximum building coverage, and shall not exceed the indicated percentage of the lot area, or portion of the lot area thereof, located in the Shoreland Zone. See definition of *Building Coverage* in Article 2.
- 14 No structure shall contain more than two and one half (2 ½) stories or the indicated height.
- 15 Expansions of legally nonconforming hotels/motels in all zoning districts in which new hotels/motels are prohibited shall meet all the-dimensional requirements of zones in which they are located according to Table 703.1, as well as the standards of Articles 3.5 and 9.8. (Amended 6/12/12, ATM; Amended 6-12-18)

## **ARTICLE 8 – GENERAL STANDARDS APPLICABLE TO ALL LAND USES**

Notwithstanding any other provisions of this Ordinance, any use that may be obnoxious or injurious because of the production or emission of odor, dust, smoke, refuse matter, fumes, noise, vibration or waste materials, or that may be dangerous to the health or safety of the community or to its disturbance or annoyance, or which consumes, generates, or handles hazardous wastes as defined in 38 M.R.S.A, §1303, hazardous matter as defined in 38 M.R.S.A, §1317 or oil as defined in 38 M.R.S.A, §542, or low-level radioactive waste storage or disposal as defined in 38 M.R.S.A, §1451, is prohibited until plans for the effective control and/or elimination of same are presented to and approved by the permit issuing authority. When the effects of use are uncertain, the Code Enforcement Officer, after prior notification to and at the expense of the applicant, shall employ such independent recognized consultant as necessary to insure compliance with all requirements of this Ordinance specifically related to the public health, safety and welfare and the abatement of nuisances. The estimated costs of such studies shall be deposited with the Town Clerk prior to their undertaking.

### **8.1. Street Frontage Required for All Lots**

Any new lot created after April 2, 2005, whether or not it is part of a subdivision, shall contain the required street frontage, pursuant to Table 703.1 of this Ordinance, on either a legally existing public or private street, or on a newly created public or private street meeting the standards of Article 10 of the Ogunquit Subdivision Regulations. (Amended 4/5/05 ATM)

### **8.2. Air Pollution**

All air pollution control shall comply with minimum State requirements and detailed plans shall be submitted to the State of Maine, Department of Environmental Protection, for approval, before a building permit is granted. No unreasonable odor, dust or smoke shall be detectable beyond the property line.

### **8.3. Buffer Areas**

A non-residential use which abuts an existing or potential residential use shall maintain a buffer strip along the side and rear yards for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance effecting the health, safety, welfare and property values of the residents of Ogunquit. Where natural vegetation cannot be maintained or due to varying site conditions, the buffer area may consist of fences, walls, tree plantings, hedges or combinations thereof. The buffering shall be sufficient to minimize the impacts of any kind of potential use such as: loading and unloading operations, outdoor storage areas, vehicle parking, mineral extraction, waste collection and disposal areas. An area no less than one half the width of the side and rear yard setback shall be maintained as a landscaped vegetative buffer and not be paved or used for parking. The permitting authority may require that the buffer effectively screen the commercial use from view from the residential property by a continuous vegetative barrier or stockade fence not less than six feet in height.

#### **8.4. Drinking Water Wells**

- A. No drinking water well may be located within 100 feet horizontal distance of an existing subsurface wastewater disposal system. This restriction shall apply as a condition to a building permit for any use not located on the municipal water supply.
- B. Prior to the issuance of any occupancy permit for any structure with a potable water supply system other than the Kennebunk, Kennebunkport and Wells Water District, a water quality analysis demonstrating that the State of Maine Safe Drinking Water Guidelines are met shall be submitted to the Code Enforcement Officer.

#### **8.5. Prevention of Erosion**

- A. No person shall perform an act or use land in a manner which would cause substantial or avoidable erosion, create a nuisance or alter existing patterns of natural water flow in the Town. This shall not effect any extractive operations complying with the standards of performance specified elsewhere in this Ordinance.
- B. All development shall generally comply with the provisions of the Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, 1991.
- C. All applicants for a permit for development on slopes greater than 15 percent shall be required to submit a soil erosion and sedimentation plan meeting the standards of the County Soil and Water Conservation District and the Maine Soil and Water Conservation Commission. In addition, all applicants proposing development on slopes greater than 25 percent shall be required to submit engineering or architectural information which indicates that the development is designed for the site in a proper manner as the Code Enforcement Officer may reasonably require.

#### **8.6. Fences**

No fence may be erected, altered or relocated without issuance of a permit from the Code Enforcement Officer. Although a Design Review for fences is not required by Article 11, the Code Enforcement Officer, at his or her discretion, may submit an application for a fence to the Planning Board for its review, interpretation and possible approval. The Code Enforcement Officer shall enforce Article 8.6 and all permits issued thereto.  
(Amended 4/5/08 ATM)

Fences shall meet the following standards:

- A. Fences shall only be made of natural, stained or painted wood, stone, or metal, wrought iron, or vinyl or other plastics and vinyl-covered or other plastic-covered wood or metal excluding chain link, within the following districts: Limited Business District, Downtown Business District, General Business Districts, SG1, and SG2 and those portions of the Shoreland Overlay Districts that overlay said districts.  
(Amended at ATM April 3, 2004, June 9, 2015)
- B. In the One-Family Residential District, Residential Districts, Farm District, Resource Protection District and those portions of the Shoreland Overlay District that overlay said districts fences may be made of wood, stone, brick or other concrete type blocks, metal, vinyl or other plastics and vinyl-covered or other plastic-covered wood or

metal.

- C. The Planning Board may approve alternative fence materials when the request is included as part of a broader application, and; when for technical or other unique circumstances, the above materials would impose adverse impact on safety or aesthetics (Amended at ATM November 8, 2016).
- D. In the One-Family Residential District, Residential District, Rural Residential District 1, 4 rural Residential District 2, General Business District 1, General Business District 2, Limited Business District and Farm District fences shall not exceed 6 feet in height.
- E. In the SG1 and SG2 fences shall:
  - 1. not be more than four feet in height; and
  - 2. not obstruct the view of tidal waters from a public way or other public property.
- F. In the Resource Protection District, or any other Shoreland Zone, fences shall
  - 1. not be more than four feet in height; and
  - 2. not obstruct the view of tidal or inland waters and/or natural beauty from a public way or other public property.

Existing nonconforming fences damaged by fire, storm, or any other cause than by a willful act of the owner, may be repaired or replaced pursuant to Article 3.3.H.3. (Amended 6/12/12, 6/9/15, ATM)

## **8.7. Lighting**

### **A. Glare**

Lighting may be used which serves security, safety and operational needs but which does not directly or indirectly produce deleterious effects on abutting properties or which would impair the vision of a vehicle operator on adjacent roadways. Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings. Direct or indirect illumination shall not exceed 0.5 foot-candles upon abutting residential properties. Any lighting fixture not meeting the above standards shall be removed or modified to meet these standards. (Amended April 8, 2002)

### **B. Outdoor Strings of Lights (Amended 6/12/12, ATM)**

Strings of light bulbs are not permitted except for the holiday season from the Monday before Thanksgiving until January 21. Holiday season strings of lights may include both colored and uncolored lights.

### **C. Landscape Lighting (Adopted April 8, 2002)**

Strings of uncolored lights may also be part of a landscape design for all or part of the year. Landscape design refers to lights in live bushes or live trees (as defined in Webster's Dictionary as having living root systems in soil), but does not include lights around windows, on building facades, on fences, on walls or on roofs.

## 8.8. Hazardous Activities

No person shall perform a hazardous activity which will have an unduly adverse environmental impact. Any person intending to construct or operate a development which consumes, generates, or handles hazardous wastes as defined in 38 M.R.S.A, §1303, hazardous matter as defined in 38 M.R.S.A, §1317 or oil as defined in 38 M.R.S.A, §542, or low-level radioactive waste storage or disposal as defined in 38 M.R.S.A, §1451, shall file a preliminary notice of intent with the Code Enforcement Officer. The preliminary notice shall contain a brief description of:

- A. The nature and location of the proposed development, and
- B. A description of the hazardous activity. The Code Enforcement Officer may, at his discretion, require the applicant to provide detailed information concerning:
  1. The nature and extent of any significant ground water aquifer in the vicinity of the proposed development, including recharge areas and flow paths;
  2. the quality and quantity of the significant groundwater aquifer;
  3. existing and potential uses of the aquifer;
  4. the nature and quantity of potentially hazardous activities and materials to be handled, and
  5. the nature and quantity of pollutants to be discharged.

## 8.9. Noise Abatement

- A. Excessive noise at unreasonable hours shall be required to be muffled so as not to be objectionable due to intermittence, beat frequency, shrillness or volume.
- B. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this Ordinance shall be established by the time period and type of land use district listed below. Sound pressure levels shall be measured at all major lot lines, at a height of at least four feet above the ground surface.

### Sound Pressure Level Limits Measured in Decibels

	7 a.m.- 10 p.m.		10 p.m.- 7a.m.	
	dB(A)	dB(C)	dB(A)	dB(C)
Business Districts	60	72	50	62
Other Districts	55	67	45	67

1. The levels specified may be exceeded by 10 decibels for a single period, no longer than 15 minutes, in any one day.
  2. Both dB(A) and dB(C) scales shall be used, and a violation of either standard shall be deemed to constitute a violation of this Ordinance.
- C. Noise shall be measured with a sound level meter meeting the standards of the

American National Standards Institute (ANSI SI .401961) “American Standard Specification for General Purpose Sound Level Meters”. The instrument shall be set to the appropriate weight response scales and the meter to the slow response. Measurements shall be conducted in accordance with ANSI SI. 2-1962 “American Standard Method for the Physical Measurement of Sound.”

- D. No person shall engage in, cause, or permit to be engaged in very loud construction activities on a site abutting any residential use between the hours of 10 p.m. one day and 7 a.m. of the following day. Construction activities shall be subject to the maximum permissible sound level specified for business districts for the periods within which construction to be completed pursuant to any applicable building permit. The following uses and activities shall be exempt from the sound pressure level regulations:
  - 1. Noises created by construction and maintenance activities between 7 a.m. and 10 p.m.
  - 2. The noises of safety signals, warning devices and emergency pressure relief valves and any other emergency activity.
  - 3. Traffic noise on existing public roads, railways or airports.
- E. These noise regulations are enforceable by law enforcement officers and the Code Enforcement Officer.

#### **8.10. Off Street Parking and Loading**

##### **A. General. (Amended 4/1/06, 6/9/15 ATM)**

- 1. In all Districts, except the Downtown Business, SG1 and SG2, no structure or use shall be constructed, extended or enlarged, unless off-street automobile parking space is provided in accordance with the following requirements:
  - a. In the Downtown Business, SG1 and SG2 only, all non-residential uses except transient accommodations, shall be exempted from the provision of minimum off street parking and loading requirements of Article D.2 below.
  - b. Parking areas with more than four parking spaces shall be arranged so that it is not necessary for vehicles to back into the street.
  - c. Parking spaces shall be provided as required and made available for use prior to the issuance of the Certificate of Occupancy.

##### **B. Parking Lot Layout**

- 1. In its review of parking lot layouts, the reviewing authority shall consult with the Road Commissioner and shall consider the following:
  - a. Sight distances along the public right-of-way;
  - b. Aesthetic and visual sighting from the public right-of-way;
  - c. Effects on adjacent public access points;

- d. Overall traffic safety considerations;
  - e. Traffic signalization requirement;
  - f. Movement of vehicles related to use of the facility;
  - g. Snow removal.
  - h. Drainage (Amended 4-01-06 ATM)
2. Vehicular Entrance and Exit.
- a. Entrances and exits should be clearly identified by the use of signs, curb cuts, and landscaping.
  - b. Entrance/exit design shall be in conformance with the standards of Article 8.13.B.
  - c. Access to parking stalls should not be from major interior travel lanes, and shall not be immediately accessible from any public way.
  - d. Except where valet parking is provided, parking areas shall be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.
3. Interior Vehicular Circulation
- a. Traffic flow in parking areas shall be clearly marked with signs and/or surface directions.
  - b. Major interior travel lanes should be designed to allow continuous and uninterrupted traffic movement.
  - c. Enclosures, such as guardrails, curbs, fences, walls, and landscaping, should be used to identify circulation patterns of parking areas and to restrict driving movements diagonally across parking aisles, but not to reduce visibility of oncoming pedestrians and vehicles.
  - d. Entrance/exits shall be designed to allow adequate stacking of vehicles without blocking interior vehicle circulation lanes.
  - e. Parking aisles should be oriented perpendicular to stores or businesses for easy pedestrian access and visibility.
4. Parking Area Design
- a. Parking stalls and aisle layout shall conform to the following standards.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9'	9'	18.5'	24'
60°	8.5'	10.5'	19'	16' (one way)
45°	8.5'	13'	17.5'	12' (one way)

30°	8.5'	17'	17.5'	12' (one way)
180°	24'	24'	9'	13' (one way)
				24' (two way)

- b. In paved parking areas painted stripes shall be used to delineate parking stalls. Stripes should be a minimum of 4" in width. Where double lines are used, they should be separated a minimum of 1'0" on center.
- c. Diagonal parking may be utilized only in parking areas with a paved surface. In aisles utilizing diagonal parking, arrows shall be painted on the pavement to indicate proper traffic flow.
- d. Bumpers and/or wheel stops shall be provided where overhang of parked cars might restrict traffic flow on adjacent roads, restrict pedestrian movement on adjacent walkways, or damage landscape materials.

5. Landscaping

Off-street parking and loading spaces, where not enclosed within a building, shall be effectively screened from view by a continuous landscaped area not less than six feet in height and fifteen feet in width along all lot lines adjacent to residential properties, except that driveways shall be kept open to provide visibility for entering and leaving. No off-street parking and loading shall be permitted within the front setback or any setback adjoining a public street. Along any public street there shall be a continuous landscaped area designed to minimize the visual impact of the parking area and vehicles as viewed from the street. The landscaped area shall contain a mix of trees, bushes, shrubs, ground cover, perennials and grading to minimize the view of parked vehicles, yet not hide the buildings or other elements of the site.

C. Off-Street Loading Standards

- 1. The following minimum off-street loading bays or berths shall be provided and maintained in the case of new construction, alterations and changes of use;
  - a. Office buildings, hotel and motel with a gross floor area of more than 100,000 square feet require one bay.
  - b. Retail, wholesale, warehouse, governmental, institutional and industrial operations with a gross floor area of more than 5, 000 square feet require the following:

5,001	to	40,000 sq. ft	.....	1 bay
40,001	to	100,000 sq. ft	.....	2 bays
100,001	to	160,000 sq. ft	.....	3 bays
160,001	to	240,000 sq. ft	.....	4 bays
204,001	to	320,000 sq. ft	.....	5 bays
320,001	to	400,000 sq. ft	.....	6 bays

Each 90,000 square feet over 400,000 square feet require one additional bay.

- 2. Each loading bay shall have minimum dimensions of 14 feet by 70 feet and may

be located either within or without a building. Every part of such loading bay shall be located completely off the street. In case motor vehicles larger than the dimensions of the minimum loading bay habitually serve a given building, additional space shall be provided so that such vehicles shall park or stand completely off the street.

3. The Planning Board shall have full authority to waive the requirements of this Article where it may be shown that appropriate parking and loading spaces maintained will be sufficient for the intended use.

D. Off-Street Parking Standards

1. Off-street parking, in addition to being a permitted use, shall be considered as an accessory use when required or provided to serve uses located in any district.
2. The following minimum off-street parking and loading requirements shall be provided and maintained, in the case of new construction, or in the case of expansion, extension, or changes of structures or uses at existing sites.

“Floor area” and “floor space” as used in the statement of parking requirements for “Restaurants”, shall include all areas, whether inside or outside, which are available to customers for eating or drinking. “Floor area” and “floor space” as used in the statement of parking requirements for “Retail Stores” shall include all areas used for retail display or sales. (Amended 4-01-06 ATM)

Auto, truck and tractor repair and gasoline stations:	1 parking space for each employee plus 1 space for each 50 square feet of floor area used for service work.
Dwellings	2 vehicle spaces per each dwelling unit.
Motels, Hotels, Bed & Breakfast, Boarding House, Inn or other rooming spaces associated with a permitted use.	1 parking space for each sleeping room.
Schools:	
Nursery School and Day Care Center:	2 parking spaces for each nursery room plus 1 space for each adult instructor
Elementary Schools	1 parking space for each adult employee plus 15 parking spaces for each 100 students, or major fraction thereof, of total enrollment.
Senior High School	1 parking space for each adult employee plus 20 parking spaces for 100 students, or major fraction thereof, of total enrollment.
Hospitals	1 parking space for each 500 square feet, or major fraction thereof, of floor area, exclusive of basement.
Nursing homes	1 parking space for every 4 beds.

Theaters, auditoria, churches, arenas, amusement centers and other places of assembly	1 parking space for every 3 seats or for every 50 square feet, or major fraction thereof, of assemblage space if no fixed seats.
Retail stores	1 parking space for each 100 square feet of retail sales floor area or major fraction thereof.
Bowling alley	2 parking spaces for each bowling lane.
Restaurants, Type 1, 2 & 3	1 parking space for each 100 square feet, or major fraction thereof, of floor space not used for storage or food preparation.
Restaurants, Type 4 & 5	Minimum 25 parking spaces; 4 square feet of parking for each square foot of floor space in excess of 2,500 square feet.
Offices, professional and public buildings	1 parking space for each 500 square feet, or major fraction thereof, of floor area exclusive of bulk storage areas.
Transportation terminals	In addition to meeting all the applicable standards enumerated above, transportation terminals shall meet the following: 1 parking space for each employee; 1 parking space for each seat of the major carrier vehicle and 1 parking space for each rented vehicle to be based on-site.
Industrial and manufacturing	1 parking space for each 1,000 square feet of floor area, or major fraction thereof, for that part of every business, manufacturing and industrial building not catering to retail trade.
Farm stand	1 parking space for each 100 square feet of display area or fraction thereof.

