



Town of Southwest Harbor

Land Use Ordinance

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Attested True Copy:

Town Clerk Marilyn Lowell

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SECTION I: INTRODUCTION

A: Title, Authority, and Administration

1. This ordinance shall be known and may be cited as the “Southeast Harbor Land Use Ordinance of the Town of Southwest Harbor”
2. This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution, the provisions of M.R.S.A. 30-A §4301, et seq., and the Mandatory Shoreland Zoning Act, M.R.S.A. 38 §435 et seq.
3. This Ordinance shall be administered by the Planning Board and the Code Enforcement Officer of the Town of Southwest Harbor.

B. Purpose of the Ordinance

1. The Southwest Harbor Land Use Ordinance (LUO) seeks to maintain a safe, healthy, and attractive environment. It is intended to regulate the construction of buildings, roads, signs, etc., and the uses to which buildings are put, so as to ensure that they do not cause damage to their neighbors or to natural resources (such as ground water, wetlands, fish spawning grounds, aquatic life, bird and other wildlife habitat, etc.), and so that such developments do not create dangerous situations on the public roads or overload the public services of the Town. The LUO also seeks to protect buildings and lands from flooding and accelerated erosion, to protect archaeological and historic resources, and to protect commercial fishing and maritime industries, to prevent and control water pollution, to protect freshwater and coastal wetlands, to conserve shore cover; actual points of public access to inland and coastal waters, to conserve natural beauty and open space.
2. In addition, the LUO contains provisions to reflect the Southwest Harbor Comprehensive Plan, approved May 5th, 1997.
3. To achieve these ends, the Ordinance sets out standards such as density; setbacks from roads, property lines, water bodies, and wetlands; height limits; buffering by means of planted areas; off-street parking requirements; etc. Some of these standards vary in the different zones and with different land uses.
4. Applicants for building permits are obliged to provide the Town with information, including site plans, sufficient to judge all the above factors. Generally, the Town is not concerned with maintenance work or alterations within a building, which do not affect its footprint, its location, height or use.

C. Planning Objectives

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

and at the same time permit a diversity of activities to maintain the economic viability of the harbor. The harbor zones encourage marine related commercial activities and specifically discourage uses and activities, which are more suited to highway locations because of their scale and need for access and parking facilities.

D. Effective Date

- (1) The effective date of this Ordinance is June 29th, 1992, or as amended thereafter. A certified copy of this Ordinance is filed with the Town Clerk and is accessible to any member of the public. Copies are available for reference and may be purchased for a reasonable fee to be determined by the Board of Selectmen. Certified copies of the relevant accompanying maps are filed in the Town Office.
- (2) Repeal of Municipal Timber Harvesting Regulation. The municipal regulation of timber harvesting activities is repealed on the statutory date established under M.R.S.A. 38 § 438-B(5), at which time the State of Maine Department of Conservation's Bureau of Forestry shall administer timber harvesting standards in the shoreland zone. On the date established under 38 M.R.S.A § 438-B (5), the following provisions of this Ordinance are repealed:

Section VII (O) in its entirety; and Section XIII Definitions, the definitions pertaining to timber harvesting and forest management activities.

NOTE: The statutory date established under 38 M.R.S.A. § 438-B (5) is the effective date of state-wide timber harvesting standards. That date is "the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards." 38 M.R.S.A. §438-B (5) further provides that "the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards

E. Other Legislation

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

4. The Town Requirements:
- a. The Town is mandated to administer the State Shoreland Zoning Ordinance and the minimum requirements are contained within this Ordinance. Any development in the Shoreland Zones including great ponds, rivers, streams, tributary streams, freshwater wetlands, and coastal wetlands which satisfies the requirements of this Ordinance also satisfies the State Shoreland Zoning Administration.
 - b. The Town also administers the Floodplain Management Ordinance and any development in flood hazard zones must conform to this Ordinance.
 - c. Other Town requirements are:
 - 1) Driveway/road entrance permit;
 - 2) Sewer permit and/or a water permit

F. Boundary Map

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

SECTION II: GENERAL REGULATIONS AND STANDARDS

A. General Regulations

1. Any structure or property in the Town devoted to a lawful use at the time of adoption of this Ordinance may continue in such use until abandoned.
2. After the date of adoption of this Ordinance, all buildings, structures, land or parts thereof shall be erected, constructed, expanded moved or structurally altered in conformance with the land use, structure and performance standards herein specified for the zone in which they are located. All new lots shall be created in conformance with the lot size, structure, and performance standards herein specified for the zone in which they are located. This ordinance also applies to all land areas within 250 feet, horizontal distance of the:
 - a) Normal high-water line of any great pond or river
 - b) Upland edge of a coastal wetland, including all areas affected by tidal action, or
 - c) Upland edge of a freshwater wetland and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

And 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 wetland.

3. Normal repairs and maintenance do not need a permit from the Town as long as they do not involve expansion of a structure or use, or a change in use. This ordinance allows, without a permit the normal upkeep and maintenance of non-conforming uses and structures, including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state or local building and safety codes may require.
4. Each subdivision requires approval by the Planning Board in accordance with provisions of this ordinance and of the "Subdivision Ordinance of the Town of "Southwest Harbor". A building permit may be approved simultaneously for construction within the first year of subdivision approval.
5. No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in a 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 Town Officials. Following installation of service, the company/district shall forward the written authorization to the Town, indicating that the installation has been completed.
6. Should any section of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
7. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.
8. To be enforceable, this Ordinance must have been adopted by the Town of Southwest Harbor's legislative body and approved by the Commissioner of the Department of Environmental Protection.
9. The Code Enforcement Officer shall determine whether the property is in compliance with any applicable Ordinance and any previously issued permit. Any property deemed "not in compliance" shall not be issued any new permit until such time as the Code Enforcement Officer shall certify the property is in compliance.

B. GENERAL STANDARDS

1. STRUCTURE

a. Definition

The term structure is defined as anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of decks, patios, fences, poles, wiring and pedestals associated with service drops. The term ‘structures’ in the shoreland zone includes structures temporarily or permanently located, such as decks, patios, balconies, piers, dumpsters, and satellite dishes; but excludes incidental structures for residential use, such as picnic tables, chairs, birdhouses, flagpoles.

b. Setbacks

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

Driveways.....page 25

Parking areas.....page 28

Roads.....page 31

Signs.....page 34

- 2) Any setback measurements from the normal high-water line of and water body, stream, tributary stream or the upland edge of a wetland are horizontal distances.
- 3) The water body, tributary stream or wetland setback provision 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.
- 4) Stairways or similar structures may be allowed within the water or wetland setback area with a permit from the Code Enforcement Officer to provide shoreline access in areas of steep slopes or unstable soils provided:
 - a) The structure is limited to a maximum of Four Feet (4’) in width;
 - b) The structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, unless permitted by DEP pursuant to the Natural Resources Protection Act (NRPA), M. R. S.A. 38 § 480-Cet seq, and
 - c) The applicant demonstrates that no reasonable access alternative exists on the property.

c. Structures and uses

- 1) If more than one structure or use, or combination thereof, is constructed, established or placed on a single parcel in common ownership, all structure standards shall be met for each structure or use except in shore land zones which shall include minimum lot area per dwelling unit or use.
- 2) Dimensional requirements are specified within the structure standards for multi-family development.
- 3) 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 their 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.

- d. Minimum residential floor space in all zones is Five Hundred (500) sq. ft.
- e. Flood hazard regulations
All openings or the equivalent to the first lowest floor elevation of all new construction or substantial improvement to existing buildings and structures including basements shall be elevated at least one foot above the elevation of the 100 year flood. (See Southwest Harbor's Floodplain Ordinance).
- f. Retaining Walls
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:
 - (1) The site has been previously altered and an effective vegetated buffer does not exist;
 - (2) The wall(s) is (are) at least Twenty Five feet (25) from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - (3) 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;
 - (4) The total height of the wall(s), in the aggregate, is no more than 24”;
 - (5) Retaining walls are located outside of the One Hundred (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.
 - (6) The area behind the wall is re-vegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
 - (7) A vegetated buffer area is established within Twenty Five feet (25) 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 storm water runoff;
 - (iii) Only native species may be used to establish the buffer area;
 - (iv) A minimum buffer width of Fifteen feet (15) 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 Section VI (B) may traverse the buffer;

NOTE: If the wall and associated soil disturbance occurs within Seventy Five feet (75) 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.

2. LOTS

- a. Minimum lot area
 - 1) Land below the normal high-water line of a water body or upland edge of a wetland shall not be included toward calculating minimum lot area.
 - 2) Land beneath rights-of-ways providing access to the lots of the proposed subdivision

or any subdivisions approved after 5/3/88 shall not be included in calculating minimum lot area.

- 3) Land beneath roads serving more than two lots in Shoreland Zones and in Zone A within One Hundred-Fifty feet (150') of the NHL shall not be included toward calculating minimum lot area.

b. Shore frontage

- 1) The minimum width of any portion of any lot within One Hundred feet (100) of the normal high-water 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.
- 2) Shore frontage is measured in a straight line between the intersections of the lot lines with the shoreline.

c. Separate tracts or parcels of land:

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, or unless one or more of the lots within the Harbor, Commercial Fishery/Maritime Activity, Maritime Activity or the Residential Shoreland zones, or 250' of any freshwater wetlands, are non-conforming and the parcels were described as one lot on the recorded deed at the time of adoption of this Ordinance.

d. Lot coverage

The calculation of lot coverage in the Shoreland Zones and within 250' of the normal high-water line of Zone A shall include all non-vegetated surfaces in addition to buildings. In the other zones, lot coverage includes only buildings.

3. ROADS AND DRIVEWAYS

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

SECTION III: NON-CONFORMANCE

A. PURPOSE

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

B. GENERAL

1. TRANSFER OF OWNERSHIP

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

2. REPAIR AND MAINTENANCE

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

3. MANDATED CHANGES

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

C. NON-CONFORMING STRUCTURES

1. EXPANSIONS

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

EXCEPTIONS:

- 1) Single family residential structures in all zones and commercial structures in Zone A except any structure or portion within 75' of the normal high-water line may be added to or expanded:
 - (a) If there is no change outside the existing footprint of any non-conforming portion of the structure as it existed on the face of the earth on May 3rd, 1988, and
 - (b) The increase in height of any non-conforming part of the structure is no greater than 12' during the lifetime of the building and no higher than the maximum elevation standard for the zone.
- 2) After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded as measured in floor area or volume by thirty (30%) or more during the lifetime of the structure. No expansion is allowed towards the shore line. If the replacement structure conforms with the requirements of Section (C)(3), and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded to 30% in floor area and volume since that date. (5-4-10)

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

The completed foundation does not extend beyond the exterior dimensions of the structure except for expansion in conformity with Section III (C)(1)(a)(2) above, and

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

2. RELOCATION

- a. A non-conforming structure or part thereof may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback and other dimensional requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules.
- b. No structure or portion thereof which is less than the required setback from a property line, the road setback line, the centerline of a road, or the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be relocated either toward or along the property line(s), road(s), shoreline.
- c. In determining whether the structure relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation in order to relocate a structure in the Harbor, Commercial Fishery/Maritime Activity, Maritime Activity or the Residential Shoreland zones, or within the Shoreland Zone elsewhere, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. 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. 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 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 replanted must consist of similar vegetation and/or ground cover that was disturbed, destroyed or removed.

- 2 In all cases, 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.

3. RECONSTRUCTION OR REPLACEMENT

- a. Any non-conforming structure or part thereof 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, or from the property line, or which otherwise fails to meet the dimensional requirements of this Ordinance, and which is removed, or damaged or destroyed regardless of the cause, may be reconstructed or replaced provided that a permit is obtained within one year of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback or other dimensional requirements to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.

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 in Section III (C) ((1), as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location.

If the total amount of floor area and volume 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 Section III (C) (2) (c) above.

No structure or portion thereof which is less than the required setback from a property line, the road setback line, the centerline of a road, or the normal high-water line of a water body, stream, or upland edge of a wetland shall be reconstructed or replaced either toward or along the property line(s), road(s), or the water body, stream, or wetland edge.

- b. In determining whether the reconstruction or replacement meets the water setback to the greatest practical extent, the Planning Board shall consider in addition to the criteria in Section (C) (2) (c) above, the physical condition and type of foundation present, if any.
- c. Any non-conforming structure or part thereof which meets the water setback requirement and which is either partially or completely removed, or damaged or destroyed, may be reconstructed or replaced within one year of the date of said removal, damage or destruction, provided that the reconstructed or replaced structure conforms to all setback, height and lot coverage requirements to the greatest practical extent as determined by the Planning Board in determining whether the building reconstruction meets the Ordinance requirements to the greatest practical extent, the Planning Board shall consider the criteria in Section(C)(2)(c) above.

4. CHANGE OF USE OF A NON-CONFORMING STRUCTURE

- a. The use of a non-conforming structure may not be changed to another use unless the Planning Board after receiving a written application determines that the new use will have no greater adverse impact on the water body, tributary stream, 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, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. NON-CONFORMING USES

1. EXPANSIONS

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

- a. Such addition or enlargement may not increase the total volume or area in use by more than Thirty (30%) of the volume or area existing at the time of passage of the Development Control Ordinance on May 3rd, 1988, or subsequent amendment, or the Land Use Ordinance on June 29th, 1992, or subsequent amendment.
- b. The Planning Board shall require written certification of the area and volume of the use at the time the use became non-conforming.

2. RESUMPTION PROHIBITED

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

3. CHANGE OF USE

- a. An existing non-conforming use may be changed to another non-conforming use provided that the Planning Board finds after receiving a written application, that the proposed use is equally or more appropriate to the area than the existing non-conforming use and has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA Zone, than the former use.
- b. The determination of appropriateness shall be based on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors, or other nuisances likely to result from such change of use.
- c. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

E. NON-CONFORMING LOTS

1. VACANT LOTS

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

2. **BUILT LOTS**

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

- a. The structure may be maintained or repaired, and may be enlarged in conformity with the standards of this Ordinance.
- b. If the proposed enlargement cannot meet the dimensional requirements of this Ordinance, relief from the denial may be sought from the Board of Appeals (see SECTION IX).
- c. If the primary use of a non-conforming lot is residential, and the residential lot is non-conforming because of its size, the CEO may issue a permit for one and only one accessory structure within three (3) feet of the lot line if all other LUO Performance Standards are met in addition to the following standards:
 - 1) The accessory structure may be used for storage only and the use of the structure may not be changed.
 - 2) The accessory structure shall be no greater than eighty (80) square feet in footprint area.
 - 3) The height of the building shall be no greater than ten (10) feet and there shall be no utilities in the structure.
 - 4) No noise shall be allowed to emanate from the accessory structure other than what would be considered residential in nature.
 - 5) It shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations in the shoreland zone. In no case shall the structure be located closer to the shoreline or tributary stream than the principle structure or required setback, whichever is closer.