3. Required off-street parking in all residential and business districts shall be located on the same lot as the principal building or within 100 feet measured along lines of access for business and industry except where it cannot reasonably be provided on the same lot, the Planning Board may authorize residential off-street parking to be located on another lot within 300 feet of the residential uses, as measured along lines of public access. Such parking areas shall be held under the same ownership or lease as the uses served and evidence of such control or lease shall be required. Arrangements for parking on leased land shall not be acceptable for meeting the minimum required parking provisions of this Ordinance unless the lessee is specifically given the option of renewing the lease indefinitely. (Amended 11-03-09 ATM)

4. Where off-street parking for more than six vehicles is required or provided, the following requirements shall apply:
  - a. The surface of driveways, maneuvering areas, and parking areas shall be uniformly graded with a subgrade consisting of gravel or equivalent materials at least six inches in depth, well compacted, and with a wearing surface equivalent in qualities of compaction and durability to fine gravel.
  - b. A system of surface drainage shall be provided in such a way that the water run-off shall not run over or across any public sidewalk street or adjacent property.
  - c. Where artificial lighting is provided, it shall be shaded or screened so that no light source shall be visible from outside the area and its access driveways.
5. The Planning Board may approve the joint use of a parking facility by two or more principal buildings or uses where it is clearly demonstrated that said parking facility will substantially meet the intent of the requirements by reasons of variation in the probable time of maximum use by patrons or employees among such establishments.
6. Parking for Handicapped
  - a. Every business, commercial, institutional, public and nonprofit use shall provide a minimum of 4 percent of the total parking spaces for vehicles with handicapped registration plates, but in no case less than one space. Handicapped spaces shall be designed according to ANSI Standard A117.1-1986. All handicapped spaces shall be identified with signs no smaller than 9 inches wide by 12 inches high, posted four feet from the ground. When parking areas are paved, handicapped spaces shall also be identified by painted markings on the pavement.
  - b. In accordance with 30-A M.R.S.A, §3 009, owners of private off-street parking shall arrange for private enforcement or shall enter into agreements with the Ogunquit Police Department to enforce handicapped parking restrictions
7. Additional Requirements in the Shoreland Overlay District
  - a. Parking areas shall meet the shoreline setback requirements for structures for the district in which such areas are located. The setback requirement for parking areas serving public boat launching facilities may be reduced to no less than 50 feet from the normal high water line or upland edge of a wetland if the Planning Board finds that no other reasonable alternative exists.
  - b. Parking areas shall be designed to prevent storm water runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.
8. Except for transient accommodations and residential uses, the Planning Board may reduce the requirements of this Article for the number of parking spaces, where it is shown that the application meets one or more of the following standards:

- a. appropriate parking and loading spaces will be maintained sufficiently for the intended use, based on the availability of public transit, which can reasonably be expected to be utilized by sufficient numbers of customers or patrons of the use, to justify the waiver request;
  - b. a public parking lots is located within five hundred (500) feet of the proposed use;
  - c. appropriate parking and loading spaces will be maintained sufficiently for the intended use, based on the availability of adequate and safe pedestrian facilities and crosswalks, which can reasonably be expected to be utilized by sufficient numbers of customers or patrons of the use, to justify the waiver request; or
  - d. the owner or operator of the proposed use will provide valet parking service for customers or patrons. (Amended 11-03-09 ATM)
9. The Planning Board may require additional information be provided by the applicant in support of any request for a waiver of parking requirements, including, but not limited to:
- a. projections regarding how many customers or patrons will arrive at the proposed use at various times of day, by each possible mode of transportation;
  - b. proposed hours, methods, and locations for the provision of valet parking; or
  - c. distance measurements and/or diagrams showing connections to pedestrian or transit facilities, and projected customer travel routes.(Amended 11-03-09 ATM)

**8.11. Shadows**

The proposed structure shall not have an unduly adverse impact on access to direct sunlight, including but not limited to blocking access to direct sunlight to structures utilizing solar energy through active or passive systems.

**8.12 Signs** (Amended 6/8/10, 6/10/14, Amended 6-12-18)

A. General.

- 1. All signs in the Town of Ogunquit shall meet the following standards.
  - a. Free standing and/or A-frame signs shall be allowed only on private property where they can be placed no closer to the street than the front yard setback allows. Businesses which cannot meet this setback standard may utilize similar signage which must be affixed to the building.
  - b. Free standing and/or A-frame signs can be no larger than 6 square feet and any dimension may be no greater than 27” wide by 42” in height. Free standing and/or A-frame signs shall be counted towards the total amount of maximum sign area permitted on the property.
  - c. No business or residential signs may be erected, altered, or relocated without issuance of a permit from the Code Enforcement Officer. Before issuing a

permit the Code Enforcement Officer may submit the application to the Planning Board for review, interpretation and possible approval. The Code Enforcement Officer shall enforce Article 8.12 and all permits issued thereto. (Amended 6/10/14 Effective 6/11/14)

- d. All business and residential signs shall be made of wood, metal or high density urethane board and may include raised or appliquéd wooden lettering or other graphics. The finished graphics of these signs may be carved, painted or of a vinyl material that resembles paint. Signs may not be surfaced with fluorescent or day-glow colors or other reflective material. Gold Leaf is permitted. The only exception from these material standards shall be for awnings or advertising signs, as provided by Article 8.12.B below, or for temporary commercial signs, as provided by Article 8.12.A.1.f below. (Amended 6/10/14 Effective 6/11/14)
  - e. Illumination is permitted only by steady, uncolored, external lighting.
  - f. Signs shall be a maximum of 15 feet high.
  - g. The measurement of sign area shall be based upon the outer perimeter of all boards, panels or sheets of materials as well as the spaces between these materials, but does not include the supporting posts or structural element outside the limits of such perimeter which does not form an integral part of the display. Only one side of a two-sided sign shall be counted in the calculation of allowable sign area. In determining the area of wall signs, the entire area within a continuous perimeter enclosing the extreme limits of the actual letters and characters shall be measured. The area of background color will also be included if it differs from the color of the building itself.
  - h. Temporary business sign(s) may be used by a new business while awaiting arrival of permanent sign(s), provided the sign is of a durable weatherproof material, however, temporary sign(s) shall be allowed only until permanent sign(s) is/are installed or for 60 days, whichever is the shorter period. Each temporary business sign shall be no larger in area or dimension than the conforming permanent sign that will replace it, and shall be placed in a manner and location in conformance with this ordinance, as if it were a permanent sign.
  - i. Any sign which no longer advertises a business that is being conducted, a product being sold, or an activity or campaign being conducted, shall, within 30 days, be taken down and removed by the owner or tenant of the premises upon which such sign is located. This provision shall not be construed to require the owners of seasonal businesses to remove signs at the end of each season.
  - j. Any sign, whether regulated by this Article 8.12 or exempted from regulation pursuant to subArticle 8.12.A.3 below, shall not be placed in rights-of-way or on other Town properties without express authorization of the Select Board.
2. The following types of signs shall be prohibited:

- a. Roof signs.
- b. Strings of pennants, inflated signs, tethered balloons, or banners, unless expressly allowed elsewhere in this Ordinance. (Amended 6/10/14 Effective 6/11/14)
- c. Flags, other than those of any nation, state, city, coalition or other political unit, including, but not limited to, military or veterans groups. In no event shall any flag of any type exceed fifty (50) square feet in area.
- d. Internally illuminated signs, including, but not limited to, neon or gas filled tubular signs, light emitting diode (LED) signs, digital signs, or electronic message center signs. This prohibition shall include signs located inside a building, when such signs are intended to be visible by pedestrians or motorists.
- e. Signs which physically or visually move, rotate or create an illusion of movement, or which have parts or surfaces that physically or visually move, rotate or create the illusion of movement, or which emit audible sound or noise.
- f. Signs which appear animated or projected, or which are intermittently illuminated, or of a traveling, tracing, scrolling, or sequential light type, or signs which contain or are illuminated by animated or flashing light, including, but not limited to, electronic message center type signs, light emitting diode (LED) signs, or digital signs.
- g. Any signs, whether regulated by this Article 8.12 or exempted from regulation pursuant to subArticle 8.12.A.3 below, placed within the right of way of a public way, unless expressly authorized by the Select Board. Any sign which is placed in a public way without such authorization shall be removed by the Code Enforcement Officer, the Highway Department, or the Police Department. The Code Enforcement Officer shall attempt to ascertain the owner of the sign and within seventy-two hours of the sign's removal notify the owner of the location of the sign so it may be retrieved.
- h. Free-standing "A-frame" or other portable signs, located on public or private property, other than those expressly exempted elsewhere in this Ordinance, or as authorized by the Select Board.
- i. Signs which attempt or appear to attempt to direct movement of traffic or interfere with, imitate or resemble an official traffic sign, signal or device.
- j. Signs which may prevent the driver of a vehicle from having clear view of an official sign or other traffic.
- k. Off premises signs, unless exempted elsewhere in this Article. The Town of Ogunquit shall not permit the erection of Department of Transportation Official Business Directional Signs, as defined in Title 23 M.R.S.A. §§ 1906 to 1925.

1. A business or advertising sign which is attached to, or painted on a: car, truck, bicycle, trailer, moped, scooter, and/or any other mechanized or human or animal powered form of transportation will be considered to be in violation of the sign ordinance if it is parked in such a manner, and/or has such limited use, as to suggest that it is being used to effectively achieve the result of announcing, directing, or advertising said business. (Effective 6/11/14)

### 3. Exemptions

The following shall not be included in the application of Article 8.12 and shall not be considered as being regulated by this Article 8.12 (Amended 6/10/14 Effective 6/11/14):

- a. One sign not exceeding one square foot in area and bearing only street number, property name, and/or the name of occupants residing at the premises.
- b. Signs erected and maintained pursuant to and in discharge of any governmental functions, or required by law, ordinance or other governmental regulation.
- c. Flags, each less than fifty (50) square feet in area, of any nation, state, city, coalition or other political unit, including, but not limited to, military or veterans groups.
- d. Signs within buildings that are oriented to patrons that have already entered the premises.
- e. Signs directing and guiding traffic and parking on private property, not exceeding four square feet in area and bearing no commercial matter, indicating “enter” or “exit,” and the like. Where confusion would occur, or to limit parking to patrons of an establishment, the name of the business may occur, but there shall be no graphics which otherwise identify the business.
- f. One sign advertising real estate for sale, lease or rent, not exceeding six square feet in area per lot or per dwelling unit, and located on the lot being advertised only. The sign shall be removed upon the closing of the sale or upon occupancy of rental property.
- g. Inside “window”-type displays or paraphernalia, incidental and necessary to the business, such as, but not limited to, jewelry cases, mannequins, and clothing layouts.
- h. Outside-mounted, glass-fronted display cabinets, no greater than 6 square feet in area, containing menus, real estate ads, and the like.
- i. Memorial signs or tablets, names of historic buildings and the date of erection when engraved in the surface of the building or constructed of permanent material.
- j. Civic group signs. One permanent, freestanding joint identification off-premise sign announcing the name of churches, social organizations and the time and place of meeting of civic clubs shall be permitted at the entrances of

the Town along US Route One, provided that they shall be designed as an integrated unit and shall be landscaped. Such freestanding signs shall not exceed 32 square feet in total combined signboard area.

- k. A temporary sign, erected for no more than 30 consecutive days, placed either on or off premises, made of rigid or flexible material, and displaying any educational, charitable, philanthropic, civic, professional, religious, or like campaign, drive, movement, or event.
- l. Off-site, directional signs for non-profit museums, non-profit theaters, or houses of worship, located within the Town of Ogunquit. (Amended 4-01-06 ATM)
- m. Warning signs such as “Posted,” “No Trespassing,” “Beware of Dog,” and “Private Driveway” of no greater than two square feet in area.
- n. Contractor signs. One sign, no larger than six square feet, identifying the name of a contractor or tradesman performing work on the premises, provided the sign is removed within five days of the completion of the work.
- o. The Ogunquit Playhouse on U.S. Route One, may maintain, repair or construct, subject to Design Review, the roadside billboard marquee, the line of pole-mounted pennants above the front façade, and one “Matinee” banner, that are in use at the time of the adoption of this ordinance and said signs will not be subject to the sunset provision of this ordinance, and will be permitted the use of changeable lettering for performance information.
- p. Movie theaters currently existing and legally operating may maintain, repair or reconstruct any billboard marquee, and one “Matinee” banner, that is in use at the time of the adoption of this ordinance, and said signs will not be subject to the sunset provision of this ordinance, and will be permitted the use of changeable lettering for show times and information.
- q. The Ogunquit Playhouse, Ogunquit Performing Arts, Leavitt Theater, Ogunquit Museum of American Art, and the Ogunquit Chamber of Commerce along with other town sanctioned committees or boards may erect portable, free standing and/or “A- frame” type on premises or off premises signs, collectively not to exceed twelve in number with no more than 4 signs placed at any one location within the town limits of Ogunquit, and each not displaying more than 12 square feet of sign area. Such signs shall be placed at the following locations: north corner of Wharf Lane and Shore Road; north corner of Beach Street and U.S. Route One; and Rotary Park. And must be placed in such a manner as to avoid hazards to pedestrian traffic; and shall have no attachments, such as balloons, flags, flyers, or any other loose item, to the sign or frame. The content and placement of such signs, as well as the allocation of signs among the groups, shall be approved annually by the Town Manager, as authorized by the Select Board. The Select Board may allow additional organizations with similar purposes, in addition to those listed above, to erect free standing and/or “A-frame” type signs in accordance with these standards, as long as the collective number does not exceed the above-

stated town-wide limit.

- r. A business may erect, for no more than thirty (30) days, one temporary sign, which is made of materials and is illuminated in compliance with Article 8.12.A.1 of this Ordinance, and that is no greater than three (3) sq. ft. in area, and indicating “Grand Opening” or “Opening Soon” or the like, and may include the impending date of the opening.
- s. A business may erect a sign at its main entrance indicating that the business is “Closed” or “Open,” which is no greater than three (3) square feet, and which is made of materials and is illuminated in compliance with Article 8.12.A.1 of this Ordinance.
- t. Signs bearing political messages relating to an election, primary or referendum shall be entirely exempted from this Article, and shall be governed by Title 23 M.R.S.A. sec. 1913-A, Maine Department of Transportation regulations, and Article 208 of Title IV, Chapter 2 of the Ogunquit Town Code.
- u. No more than two (2) yard sale signs shall be displayed on the property where the yard sale is being held, and no more than two (2) signs on the street where the yard sale is being held (a maximum of four (4) signs), None of the individual signs is to be greater than six (6) square feet in size, and no sign shall be displayed either prior to, or after, the yard sale dates as indicated on the Yard Sale Permit. (Effective 6/11/14)

## B. Awnings

Awnings in the business districts (DB, GB1, GB2, LB, SG1 and SG2 and any Shoreland Zone as applicable) may be erected, altered or relocated with issuance of a permit from the Code Enforcement Officer. All awnings accessory to commercial uses shall be rated as fire resistant per Building and Life Safety Codes. Before issuing a permit, the Code Enforcement Officer may submit the application to the Planning Board for review, interpretation and possible approval. The Code Enforcement Officer shall enforce Article 8.12.B and all permits issued thereto. (Amended 6/12/12, 6/9/15 ATM)

No permit is required to erect, alter or relocate an awning within residential districts (OFR, R, RR1, RR2, and F) so long as the free passage of pedestrians, bicyclists and motorists on public right-of-ways are not obstructed and public safety is maintained. (Adopted November 6, 2001)

Notwithstanding the provisions of Article 8.12.A.1.b above, awnings made of canvas, vinyl, nylon, polyester or other durable weather-resistant material may be used as a sign in accordance with the following provisions.

1. The lettering and symbols which make up the sign may be placed only on a vertical portion of an awning, no taller than 18 inches in height, which hangs from the awning frame with no support or frame on its lower edges except where the awning must be supported on its lower edge for structural purposes.
2. The area of the awning which is considered to be a sign shall be calculated by

creating the smallest possible rectangle around all of the symbols, letters and characters which make up the sign on each surface of the awning. The top and bottom of the rectangle shall be horizontal with the ground.

3. No more than 25% of the maximum allowable business sign area for the business or structure may be included on an awning or set of awnings.

#### C. Number of Signs

1. Each lot which has a nonresidential use and each multifamily development may have no more than one free standing sign.
2. No business shall have a total of more than six signs, including both business and advertising signs, as defined and regulated by this ordinance.
3. In multiple tenant buildings (two (2) or more tenants), there may be a collective sign or free standing collective sign post that consolidates the signs for all of the individual tenants in the building. A multiple-tenant building shall have not more than one (1) collective sign or free standing collective sign post for each side of the building that faces a public way and there shall be no more than one (1) collective sign or free standing collective sign post located on any individual side of a building that faces a public way. Each individual business with its own outside entrance may have one additional business sign at its entrance. All signs permitted under this subArticle shall be subject to the total size limitation set forth in SubArticle D of this Article and the Town shall not be responsible for allocating the amounts of allowable sign area among various tenants.

#### D. Size Restrictions

Business and Residential Signs shall not exceed the following standards. Sign area shall include the combined area of free standing signs and signs attached to buildings, as well as any signs permitted on collective signs or free standing collective sign posts in accordance with the requirements of SubArticle C of this Article. (Revised 4/5/3, 6/9/15 ATM.)

##### 1. Residential Districts

In the One-Family Residential District, Residential District, Rural Residential District 1, Rural Residential District 2: Two square feet.