3. **CONTIGUOUS BUILT LOTS**

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

4. **CONTIGUOUS LOTS – VACANT OR PARTIALLY BUILT**

If 2 or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance and if all or part of the lots do not meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure, the lands involved shall be considered to be a single parcel for the purposes of this Ordinance and no portion of such parcel shall be built upon which does not meet dimensional requirements of this chapter. This subsection shall not apply to any subdivision approved by the planning board for which an approved plan was recorded in the county registry of deeds prior to the adoption of the ordinance from which this chapter is derived.

5. **BOUNDARY ADJUSTMENT**

Boundaries may be adjusted provided that the resulting lots are not more non-conforming.

SECTION IV: DEFINITION OF ZONES

For the purpose of this Ordinance the Town of Southwest Harbor is hereby divided into eight zones. The zones are shown on a map entitled "Town of Southwest Harbor, Maine, Land Use Map", dated June 29th, 1992, and as amended. (A reduction of this map is included in the Appendix.) The Town of Southwest Harbor has mapped its natural resources, roads, and utilities on GIS (Geographical Information System) Maps. When the density limitation within a zone and the density limitation on the map "Town of Southwest Harbor, Maine, Subsurface Sewage Disposal, Soil Suitability/State Plumbing Code" are in conflict, the more restrictive density shall apply. These maps, certified by the attested signature of the Municipal Clerk, are hereby made part of this Ordinance, and copies shall remain on file in the Town Office.

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

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

ZONE C Delete Zone C from the Land Use Ordinance: Replaced by above ordinance

COMMERCIAL FISHERY/MARITIME ACTIVITY ZONE

Shoreland areas within the Harbor which already contain or appropriately might contain commercial uses primarily related to the traditional fishing industries. Recreational water-dependent uses are limited in order to protect berthing space and onshore staging areas for commercial fishing enterprises.

MARITIME ACTIVITY ZONE

Shoreland areas of restricted size within the Harbor which already contain or appropriately might contain commercial uses primarily related to marine recreation, commerce, and services.

HARBOR ZONE

The other shoreland areas within the Harbor which allow not only the same uses as the Maritime Activity Zone, but also encourage the development of single family residential use.

RESIDENTIAL SHORELAND ZONE

Shoreland residential areas on both tidal and fresh water, but not in the harbor area.

RESOURCE PROTECTION ZONE

Those land and water areas recognized to be of exceptional natural character and importance, including floodplains, selected estuaries, and small islands, in which development would lower water quality, significantly disturb essential plant and animal relationships, or general scenic and natural values. This zone shall include the following areas when they occur within the limits of the shoreland zone, except that as which are currently developed and areas which meet the criteria for the Zone A, Harbor, Commercial Fishery/Maritime Activity, and Maritime Activity Districts need not be included within the Resource Protection Zone:

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. Coastal wetlands are rated as of January 1, 1973, and freshwater wetlands are rated as of December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond, and have a surface elevation at or below the water level of the great pond during the period of normal high water. "Wetlands associated with great ponds" are considered to be part of that great pond.

Areas within the 100-year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

Areas of two or more contiguous acres with sustained slopes of 20% or greater.

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.

Areas along coastal wetland which are subject to severe erosion or mass movement, such as steep coastal bluffs.

SECTION V: STANDARDS FOR THE ZONES

ZONE A (See applicable General Regulations and Standards)

A. LAND USE STANDARDS

1. The following uses are not permitted:
 - a) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
 - b) Non-maritime industry
2. All other uses are permitted subject to lot, structure and performance standards.

B. LOT STANDARDS

1. Lot area minimum: 6500 square feet.
2. Shore frontage residential minimum: One Hundred Feet (100').

C. STRUCTURE STANDARDS

1. Set-backs (minimum):
 - a) 10' from edge of paved roadway; sidewalks must be provided (standards in Southwest Harbor Road Ordinance)
 - b) 10' from lot lines
EXCEPTION: Construction permitted either on the lot line as an agreed common firewall, or set back at least 5' from the lot line, provided a firewall is used.
 - c) 75' from the upland edge of a coastal wetland";

EXCEPTION: 25' for a non-residential structure
 - d) 75' from the upland edge of a wetland
 - e) 25' from the normal high-water line of an intermittent stream and 75' from a perennial stream (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained)
 - f) 75' from the shoreline of a tributary stream.
2. Height:
 - a) 30' maximum within 150' of the normal high-water line of the Harbor Shoreland Zone
 - b) 40' maximum within the rest of the Zone
3. Lot coverage:
 - a) 70% within 150' of the normal high-water line of a water body (coverage in this context includes all impervious non-vegetated surfaces)
 - b) no limit within the rest of the zone.

ZONE B (See applicable General Regulations and Standards)

A. LAND USE STANDARDS

All uses are permitted.

B. MINIMUM LOT STANDARDS AREA

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

1. Minimum lot size:

- a. 40,000 sq. ft. (If Structures are serviced by Private Well and Private Septic System)
- b. 30,000 sq. ft. (If Structures are service by non-seasonal Public Water and Private Septic System)
- c. 20,000 sq. ft. (If Structures are serviced by Private Water and Public Sewerage)
- d. 15,000 sq. ft (If Structures are serviced by non-seasonal Public Water and Public Sewerage)

Exception: Minimum lot area within 250' of the high water line will be 40,000 square feet.

C. STRUCTURE STANDARDS

1. Minimum set-backs for all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks and signs:

- a) Lot lines – 15'
- b) State road – 55' from the centerline
- c) Town road – 20' from the edge of the right-of-way but not less than 35' from the centerline
- d) Private road – same as Town road if service to three or more lots

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

2. Other Minimum set-backs for all structures:

- a) Upland edge of a wetland – 75'
- b) Intermittent stream (NHL) – 25'
- c) Perennial stream (NHL) – 75' (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).
- d) Tributary Stream (NHL) – 75'

3. Height:

- a) 30' maximum within 250' of the normal high-water line
- b) 40' maximum within the rest of the zone

4. Individual Lot coverage: Includes structures only

- a. 10% if structures are serviced by private well and private septic system
- b. 12% if structures are serviced by non-seasonal public water and private septic system
- c. 15% if structures are serviced by private water and public sewerage
- d. 3,000 sq ft or 20%, whichever is greater, if structures are serviced by non-seasonal public water and public sewerage

EXCEPTION:

- a. 20% within 250' of the normal high-water line of a water body (includes structures and non-vegetated surfaces)
 - b. 40% lot coverage by structures for commercial uses
 - 1. May include multi-family structures in excess of three dwelling units.
 - 2. Seasonal cottages with occupancy less than six months.
 - 3. Property to be in common ownership
 - 4. No condos or condo associations allowed
 - 5. All performance standards must apply
5. Minimum Shore Frontage
- A) Residential Use - 150'
 - B) Non-Residential Use - 200'

COMMERCIAL FISHERY/MARITIME ACTIVITY ZONE

(See applicable General Regulations and Standards)

A. LAND USE STANDARDS

The following uses are not permitted:

- 1) Hotels, motels, boatels, inns or similar transient accommodation
- 2) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
- 3) Non-maritime industrial use
- 4) Marinas
- 5) New residential use

EXCEPTION:

- a. Commercial Fishery/Maritime Activity Uses: No more than two (2) residential units per lot are permitted as accessory uses provided that the following criteria are met:
 - The existing use has been established for at least 2 years;
 - The residential units must not be on the 1st (ground) floor; and
 - The total area of the building(s) devoted to all accessory uses is less than 40% of the total area of the building(s).
- b. Other Commercial Uses: No more than one (1) residential unit per lot is permitted as an accessory use provided that this unit meets the same criteria established above in #a.