##### 2. Business Districts

a. In the Downtown Business District, General Business District 1, and General Business District 2:

- i. If there is only one business on the lot the maximum sign area shall be 40 square feet.
- ii. If there is more than one business on the lot and all businesses are accessed from the outside by common entrances and exits and no business is directly accessed from the outside, the maximum sign area for all tenants combined shall be 40 square feet, and all signage shall be combined on a collective sign or freestanding collective sign post. (Amended 6/9/15)

iii. If there is more than one business on the lot, and one or more businesses are directly accessed from the outside, then there shall be no more than forty (40) square feet of total signage on the collective sign or freestanding sign post, for all tenants, identifying the building, lot or development. Each business which is directly accessed from the outside may have one (1) additional sign, in close proximity to its entrance, which is no more than 6 square feet of sign area. If no collective sign is located on the parcel then, the maximum sign area shall be divided among all units on the parcel. (Amended 6/10/14 Effective 6/11/14)

b. Limited Business District, SG1 and SG2:

i. If there is only one business on the lot the maximum sign area shall be 12 square feet.

ii. If there is more than one business on the lot and all businesses are accessed from the outside by common entrances and exits and no business is directly accessed from the outside, the maximum sign area shall be 12 square feet.

iii. If there is more than one business on the lot, and one or more businesses are directly accessed from the outside, then there shall be no more than twelve (12) square feet of total signage on the collective sign or freestanding sign post, for all tenants, identifying the building, lot or development. Each business which is directly accessed from the outside may have one (1) additional sign, in close proximity to its entrance, which is no more than 6 square feet of sign area. If no collective sign is located on the parcel then, the maximum sign area shall be divided among all units on the parcel. (Amended 6/10/14 Effective 6/11/14)

3. Farm District: 40 square feet.

4. Residential Developments:

A residential neighborhood, development or subdivision with clearly defined geographical boundaries may have one (1) sign located at the primary entrance not to exceed twelve (12) square feet. (Adopted November 6, 2001)

E. Advertising Signs

Advertising signs may be erected and altered without a permit from the Code Enforcement Officer. Business and Residential Signs shall require a permit, however. Advertising signs shall meet the following restriction:

The aggregate sign area of all advertising signs for an establishment shall not exceed six square feet and no advertising sign shall have any dimension greater than three feet. No window shall have more than 15% of its area covered with advertising signs.

F. Nonconforming Signs

1. Any sign or part thereof, legally existing prior to April 4, 1998, which does not

conform to the requirements of this Article may continue and may be maintained, but may not be extended, reconstructed, enlarged or altered. Any sign replacing a nonconforming sign shall conform to the provisions of this Article, and thereafter the nonconforming sign shall not be displayed.

2. Removal of nonconforming signs from properties with multiple-tenant buildings. The Town has hereby determined that there has been a proliferation of signs on lots that contain multiple tenant buildings. This proliferation has had a deleterious effect upon the aesthetics of the neighborhoods in which such buildings are located and in some cases may cause traffic safety problems with traffic circulation either on the site or on adjoining streets or both. Based upon these problems and notwithstanding the provisions of SubArticle F.1 of this Article, any sign or signs that are located on a lot that contains a multiple tenant building must be brought into compliance with all applicable requirements for collective signs set forth in this Article. Such signs must be in full compliance with these requirements within one year from the effective date of these amendments. (Article F.2 Adopted April 5, 2003 at the ATM)

### **8.13 Traffic Impacts and Street Access Control.**

- A. General Provision shall be made for vehicular access to, and circulation within, all land use activities, lots, subdivisions and activities requiring site plan review, in such a manner as to safeguard against hazards to traffic and pedestrians in the street and within the development, to avoid traffic congestion on any street and to provide safe and convenient circulation on public streets and within the development. In addition, access and circulation shall also conform to the following standards and the design criteria below.
- B. Driveway and Entrance Design. (Amended 6/12/12, ATM)  

All driveway and entrance designs connecting to State or State Aid Highways shall meet the most current Chapter 299 Highway Driveway and Entrance Rules of the Maine Department of Transportation, adopted pursuant to Title 23 M.R.S.A, Articles 52 and 704. Commercial uses, multifamily residential uses, and subdivisions connecting to non-State or non-State Aid Highways within the Town of Ogunquit, shall also be required to meet said rules.
- C. The following standards and design criteria shall apply only to developments defined as subdivisions or activities requiring site plan review by this Ordinance, which are projected to generate average daily traffic (ADT) of 50 or more trips per day, or which are required to provide 10 or more parking spaces. If a proposed subdivision or development requiring site plan approval is located on land contiguous to land on which a subdivision or site plan was approved by the Planning Board within the past five years and such prior approval was obtained by the same applicant or by an applicant who is an immediate family member, or is under common control, of the current applicant, the ADT and parking spaces of such prior development shall be included in determining whether the proposed amount of ADT to be added, or required parking to be provided, has met or exceeded the threshold of 8.13.B Proposed projects owned and operated by the Town of Ogunquit are exempted from

these requirements, if the Town can demonstrate to the Planning Board that trips generated shall be prohibited during peak traffic hours, or shall be otherwise controlled to avoid or minimize congested streets or interArticles.

1. The street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development shall have sufficient traffic carrying capacity, as defined below, or be suitably improved, to accommodate the amount and types of traffic generated by the proposed use.
  - a. No development which meets or exceeds the ADT or parking space threshold of 8.13.C shall increase the volume/capacity ratio of any street above 0.8 nor reduce the street giving access to the proposed development to a Level of Service to “D” or below, nor shall it reduce any Route 1 street interArticle within one mile as measured by the actual travel distance from the proposed development to a Level of Service “D” or below, unless the applicant constructs traffic improvements or agrees to reasonable conditions of approval to mitigate the traffic impacts of the proposed development. Level of Service shall be defined according to the latest edition of the Highway Capacity Manual, published by the Transportation Research Board, National Academy of Sciences. All subdivisions or site plans, which were approved and located on contiguous lots owned by the applicant within the last five years, shall be included in determining whether the proposed amount of ADT to be added, or required parking to be provided, has exceeded the threshold of 8.13.C.
  - b. If the volume/capacity ratio of the existing street giving access to the proposed development already exceeds 0.8, or the level of service of the existing street giving access or of any Route 1 street interArticle within one mile as measured by the actual travel distance from the proposed development is already at “D” or below, the application for such a subdivision or activity requiring site plan review meeting or exceeding the ADT or parking space threshold of 8.13.C above, shall be denied unless the applicant can improve the street or interArticle capacities or level of service so that no further increase in delay or waiting times will occur, should the project be constructed, as demonstrated by a traffic impact analysis prepared by a licensed professional engineer, submitted by the applicant.
- D. The following standards and design criteria in this subArticle shall apply to any land use activities, lots, subdivisions, or activities requiring site plan review, as applicable (Amended 6/9/15):
  1. Where a lot has frontage on two or more streets, the access to the lot shall be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
  2. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads, driveways and traffic controls within public streets.
  3. Access ways shall be of a design and have sufficient capacity to avoid queuing of entering vehicles on any street or exiting the development onto any street

4. Where topographic and other conditions allow, provision shall be made for circulation driveway connections to adjoining lots of similar existing or potential use
  - a. when such driveway connection will facilitate fire protection services as approved by the Fire Chief and/or
  - b. when such driveway will enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a street.

**8.14 Waste-Water Pollution** (Subparagraph C Amended June 8, 2010)

- A. The disposal of waste water by means other than a public system must comply with the laws of the State of Maine and the Town concerning water pollution. Where a public sanitary sewer system is located within 100 feet, horizontal distance, of any portion of any new buildings used for human habitation or occupancy as measured from the public way, the Town shall require participation in said sewer. Wherever the requirements of this Ordinance are at variance with the rules and regulations of the Sewer District, the most restrictive shall govern. Buildings existing as of April 10, 2001 within 100 feet of a public sanitary sewer system which are served by a private sewer or drainage system shall not be required to connect to the sewer or drain of the Sewer District so long as the private sewer or drainage system functions in a satisfactory and sanitary manner and does not violate any law or ordinance applicable thereto or any applicable requirement of the State of Maine Plumbing Code as determined by the Ogunquit Licensed Plumbing Inspector. In the event of a failure of any private sewer or drainage system within 100 feet of a public waste water system as determined by the Code Enforcement Officer, such private system shall be replaced with a connection to the public sewer system. (The effective date of this amended Article is April 10, 2001).
- B. Discharge of sanitary waste from any private waste discharge system into any water body in the Town of Ogunquit is prohibited, except for systems which were lawfully existing at the time of adoption of this Article, so long as they are in compliance with all applicable state and federal laws and regulations.
- C. The following provisions regarding the required pump-out of septic tanks shall become effective on 1 July 2010:
  1. Any new or existing septic tanks outside of Shoreland Zones shall be pumped out not less than once every five (5) years.
  2. Any new or existing septic tanks within any Shoreland Zone shall be pumped out not less than once every three (3) years.
  3. Regardless of subArticles 1 and 2 above, in any zone or district, advanced waste water treatment units, as defined in Article 1802.4.4 of the Maine Subsurface Waste Water Disposal Rules, shall be pumped out not less than once every ten (10) years.
  4. Any person or company that pumps septic tanks in the Town of Ogunquit shall file a report each month with the Code Enforcement Officer. The monthly report shall indicate, for each tank pumped during that month:

- a. The name of the customer;
- b. The street address where the tank is located;
- c. The approximate number of gallons of septage pumped; and
- d. The location where the septage was taken.

### **8.15 Water Quality**

All outdoor storage facilities for fuel, chemical or industrial wastes and potentially harmful raw materials, shall be located on an impervious base, and shall be completely enclosed by an impervious dike which shall be high enough to contain the total volume of liquid kept within the storage area, plus the rain falling into this storage area during a 50-year storm, so that such liquid shall not be able to spill onto or seep into the ground surrounding the paved storage area. Storage tanks for “home heating oil” and diesel fuel, not exceeding 275 gallons in size may be exempted from this requirement, in situations where neither a high seasonal water table (within 15 inches of the surface) nor rapidly permeable sandy soils are involved.

### **8.16 Dumpsters, Trash Containers, and Recyclables Containers - Setbacks & Screening** (Adopted November 6, 2001, amended June 8, 2010)

Effective June 8, 2010, the following provisions shall apply to:

- (1) any existing or new commercial entity required to register as a business, pursuant to the Business Registration Ordinance, Title IX, Chapter 9, of the Ogunquit Town Code; and
- (2) any existing or new residential complex, containing four (4) or more dwelling units located on any single lot.

As of this effective date, the provisions of this Article shall apply to any such existing commercial or residential properties meeting the above criteria, notwithstanding the provisions of Article 3.1.A. of this Ordinance regarding continuance of nonconformities.

- A. Exposed trash containers, recyclables containers and dumpsters shall have sufficient setbacks and screening (such as containment within a cabinet, stockade fence or a dense evergreen hedge six (6) feet or more in height) to provide a visual buffer sufficient to minimize their impact on other land uses and properties in the area.
- B. Trash containers, recyclables containers and dumpsters shall be located within a cabinet or screened so as not to be visible from a public way or from the ordinary eye level of an individual standing on the ground from abutting residential property or transient accommodations. In a residential district or a property abutting a residential district or on a property abutting a strictly residential use only, trash containers, recyclables containers and dumpsters shall meet the setback requirement for structures.
- C. If any business is unable to comply with these standards, because of serious space limitations that make such enclosures or screening unworkable, it may apply to the Planning Board for a waiver, using forms provided for such purpose by the Land Use Office. The application fee for a waiver of this Article shall be set annually by the Board of Selectmen. The Planning Board may waive any or all

portions of this Article with or without limitations, when, after-review of the waiver application, it is determined that suitable conforming space is not available on a subject property for the location of any screening for exposed trash containers, recyclables containers, or dumpsters. The Planning Board may schedule a site visit to the subject property, before making a final determination on such a waiver application.

Enforcement of this Article, and penalties for any violations shall be governed by Article 4 of this Ordinance.

## **ARTICLE 9 – STANDARDS FOR SPECIFIC LAND USES**

### **9.1 Accessory Affordable Apartments** (Amended 4-7-07 ATM)

As an accessory use to a single family dwelling, the creation and renting of a single apartment within the dwelling, at an affordable rent, shall be permitted provided all of the following conditions are met:

- A. There shall be no new external construction to increase the size of the structure to accommodate the accessory apartment, except as may be required by life safety codes. However, there may be construction within the home to accommodate the accessory apartment.
- B. The water and sewage facilities shall meet all existing laws and codes.
- C. The building is owner-occupied.
- D. The building is located on a conforming lot for a single family dwelling in the district in which it is located, or is located on a nonconforming lot as defined in Article 2 of this Ordinance.
- E. One off-street parking space is provided for the accessory apartment, in accordance with the dimensional and design requirements of this Ordinance. This parking space shall be in addition to the parking required for the single family dwelling.
- F. All required permits are obtained for construction of the accessory apartment and a certificate of occupancy is obtained prior to the apartment being rented.
- G. The accessory apartment is no larger than 40% of the total area of the single family dwelling, or 800 square feet, whichever is smaller.
- H. The rent for the accessory apartment is affordable, as defined by this Ordinance in the definition of affordable housing (renter-occupied units) in Article 2.
- I. Any apartment created under this Article need not meet any of the dimensional or area requirements for dwelling units or multi-family housing contained in the density requirements of Table 703.1 or other Articles of this Ordinance. If any one or more provisions A through H of this Article cannot be met, an additional apartment may only be created if all applicable density or other requirements for an additional dwelling unit can be met.

### **9.2 Agriculture**

All spreading or disposal of manure shall be accomplished in conformance with the “Maine Standards for Manure and Manure Sludge Disposal on Land”, published by the University of Maine and Maine Soil and Water Conservation Commission in July, 1972.

### **9.3 Animal Husbandry**

- A. All pasture, barns, barnyards, and other areas where the livestock, animals, or fowl are kept, housed, fed, or cared for shall be a minimum of 100 feet from the nearest dwelling other than the applicant’s.
- B. Uncovered manure shall be kept 150 feet from the nearest dwelling other than the applicant’s and 300 feet from any body of water or drinking water well.

- C. All feed and grain shall be stored in rodent proof containers.
- D. All paddocks, pastures, barnyards or other enclosures must be adequately fenced to contain livestock, animals or fowl.

**9.4 Bed & Breakfast and Inn – Transient Accommodation Types 2 & 3 (TA-2, TA-3)**  
(Amended 4-7-07 ATM)

- A. The application for approval shall include a scale drawing of the lot showing the location of: existing buildings, existing and proposed parking, and existing and proposed sewage disposal systems.
- B. There shall be no less than one parking space for each rental room in addition to the spaces required for the dwelling unit.
- C. There shall be one bathroom provided for the rental rooms, in addition to the bathroom for the dwelling unit.
- D. Each rental room shall have not less than ten by twelve feet horizontal dimensions.
- E. Each rental room shall be equipped with an approved smoke detector.

**9.5 [Reserved]** (Amended 4-7-07 ATM)

**9.6 Clustered or Planned Unit Residential Development (Amended 4-7-07 ATM)**

A. Standards

Notwithstanding other provisions of this Ordinance relating to space and bulk, the Planning Board, in reviewing and approving proposed residential developments and other projects located in the Town, may modify said provisions related to space and bulk to permit innovative approaches to housing and environmental design in accordance with the following standards. This shall not be construed as granting variances to relieve hardship. Effective November 7, 2006, all subdivisions, containing five (5) or more dwelling units or lots, created on the west side of Route 1, shall be designed as clustered or planned unit developments, according to the standards of this Ordinance. Subdivisions created on the east side of Route 1 may be designed either utilizing the clustered or planned unit development approach, or by the traditional subdivision method without common open space.

1. There shall be compliance with all other applicable provisions of State and local law;
2. Each building shall be an element of an overall plan for site development. Only developments having a total site plan for structures shall be considered;
3. Calculations and Density Bonus. For the purposes of conserving open space, minimizing land disturbance, and to protect wildlife habitat, a density bonus shall be provided for clustered or planned unit residential development. The maximum number of dwelling units in a clustered or planned unit residential development shall be calculated as follows:
  - a. Divide the minimum net residential area per dwelling unit proposed, according to Table 703.1, into the net residential area of the entire parcel or tract. The term “Net Residential Area” shall be as defined by this

Ordinance in Article 2.

- b. Multiply the result by 1.2, and round to the nearest whole number.
4. Within a cluster development or planned unit residential development, if multiple lots are proposed, an individual lot may contain less than the minimum net residential area per dwelling unit, or less than the minimum lot area, as long as the overall density, as calculated in subArticle 3 above, is met for the entire parcel or tract.
5. At least fifty percent (50%) of the area of the entire parcel or tract shall be included as common open space. Common open space shall not include road rights of way, streets, drives, or parking. No more than fifty percent (50%) of the common open space shall contain wetlands of any size. Common open space shall be usable for recreational or other outdoor living purposes and for preserving large trees, tree groves, woods, ponds, streams, glens, rock outcrops, native plant life, wildlife cover and the like. The use of any open space shall be further limited or controlled at the time of final approval where necessary to protect adjacent properties or uses. -Common open space shall be dedicated to the recreational amenity and environmental enhancement of the development and shall be recorded as such. There shall be no further subdivision of this land or buildings constructed upon it which would cause the net residential density to exceed the density permitted in that district. Such dedications shall include private covenants or arrangements to preserve the integrity of open spaces or their use for agricultural or conservation purposes.
6. The developer shall take into consideration the following points, and shall illustrate the treatment of spaces, paths, roads, service and parking areas and other features required in his proposal:
  - a. Orientation: buildings and other improvements shall respect scenic vistas and natural features;
  - b. Drainage: adequate provision shall be made for storm waters, with particular concern for the effects of any effluent draining from the site. Erosion resulting from any improvements on the site shall be prevented by landscaping or other means;
  - c. Water Supply: the primary source of water shall be the public water system;
  - d. Utilities: utilities shall be installed underground whenever possible. Transformer Boxes, pumping stations and meters shall be located so as not to be unsightly or hazardous to the public;
  - e. Recreation: facilities shall be provided consistent with the development proposal;
  - f. Buffering: planting, landscaping, disposition and form of building and other improvements, fencing and screening shall be utilized to integrate the proposed development with the landscape and the character of any surrounding development;



town.