B. LOT STANDARDS

- Minimum lot size: a. none for a Commercial Fisheries/Maritime Activity Use
 b. 6,500 sq. ft. for other uses

C. STRUCTURE STANDARDS

1. Set-backs (minimum):

- a) 15' from lot lines – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.
- b) 20' from the edge of the right-of-way of any Town or Private Road but not to be less than 35' from the centerline of the roadway all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.

EXCEPTION: A 6' minimum setback from the edge of a road which provides access to a single family residential unit on a second lot.

- c) No setback from the normal high-water line of a water body, a tributary stream, perennial stream, or the upland edge of a wetland, Except:
 - Residential structure – 75', unless the structure contains a residential accessory use to the commercial use in which case the residential use shall be setback at least 25 feet.
 - Non Commercial-Fisheries/Maritime Activity structure 25' (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).

2. Height: 25' maximum

EXCEPTION: 35' on land only, if more than 50% of the floor area is occupied by a Commercial Fishery Activity.

3. Lot coverage: 70% maximum (coverage in this context includes all non-vegetated surfaces).

Section V: MARITIME ACTIVITY ZONE

(See applicable General Regulations and Standards)

A. LAND USE STANDARDS

The following uses are not permitted:

- 1) Hotels, motels;
- 2) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
- 3) Non-maritime industrial use
- 4) New residential use on the North side of Shore Road

EXCEPTION:

Commercial Uses: New Residential units are permitted on the North side of Shore Road provided that the following criteria are met:

- That the residential units must not be on the 1st (ground) floor;
- Residential use shall not be the primary use of the lot
- The total area of the building(s) devoted to all residential and accessory uses shall be less than 50% of the total area of the buildings(s).
- If the primary use of the lot is vacated for more than one (1) year, any and all residential units on the lot shall not be occupied until a primary, non-residential use of the lot is installed; and
- The Lot and structure Standards set forth below are met.

B. LOT STANDARDS

Minimum lot size:	6,500 sq. ft. per use
Minimum Shore Frontage:	1) None for Maritime Activity uses
	2) 150 feet per use for all other uses

C. STRUCTURE STANDARDS

1. Set-backs (minimum):
 - a) 15' from lot lines – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs
 - b) 20' from the edge of the right-of-way of any Town or Private Road but not to be less than 35' from the centerline of the roadway – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.

EXCEPTION: A 6' minimum setback from the edge of a road which provides access to a single family residential unit on a second lot.

- c) Maritime Activities: None from the normal high-water line of a water body, a tributary stream, perennial stream, or the upland edge of a wetland if use is water dependent.
- d) Other Commercial Uses: 25' from the shoreline, (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained.

- e) All other Structures: 75' from the shoreline. (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).
- 2. Height: 25' maximum.
- 3. Lot coverage: 70% maximum (coverage in this context includes all non-vegetated surfaces).

HARBOR ZONE (See applicable General Regulations and Standards)

A. LAND USE STANDARDS

1. The following uses are not permitted:
 - a) Multi-family residential use
 - b) Hotels, motels, boatels, inns or similar transient accommodation
 - c) Commercial boat storage within structures (structures existing on the lot at the time of the adoption of this Ordinance may be used but not expanded)
 - d) Non-maritime Industrial use
2. No more than one (1) residential unit per lot is permitted as an accessory use to a commercial use provided that the following criteria are met:
 - The existing use has been established for at least 2 years;
 - The residential units must not be on the 1st (ground) floor; and
 - That the total area of the building(s) devoted to all accessory uses is less than 40% of the total area of the building(s).

B. LOT STANDARDS

1. Minimum lot size:

Non-residential use:	1)	10,000 sq. ft./sewered lots
	2)	20,000 sq. ft./unsewered lots
Residential use:		20,000 sq. ft.
2. Minimum shore frontage for residential use: 100'

C. STRUCTURE STANDARDS

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

EXCEPTION: A 6' minimum setback from the edge of a lane which provides access to a single family residential unit on a second lot.

 - (I) For traffic safety reasons, the area between the edge of the right-of-way and the structure setback line must indeed a vegetated strip with a minimum depth of 6 feet along the nearest edge of the right-of-way. Access driveways shall be permitted to cross the vegetative strip.
 - (II) If parking lots for multi-family residential or for any non-residential uses are placed within the setback area, the vegetative strip shall be densely planted with shrubs or bushes, or a berm constructed, so that the height of the buffer shall be of at least three feet, but shall not obstruct the vision of vehicles at any access driveway
 - (III) Any requirement for landscaped buffering required in SECTION VI. A. is a separate requirement and is in addition to the vegetative strip noted above.
2. Minimum set-backs for structures:
 - a) Upland edge of a wetland – 75' (exception: non-residential structure – 25')
 - b) Intermittent stream (NHL) – 25'
 - c) Perennial stream (NHL) – 75' (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).
 - d) Tributary Stream (NHL) – 75'
3. Height: 25' maximum
EXCEPTION: 30' on land only, if more than 50% of the floor area is occupied by a maritime Activity
4. Lot coverage: 70% maximum (coverage in this context includes all non-vegetated surfaces).

RESIDENTIAL SHORELAND ZONE (See applicable General Regulations and Standards)

A. LAND USE STANDARDS

1. The following uses are not permitted:
 - a) Commercial
 - b) Industrial
 - c) Governmental
 - d) Institutional
 - e) Multi-family residential
2. Lobster, scallop, mussel and similar commercial fishing activities may be considered a home occupation provided:
 - a) The activity involves only one boat less than 40'; and
 - b) The operation employs not more than 2 persons including the owner.

B. LOT STANDARDS

1. Minimum lot size: 40,000 sq. ft.
2. Minimum shore frontage: 150'

C. STRUCTURE STANDARDS

1. Set-backs (minimum):
 - a) 15' from lot lines – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs
 - b) 55' from the centerline of a State roadway – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.
 - c) 20' from the edge of the right-of-way of any Town or Private Road but not to be less than 35' from the centerline of the roadway – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.

EXCEPTION: A 6' minimum setback from the edge of a road which provides access to a single family residential unit on a second lot.
 - d) 100' from the normal high-water line of a great pond
 - e) 75' from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland (if sustained slopes exceed 20%, a 100' setback of undisturbed vegetation shall be maintained).
2. Height: 30' maximum
3. Lot coverage: 20% maximum (coverage in this context includes all non-vegetated surfaces).

RESOURCE PROTECTION ZONE

(See applicable General Regulations and Standards)

A. LAND USE STANDARDS

1. No residential, commercial, or industrial development is permitted.
2. Non-residential facilities for educational, scientific, nature interpretation or other governmental or institutional purposes are permitted.

B. LOT STANDARDS

Minimum shore frontage: 150'

C. STRUCTURE STANDARDS

1. Set-backs (minimum):
 - a) 15' from lot lines – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs
 - b) 55' from the centerline of a roadway – all structures except antennae, boundary walls, driveways, parking lots, roads, sidewalks, and signs.
 - c) 250' except for uses permitted by Section A. above, in which case the setback requirements are from the shoreline: 100' from a great pond or 75' from other water bodies, tributary streams and wetlands.
2. Height: 20' maximum
3. Lot coverage: 20% maximum (coverage in this context includes all impervious non-vegetated surfaces).

SECTION VI: PERFORMANCE STANDARDS

A. BUFFERING

1. PURPOSE

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

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

2. REQUIREMENTS

- a. Plantings shall be permanent. They shall be arranged and maintained so as not to obscure the vision of traffic.
- b. Buffering is required in the following situations:
 - 1) Non-residential and multi-family residential uses and structures (including parking areas, driveways, and roads) shall be buffered from adjacent residential and/or vacant lots.
 - 2) With the exception of development in Zone A and the Harbor Shoreland Zones, all existing and proposed non-residential and multi-family residential uses and structures (including parking areas) which occupy an aggregate of more than 4,000 square feet of land shall be buffered from roads. If the building is less than 2,500 square feet and is closer to the road than the parking, the building itself does not need to be buffered from the road. Free standing signs do not need to be buffered from roads.
 - 3) Any increase in impact/activity as described in the “purpose” paragraph above caused by the expansion of an existing use or structure shall require buffering of the expansion.
 - 4) Mining, sand and gravel extraction, landfills, timber harvesting operations, bulk storage areas, mobile home parks, electrical substations, and storage or collection of discarded automobiles will be buffered from all adjacent lots and roads in all zones.
- c. When a buffer is required, a landscaping plan must be submitted as part of the general site plan or as a separate drawing. This shall include:
 - 1) Owner’s name, lot number, date, scale, north arrow
 - 2) Existing and proposed buildings, structures, roads, driveways, and parking areas
 - 3) Adjoining roads and land uses
 - 4) Existing and proposed planted areas accompanied by a description of the trees, hedges, ground vegetation and other plant material including number and layout of trees, common or botanical names of plants, intended fully-grown heights above ground, distances between trees planted for screening purposes, and types of ground covering vegetation.

- 5) Details of the construction of any fences, trellises, walls, berms or sunken fences (ditch-and-wall) must be included.

3. IMPACT OF USE

a. Definition of Impact Level:

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

b. Determination of Level of Impact

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

4. STANDARDS

- a. A buffer should be deep enough, high enough, and sufficiently dense to meet the objectives described in 1 (Purpose). Note that the purpose includes not only screening traffic and other activities on the applicant's site, and large buildings, but also preserving the privacy of adjoining residents (or potential residents).
- b. In the case of existing natural tree growth, this may therefore need to be supplemented by additional low-level planting, hedges, fences or berms. Existing low-level growth may need to be supplemented by trees.
- c. The buffer may include fences, hedges or berms designed to ensure that the purpose is met. It is not intended that landscaped buffering should be required in situations where it would interfere with neighbors' views of the water.
- d. Note that the combined screening effect of trees, low-level planting, hedges, fences or berms is intended to be effective all year round. Plant material should not all be of deciduous types. Recommended varieties of trees and shrubs include white cedar, pine, spruce, hemlock, columnar arborvitae and juniper. Illustrations of plant materials and buffering designs are available in the Town Office.

5. EXECUTION AND MAINTENANCE

- a. The Buffering Plan shall be implemented as required before commencement of the permitted use unless the CEO determines that due to the season, weather or other circumstance the buffering cannot be completed. The CEO shall then specify the date upon which the buffering shall be in compliance.
- b. The ongoing maintenance of the approved landscape plan is the responsibility of the property owner. The signature of the applicant on the permit application denotes agreement to this requirement.

6. CONSERVATION COMMISSION

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

B. CLEARING or REMOVAL OF VEGETATION STANDARDS OTHER THAN TIMBER HARVESTING

1. Resource Protection Zone

- a. In a Resource Protection Zone abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75' inland from the normal high-water line, except to remove safety hazards.
- b. Elsewhere, the clearing of vegetation shall be limited to that which is necessary for uses expressly authorized in the Zone.

2. In Shoreland Zone areas other than those described in Section B.1 above

- a. A strip of land extending 100' from the normal high-water line of any great pond and 75' from any water body, tributary stream, or the upland edge of a wetland, shall be preserved as a buffer strip of vegetation, except to allow for the development of permitted uses, according to the following rules:
 - 1) There shall be no cleared opening greater than Two Hundred Fifty (250) sq. ft. 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 shrub crown. However, a footpath not to exceed 10' six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
 - 2) 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 purposes of Section (b)(2)(a)(2), a well distributed stand of trees adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA shall be defined as maintaining a rating score of 24 or more in each 25' x 50' rectangular (1250 square feet) as determined by the following rating system;

Diameter of Tree at 4 1/2'	
Above Ground Level Points	
2 – < 4 inches	1
4 < 8 inches	2
8-12 inches	4
12 inches or greater	8

Adjacent to other water bodies, tributary streams and wetlands, a “well distributed stand of trees” is defined as maintaining a minimum rating score of 16 per 25-foot by 50 –foot rectangular area.

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 is 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 Section VI.B.a.2 "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 1/2) 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.

- 3) Notwithstanding the above provision, no more than 40% of the total volume of trees 4" or more in diameter, measured 4 1/2' above ground level, may be removed in any 10 year period.
 - 4) In order to protect water quality and wildlife habitat, existing vegetation under 3' 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 allowed by this Ordinance.
 - 5) Pruning of tree branches on the bottom 1/3 of the tree is allowed.
 - 6) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.
- b. At distances greater than 100' from the shoreline of a great pond and 75' from the shoreline of other water bodies, tributary stream or upland edge of a wetland:
- 1) There shall be permitted on any lot in any 10 year period, selective cutting of not more than 40% of the volume of trees 4" or more in diameter measured 4 1/2' above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the 40% calculation. Volume may be considered to be equivalent to basal area.
 - 2) 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% of the lot area within the shoreland zone or 10,000 sq. ft., whichever is greater, including land previously cleared.
EXCEPTION: Shall not apply to the Residential Shoreland Zone.
- 3. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
 - 4. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section VI (B).

C. DRIVEWAY AND DRIVEWAY OPENING STANDARDS

- 1. A driveway is a vehicular way within a lot. There may be more than one driveway on a lot.
- 2. The width of the vehicular way shall be designed to accommodate adequately the volume and character of vehicles anticipated to be attracted to the development.
 - a. RESIDENTIAL DRIVEWAY:
 - 1 – 2 dwelling units no minimum
 - 3 – 10 dwelling units 9 feet
 - Over 10 dwelling units 18 feet

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

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

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

3. SETBACK STANDARDS:

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

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

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

4. CURB CUT STANDARD

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

- 5. Any driveway over 500' in length may be required to be of greater width and/or include turn-outs as recommended by the Fire Chief of Southwest Harbor.
- 6. New driveways are prohibited in a Resource Protection Zone except to provide access to permitted uses within the Zone. A driveway may also be approved by the Planning Board in a Resource Protection Zone upon a finding that no reasonable alternative route or location is available outside the Zone. When a driveway is permitted in a Resource Protection Zone, the driveway shall then 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.
- 7. Any new driveway opening onto a Town way must obtain a "Road Opening" permit from the Town. A new driveway opening onto a State road must obtain the necessary permits from the State, or a letter from the State saying that the permits are not needed.
 - a. The Town and State roads must be returned to their original condition upon completion of the driveway opening construction.
 - b. Specifications for the required storm water drainage culvert size are contained in Southwest Harbor's Road Ordinance. The property owner is responsible for the first culvert. The Town will maintain and replace them.
 - c. The Town Road Superintendent shall be notified of the date of construction of the driveway opening on both a Town and a State Road.
- 8. Any new driveway opening off a private road may require a culvert as determined by the CEO or Public Works Director, sized accordingly to the SWH Road Ordinance standards. The owner of

the property being served by the driveway shall be responsible for the installation, maintenance and future replacement. (5-4-10)

9. Drainage Standards:

In order to prevent driveway surface drainage from directly entering water bodies, tributary streams or wetlands:

- a. Driveways shall be design, 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.
- b. 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.