14. The association shall levy annual charges against all property owners to defray the expenses connected with the maintenance of common open space, neighborhood recreational facilities and Town assessments.
15. The developer or subdivider shall be responsible for the maintenance of the common open space and the other common facilities, until development sufficient to support the neighborhood association has taken place. The transfer of responsibility shall occur only after review and approval by the Planning Board, upon request by the neighborhood association or the developer or subdivider.

### **9.7 Home Occupations** (Amended 4-7-07 ATM)

Where permitted by Table 702.1, home occupations shall be permitted only in compliance with all of the requirements of this Article:

- A. The occupation or profession shall be carried on wholly within a principal or accessory building.
- B. Not more than two employees who are not residents of the dwelling unit shall be employed in the home occupation.
- C. There shall be no exterior display, no exterior sign larger than 2 square feet, no exterior storage of materials and no other exterior indication of the home occupation. A home occupation may not alter the residential character of the dwelling or change the character of the lot from its principal use as a residence.
- D. No unreasonable nuisance, offensive noise, vibration, smoke, dust, odors, heat, glare, traffic or parking shall be generated. If additional parking spaces are provided, they shall be located to the rear or side of the principal structure but not within the required yard setbacks.
- E. A home occupation may involve the provision of professional, technical or business services, individual or small group private instruction, or the sale of products. However, the sale of products shall be limited to:
  1. those products which are crafted, assembled, or substantially altered on the premises, or
  2. catalog items ordered off the premises by retail customers, or
  3. retail items which are accessory and incidental to a service which is provided on the premises.
- F. A home occupation shall not create greater traffic than normal for the area in which it is located or generate more than 20 vehicle trips/day.
- G. Automobile storage, sales or repairs shall not be permitted to be established as home occupations.

### **9.8 Transient Accommodation Type 4 - Motel/Hotel (TA-4)** (Amended 4-7-07 ATM)

For traffic safety on and immediately adjoining each motel or hotel, and to assure health, safety and welfare of occupants and of the neighborhood generally, the

following requirements shall be complied with by all transient accommodations type 4 (TA-4) as defined by this ordinance:

- A. Any individual guest accommodations containing 650 square feet or more, whether or not cooking facilities are provided, shall be considered as a dwelling unit for the purposes of this Ordinance, and subject to all applicable dimensional and net residential area per dwelling unit requirements.
- B. The minimum lot size for any hotel or motel shall contain not less than three acres of total area. The minimum frontage shall be ten times the posted speed limit of the most traveled way serving the development but not less than two hundred feet lot width at the street and throughout the first two hundred feet of depth of the lot back from the street.
- C. No part of any building shall be closer than sixty feet to the front lot line, rear lot line or either side line of the lot. A green space, not less than twenty feet wide, shall be maintained open and green with grass, bushes, flowers or trees all along each side lot line, the rear lot line, the front line of such lot, except for entrance and exit driveways. The green space shall not be used for automobile parking.
- D. Buildings shall not cover more than fifteen percent of the area of the lot.
- E. Each individual guest accommodation shall provide a full, private bathroom, and shall contain a total of not less than one hundred and eighty (180) square feet of habitable floor area enclosed by walls and roof, exclusive of the bathroom area and any adjoining portions of roofed or covered walkways. Each bedroom within an individual guest accommodation shall have minimum interior dimensions of twelve by fifteen feet, unless it is part of a suite of rooms. If a suite of rooms is offered as an individual guest accommodation, the minimum interior dimensions of any bedroom shall be twelve feet by twelve feet. (Amended 4-05-08 ATM)
- F. On each lot, one apartment may be provided for a resident staff persons, which will not be considered as a dwelling unit for the purposes of this Ordinance.
- G. Building construction plans shall be reviewed and approved by the State Fire Marshall's Office.

## **9.9 Kennels and Veterinary Hospitals**

- A. Structures or pens for housing or containing the animals shall be located not less than 100 feet from the nearest residence existing at the time of permit other than the applicant's.
- B. All pens, runs, or kennels, and other facilities shall be designed, constructed, and located on the site in a manner that will minimize the adverse effects upon the surrounding properties. Among the factors that shall be considered are the relationship of the use to the topography, natural and planted horticultural screening, the direction and intensity of the prevailing winds, the relationship and location of residences and public facilities on nearby properties, and other similar factors.
- C. The owner or operator of a kennel shall maintain the premises in a clean, orderly, and sanitary condition at all times. No garbage, offal, feces, or other waste material shall be allowed to accumulate on the premises. The premises shall be maintained in a

manner that they will not provide a breeding place for insects, vermin or rodents.

- D. Temporary storage containers for any kennel or veterinary wastes containing or including animal excrement shall be kept tightly covered at all times, and emptied no less frequently than once every four days. Such containers shall be made of steel or plastic to facilitate cleaning, and shall be located in accordance with the setbacks required for outdoor runs.
- E. If outdoor dog “runs” are created, they shall be completely fenced in, and shall be paved with cement, asphalt or a similar material to provide for cleanliness and ease of maintenance.
- F. Any incineration device for burning excrement-soaked waste papers and/or animal organs or remains shall be located a minimum distance of 400 feet from nearest residence other than the applicants, and shall have a chimney vent not less than 35 feet above the average ground elevation. The applicant shall also provide evidence that he has obtained approval from the Maine Department of Environmental Protection for the proposed incinerator, and that it meets state standards for particulate emissions, flue gas temperature, and duration of required flue temperatures.

#### **9.10 Mineral Exploration and Extraction**

- A. Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 square feet of ground surface. Within the Shoreland Overlay District, a permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitations. All excavations, including test pit sand holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety

Mineral Extraction is permitted only upon application for and receipt of a Site Plan Review approval for such removal and nothing herein shall be deemed to apply to normal excavation operations incidental to construction activities for which a valid permit is held. The following standards and requirements shall be met:

1. In addition to the application for a Site Plan Review as required by Article 6.6, the applicant shall submit to the Code Enforcement Officer plans of the proposed extraction site showing the property lines and names of all abutting owners and ways, indicating by not greater than five foot contour intervals related to U.S. Geodetic Survey data, the location and slope of the grades existing and as proposed upon completion of the extraction operation, and detailing proposed fencing, buffer strips, signs, lighting, parking and loading areas, entrances and exits, together with a written statement of the proposed method, regularity, working hours and total proposed rehabilitation and restoration of the site upon completion of the operation. (Amended 4-01-06 ATM)
2. The application, plans and statement shall promptly be submitted with the recommendations of the Code Enforcement Officer to the Planning Board for its consideration with respect to the effect of the proposed operation upon existing and foreseeable traffic patterns within the Town, upon existing or approved land

uses which may be effected by the operation, and upon implementation of the Comprehensive Plan.

B. The Planning Board shall impose such conditions upon any Site Plan Review as they deem necessary or desirable to assure compliance with the following requirements:  
(Amended 4-01-06 ATM)

1. No part of any extraction operation shall be permitted within 100 feet of any property or street line, and natural vegetation shall be left and maintained on the undisturbed land. Unless authorized pursuant to the Natural Resources Protection Act, 38 M.R.S.A, §480-C, no part of any extraction operation, including drainage and control features shall be permitted within 75 feet of the normal high water line any river, salt water body, tributary stream, or the upland edge of a wetland.
2. No standing water shall be permitted in any extraction site during or after extraction operations, except when permitted under strict conditions regarding fencing, safe levels of coliform bacteria count and treatment to prevent breeding of harmful insects.
3. No slope steeper than three feet horizontal to one foot vertical shall be permitted at any extraction site unless a fence at least three feet high is erected to limit access to such locations.
4. Before commencing removal of any earth materials, the owner or operator of the extraction site shall present evidence to the Planning Board of adequate insurance against liability arising from the proposed extraction operations, and such insurance shall be maintained throughout the period of operation.
5. Any top soil and subsoil suitable for purposes of revegetation shall, to the extent required for restoration, be stripped from the location of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased. All disturbed land areas shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources, if necessary, to complete the stabilization project. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding property and resources.
6. Upon completion of active extraction operations, the land shall be left so that natural storm drainage and water courses leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not significantly increased.
7. The hours of operation at any extraction site shall be limited as the Planning Board deems advisable to ensure operations compatibility with residents of the Town.
8. Loaded vehicles shall be suitably covered to keep dust and contents from spilling or blowing from the load, and all trucking routes and methods shall subject to approval by the Chief of Police.
9. All access/egress roads leading to/from the site to public ways shall be treated with, stone, calcium, or other suitable materials to reduce dust and mud for a

distance of at least 100 feet from such public ways.

10. No equipment, debris, junk or other material shall be permitted at an extraction site except those directly relating to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith shall be removed within 30 days following completion of active extraction operations.
11. Within 12 months following the completion of extraction operations at any extraction site or at any one or more locations within any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12 month period, ground levels and grades shall be established in accordance with the approved plans filed with the Planning Board; all debris, stumps, boulders and similar materials shall be removed and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil. All disturbed areas shall be covered with sufficient top soil or loam and shall be reseeded and properly restored to a stable condition adequate to meet the provisions of the Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, 1991.

- C. Issuance and Renewal of Permits. Site Plan Review approvals shall be issued in accordance with the foregoing provisions for a period not to exceed one year, and they shall be renewable only upon application by the owner, after a finding by the Planning Board that the conduct of the operation has been substantially in accordance with any and all conditions imposed or material representations made in connection with the original Site Plan Review approval; and upon such additional and altered conditions as the Planning Board may deem necessary. (Amended 4-01-06 ATM)

## **9.11 Mobile Home Parks**

### **A. Preamble**

To allow conformance with State standards governing mobile home parks, in an environmentally appropriate area of the Town in which they are a permitted use, the following provisions shall be adopted to apply to those areas of the Town of Ogunquit described as follows: Those portions of the RRD-1 and RRD-2 bounded by the Turnpike, Berwick Road, the RD and GBD-2 on the east, and the Ogunquit River.

### **B. Application**

No person, firm or corporation shall establish or maintain a mobile home park within the Town without a permit issued in conformity with the provisions of this Article, the Maine Subdivision Statute (30-A M.R.S.A §4401 et. Seq.) and the Ogunquit Subdivision Standards. A mobile home park in existence prior to the adoption of this Article may be enlarged only in conformance with the provisions of this Article.

Application for approval of a mobile home park shall be filed with the Code Enforcement Officer who shall, in turn, forward the application to the Planning Board for review in accordance with this Article and the Subdivision Standards. The

Planning Board shall review plans of the proposal and approve, approve with conditions or deny approval of the proposal on the basis of standards contained herein and contained in the Subdivision Standards. The Planning Board shall inform the applicant and Code Enforcement Officer of its decision in writing.

C. Design and Performance Standards

Except as stipulated below, mobile home parks shall meet all the requirements for a residential subdivision, and shall conform to all applicable State laws and local Ordinances or regulations. Where the provisions of this Article conflict with specific provisions of this Ordinance or the Ogunquit Subdivision Ordinance, the provisions of this Article shall prevail.

1. Lot Area and Lot Width Requirements.

Notwithstanding the dimensional requirements in Table 703.1 of this Ordinance, lots in a mobile home park shall meet the following lot area and lot width requirements:

a. Lots served by public sewer:

Minimum lot area: 6,500 square feet

Minimum lot width: 50 feet

b. Lots served by individual subsurface waste disposal systems:

Minimum lot area: 20,000 square feet

Minimum lot width: 100 feet

c. Lots served by a central subsurface waste water disposal system approved by the Maine Department of Human Services:

Minimum lot area: 12,000 square feet

Minimum lot width: 75 feet

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

e. Lots located within any shoreland zoning district shall meet the lot area, lot width and shore frontage requirements for that district. The Planning Board may waive or vary the minimum lot width requirements by applying the same standards for variances and waivers as are contained in Article 12 of the Subdivision Standards.

D. Unit Setback Requirements

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

2. On lots which abut a public way either within the park or adjacent to the park, or on lots which are located within a shoreland zoning district, structures shall meet the front setback and setback from high water table mark requirements,

respectively, applicable to the zone in which the park is located as required by Table 703.1.

E. Screening and Buffering

Parks shall be required to have a buffer strip consisting of a landscaped area along the boundaries with any lots which, at the time the park is developed, are:

1. undeveloped and in a zone which permits residential development with an overall density of no greater than one half the density of the park, or
2. developed residentially with an overall density which is one half the density of the park or less.

The buffer strip must be at least (50 feet in width and shall contain no structures or streets. Within the first 25 feet of the buffer strip, as measured from the exterior boundary, a green strip planted with appropriate shrubbery shall be provided and maintained.

- F. Open Space Reservation for Parks Serviced by Public Sewer. An area no less than 10 percent of the total area of those lots which are 10,000 square feet or less shall be preserved as open space. No more than one half of the reserved open space shall have slopes greater than five percent. The reserved open space shall not be located on poorly or very poorly drained soils, and shall be accessible directly from roads within the park.

G. Road Design, Circulation, and Traffic Impacts.

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

1. Streets which the applicant proposes to dedicate as public ways shall be designed and constructed in accordance with the standards in Article 10 below.
2. Streets which the applicant proposes to remain private ways shall be designed and constructed in accordance with the State of Maine Manufactured Housing Board and shall meet the following minimum geometric design standards.
  - a. Minimum right-of-way width: 23 feet
  - b. Minimum width of paved way: 20 feet
3. Any mobile home park expected to generate average daily traffic of 200 trips per day or more shall have at least two street connections with the same or different existing public streets. These street connections shall be separated by a minimum horizontal distance of 125 feet. Any street within a park with an average daily traffic of 200 trips or more shall have at least two street connections leading to existing public streets, other streets within the park, or other streets shown on an approved subdivision plan.
4. The Planning Board may require that no individual lot within a park shall have direct vehicular access onto an existing public street if the traffic impact analysis indicates that such direct access would pose a traffic hazard.
5. The interArticle of any street within a park and an existing public street shall meet the following standards:

- a. Angle of intersection. The desired angle of intersection shall be 90°. The minimum angle of intersection shall be 75°.
  - b. Maximum Grade within 75 feet of intersection. The maximum permissible grade within 75 feet of the intersection shall be 2 percent.
  - c. Minimum Sight Distance. A minimum sight distance of 10 feet for every mile per hour of posted speed limit on the existing road shall be provided. Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3 1/2 feet above the pavement and the height of the object 4 1/4 feet.
  - d. Distance from other intersections. The centerline of any street within a park intersecting an existing public street shall be no less than 125 feet from the centerline of any other street intersecting that public street.
6. The application shall contain an estimate of the average daily traffic projected to be generated by the park. Estimates of traffic generation shall be based on the Trip Generation Manual, 1991 edition, published by the Institute of Transportation Engineers. If the park is projected to generate more than 400 vehicle trip ends per day, the application shall also include a traffic impact analysis, by a registered engineer with experience in transportation engineering.
- H. No development or subdivision which is approved under this Article as a mobile home park may be converted to another use without the approval of the Planning Board and without meeting the appropriate lot size, lot width, setback and other requirements. The plan to be recorded at the Registry of Deeds and filed with the municipality shall include any notes or conditions of approval as well as the following restrictions:
- 1. The land within the park shall remain in a unified ownership and the fee to lots or portions of lots shall not be transferred.
  - 2. No dwelling unit other than a manufactured housing unit, nor any manufactured housing unit consisting of more than two transportable Articles or greater than one story in height, shall be located within the park.

## 9.12 Multi-Family Developments

Multi-family developments may be approved by the Planning Board in accordance with the Land Use Table of this ordinance. All proposals to construct multifamily developments shall be in conformance with the appropriate standards of Article 8 and the design requirements below.

- A. Applications for approval shall include: a map of the area; dimensions, boundaries and principal elevations of the land for which approval is sought; the names of all property owners within 100 feet of the proposed site, as found on the most recent tax list; building layout and general construction plans; a site plan of all driveways and parking areas proposed to be constructed; and other information which addresses all appropriate performance standards and design requirements and all appropriate factors to be considered in evaluating proposals.

## B. Design Requirements.

### 1. Density. (Amended 4/5/05 ATM)

- a. Net residential area for multi-family developments shall be calculated according to the definition in Article 2 of this Ordinance.
- b. In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential area of the entire parcel or tract shall be divided by the minimum net residential area per dwelling unit required in the District, according to Table 703.1. A high-intensity soil survey map, certified by a Registered Soil Scientist licensed in the State of Maine, shall be submitted. No building shall be constructed on soil classified as being very poorly drained.

### 2. Water Supply.

- a. When a multi-family development is proposed within the service area of the Kennebunk, Kennebunkport and Wells Water District all dwellings shall be connected to the system, at no expense to the town. The applicant shall demonstrate by a signed letter from an authorized representative of the district that an adequate water supply can be provided to the development at an adequate pressure for firefighting purposes. Fire hydrants shall be located so that they are not more than 500 feet from any building, as hose is laid.
- b. When a multi-family development is proposed outside of the service area of the Kennebunk, Kennebunkport and Wells Water District, the applicant shall demonstrate the availability of adequate supply and quality of water for both domestic and firefighting purposes. The Planning Board may require the construction of fire ponds and dry hydrants.