10. Ditch Relief Culverts, Drainage Dips and Water Turnouts Design in Shoreland Zone

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 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 driveway at intervals no greater than indicated in the flowing table:

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

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

11 Driveway Grade Limitation in Shoreland Zone

Driveway grades shall be no greater than ten (10) percent except for segments or less than two (200) feet.

12 Maintenance Standards in the Shoreland Zone

- a. 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.

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

D. EROSION and SEDIMENTATION CONTROL STANDARDS

1. All activities which involve filling, grading, excavation or other similar activities which result in un-stabilized soil conditions shall require a soil erosion and sedimentation control plan in accordance with the current Maine Erosion & Sediment Control BMP'S (Best Management Practices). That plan shall be submitted to the permitting authority for approval, and shall include, where applicable, provisions for:
 - a. mulching and re-vegetation of disturbed soil
 - b. temporary runoff control features such as hay bales, silt fencing or diversion ditches
 - c. permanent stabilization structures such as retaining walls or riprap (5-4-10)
2. Development shall be designed to fit with the topography and soils of the site, so as to create the least potential for erosion. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
3. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
4. Any exposed ground area shall be temporarily stabilized as soon as possible, but no later than one (1) week from the time it was last actively worked, and permanently stabilized within nine months of the initial date of exposure by use of riprap, sod, seed and mulch, or other effective measures. In addition:
 - a. Where mulch is used, it shall be applied at a rate of at least 1 bale per 500 sq.ft. and shall be maintained until a catch of vegetation is established.
 - b. Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - c. Additional measures shall be taken where necessary in order to minimize siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
5. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a 25 year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

E. EXTERIOR LIGHTING STANDARDS

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

F. FILL and EXCAVATION STANDARDS

1. A fill or excavation permit is not required for the movement of less than 100 cubic yards on a site in any twelve (12) month period. Fill and excavation activities are prohibited within 75 feet, horizontal distance, of the normal high-water line of a stream.
2. A fill or excavation permit is required for the moving of 100 cubic yards or greater of inert fill if the operation is not associated with permitted construction.
3. Upon completion of work, the permit shall require the site to be properly graded (not steeper than 2:1 or such lesser slope as may be necessary to prevent erosion) and to be re-vegetated.

G. FIRE PROTECTION STANDARDS

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

H. FLOOD HAZARD AREA STANDARDS

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

I. HANDICAPPED ACCESS STANDARDS

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

J. HEAVY COMMERCIAL or INDUSTRIAL POLLUTANT STANDARDS

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

K. NOISE STANDARDS

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

L. PARKING and LOADING STANDARDS

1. GENERAL STANDARDS FOR PARKING SPACES

- a. The parking standards in this ordinance are to be satisfied by off-street parking (on-site or off-site).
- b. Standards for additions to a use or a change in use.
 - 1) New commercial uses in Zone A may be added without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Existing commercial uses in Zone A may be expanded or changed without meeting the parking standards (Section VI.L.2.) contained in this ordinance provided that the shape or size of the structure footprint(s) is not changed. Elimination of any parking spaces or any changes in shape or size of the structure footprint(s) will require full compliance with all parking standards.
 - 2) Except for commercial uses in Zone A, any additions to a use or a change in use, will require compliance with the parking and/or loading standards for the existing use, the addition or the change in use. Those land uses which are unable to comply with the above will provide as much of the parking and loading for the existing use as they can, and all the additional parking and loading required by the addition or use change.

EXCEPTION: Marinas are an exception to this rule: all the required parking must be provided.

2. STANDARDS FOR PARKING SPACE(S) BY USE

- a. Automobile shops (sales, parts, body, rental):
 - 1 space per 200 sq. ft. of sales area plus
 - 3 spaces per service bay plus
 - 1 space per 3 employees plus
 - 1 space for each 3,000 sq. ft. of open sales lot area devoted to the sale, display and rental of vehicles
- b. Health Institutions:
 - 1 space per 3 beds
 - 1 space per 2 employees
- c. Hotels, inns, cabins, cottages, etc:
 - 1 space per 1 sleeping room
 - 1 space per 2 employees
- d. Maritime activities – commercial and recreational:
 - 1 space per 4 boat berths and/or 1 space per 4 moorings;
 - 1 space per 4 boat passengers of the rated passenger capacity of vessels carrying passengers for hire;
 - 1 space per 2 employees; and
 - 1 space per 20 berths and moorings for dedicated drop-off areas required at DocksideMaritime activities – industrial:
 - 1 space per 2 employees
- e. Nursery or Greenhouse
 - 1 space per 1,000 sq. ft., of floor area, plus one space per 2,000 sq. ft. of land area used for retail sales
- f. Offices (including medical) and public buildings:
 - Zone A and Shoreland Zones – 1 space per 500 sq. ft. of gross floor area

- All other zones – 1 space per 200 sq. ft. of gross floor area
- g. Residential Unit:
 - Single family unit – 2 spaces per unit
 - Single family unit with accessory residential unit – 3 spaces
 - Multi-family units – 2 spaces per unit
- h. Restaurants, other eating and drinking establishments:
 - Zone A and Shoreland Zones – 1 space per 6 seats; 1 space per 4 employees
 - All other Zones – 1 space per 4 seats; 1 space per 2 employees
- i. Retail stores including service (Laundromats, etc.):
 - Zone A and Shoreland Zones – 1 space per 500 sq. ft. of floor area accessible to the public
 - 1 space per 4 employees
 - All other zones – 1 space per 200 sq. ft. of floor area accessible to the public
 - 1 space per 2 employees
- j. Schools:
 - 1 space per classroom and 1 space per 2 employees
- k. Theaters, churches, and other assembly places:
 - Zone A – 1 space per 200 sq. ft. of gross floor area
 - All other zones – 1 space per 100 sq ft of gross floor area
- l. Warehouses and storage facilities:
 - 1 space per employee
 - 1 space per 10 storage units
- m. Any use whose parking standards are not specifically detailed shall provide parking equivalent to that use whose characteristics are most similar.

3. LOADING BAY STANDARDS

- a. Loading facilities shall be located entirely on (or as close as possible to) the same lot as the building or use to be served, so that trucks, trailers, and containers for loading or storage shall not be located upon any Town way.
- b. The following minimum off-street loading bays shall be provided and maintained in the case of new construction, alterations, and changes of use:

less than 2000 sq. ft. =	not required
2000 – 15,000 sq. ft. =	1 bays
15,001 – 30,000 sq. ft. =	2 bays
30,001 – 50,000 sq. ft. =	3 bays
more than 50,000 sq. ft. =	4 bays
- c. Minimum loading bay size: 12' wide by 50' long by 14' high.

4. PARKING AREA DESIGN STANDARDS

- a. Specifications for layout of parking areas shall be similar to those found in the most recent “Architectural Graphic Standards” or a similar publication.
- b. The minimum parking space shall be 9 1/2' by 18'. (Spaces for a vehicle and boat trailer and/or a recreational vehicle shall be 40 feet long.) The spaces must be delineated for all but single family uses.
- c. Aisle width:
 - 24' two way
 - 16' one way only for 60 degree parking
 - 12' one way only for 45 & 30 degree parking
- d. The layout and design of vehicular and pedestrian ways, including walkways, interior drives, and parking spaces, shall provide for safe general interior circulation, separation of pedestrian and vehicular traffic, service traffic, and loading areas.

- e. Required setbacks for parking areas:
 - 1) In the Shoreland Zones, parking areas shall meet the shoreline setback requirements for structures for the Zone in which such areas are located, except that in the CFMA and MA zones and Zone A, parking areas shall be set back at least 25' from the normal high-water shore-line.
 - 2) In all zones the lot line setback is that which is necessary to satisfy the design standards, but no parking area shall be closer to the lot line than 6' except abutting non-residential parking areas in Zone A.
 - f. Non-residential and multi-family residential off-street parking and loading areas, where not enclosed within a building, shall be buffered as described in SECTION VI. Paragraph A. Buffering and Landscaping.
 - g. Parking areas shall be planted with canopy trees and shrubs within the area. There shall be one tree planted for every 8 spaces. This requirement applies to all spaces when an area is expanded.
 - h. The site layout shall provide for adequate location, number, and control of access points and shall incorporate adequate site distance and turning lanes where justified by existing and projected traffic flow. There shall be not more than one ingress and one egress in any 100' of road frontage. The ingress and egress shall meet the standards of the Maine Department of Transportation. When required, MDOT Entrance Permits must be obtained before approval.
 - i. Access points from a public road shall be so located as to minimize traffic on local streets of a primarily residential character.
 - j. All parking area entrances and exits shall be kept free from visual obstructions higher than 3 feet above street level for a distance of 25 feet measured along the intersecting entrance/exit and street lines in order to provide visibility for entering and leaving vehicles.
 - k. Provision shall be made for providing and maintaining convenient and safe emergency vehicle access at all times.
 - l. The areas shall be designed to prevent storm water runoff from flowing directly into a water body, and where feasible, to retain all runoff on-site.
 - m. Parking areas shall be arranged so that vehicles do not back onto any road.
 - n. Parking spaces shall be delineated and planted as required and made available for use prior to the commencement of the permitted use.
5. OFF-STREET/OFF-SITE PARKING shall be considered accessory to the principal use and shall be permitted only when parking requirements cannot be met on-site. The following criteria shall apply to an off-site area:
- a. All of the requirements for an on-site parking area.
 - b. The distance between the proposed off-site parking area must be a reasonable and convenient distance for the proposed user.
 - c. The proposed access route between the off-site parking area and the site must provide for safe pedestrian and vehicle traffic.
 - d. Drop-off areas shall be provided at the site and the off-site parking area.

M. ROAD STANDARDS

1. PURPOSE

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

2. ROAD DESIGN STANDARDS

- a. Any road intended for adoption by the Town as a public road shall be designed and constructed to the specifications of the Road Ordinance of the Town of Southwest Harbor, 1990 and as amended.
- b. New private roads shall be designed according to one of the following standards.
 - 1) Access to one single family residential use on a second lot
Right-of-way: 12' minimum
Vehicular way: 9' minimum
 - 2) Access to residential uses only, including rental cottages
Right-of-way: 24' minimum
Vehicular way: 9' minimum to access not more than 10 residential units
18' minimum for access to more than 10 residential units
 - 3) Access to all uses
Right-of-way: 30' minimum (36' minimum if the vehicular way is to be 24' wide)
Vehicular way: 20' minimum (not more than 15% of the vehicles or combination of vehicles of gross weight of more than 12,000 pounds.)*

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

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

- c. Existing roads or new roads where they are sited on a right-of-way existing as of May 2, 1994 must comply with the following standards.
 - 1) If the right-of-way is less than 16', only one single family residential use is permitted per undeveloped lot of record as of May 3, 1993. If there is existing development, on the right-of-way, only additional single family residential use is permitted. The vehicular way shall have a 9' minimum width.
 - 2) If the right-of-way is 16' or greater, but no wider than 26', only residential expansion, is permitted. The vehicular way shall be as specified under 2.b.2) above.
Exception: In Zone A only. Public parking areas may be accessed by Town roads provided that:
 - 1) R. O. W. is a minimum of 22' in width
 - 2) Travel way is a minimum of 16' in Width
 - 3) If the right-of-way is 26' or wider, then all development can occur and the vehicular way shall be as specified under 2.b.3) above.
- d. All private roads except the road providing access to a single family residential use on a second lot must meet the design specifications in the Southwest Harbor Road Ordinance, Section VII.B.
- e. Road banks shall be no steeper than a slope of 2:1, and shall be graded and stabilized in accordance with the standards for erosion and sedimentation control contained in Section VI (D), Erosion and Sedimentation Control Standards.
- f. In order to prevent road surface drainage from directly entering water bodies, tributary

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

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

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

1) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

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

2) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.

3) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road.

4) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

i. Road grades in the Shore Land Zone shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.

3. SETBACK STANDARDS

a. Right-of-way setbacks from structures

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

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

second lot.

- b. Road surface setback
 - 1) No part of any roadway surface shall be located within 6' of a side property line, or the right-of-way lines except road surface providing access to a single family residential use on a second lot.
 - 2) If the road surface is within 15' of the lot line of a residential use, a buffer must be provided (See BUFFERING STANDARDS, Paragraph A. of this SECTION). The Planning Board will determine the adequacy of the buffer as a deterrent for noise and dust in relation to the use of the road.
 - 3) Existing public roads may be expanded within their legal road right-of-way regardless of their setback from the a water body tributary stream or wetland.

Roads shall be set back at least one-hundred (100) feet from the normal high-water line of a great pond, and seventy-five (75) feet from the normal high -water line of other 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 road setback requirement shall be no less than fifty (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/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

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

- 4) New roads are prohibited in a Resource Protection Zone except that the Planning Board may grant a permit to construct a road to provide access to permitted uses within the Zone. A road may also be approved by the Planning Board in a Resource Protection Zone upon a finding that no reasonable alternative route or location is available outside the Zone. When a road is permitted in a Resource Protection Zone, the road shall then be set back as far as practicable from the normal high-water line of a water body, stream, or upland edge of a wetland.
- 5) Any new road opening onto a Town road must obtain a "Road Opening" permit from the Town. A new road opening onto a State road must obtain the necessary permits from the State or a letter from the State saying the permits are not needed.
 - a. The Town and State roads must be returned to their original condition upon completion of the road opening construction.
 - b. Specifications for the required storm water drainage culvert size are contained in Southwest Harbor's Road Ordinance. The property owner is responsible for the first culvert. The Town will maintain and replace them.
 - c. The Town Road Superintendent shall be notified of the date of construction of the road opening on both a Town and a State Road.

N. SEWAGE DISPOSAL STANDARDS

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

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

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

2. When the Town sewer system is to be used, a permit must be obtained from the Town of Southwest Harbor's Sewer Department. This permit plus payment (or a letter of intent to pay) must be filed in the Town Office before a building permit can be issued. The sewer permit certifies compliance with the Southwest Harbor Sewer Ordinance.

O. SIGN REGULATION STANDARDS

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

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

- a. Any sign which was lawfully in existence prior to June 29th, 1992; provided, however, any change in size, construction, location, or lighting of said sign shall constitute a new sign and such change shall be governed by the terms of this Ordinance.
 - b. Customary holiday decorations.
 - c. House addresses, family name signs, and no trespassing signs.
 - d. Traffic control signs.
 - e. Public safety signs.
 - f. A flag signifying that a business is open, or a national flag, provided it does not cause a hazard.
 - g. Directional signs solely indicating ingress and egress placed at driveway locations, containing no advertising material and having a display area not exceeding three (3) square feet.
 - h. An identification sign erected over or by the doorway or entrance to the building which does not exceed 10% of the area doorway or entrance.
 - i. Real estate signs, not to exceed six (6) sq.ft. in area, attached to a building or free standing, may be erected advertising the sale, lease, or rental of a premises and shall be removed by the owner or agent when the property is sold or leased. (No larger Real Estate sign is permitted by this Ordinance.)
 - j. One development or construction sign not to exceed 32 square feet in area attached or free standing, may be erected provided such sign shall be limited to a general identification of the project and shall be removed within thirty days after completion of the project.
 - k. Permanent signs on vehicles regularly and customarily used to transport persons or property for the business.
2. Temporary signs excluding street banners, sandwich signs and signs within vehicles, are allowed without a permit for a period not to exceed thirty (30) days in any one calendar year for any one commercial premises or use, provided they comply with the Ordinance.
 - a. The size of such sign may not exceed twelve (12) square feet.
 - b. The sign or signs are to be promptly removed by the person posting them.
 - c. Street banners for special events may be posted upon receipt of a written permit. The size of a street banner shall be no larger than 2' in height and 50 sq.ft. in area. The

applicant shall provide evidence of liability insurance protection for any damage resulting from the placement of said street banner. The applicant shall remove the street banner upon termination of the permit.