### 3. Sewage Disposal. Multifamily developments with more than ten dwelling units shall be connected to a public sewer system. The applicant shall submit to the Planning Board a letter from the Supt. of the Sewer District indicating that service is available and the sewage from the development can be adequately treated.

### 4. It shall be the responsibility of the owner to provide for rubbish disposal, snow removal, and site maintenance. All outdoor storage areas for waste collection shall be enclosed by a wooden or masonry screen at least six feet in height.

### 5. A twenty foot landscaped buffer shall be provided along all property boundaries.

### 6. Storm water and surface drainage systems shall be designed in accordance with the town subdivision standards.

### 7. Access, Circulation, and Parking.

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

- b. The proposed development shall not have an unreasonable adverse impact on the public road system, and shall assure safe interior circulation within its site, by separating pedestrian and vehicular traffic and by providing adequate parking and turn-around areas.
  - c. All developments containing fifteen or more dwelling units may be required by the Planning Board to have more than one street access (for emergency and safety purposes). No more than two accesses shall be allowed on any single street or roadway.
8. Recreation and Open Space. All multifamily developments of 25 dwelling units or more shall provide a developed play area no smaller than 5,000 square feet. Any development in which occupancy is restricted to the elderly need not provide a play area, but space shall be provided for outdoor recreation.

### **9.13 Restaurants**

- A. The application for a permit shall state the maximum seating capacity of the restaurant. Any expansion or enlargement over the stated capacity shall require a new permit.
- B. Any restaurant located within 500 feet of an existing public sewer line shall connect with the sewer system at the expense of the owners.
- C. Restroom facilities for the patrons shall be provided on the premises.

### **9.14 Satellite Receiving Dish**

No satellite receiving dish more than 24 inches in diameter may be located between a building and a public street unless the building is greater than 150 feet from the street.

### **9.15 Shoreland Zone Standards** (Amended 11/4/08, Effective 4/1/09)

Pursuant to 38 M.R.S.A, § §435-449 and its Home Rule authority, the Town of Ogunquit places the following conditions, limitations and standards on any use, activity, or structure permitted in the Shoreland Zone:

- A. No Filling below High Water Mark (Amended 11/4/08, Effective 4/1/09)
  - The excavation of channels and boat basins, wildlife management impoundments and other such excavations are subject to the condition that no fill or other material shall be placed below the high water mark except as may be necessary for bank stabilization allowable under the Department of Environmental Protection Rules, and as will not be an impediment to the natural flow of water even in time of flood.
- B. General Requirements for Principal and Accessory Structures and Lots in the Shoreland Zone (Amended 11/4/08, Effective 4/1/09)
  - 1. 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.
  - 2. The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a

lot with the proposed use.

3. If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.
4. Clustered developments within the shoreland zone are permitted, pursuant to Article 9.6 of this ordinance, provided that the overall dimensional requirements of the shoreland zone, including frontage and lot area per dwelling unit, are met. When determining whether dimensional requirements of the shoreland zone are met, only land area within the shoreland zone shall be considered.
5. The water body, tributary stream, or wetland setback provisions of Article 7 shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
6. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the board of appeals.
7. The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.
8. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
  - a. The site has been previously altered and an effective vegetated buffer does not exist;
  - b. The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - c. The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;

- d. The total height of the wall(s), in the aggregate, are no more than 24 inches;
- e. Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
- f. The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
- g. A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
  - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
  - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
  - (iii) Only native species may be used to establish the buffer area;
  - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
  - (v) A footpath, not to exceed the standards in Article 9.15.M.2.a, may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.

- 9. Notwithstanding the requirements of Article 7.2 or any stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four feet in width; that the structure does not extend below or over the normal high waterline of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A, §480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

C. Piers, Docks, Wharves, Bridges, and Other Structures and Uses Extending Over or below the Normal High Water Line of a Water Body or Within a Wetland and Shoreline Stabilization. (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

1. No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Table 703.1 a second structure may be allowed and may remain as long as the lot is not further divided.
2. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
3. The location shall not interfere with existing developed or natural beach areas.
4. The facility shall be located so as to minimize adverse effects on fisheries.
5. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
6. No new structure shall be built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.

NOTE: A structure constructed on a float or floats is prohibited unless it is designed to function as, and is, registered with the Maine Department of Inland Fisheries and Wildlife as a watercraft.

New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

7. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
8. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.
9. Vegetation may be removed in excess of the standards in Article 9.15.L of this Ordinance in order to conduct shoreline stabilization of an eroding shoreline provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
  - a. When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to

no more than 12 feet in width. When the stabilization project is complete the construction equipment access way must be restored.

b. Revegetation must occur in accordance with Article 9.15.O.

NOTE: A permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection for Shoreline Stabilization activities.  
(Amended 6-12-18)

*NOTE: Permanent structures projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A, §480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.*

D. Individual Private Campsites. (Amended 11/4/08, Effective 4/1/09, Amended 6-12-18)

Individual, private campsites not associated with campgrounds are permitted provided the following conditions are met:

1. One campsite per lot existing on the effective date of this Ordinance, or 30,000 square feet of lot area within the Shoreland Overlay District, whichever is less, may be permitted.
2. When an individual campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
3. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 75 feet from the normal high water line of rivers, streams, salt water bodies, tributary streams, or the upland edge of a wetland.
4. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicles shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
5. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to 1,000 square feet.
6. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
7. When a recreational vehicle, tent, or similar shelter is placed on-site for more than 120 days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

E. Commercial and Industrial Uses. (Amended 11/4/08, Effective 4/1/09)

The following new commercial and industrial uses are prohibited within the Shoreland Zone. If there is any conflict with the table of permitted uses in Article 7, the following prohibitions shall control:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories
- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms
- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

F. Parking Areas (Amended 11/4/08, Effective 4/1/09)

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the Shoreland Zone in which such areas are located. The setback requirement for parking areas serving public boat launching facilities in Districts other than the General Development I & II Districts shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.

G. Roads and Driveways (Amended 11/4/08, Effective 4/1/09)

The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features:

1. Roads and driveways shall be set back 75 feet, horizontal distance, from the normal high water line of rivers, streams, water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the Planning Board may reduce the road or driveway setback requirements to no less than 50 feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the

installation of settling basins, and the effective use of additional ditch relief culverts and turnouts placed so as avoid sedimentation of the water body, tributary stream, or wetland.

2. On slopes of greater than 20 percent, the road and/or driveway setback shall be increased by 10 feet for each five percent increase in slope above 20 percent. This paragraph shall neither apply to approaches to water crossings nor to roads or driveways that provide access to structures, and facilities located nearer to the shoreline due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this Article except for that portion of the road or driveway necessary for direct access to the structure.
3. Existing public roads may be expanded within the legal right-of-way regardless of their setback from a water body, tributary stream or wetland.
4. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District, the road and/or driveway shall be set back as far as practicable from the normal high water line of a water body, tributary stream, or upland edge of a wetland.
5. Road and driveway banks shall be no steeper than a slope of two horizontal to one vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Article 8.5.
6. Road and driveway grades shall be no greater than 10 percent except for short segments of less than 200 feet.
7. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least 50 feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip
8. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway or ditch. To accomplish this, the following shall apply:
  - a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at no greater than indicated in the following table:

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

- b. Drainage dips may be used in place of ditch relief culverts only where the grade is 10 percent or less.
  - c. On Articles having slopes greater than 10 percent, ditch relief culverts shall be placed across the road at approximately a 30 degree angle downslope from a line perpendicular to the centerline of the road or driveway.
  - d. Ditch relief culverts shall be sufficiently sized properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.
9. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

H. Storm Water Runoff (Amended 11/4/08, Effective 4/1/09)

- 1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
- 2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

I. Septic Waste Disposal (Amended 11/4/08, Effective 4/1/09)

- 1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

J. Essential Services (Amended 11/4/08, Effective 4/1/09)

- 1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

2. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
3. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

K. Agriculture (Amended 11/4/08, Effective 4/1/09)

1. All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. Articles 4201-4209).
2. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
4. There shall be no new tilling of soil within 75 feet, horizontal distance, of the normal high water line of water bodies or coastal wetlands, nor within 25 feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
5. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of other water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

L. Clearing or Removal of Vegetation for Activities other than Timber Harvesting (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

1. In any Resource Protection District the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in that district and/or to remove hazard trees, storm damaged trees, and dead tree removal as

described in Article M.

2. Within a strip of land extending 75 feet, horizontal distance, from any water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
  - a. There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer strip is not created.
  - b. Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this Article, a “well distributed stand of trees and other natural vegetation” shall be defined as maintaining a rating score of 16 or more in any 25 foot by 50 foot rectangular (1250 square feet) area as determined by the following rating system:

Diameter of Tree at 4 1/2 feet Above Ground Level (inches)	Points
2 - <4 in.	1
4 - <8 in.	2
8 - <12 in.	4
12 in. or greater	8

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by its Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of subArticle b above, “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40 percent of the total volume of trees 4 inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any 10 year period.

- c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Article 9.15.M paragraphs (2) and (2)(a) above.
  - d. Pruning of tree branches, on the bottom one-third of the tree is allowed.
  - e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead, or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Article O below, unless existing new tree growth is present. The provisions of this paragraph shall not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.
  - f. In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation, within our outside the shoreline buffer, must comply with the requirements of Article 9.15.L.2.
3. At distances greater than 75 feet, horizontal distance, from the normal high water line of any water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any 10 year period, selective cutting of not more than 40 percent of the volume of trees 4 inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40 percent calculations. For the purposes of these standards, volume may be considered to be equivalent to basal areas.
- In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25 percent of the lot area within the shoreland zone or 10,000 square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the Shoreland Zone, including the buffer area, but shall not apply to any General Development Districts.
- 4. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
  - 5. Fields and other cleared openings which have reverted to primarily shrubs, trees or other woody vegetation shall be regulated under the provisions of this Article.

M. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

(1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are

met:

(a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.

(b) Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.

(c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.

(d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.

(e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.

(2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:

(a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:

(i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;

(ii) Stumps from the storm-damaged trees may not be removed;

(iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and

(iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.

(b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.(Amended 6-12-18)

#### N. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Article 15(L), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

(1) The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this Article. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Article 9.15.L apply;

(2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of Table 703.1 are not applicable;

(3) The removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;

(4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of Article 9.15.K are complied with;

(5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary

response action program pursuant 38 M.R.S.A Article 343-E, and that is located along:

(a) A coastal wetland; or

(b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A Article 465-A.

(6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:

(a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;

(b) Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and

(c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.

**NOTE:** An updated list of non-native invasive vegetation is maintained by the Department of Agriculture, Conservation and Forestry's Natural Areas Program:  
[http://www.maine.gov/dacf/mnap/features/invasive\\_plants/invasives.htm](http://www.maine.gov/dacf/mnap/features/invasive_plants/invasives.htm).

(7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.(Amended 6-12-18)

#### O. Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Article 15(L), to address the removal of non-native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

(1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.

(2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except

where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was removed:

(3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.

(4) Revegetation activities must meet the following requirements for trees and saplings:

(a) All trees and saplings removed must be replaced with native noninvasive species;

(b) Replacement vegetation must at a minimum consist of saplings;

(c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used; or as determined to be acceptable by the Code Enforcement Officer;

(d) No one species shall make up 50% or more of the number of trees and saplings planted; or as determined to be acceptable by the Code Enforcement Officer.

(e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and

(f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.

(5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:

(a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;

(b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

(c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted; or as determined to be acceptable by the Code Enforcement Officer.

(d) No one species shall make up 50% or more of the number of planted woody vegetation plants; or as determined to be acceptable by the Code Enforcement Officer. and

(e) Survival of planted woody vegetation and vegetation under three feet in height must be

sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years;

(6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:

(a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;

(b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and

(c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years. (Amended 6-12-18)

P. Erosion and Sedimentation Control (Amended 11/4/08, Effective 4/1/09; Amended 6-12-18)

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - (a) Mulching and revegetation of disturbed soil.
  - (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - (c) Permanent stabilization structures such as retaining walls or rip-rap.
2. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:

- (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

Q. Soils. (Amended 11/4/08, Effective 4/1/09)

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

R. Water Quality. (Amended 11/4/08, Effective 4/1/09)

No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

S. Historic Sites. (Amended 11/4/08, Effective 4/1/09)

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

## **9.16 Wireless Communication Facilities and Communications Towers**

- A. Communication towers are permitted only in the Farm District. Communications antennas shall be permitted by Site Plan Review in the zones indicated in Table 702.1 as an accessory use only and may be erected on or attached only to existing structures. The antenna and its associated equipment must be made to blend in with the existing structure to minimize its visual impact. In no case may an antenna in any district but the Farm District exceed the height of the building that is mounted on or adjacent to. In the Farm District the height of an antenna shall be included in the total height limitation as allowed for a communications tower. (Amended 4-01-06 ATM)
- B. The placement of antennas and associated equipment onto an existing structure may be allowed in all districts indicated in Table 702.1 when they are designed to be incorporated into the architecture of new or existing buildings or into the fabric of other manmade or natural structures or features so as to be inconspicuous when viewed at any point beyond the limits of the host property. Where applicable the provisions of Article 11, Design Review, shall apply.
- C. The maximum height of a communication tower serving one company or carrier shall be 125 feet. For each additional company or carrier using the tower, the height may be increased 32 feet, up to a maximum of 190 feet.
- D. The tower shall be set back from all property lines a minimum of its height.
- E. The tower may not have any flashing lights.
- F. The tower shall remain unpainted galvanized steel or be painted gray or silver.
- G. At its base the tower shall be no wider than four feet. No individual member of the tower may have a diameter or thickness larger than four inches.
- H. Wireless communications facilities which have been abandoned or which have remained unused for a period of six months shall be removed. Prior to approval, the applicant shall submit a bond acceptable to the Town in an amount sufficient to pay for the cost of removal of the facility. The bond shall be made available to the town upon a finding, including adequate written notice to the applicant, that the facilities have not been used for a six-month period.

## **9.17 Ham Radio Tower/Antennae**

- A. Private Ham radio towers/antennae are permitted in all districts except in the Resource Protection district, subject to the following height limitations. In the One Family Residential, Residential, Perkins Cove Residential, Downtown Business, Ogunquit Beach Business, and Perkins Cove Limited Business districts, the maximum height is 50 feet as measured from the ground to the top of the tower or antenna, whichever is higher. In the Rural Residential District 1, Rural Residential District 2, General Business District 1 and General Business District 2, the maximum height is 80 feet as measured from the ground to the top of the tower or antenna, whichever is higher. In the Farm District, the maximum height is 125 feet as measured from the ground to the top of the tower or antenna, whichever is higher. Additional height may be approved by the Planning Board on a proven need for additional height by the applicant following the procedures for a Site Plan Review for

- hearing, notice and decision. Any costs associated with professional services which may be required by the Board in determining such need shall be borne by the applicant. (Amended 4-01-06 ATM)
- B. A Ham Radio Tower/antenna shall be set back a minimum of 110% of the height of the structure from all property lines. Towers or antennae shall be located only to the sides, to the rear or on top of residences or other building and shall not be located between a building and public street.
  - C. The tower shall remain unpainted galvanized steel or be painted gray or silver if constructed of another material.
  - D. The tower may not have any flashing lights.
  - E. At its base, the tower shall be no wider than four feet. No individual member of the tower shall have a diameter or thickness larger than four inches.
  - F. Ham radio towers located on property where the original licensed operator no longer resides and no other licensed operator currently resides, must be removed.
  - G. The lower six feet of any tower, when not located on top of a building, shall be bordered with landscaping so as to shield the structure from the road and any neighboring yard.
  - H. The applicant shall provide the Code Enforcement Officer with a copy of a current license issued by the Federal Communications Commission to the applicant together with proof that all required state or federal permits have been obtained before construction of any tower.
  - I. Any Ham radio tower legally existing at the time of adoption of this Article may remain in place and be repaired, however, may not be replaced, enlarged or altered except in compliance with all requirements of this ordinance.

**9.18 Small Wind Energy and Freestanding Solar Panel Systems** (Amended 6/12/12, ATM)

Small Wind Energy Systems, as defined in Article 2 of this Ordinance, as well as free-standing photovoltaic solar panel systems, shall be considered as a permitted accessory use in all districts, except Resource Protection, and shall be subject to the following requirements:

- A. No part of the small wind energy system or freestanding solar panel system, including any guy wire anchors or supports, shall be located within any required structure setbacks.
- B. Tower Height for Wind Turbines. The base of the tower supporting the wind turbine shall be set back from any property line at a minimum distance equal to 110% of the height of the tower, or equal to the required structure setback, whichever is greater. When calculating the height of the tower, the wind turbine and blades shall not be included in the measurement of tower height. In no event shall the tower height of a small wind energy system exceed 80 feet.
- C. Height of Freestanding Solar Panels. No free standing solar panel system shall

exceed 12 feet in height about the existing grade.

- D. Noise. Small wind energy systems shall comply with the noise standards of Article 8.9 of this Ordinance. These standards, however, may be temporarily exceeded during short term events, such as wind storms or power outages.

**9.19 Outdoor Sales** (Amended 6/12/12, ATM)

- A. There shall be no outdoor sales unless specifically allowed in this Article or by another Article of this Ordinance. Specifically allowable outdoor sales may include, but are not necessarily limited to, the use of outdoor cafe or restaurant seating or vending or buyer operated retail devices, as defined by this Ordinance.
- B. For the purposes of this Article, a public right-of-way is defined as a right-of-way upon which motor vehicles travel. Public rights-of-way exclusively for pedestrian, bicycle or other non-motorized travel are not deemed as public rights-of-way for the purposes of this Article.
- C. A vending or buyer operated retail device, either covered or uncovered, may be placed anywhere on a lot that meets or exceeds the minimum setback of the zoning district from any lot line so long as it cannot be seen from the public motor vehicle right-of-way and/or the Marginal Way.
- D. Vending or buyer operated devices that have internally lighted facades that advertise brand name products and that can be seen from a public motor vehicle right-of-way, shall also be subject to the requirements of Article 8.12 - Signs.
- E. Devices exempted from the definition of “*vending or buyer operated retail device*” in Article 2, shall not be required to meet the standards of subArticles C and D above. However, the installation of any such devices, whether or not they are regulated by these two Articles, still may be subject to a design review under Article 11 of this Ordinance, if the installation of such devices meets the definition of “Material Change” found in Article 11.
- F. SUNSET PROVISION - As of the date of adoption of this Ordinance, all existing vending or buyer operated retail devices shall have until May 1, 2000, to bring all existing said devices into compliance with all provisions of this Article and all other Articles of the Ordinance.

**9.20 Affordable Housing Provisions** (Added 4-7-07 ATM)

- A. Mandatory Minimum Set-Aside of 10 Percent of Dwelling Units for Affordable Housing  
All subdivisions, with ten or more lots or dwelling units created within a five year period, shall set aside at least ten percent (10%) of the lots or dwelling units in the project as affordable housing as defined by this Ordinance. Assurance of continued affordability shall be provided as set forth below.
- B. Density Bonus Calculation for Projects with at least 25 Percent Affordable Lots or Units
  - 1. The Planning Board may decrease the minimum lot area and/or minimum net residential area per dwelling unit in any district, as listed in Table 703.1, by up to

- 25%, if at least 25% of the lots or units in any residential subdivision are set aside for affordable housing, as defined by this Ordinance, and the project is designed as a clustered or planned unit development, pursuant to Article 9.6 of this Ordinance.
2. This affordable housing density bonus shall not apply to mobile home parks or to conventional subdivisions.
  3. Calculation of Bonus for Clustered or Planned Unit Developments with Affordable Housing. If a clustered or planned unit residential development is proposed with at least 25% of the lots or units set aside for affordable housing, as defined by this Ordinance, the maximum number of dwelling units shall be calculated as follows:
    - a. Multiply the minimum net residential area per dwelling unit listed in Table 703.1, by 0.75;
    - b. Divide the result above into the net residential area of the entire parcel or tract. The term "Net Residential Area" shall be as defined by this Ordinance in Article 2.
    - c. Multiply the result by 1.2, and round to the nearest whole number.

C. Assurance of Affordability

1. An application for a subdivision that includes affordable housing under this Article shall demonstrate to the satisfaction of the Planning Board that, either by means of the terms of a mortgage held by a governmental agency whose purposes include the provision of affordable housing, or by means of an affordable housing covenant to be conveyed to a qualified holder, along with a signed statement by the qualified holder that it will serve as the holder of the affordable housing covenant, the designated share of units will remain affordable, as defined by this Ordinance:
  - (a) for at least 30 years from the date of first occupancy, in the case of units to be occupied by renters, whether or not the units are subsequently sold for owner-occupancy; and
  - (b) for at least 10 years from the date of first occupancy, in the case of units to be occupied by the owners of the units.

The affordable housing covenant shall provide, further, that the units will be rented or sold during the designated period of time only to persons whose incomes meet the guideline for affordability, as defined in this Ordinance.

The terms "affordable housing covenant" and "qualified holder" shall have the meaning as set forth in Article 2, Definitions, of this Ordinance. Nothing in this paragraph shall preclude a qualified holder itself from being the applicant for the development of an affordable housing project, provided that it demonstrates to the satisfaction of the Planning Board that, by means of deed restrictions, financial agreements, or other appropriate legal and binding instruments, the designated share of units will remain affordable for the required period of time.

2. An application for a subdivision that includes affordable housing under this Article shall include a written statement on the subdivision plat indicating the share of dwelling units set aside as affordable, and, in the case of dwelling units to be sold to others individually, the actual units (or the lots that will accommodate such units) set aside as affordable.

3. An application for a subdivision comprised of rental units that includes a request for affordable housing under this Article shall include as part of the affordable housing covenant a written description of the mechanism by which the subdivider and his successors shall document annually to the qualified holder and to the Planning Board that the designated share of units to be rented have remained priced and, if occupied, actually rented at affordable levels and have been rented to households within the guidelines of affordability, as defined by this Ordinance. Failure to make such annual documentation shall constitute a violation of the subdivision approval.
4. Any dwelling unit that is set aside for affordability and is to be sold shall include a restriction in its deed that requires:
  - (a) any buyer within a 10-year period from the date of first occupancy to be within the guideline of affordability, as defined by this ordinance; and
  - (b) the price of the dwelling unit not to be increased by a percentage greater than the percentage increase in the median household income in nonmetropolitan York County, as reported by the U.S. Department of Housing and Urban Development, between the date of purchase of the dwelling and the date of sale of the dwelling. A copy of the deed restriction shall be included as part of the subdivision application and the deed restriction shall reference the book and page number at which the subdivision plat is recorded in the York County Registry of Deeds.

D. Timing and Phasing.

Affordable housing lots or dwelling units shall be constructed and completed at least concurrently with the remainder of the project. In developments where the applicant or its agents, or its successors or assigns shall construct at least fifty percent (50%) of the units, the approved affordable housing units shall be constructed in proportion to the market rate units. Proportionality shall be determined by dividing the total number of units in the development by the total number of affordable units. No building permit shall be issued for a market rate unit in excess of the proportion of affordable housing units for which a certificate of occupancy has been issued. For example, in a development of 20 units (total) with 2 affordable units, the proportional number of total units to affordable units is 10 total units to 1 affordable unit. If one building permit is issued for an affordable unit, then up to 9 building permits for market rate units can be issued. No additional market rate unit building permit can be issued until the first affordable unit is built and a certificate of occupancy for that unit is issued. An additional 9 market rate unit building permits can then be issued before the second affordable unit has been issued a certificate of occupancy. When calculating proportionality, any fractional sum shall be rounded down to the nearest whole building unit. For example, in a development of 20 units with 3 affordable units, the proportional number of units to affordable units would be 6 units to 1 affordable unit.

**9.21 Timber Harvesting Outside of the Shoreland Zone** (Amended 11/4/08, Effective 4/1/09; Amended 6-13-17 Effective 6-1-13)

Forest management activities outside of the Shoreland Zone shall meet the following standards:

- A. Within the public right-of-way of any new or proposed entrance onto a public way a culvert approved by the Road Commissioner may be required to ensure that the natural flow of drainage water will not be interrupted and to protect the shoulder of the public road.
- B. Where yarding and loading operations are conducted within 50 feet of the right-of-way, all debris remaining after such operations shall be removed and the ground restored to its original contour.
- C. Notification must be made to the Maine Forest Service by the owner if applicable.
- D. Whenever provisions of this ordinance are less stringent than the corresponding provisions of applicable federal, state, or municipal law or regulations, the more stringent provisions apply.

**9.22 Archaeological Sites** (Amended 6/12/12, ATM)

The following provisions are intended to prevent the disturbance of sites with potential or identified archaeological significance until their importance is documented.

**A. Identified Sites**

No activity which disturbs the ground such as trenching, grading, or excavating shall be commenced and no municipal permit or approval shall be issued within any of the following archaeological resource potential areas until the Maine Historic Preservation Commission has been notified of the nature of the proposed activity in writing by the owner of the property, a copy of the notice is provided to the Code Enforcement Officer, and a reconnaissance level archaeological survey is conducted, unless the Maine Historic Preservation Commission notifies the owner in writing that such a survey will not be needed.

The survey requirement will be deemed satisfied if the Maine Historic Preservation Commission has not carried out a survey or responded to the owner in writing within six (6) months or if the owner of the property has a reconnaissance level survey completed by a competent professional and provides a copy of the survey to the Maine Historic Preservation Commission and the Code Enforcement Officer, and the property owner implements any recommended or required actions resulting from the survey.

The archaeological resource potential areas as identified in the Comprehensive Plan are:

1. Four sites identified by the Maine Historic Preservation Commission along the banks of the Ogunquit River, designed as sites numbered 4.2, 4.4, 4.5, and 4.6.
2. Any area within 250 feet of the normal high water mark of the entire Ogunquit River.
3. Any area within 250 feet of the normal high water mark of the Atlantic Ocean.

**B. Other Areas Not Yet Identified**

If an archaeological artifact is uncovered during any ground-disturbing activities in

other areas not identified above as archaeological resource potential areas, regardless of whether or not the activities required Planning Board or Code Enforcement Officer approvals, the activities shall be halted and not recommenced until the Maine Historic Preservation Commission (MHPC) has been notified in writing of the find by the owner of the property, a copy of the notice provided to the Code Enforcement Officer, and a written response received from the Commission.

If the MHPC in its written response so recommends, the owner of the property shall conduct a reconnaissance level archaeological survey completed by a competent professional, and shall provide a copy of the survey to the MHPC and the Code Enforcement Officer. The Code Enforcement Officer shall not permit ground disturbing activities to recommence until any recommendations or requirements of the MHPC are implemented.

If no response is received within forty-five (45) days from the date notification was provided to the MHPC, the Code Enforcement Officer shall authorize commencement of the activity.

## **ARTICLE 10 – STREET DESIGN STANDARDS**

### **10.1 Minimum Standard for Street Design and Construction**

The design of streets shall provide for proper continuation of streets from adjacent development and for proper projection of streets into adjacent subdivided and open land.

### **10.2. Acceptance of Streets and Ways**

- A. A street or way constructed on private lands by the owner(s) and not dedicated for public travel prior to the date of enactment of this Ordinance, may be laid out by the Board of Selectmen for acceptance at Town Meeting as a public street or way upon the following conditions:
1. The owner(s) shall give the Town a deed to the property within the boundaries of the street at the time of its acceptance by the Town;
  2. A plan of the street or way shall be recorded in the York County Registry of Deeds at the time of its acceptance;
  3. A petition for the laying out and acceptance of the street or way shall be submitted to the Board of Selectmen upon a form to be prescribed by the Ogunquit Road Commissioner. The petition shall be accompanied by a plan, profile and cross Article of the street or way, prepared by a Professional Engineer registered in the State of Maine, certifying the road has been built in accordance with the plan, as follows:
    - a. The plan shall be drawn to a scale of no more than fifty feet to one inch, and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. The plan shall show the north point, the location and ownership of all adjoining lots of land passageways, street lights and electric lines, boundary monuments, water ways, topography and natural drainage courses with contour at not greater than two foot intervals, all angles, bearings and radii necessary for the plotting of the street and lots of their reproduction on the ground, the distance of the nearest established street or way, together with the stations of their sidelines.
    - b. The profile of the street shall be drawn to a horizontal scale of no more than fifty feet to one inch, and a vertical scale no more than five feet to one inch. The profile shall show the profile of the side lines and center line of the street and the proposed grades thereof. Any buildings abutting on the street shall be shown on the profile.
    - c. A cross Article of the street or way shall be drawn to a horizontal scale of five feet to one inch and a vertical scale of one foot to one inch.
    - d. The plan shall show the location and size of the proposed water and/or sewer mains in accordance with this Article.
- B. Any new public or private streets shall be constructed according to the Street Design and Construction Standards of Article 10 of the Ogunquit Subdivision Regulations. (Amended 4/5/05 ATM)

- C. All engineering work, including the setting of grade stakes necessary for the construction of streets and sidewalks, and storm sewers shall be performed by the developer at no expense to the town.
- D. Any sewers, drains, including house drains and catch basins which are to be built in the street or sidewalk and all underground utilities and their respective services, shall be constructed before any road material is placed. The sole exception shall be for house connections to serve lots where no construction has begun prior to the placing of such road material.
- E. Whenever it shall be deemed necessary by the Planning Board, after consulting with the Road Commissioner, that a storm sewer shall be constructed to serve the street under consideration, such storm sewer shall be completed before the gravel or road material is placed. The storm sewer shall be built by the developer at no expense to the town in accordance with the following:
 

The developer shall cause the storm sewers and appurtenances, including catch basins, to be built to the specifications of the Road Commissioner. When the street has been accepted, the storm sewers shall be deeded to the Town public sewer at no cost to the Town.
- F. When reasonably available, a water main of at least eight inches in diameter must exist for the use of buildings, residents and occupants for the street to be accepted. The Chief of the Ogunquit Fire Department must, in writing, certify that adequate water services for sufficient fire protection exists. It shall be the policy of the Town to require such fire hydrants as may be required for fire protection at the same time as the installation of the water main.

**10.3 Acceptance of Street and Ways Required by the Public Interest**

Notwithstanding the provisions of any other Article, the Board of Selectmen may at any time lay out for acceptance at Town Meeting any street or way in the Town as a public street or way whenever the general public interest so requires. The cost of maintaining the street or way shall be borne by the Town after its acceptance.

**10.4 Curbs**

Curbing of a type approved by the Road Commissioner may be required by the Planning Board on both sides of any proposed street.

**10.5 Easements**

The Planning Board may require easements for sewage, other utilities, drainage and stream protection. In general, easements shall not be less than 30 feet in width. Wider easements may be required.

**10.6 Report by the Planning Board and Road Commissioner.**

No street or way shall be laid out or accepted by the Town Meeting until the Planning Board and the Road Commissioner shall have made a careful investigation thereof, and shall have reported to the Board of Selectmen their recommendations in writing with

respect thereto.

#### **10.7 Private Streets and Ways, Not Intended to be Offered to the Town**

Private streets and ways may be constructed within the Town, with the intention that they remain private, upon showing by the applicant that the public health, safety and welfare will be maintained. It shall be clearly demonstrated, in written form, that the proposed private street will meet all of the Street Design and Construction Standards of Article 10 of the Ogunquit Subdivision Regulations, be adequately maintained, will provide sufficient spaces for emergency vehicle access, will conveniently serve its intended properties and will not exceed the maximum permissible lengths established by the Town. (Amended 4/5/05 ATM)

## ARTICLE 11 – DESIGN REVIEW

### 11.1 Purpose

#### A. General Purpose

The Town of Ogunquit includes mixed residential and business uses consisting predominantly of buildings constructed before December 31, 1930. They include many significant historic buildings which contribute a variety of architectural styles, other buildings which contribute to the historic setting, and a number of contemporary buildings. The purpose of this Article is to promote educational, cultural, economic, and general welfare of the Town of Ogunquit, to provide for the protection and preservation of buildings, structures and places of historic, architectural, cultural, or neighborhood significance or value as defined below, all of which confer “historical significance” and to promote design which is compatible with the present character of Ogunquit and consistent with the Ogunquit Historic Preservation Ordinance. (Amended 6/12/12, ATM)

#### B. Specific Intent

It is the specific intent of this Article to:

1. encourage the continued use of existing historically or architecturally important buildings and those which contribute to the character of the District and discourage their demolition or removal;
2. prevent inappropriate alterations of buildings of historical significance in the appropriate districts;
3. assure that new buildings are designed and built in a manner compatible with the character of the District in terms of scale and visual effect; and
4. assure that changes to contemporary buildings and new construction in the district do not detract from adjacent buildings with historical significance.

### 11.2. Definitions

Notwithstanding the definitions in Article 2 of this Ordinance, for purposes of this Article the following terms shall have the following meanings:

#### *Architectural Significance*

A building or structure shall be deemed to have “architectural significance” if it embodies distinctive characteristics of a type, period, or method of construction, represents the work of a master architect or builder, or possesses high artistic value.

#### *Board*

Unless otherwise specified, “Board” shall mean the Planning Board.

#### *Building*

Wherever the word “building” is used, it also refers to all structures and places (i.e., cemeteries, parks, etc.) which may or may not have buildings located on them and which are classified under this Article.

### *District*

In this Article, “District” refers to the Downtown Business District, the General Business Districts I and II, the Limited Business District, the Shoreland General 1 and Shoreland General 2 or the district in which a use, structure or building subject to the requirements of this Article lies.

### *Historical Significance*

A building or structure shall be deemed to have “historical significance” if it is associated with events which have contributed to the formation and development of the Town of Ogunquit, if it is associated with the lives of people who have been important to the community, if it is determined to have historical, architectural, cultural or neighborhood significance, or if it is listed in the National, Maine, or Ogunquit Historic Register.  
(Amended 4-01-06)

### *Material Change* (Amended 6/12/12, ATM)

“Material Change” means a modification to the architectural style, general design and general arrangement of the exterior of a building or structure, including:

- A. the kind and texture of the building materials and the type and style of all windows, doors ; or
- B. other appurtenant fixtures connected to a building, such as awnings, automated teller machines, pay telephones, as the like; or
- C. other site features such as walks, driveways and parking areas.

Any activities that effect the exterior of buildings or accessory structures, or require a building permit are also included in this definition, unless expressly exempted from Design Review pursuant to Article 11.4 below.

### *Neighborhood Significance*

A building shall be deemed to have “neighborhood significance” if it contributed to the creation of a physical setting representing a period important in the evolution of the Town. It is understood that the physical setting, which is composed of buildings, landscape features and open space, and other natural and architectural features, can transcend the sum of its parts in creating a sense of history. Some examples of situations in which a building would have neighborhood significance are: it is one of a group of similar buildings constructed and/or designed by an individual important in Ogunquit history; it is a compatible element in a group of buildings of similar or equally important significant architectural styles; its location (e.g., on a corner lot, on a rise of land, on a curve, on a large parcel of land, as the first building to visually introduce an important group of buildings) makes it an important element in the neighborhood; its size gives it a dominant place in the neighborhood.

### *Public Street or Public Right-of-Way*

A street or way for the passage of vehicles and/or pedestrians, either accepted by the municipal legislative body and owned by the Town of Ogunquit, or owned by the State or Federal governments. The term as used in this Article shall not include public beaches, public parks or any other types of public properties or facilities. (Amended 4-01-06 ATM)

### *Reconstruction*

“Reconstruction” means the rebuilding, or constructing again, of a building or part of a building. The reconstruction may or may not be a return to the original design of the building.

### *Rehabilitation*

“Rehabilitation” means the upgrading of a building, previously in a dilapidated or substandard condition, for human habitation or use. Rehabilitation does not necessarily retain the building’s original architectural features.

### *Restoration*

“Restoration” means the replication or reconstruction of a building’s original architectural features. Restoration usually describes the technique of preserving historic buildings.

### *Violation*

It shall be deemed a “violation” of this Article if an applicant fails to comply with the plans and conditions as approved by the Planning Board when it issued the Design Certificate, or if any activity listed in Article 11.3 is carried on without first obtaining a Design Certificate which permits the activity to proceed.

### *Visually Compatible and Complimentary* (Amended 6/12/12, ATM)

It is not the intent that all buildings in a neighborhood should look the same, but that a mix of styles, sizes, etc. that blend together well shall be allowed and that facade designs erected prior to December 31, 1930 be encouraged, although not necessarily required.

## **11.3. Design Certificate (Amended 4-01-06)**

In considering applications for permits, the Planning Board shall use the guidelines appearing in Article 11.6 of this Article. A Design Certificate, issued by the Planning Board, shall be required before a permit to proceed is issued for any of the following activities within the District, as defined by this article:

- A. any demolition of a building or portion thereof within the District; whether or not it is visible from a public street or public right-of-way;
- B. any moving or relocation of a building within the District; whether or not it is visible from a public street or public right-of-way;
- C. any material change in the exterior appearance of existing buildings, driveways or parking areas within the District by additions, reconstruction or other alteration, only

if it is visible from a public street or public right-of-way; and (Amended 4-05-08 ATM)

D. any new construction of a building or accessory building or structure within the District, only if it will be visible from a public street or public right-of-way.

**11.4. Exemptions** (Amended 6/12/12, ATM)

The following changes, when proposed to effect buildings constructed after December 31, 1930, shall not be deemed “material changes,” as defined in Article 11.2 above, and therefore shall be exempted from a Design Review by the Planning Board.

1. Sky-lights of 5.7 square feet or less in area individually, and collectively covering less than 15% of the total roof area;
2. Replacement of doors and windows with modern materials, in same style and configuration, with no significant change in size of wall openings;
3. Erection of residential satellite dishes with a maximum diameter of two feet; or erection of conventional residential television antennae with a maximum longest dimension of 4 feet;
4. Erection of photovoltaic cells or solar hot water heaters servicing any type of dwelling unit, except for a “dwelling accessory to business; above ground floor,” as classified by Table 702.1.
5. Erection of the following structures, only if not visible from a public way: residential storage sheds, private residential swimming pools, hot tubs, gazebos, pergolas;
6. Erection of devices, ramps, access ways, elevators or other structures for the purpose of making a residence handicapped-accessible;
7. Installations of NFPA 96 Exhaust Systems for restaurants, installed on walls or roofs;
8. Replacement of siding and roofing materials with the same or modern materials, in the same style and configuration;
9. Addition of weathervanes;
10. Awnings, without internal lighting, supported only by attachment to the building, without support columns or fabric/vinyl walls;
11. Means of Egress required under NFPA 101 Life Safety Code;

A Design Review by the Planning Board shall not be required for signs and fences accessory to buildings either existing on December 31, 1930 or constructed after December 31, 1930, or whether located on private or public property. Signs shall be regulated by the provisions of Article 8.12, and fences shall be regulated by the provisions of Article 8.6.

Any material changes other than those expressly exempted by this subArticle shall be subject to a Design Review by the Planning Board.

## **11.5. Planning Board Review**

- A. The Board may, from time to time, issue publications describing design guidelines which further the purposes of this Article.
- B. The Board shall have the right to retain the services of professional help required in carrying out the purposes of this Article. Any expenses incurred in the retention of such professional assistance shall be borne by the applicant, not to exceed one percent of the cost of the project.
- C. The Board shall, at its regular meetings, review applications for Design Certificates. All meetings of the Board shall be open to the public and a public record shall be kept of the Board's resolutions and decisions. The Land Use Office shall notify the Ogunquit Historic Preservation Commission (OHPC) of any application for activities required to obtain a Design Review Certificate under Article 11.3, that effect buildings within the District constructed prior to December 31, 1930. The OHPC shall be requested to comment on whether the application meets the standards of Article 11.6 of this Ordinance and the Ogunquit Historic Preservation Ordinance. Members of the OHPC shall be invited to participate in any scheduled hearings or meetings on the application. (Amended 6/12/12, ATM)
- D. The Board may hold a public hearing on an application. Public notice requirements shall be as follows:
  - 1. If the Board decides to hold a public hearing prior to making a decision on a design review application, the Planning Board Chairman shall notify, by U.S. First Class Mail, the applicant and the owners of all abutting properties, at least ten (10) days in advance of the hearing. Notification shall include the nature of the application, and the time and place of the public hearing. Notice of the hearing shall also be published twice in a newspaper of local circulation, with the first advertisement appearing at least seven (7) days in advance of the hearing. In addition, the notice of the hearing shall be posted in at least three prominent public places within the Town at least ten (10) days prior to the hearing. (Amended 6/12/12, ATM)
  - 2. For the purpose of this Article, the owners of property should be considered to be the parties listed by the Tax Assessor of the Town as those against whom taxes are assessed. Failure of any property owner to receive a notice of a design review public hearing shall not necessitate another hearing or invalidate any action by the Board.
  - 3. The Code Enforcement Officer, Planning Consultant, or the Town Planner, shall attend all hearings, and shall present to the Board all plans, photographs or other material he deems appropriate for an understanding of the application. (Amended 4-01-06 ATM)

## **11.6. Action of Applications for Design Certificate (Amended 4-7-07 ATM)**

- A. The application for a Design Certificate shall be made in the Land Use Office on forms provided therefore, at least 14 days prior to the Planning Board meeting at which it will be reviewed. Each application shall be accompanied by:

1. A site plan showing the subject property and its context;
2. Elevations of each side of the proposed building to be constructed or altered, at a scale of at least  $\frac{1}{4}'' = 1$  foot, and in the case of alterations, showing conditions before and after the proposed alteration;
3. Photographs of the site and existing buildings; and such additional sketches, drawings, photographs, descriptions or other information showing the proposed alterations, additions, changes or new construction as may be required for the Board to make a decision.
4. Estimates of the construction cost for proposed new buildings or proposed new building additions.
5. For proposed new buildings or proposed new building additions with a value of construction estimated to be \$2,000,000 or greater require a visual impact assessment. An applicant's visual impact assessment should visualize the proposed activity and evaluate potential adverse impacts of that activity on existing scenic and aesthetic uses, and determine effective mitigation strategies, if appropriate. If required, a visual impact assessment must be prepared by a design professional trained in visual assessment procedures, in the following manner:
  - a. In all visual impact assessments, scenic resources within the viewshed of the proposed activity must be identified and the existing surrounding landscape must be described. The assessment must be completed following standard professional practices to illustrate the proposed change to the visual environment and the effectiveness of any proposed mitigation measures. The radius of the impact area to be analyzed must be based on the relative size and scope of the proposed activity given the specific location. Areas of the scenic resource from which the activity will be visible, including representative and worst-case viewpoints, must be identified. Line-of-sight profiles constitute the simplest acceptable method of illustrating the potential visual impact of the proposed activity from viewpoints within the context of its viewshed. A line-of-sight profile represents the path, real or imagined, that the eye follows from a specific point to another point when viewing the landscape. For activities with more sensitive conditions, photo-simulations and computer-generated graphics may be required.
  - b. A visual impact assessment must also include narratives to describe the significance of any potential impacts, the level of use and viewer expectations, measures taken to avoid and minimize visual impacts, and steps that have been incorporated into the activity design that may mitigate any potential adverse visual impacts to scenic resources.

B. The Code Enforcement Officer, Planning Consultant, or the Town Planner shall place the application for a Design Certificate, on the next Planning Board meeting agenda. The Board shall act upon the application within 30 days of finding the application

complete, making findings of fact and conclusions as to whether the design guidelines in Article 11.6 will be met by the proposed changes. If the Board does not act within 30 days, the application is deemed to be not approved and a Design Certificate shall not be issued. If the activity which necessitates a Design Certificate is part of an activity which also requires a Site Plan Review from the Planning Board, the Planning Board shall combine the two proceedings.

- C. Nothing herein shall prohibit an extension of time, by a formal action for a specific period of time, for review and approval of the application if the applicant and the Board have mutually agreed that more information or discussion is required. Unless the Board disapproves an application, a Design Certificate shall be issued to the applicant in written form.
- D. If an activity regulated by this Article also requires a building permit, the permit shall not be issued until the Design Certificate is granted.
- E. The Board may require an irrevocable letter of credit or performance bond prior to the issuance of a building permit.

#### **11.7. Design Guidelines** (Amended 6/12/12, ATM)

- A. Activities Required to Obtain a Design Review Certificate under Article 11.3, and Effecting Buildings Existing Within the District on December 31, 1930
  - 1. Reconstructing, Altering or Maintaining Buildings Existing within the District on December 31, 1930.

Any building, or any part or appurtenance thereof, shall be reconstructed, altered or maintained only in a manner that will preserve its historical and architectural significance. When making that determination, recognition shall be given to the design and past relationship with surrounding buildings.
  - 2. Demolition, Removal or Relocation of Buildings Existing within the District on December 31, 1930.
    - a. The Planning Board shall initially determine whether the building or structure is historically or architecturally significant in accordance with the definitions in this Article. If the building is judged insignificant or its location is judged not to contribute to its historical or architectural significance, the Board shall approve the Design Certificate to permit its demolition, removal or relocation.
    - b. If the Planning Board determines that the building or structure is historically or architecturally significant or derives its historical or architectural significance due to its location, it shall deny the application for the Design Certificate, and prohibit its demolition, removal or relocation. The applicant may appeal such a denial to the Board of Selectmen, within 30 days of the Planning Board Decision. The Board of Selectmen shall take one of the following actions, after making its own findings of fact and conclusions:
      - 1. Uphold the Planning Board's decision to prohibit the demolition, removal or relocation, and deny the appeal; or
      - 2. Uphold the Planning Board's decision to prohibit the demolition, removal

or relocation, and deny the appeal, and recommend at a Special or ATM, for the Town to acquire a historic easement on the property, pursuant to Article 11.9 of this Ordinance; or

3. Before reversing the Planning Board's decision to prohibit the demolition, removal or relocation, and approving the appeal, the Board of Selectmen shall require the applicant to wait 120 days until the Design Certificate is issued, so that the Ogunquit Historic Preservation Commission, Planning Board, and owners may have an opportunity to negotiate about alternative solutions to preserve the structure or site. If negotiations to preserve the structure or site are unsuccessful during the waiting period, after 120 days the Board of Selectmen shall reverse the Planning Board's decision, approve the appeal, and issue the Design Certificate to permit its demolition; or
4. Reverse the Planning Board's decision, and immediately approve the Design Certificate to permit its demolition, upon finding that the building or structure is a nuisance or dangerous, in accordance with 17 M.R.S.A., §2851 et. seq.

- c. When repair or reconstruction of a structure damaged by fire, accident, or an act of God, would cost more than 50% of the market value of the structure before the damage occurred, the building may be restored to its original design, or demolished and replaced with new construction, subject to a Design Certificate issued by the Planning Board in accordance with the provisions of this Article. Damage to a structure by neglect or deferred maintenance shall not be considered for the purposes of interpreting this Article.

**B. Activities Required to Obtain a Design Review Certificate under Article 11.3, and Effecting Buildings Which Did Not Exist on December 31, 1930**

The construction, reconstruction, alteration or moving of any building and its appurtenances built after 1930 shall be generally of such design, size, building material, texture, and location on the lot as will be compatible with other buildings in the District and particularly those in existence on December 31, 1930. The intent of this Article is not to require that a contemporary or post-1930 building be constructed or altered to meet a specific architectural style (i.e., colonial, federal, etc.). Rather, compatibility with other buildings shall be determined by factors such as: type and style of buildings previously on the parcel, historical design of the buildings and relationship with surrounding buildings.

**C. Design Guidelines for all Buildings within the District Required to Obtain a Design Review Certificate under Article 11.3**

Newly constructed buildings, reconstructed buildings and existing buildings, as well as their appurtenances which have been altered, repaired or moved, shall be visually compatible with the buildings, squares and places to which they are visually related, and particularly with nearby or adjacent buildings in existence on December 31, 1930, in terms of the following factors:

1. **Scale of the Building.** The scale of a building depends on its overall size, its mass

in. relationship to the open space around it, and the sizes of its doors, windows, porches and balconies. The scale gives a building “presence,” that is, it makes it seem big or small, awkward or graceful, overpowering or unimportant. The scale of a building should be visually compatible with its site and neighborhood.

2. Height. A sudden dramatic change in building height can have a jarring effect on the streetscape, i.e., the way the whole street looks. For example, a tall building can shade its neighbors or the street. The height of a building should be visually compatible with the heights of the buildings in the neighborhood.
3. Proportion of Building’s Front Facade. The “first impression” a building gives is that of its front facade, the side of the building which faces the most frequently used public way. The relationship of the width to the height of the front facade should be visually compatible with that of its neighbors.
4. Relationship of Solids to Voids in Front Facades. When one looks at any facade of a building, one sees openings such as doors or windows (voids) in the wall surface (solid). Usually the voids appear as dark areas, like holes, in the solid and are quite noticeable, setting up a pattern or rhythm. The pattern of solids and voids in the front facade of a new or altered building should be visually compatible with that of its neighbors.
5. Proportions of Opening Within the Facility. Windows and doors come in a variety of shapes and sizes; even rectangular window and door openings can appear quite different depending on their dimensions. The relationship of the height of windows and doors to their width should be visually compatible with the architectural style of the building and with that of its neighbors.
6. Roof Shapes. A roof can have a dramatic effect on the appearance of a building. The shape and proportion of the roof should be visually compatible with the architectural style of the building and with those of neighboring buildings.
7. Relationship of Facade Materials. The facades of a building are what gives it character, and the character varies depending on the materials of which the facades are made and their textures. In Ogunquit, many different materials are used on facades: clapboards, shingles, patterned shingles, brick depending on the architectural style of the building. The facades of a building, particularly the front facade, should be visually compatible with those of other buildings around it.
8. Relationships of Spaces to Buildings on Streets. The building itself is not the only thing one sees when one looks at it; one is also aware of the space around the building. Looking along a street, the building and open spaces set up a rhythm. The rhythm of spaces to buildings should be considered when determining visual compatibility, whether it is between buildings or between a building and the street.
9. Site Features. The size, placement and materials of walls, fences, signs, driveways and parking areas may have a visual impact on a building. These features should be visually compatible with the building and neighboring buildings.
10. Architectural, Historical or Neighborhood Significance. These factors shall be considered with regard to buildings existing on December 31, 1930. The

reconstruction, alteration, maintaining or moving of such buildings should be done in a manner as to preserve their architectural, historical or neighborhood significance. The construction, reconstruction, maintenance or moving of post-1930 buildings should be done in a manner which is visually compatible with the architectural, historical or neighborhood significance of buildings existing on December 31, 1930.

**11.8. Appeals (of Design Review Decisions)** (Amended 4-01-06 ATM)

Appeals from a decision of the Code Enforcement Officer, Planning Consultant, or the Town Planner regarding the necessity for a Design Certificate may be taken to the Board of Appeals as an administrative appeal, pursuant to Article 5 of this Ordinance. Appeals from a decision of the Planning Board regarding the issuance or denial of a Design Certificate shall be taken to the Maine Superior Court in accordance with Maine Law.

**11.9. Article Review**

On or about the second anniversary of the passage of the Design Review Article, the Planning Board shall conduct a review of its effectiveness and submit amendments or other changes, if appropriate. At that time, the Planning Board shall determine if it wishes to continue a biannual review of the Article.

**11.10. Acquisition of Historic Easements**

The Town may acquire, by purchase or donation, historic easements in any area within its jurisdiction wherever and to the extent that the Board of Selectmen, upon recommendation of the Board, determines that the acquisition will be in the public interest. For the purpose of this Article, the term “historic easement” means any easement, restriction, covenant or condition running with the land, designed to preserve, maintain or enhance all or part of the existing state of places of historic, architectural, or neighborhood significance.

**11.11. Ordinary Maintenance Allowed: Public Safety**

- A. Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior feature in the District which does not involve a change in design, material or outer appearance.
- B. Nothing in this Article shall prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the Code Enforcement Officer shall certify is required by the public safety because of an unsafe or dangerous condition.

**11.12. Enforcement** (Amended 4-01-06)

- A. The Code Enforcement Officer shall enforce the provisions of this Article, and may inspect, from time to time, those buildings, structures and any appurtenances for which a Design Certificate has been issued, to ensure compliance with the terms contained in the Certificate.
- B. A Design Certificate secured under the provisions of this Article shall expire if the work is not commenced within one year of the date on which it is granted or if the

work is not completed within two years of the date on which the Certificate is granted. An extension of one year from either deadline may be granted by the Board, upon written request. A single, additional one-year extension from either extended deadline may be granted upon a further written request, but only upon a showing of special circumstances that are beyond the control of the applicant. This provision shall be effective for any Design Certificate approved after June 8, 2010 or any prior Design Certificate approval that had not expired, as of January 1, 2010.  
(Amended 06-08-10)

### **11.13. Penalties**

Any person who violates any provision of this Article shall be guilty of a misdemeanor and shall be punished in accordance with 30-A M.R.S.A. §4452.

### **11.14. Injunctions**

Wherever any person has engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of this Article, the Code Enforcement Officer shall make application to the District Court for an order enjoining such act or practice, or requiring such person to refrain from such prospective violation, or to remedy such violation by restoring the effected property to its previous condition. Upon a showing by the Code Enforcement Officer that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order or other appropriate order shall be granted without bond.

### **11.15. Separability**

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of this Article and the application of such provisions to other persons or circumstances shall not be effected thereby.

### **11.16. Fees**

All applications for design review approval shall be accompanied by a fee as prescribed by the Board of Selectmen.

## **ARTICLE 12 - SURVEY REQUIREMENTS OF LAND USE APPLICATION**

(Adopted 11/6/01)

### **12.1. Purpose**

The purpose of this Ordinance is to insure that the Municipal Officials and Boards required to decide applications for permits and approvals under the Town's Land Use Ordinance have accurate information upon which to base those decisions. To that end, this Ordinance establishes, requirements for the types of survey information required to be provide with certain types of land use applications governed by the Town's Ordinances.

### **12.2. Subdivisions**

Every application for any approval required under the Ogunquit Subdivision Regulations shall be accompanied by a Standard Boundary Survey, Category 1, Condition 3 which reflects the current conditions of the site. Plans showing engineering details submitted as part of the application shall be prepared by a professional engineer. (Amended 4-01-06 ATM)

### **12.3. Site Plans**

Every application of any approval required under a site plan review shall be accompanied by a Standard Boundary Survey, Category 1, Condition 3. However, the Town Planner or Planning Consultant may waive the requirement of this Article and accept a plan of a lower classification, category or condition, provided the scale remains at 1' = 40', if the Planner or Planning Consultant determines that special characteristics of the site, such as a large parcel size (50 acres or greater) or large street frontage (500 feet or greater) or changes to only a specific location on a site plan so warrant. Plans showing engineering details submitted as part of the site plan application shall be prepared by a professional engineer. (Amended 4-01-06 ATM)

### **12.4. Variances**

- a) Lots Unimproved on Effective Date – Every application to the Ogunquit Board of Appeals for a variance for a lot not containing buildings or structures before the effective date of this Ordinance under the Ogunquit Zoning Ordinance shall be accompanied by a Standard Boundary Survey, Category 1, Condition 3. (Amended 4-01-06 ATM)
- b) Lots Improved on Effective Date – Every application to the Ogunquit Board of appeals for a variance for a lot containing buildings or structures constructed on or after the effective date of this Ordinance under the Ogunquit Zoning Ordinance shall be accompanied by a Mortgage Loan Inspection type survey with existing pins located sufficient to determine the dimensions for which the variance is sought. (Amended 4-01-06 ATM)

### **12.5. Day Care Centers**

Every application to the Ogunquit Planning Board for Site Plan Review approval of a Day Care Center under the Ogunquit Zoning Ordinance shall be accompanied by a Mortgage Loan Inspection type survey with existing pins located sufficient for the Board

to determine compliance with the requirements of the Ogunquit Zoning Ordinance for the use sought. (Amended 4-01-06 ATM)

**12.6. Single Family Dwellings** (Amended 4-7-07 ATM)

Every application for a permit under the Ogunquit Zoning Ordinance for the construction of a new single family dwelling shall be accompanied by a Standard Boundary Survey, Category 1, Condition 3. In addition, the location of the foundation shall be set and pinned by a professional land surveyor before the Code Enforcement Officer approves the footing inspection if:

- a) Any part of the proposed structure to be located closer than five (5) feet to the minimum front, side or rear yard setbacks required by the applicable zoning district regulations; or
- b) The Code Enforcement Officer determines that special conditions exist, such as:
  - i) complex curves in the property lines, or
  - ii) the presence of wetlands, vernal pools, wildlife habitat areas, or other natural features requiring special setbacks or net residential area deductions under the Ogunquit Zoning Ordinance; or
  - iii) other unusual features of lot shape or topography.

**12.7. Additions to Single Family Dwellings** (Amended 4-7-07 ATM)

- a) Dwellings Constructed Before Effective Date – Every application for a permit under the Ogunquit Zoning Ordinance for the construction of an addition to a single family dwelling which was constructed before the effective date of this Ordinance shall be accompanied by a Standard Boundary Survey, Category 1, Condition 3. In addition, the location of the foundation shall be set and pinned by a professional land surveyor before the Code Enforcement Officer approves the footing inspection if:
  - i) Any part of the addition is proposed to be located closer than five (5) feet to the minimum front, side or rear yard setbacks required by the applicable zoning district regulations; or
  - ii) The Code Enforcement Officer determines that special conditions exist, such as:
    - 1. complex curves in the property lines, or
    - 2. the presence of wetlands, vernal pools, wildlife habitat areas, or other natural features requiring special setbacks or net residential area deductions under the Ogunquit Zoning Ordinance; or
    - 3. other unusual features of lot shape or topography.
- b) Dwellings Constructed After Effective Date – Every application for a permit under the Ogunquit Zoning Ordinance for the construction of an addition to a single family dwelling which was constructed on or after the effective date of this Ordinance shall be accompanied by a Mortgage Loan Inspection type

survey with all proposed yard dimensions and setbacks shown on the plan.

**12.8. Minor Accessory Structures** (Amended 4-7-07 ATM)

- a) Lots Improved Before Effective Date – Every application for a permit under the Ogunquit Zoning Ordinance for the construction of a minor accessory structure, as defined in Article 12.10 below of this Ordinance, on a lot where the principal structure was constructed before the effective date of this Ordinance shall be accompanied by a Standard Boundary Survey, Category 1, Condition 3.
- b) Lots Improved After Effective Date – Every application for a permit under the Ogunquit Zoning Ordinance for the construction of a minor accessory structure as defined in Article 10 of this Ordinance, on a lot where the principal structure was constructed on or after the effective date of this Ordinance shall be accompanied by a Mortgage Loan Inspection type survey with all proposed yard dimensions and setbacks shown on the plan.
- c) In the case of a minor accessory structure, the location of the foundation or base of the structure need not be set or pinned by a professional land surveyor.

**12.9. Major Accessory Structures** (Amended 4-7-07 ATM)

Every application for a permit under the Ogunquit Zoning Ordinance for the construction of a major accessory structure, as defined in Article 12.10 below of this Ordinance, shall be accompanied by a Standard Boundary Survey, Category 1, Condition 3. In addition, the location of the foundation shall be set and pinned by a professional land surveyor before the Code Enforcement Officer approves the footing inspection if:

- a) Any part of the structure is proposed to be located closer than five (5) feet to the minimum front, side or rear yard setbacks required by the applicable zoning district regulations; or
- b) The Code Enforcement Officer determines that special conditions exist, such as:
  1. complex curves in the property lines, or
  2. the presence of wetlands, vernal pools, wildlife habitat areas, or other natural features requiring special setbacks or net residential area deductions under the Ogunquit Zoning Ordinance; or
  3. other unusual features of lot shape or topography.

**12.10. Definitions** (Amended 4-7-07 ATM)

The following terms used in this Ordinance have the following meanings:

*Standard Boundary Survey, Category 1, Condition 3*

A survey performed by a professional land surveyor which conforms to the requirements of a Standard Boundary Survey Category 1, Condition 3 in accordance with the State rules and regulations of the Maine Board of

Licensure for Professional Land Surveyors.

*Mortgage Loan Inspection Type Survey*

A Mortgage Loan Inspection Type Survey shall be performed by a professional land surveyor in accordance with the State rules and regulations of the Maine Board of Licensure for Professional Land surveyors regarding Mortgage Loan Inspections.

*Major Accessory Structure*

Any accessory structure which is not a minor accessory structure.

*Minor Accessory Structure*

A Swimming pool, above ground or in-ground, with associated decks and patios and any structure with a footprint of less than two hundred and fifty (250) square feet.

*Professional Engineer*

An engineer licensed by the State of Maine to practice in the State of Maine.

*Professional Land Surveyor*

A surveyor licensed by the State of Maine to practice in the State of Maine.

## **ARTICLE 13 BLASTING REQUIREMENTS**

(Adopted April 7, 2003 ATM, Revised October 28, 2003 ATM)

### **13.1 PURPOSE**

Unregulated blasting may cause undue psychological, physical or nuisance damage to the residents and environment of the community.

The establishment of standards, notice requirements and instrument monitoring of blasting operations is intended to minimize the effect of airblast over pressure, ground vibration, dust and noise associated with blasting which may be detrimental to individuals and the community in the enjoyment of life, property and the conduct of business.

This Ordinance is intended to prevent permanent damage to the geologic, hydrogeologic, wildlife resources and ecological balance in the region and to have provisions which can be effectively and efficiently administered without causing undue influence and administrative hardship to blasting operations.

### **13.2 AUTHORITY**

This Ordinance is enacted pursuant to Title 30-a, M.R.S.A, Article 3001 and shall be administered by the Code Enforcement Office. The requirements of this Ordinance are in addition to any other Ordinances, regulations and statutes and where different standards are contained elsewhere, the more restrictive standards shall apply.

### **13.3 DEFINITIONS**

#### *Blast/Blasting*

The use of explosives to break up or otherwise aid in the extraction or removal of rock or other consolidated natural formation.

#### *Blasting Operations*

Any activity or conduct carried on or conducted within the Town of Ogunquit in which explosives are used.

### **13.4 BLASTING**

1. Blasting is allowed in all zoning districts of Ogunquit except the Resource Protection District, provided that blasting shall only be permitted on weekdays (Monday through Friday, excluding holidays), between the hours of 9:00 AM and 5:00 PM, unless otherwise permitted by the Code Enforcement Officer under extraordinary circumstances as may be determined by the Code Enforcement Officer.

2. No blasting shall be done as part of any excavation or mineral extraction operation, nor as part of any approved construction activity without first obtaining a permit to blast from the Code Enforcement Office pursuant to this Article. The applicant shall provide:
- a) A completed application form for a permit to blast;
  - b) A site plan showing where the blasting will take place;
  - c) A statement of the purposes and extent of the blasting further indicating the approximate dates and times the blasting will occur;
  - d) The name, address and telephone number of the entity that will actually perform the blasting operation.
  - e) Proof that the entity applying for the permit to blast is properly licensed by the State of Maine and that the work will be performed in compliance with the State Fire Marshal Rules and any other applicable State statutes and regulations.
  - f) Evidence that notice of the proposed blasting operation has been sent by United States Certified Mail, Return Receipt Requested to all landowners abutting the subject property of the application within three hundred and fifty (350) feet of the proposed blast site. Said notice shall indicate the location of the proposed blasting, approximate date and times that the blasting will occur and the name, address and telephone number of the entity that will actually perform the blasting operation. A copy of said notification together with a copy of the names and addresses of the landowners and a copy of the Return Receipts shall be filed with the Code Enforcement Office.
  - g) Before blasting operations begin, the contractor shall:
    - i) make a reasonable effort to obtain landowner permission to have a video recorded survey made of all structures within a three hundred and fifty (350) foot radius of the blast site at the contractor's expense and at the convenience of the abutting landowners. The contractor shall offer to make a video recorded survey of any structure located within a two thousand (2,000) foot radius of the blasting site at the expense of the landowner, and (Revised 10/28/03 Special Town Meeting)
    - ii) make a reasonable effort to obtain landowner permission to test all drinking water supply wells within a three hundred and fifty (350) foot radius of the blast site at the contractor's expense and at the convenience of the abutting landowners. Such tests shall document the flow rate of the well prior to blasting as well as the values of the Coliform bacteria, E-coli, Nitrite-N, Nitrate-N, Ph; Cooper, Iron, Chloride, Manganese, Arsenic, Calcium and Sodium.

A copy of the results of the pre-blast well testing shall be furnished to the landowner prior to the commencement of the blasting operations. (Revised 10/28/03 Special Town Meeting)

- iii) where an owner or occupant of property denies permission to enter a property for purposes of the video recorded survey and there is no other means of conducting the survey for that property, or where the owner or occupant denies permission to enter the property for purposes of testing the drinking water supply well, the contractor shall list the names and addresses of all properties where such permission was denied and submit a copy of the list to the Code Enforcement Office and to the insurance company issuing the insurance required by SubArticle h of this Article.
  - h) The video recorded survey and the well test results shall be held by the insurance company providing liability coverage to the entity performing the blasting work and upon request, said video recorded survey and/or well test results shall be made available to the landowner at the expense of the contractor.
  - i) The contractor shall submit proof of adequate liability insurance to cover the blasting operations to the Code Enforcement Office.
  - j) Prior to any blast, the entity conducting such blast shall first notify the Code Enforcement Office that a blast is planned to occur at a specific time. Such notification shall be made to the Code Enforcement Office at least four (4) hours prior to the planned detonation and shall give the time, within thirty (30) minutes of the blast, the location where the blast will occur and the name and address of the company responsible for the blasting operation. This notification may be given by telephone, however, the burden of proof as to whether such notification was in fact received rests with the company responsible for the blasting operation.
  - k) The contractor shall submit a post-blast report to the Code Enforcement Office within ten (10) days of completing blasting operations. The Code Enforcement Office shall keep the post-blast report on file and make it available to all interested parties. (Revised 10/28/03 Special Town Meeting)
  - l) A Blasting Permit Fee shall be established by the Municipal Officers in compliance with the Municipal Code.
  - m) Failure to comply with any and all terms of this Article will result in fines being imposed at a rate of not less than One Hundred (\$100.00) Dollars per day or more than Two Thousand Five Hundred (\$2,500.00) per day as per Title 30-A M.R.S.A, Article 4452.
3. The Code Enforcement Officer or his designee shall:
- a) issue a Blasting Permit within ten (10) days of the receipt of a complete application form, fee and all supporting evidence as set forth above;
  - b) notify any abutting town within two thousand (2,000) feet of the blast site of the issuance of said permit; and

- c) post a notice of the said blasting ten (10) days prior to the actual blasting occurring in the usual places for posting of other Town notices.
- d) solicit acknowledgement of such blasting notification from the Police Chief and Fire Chief (or their designees).

### **13.5 RECORDS**

The entity responsible for the blasting operations shall maintain a record of each blast. All records shall be retained for a period of no less than three (3) years following cessation of the blasting operation and shall be available for inspection by the Town of Ogunquit's designee. Such records shall include the following data:

1. The name of the company responsible for the blasting operation.
2. The location, date and time of each and every blast.
3. The name of the licensed blaster in charge of any specific blast.
4. The type of material blasted.
5. Diameter and depth of the holes dug for the blasting.
6. Types of explosives used.
7. Amount of explosives used.
8. Method of firing and type of circuit.
9. Weather conditions at the time of each blast event to include such factors as the wind direction, cloud cover, etc..
10. Whether mats or other protection were used.
11. Type of detonators and delay periods used.
12. Seismograph and airblast readings when measured and from where measured.

### **13.6 COMPLIANCE SCHEDULE**

Thirty (30) days after the adoption of this Ordinance all blasting operations shall be brought under the provisions of this Article.

### **13.7 PENALTIES**

The submission of false information required by this Ordinance or the violation of this Ordinance or the violation of any condition attached to a permit granted under this Ordinance shall constitute a land use violation and the penalties in accordance with Title 30-A, M.R.S.A., Article 4452 shall be imposed.

### **13.8 SEVERABILITY**

If any provision of this Ordinance is declared unconstitutional or held invalid, it shall not

effect any other Article, clause or provision thereof, but the same shall remain in full force and effect.

## **ARTICLE 14 – CONDOMINIUM CONVERSION ORDINANCE**

(Adopted November 8, 2005 ATM)

### **14.1 Title**

This Chapter shall be known and may be cited as “Condominium Conversion Ordinance of Ogunquit”.

### **14.2 Purpose**

The purpose of this Ordinance is to protect the public health, safety and welfare by regulating condominium conversions in Ogunquit. The necessity for regulating condominium conversions is to protect the public from fraud or duress.

### **14.3 Authority**

Authority to enact is found generally under Maine Home Rule authority and 33 M.R.S.A., Article 1604-111(f).

### **14.4 Permit Required**

As of date of passage, any existing structure or property which is converted to condominium ownership in accordance with the provisions of the Maine Condominium Act, Title 33, Chapter 31, regardless of whether or not there is any proposed change in use or any proposed physical change in the structure or property, shall be required to obtain a Condominium Conversion Permit from the Code Enforcement Officer.

### **14.5 Procedure and Fee (Amended 6/12/12 ATM)**

The Code Enforcement Officer, with the assistance of the Town Attorney and the Town’s Planning Consultant, shall review the proposed Condominium Declaration and any drawings or supporting documents and shall only approve the Condominium Conversion Permit upon finding that the declaration is worded in a way that will insure that the prospective condominium owner will be thoroughly informed of the permitted use of their property and any restrictions placed upon its use by the Zoning Ordinance, Subdivision Regulations, Planning Board conditions of approval or other Town Codes or Town license restrictions. The permit application fee for a condominium conversion permit shall be set annually in a fee schedule adopted by the Board of Selectmen, to be used by the Code Enforcement Officer for hiring independent consulting services to review the application. If the cost of hiring legal and planning consultants exceeds the initial application fee, the Code Enforcement Officer shall notify the applicant and require that an additional, supplemental application fee be deposited by the applicant.

### **14.6 Violation**

Filing of a Condominium Declaration converting an existing structure or property to condominium ownership prior to obtaining a Condominium Conversion Permit shall be considered a violation of this Ordinance. In addition to any court ordered injunctive relief, violation of this Ordinance shall be deemed a land use violation for which fines and attorney’s fees shall be allowed under 30-A M.R.S.A., Article 4452.