3. No existing or new sign shall be permitted to cause a sight, traffic, health or welfare hazard, or to result in a nuisance due to illumination, placement, or manner of construction. The sign must be kept clean, neatly painted.
4. All signs which no longer advertise a bonafide business, product sold, activity or campaign being conducted, or public notice, shall be taken down and removed by the owner, agent or person having the beneficial use of the building or premises upon which such sign may be found.
5. Awnings are allowed without a permit, but they must be at least 7' above sidewalks and cannot extend over a road surface. Signs with lettering no greater than 6" are permitted on the "fringe" of the awnings, but a sign permit from the Town must be obtained. Each sign counts towards the total of permitted signage. No illuminated awnings are permitted.
6. STANDARDS:

NUMBER OF SIGNS

- a. Free-standing signs shall be limited to one (1) per site.
- b. A business may have 6 signs with a maximum total area of 72 sq.ft. (EXCEPTION: limited to 50 sq.ft. if the name of the business also appears on a free-standing owner/tenant/lessee sign)
- c. A home occupation shall have only one (1) sign and it shall not exceed six (6) square feet.
- d. In the Residential Shoreland Zone, only 2 signs per premise are allowed.

SIGN AREA

- a. No single sign shall have a sign area exceeding 24 square feet on any one side, except in the Residential Shoreland Zone where it shall not exceed 6 square feet.
- b. No combination of signs on a free-standing structural support system shall have a sign area exceeding 32 square feet on any one side.
- c. On-building sign area may not be more than 10% of the total wall area to which it is attached.

HEIGHT OF SIGN

- a. No free standing sign shall extend higher than 10' above the ground, unless it is a multi-tenant sign for over 6 businesses.
- b. No sign attached to a building shall extend higher than the roof line.
- c. Roof signs may have a height of 2' or less and the top of the sign must not exceed the elevation of the top of the roof line upon which the sign is erected. No roof sign shall obscure the view of a natural vista as seen from any public park or public right-of-way.
- d. A sign attached to a structure by a bracket, which overhangs a public sidewalk or pedestrian walkway, must have a minimum clearance of 10' over the sidewalk and no part of the sign or bracket shall be any closer than 18" to the edge of the road.

SETBACKS

- a. No sign may be within a road right-of-way or a sidewalk.
- b. A sign must be set back 5' of the edge of the pavement, sidewalk, and/or lot lines.

ILLUMINATION OF SIGNS

- a. Signs shall only be illuminated by shielded non-flashing lights.
- b. No sign shall have blinking, moving, glaring, neon, or internal illumination, except those giving only public service information such as time, date, temperature, weather, or similar information

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

LEASEHOLDER SIGNS

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

- a. If there are not more than five tenants or lease holders (including the owner), a single free-standing sign may have a maximum height of 10', a maximum sign area of 24' for the general logo, plus as many 4' x 1' individual name signs below the logo as there are tenants/lease holders.
- b. For six tenants or lease holders (including the owner) or more, the single free-standing sign may have a maximum height of 15', a maximum sign area width of 8', a maximum sign area of 24' for the general logo, plus as many 4' x 1' individual name signs below the logo as there are tenants/lease holders.

OFFICIAL BUSINESS DIRECTIONAL (OBD) SIGNAGE

- a. State Law regulates the location of OBD signs within the width of the right-of-way of any road.
- b. Within Southwest Harbor, OBD signs are only allowed within the right-of-way of State roads (Route 102 and 102A).
- c. OBD signs must be non-reflective white on blue and 4' x 1'.

P. SOIL STANDARDS

1. All land uses shall be located on soils in or upon which the proposed uses or structure can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction.
2. The Planning Board may determine that proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses, may require a soils report based on an on-site investigation and may require it prepared by state-certified professionals. Proposed uses within the State defined Shoreland areas are required to submit a soils report. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties.
3. The report may be based upon any of the following relevant criteria:
 - a. The analysis of the characteristics of the soil and surrounding land and water areas;
 - b. Maximum ground water elevation;
 - c. Presence of ledge;
 - d. Drainage conditions; and
 - e. Other pertinent data which the evaluator deems appropriate.
4. The soils report may include recommendations for a proposed use to counteract soil limitations where they exist.
5. Reference shall be made to the GIS maps of Southwest Harbor soils and wetlands. (The maps are in the Town Office.)

Q. STORM WATER RUNOFF STANDARDS

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Whenever possible, on-site absorption of run-off waters shall be utilized to minimize off-site discharge.

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

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

R. STREAM STANDARDS (perennial and non-perennial streams)

Existing vegetation within 25' of the stream edge shall remain undisturbed.

S. VIBRATION STANDARDS

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

T. WATER QUALITY STANDARDS

1. No activity shall deposit on the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.
2. The following activities require a permit under the Natural Resources Protection Act (NRPA) from the Department of Environmental Protection if performed in, on or over any freshwater or coastal wetland, great pond, river or stream, or adjacent* to said natural resources such that material or soil may be washed into them
 - a. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
 - b. Draining or otherwise dewatering;
 - c. Filling;
 - d. Any construction, repair or alteration of any permanent structure.

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

U. WATER SUPPLY STANDARDS

When the Town water supply is to be used, a permit must be obtained from the Town of Southwest Harbor's Water Department. This permit plus payment (or a letter of intent to pay) must be filed in the Town Office before a building permit can be issued. The water permit certifies compliance with the Southwest Harbor Water Ordinance.

SECTION VII: STANDARDS FOR SPECIAL ACTIVITIES

A. AGRICULTURE

1. Spreading or disposal of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001.
2. Manure shall not be stored or stockpiled within 100' of a great pond or within 75' of other water bodies, tributary streams, or wetlands. All manure storage areas must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
3. Within the shoreland zones, agricultural activities involving tillage of soil greater than 40,000 sq. ft., shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be a violation of this Ordinance.
4. There shall be no new tilling of soil within One Hundred feet (100') of the normal high-water line of a great pond, within Seventy Five feet (75') from other water bodies and coastal wetlands nor within Twenty Five feet (25') 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 100' feet, horizontal distance, of the normal high-water line of a great pond; within 75' (feet, horizontal distance) of other water bodies and coastal wetlands; nor within 25' (feet, horizontal distance) of tributary streams and freshwater wetlands. Livestock grazing must be conducted in accordance with a Conservation Plan.

B. ARCHAEOLOGICAL and HISTORICAL SITES

1. Southwest Harbor has 6 prehistoric archeological sites and 2 listed historic buildings (the Claremont Hotel and "Raventhorp" house on Greenings Island). These sites are located on maps available in the Town Office.
2. Any proposed land use activity involving structural development or soil disturbance on or adjacent to these sites shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the permitting authority.
3. The Planning Board shall consider comments received from the Commission prior to rendering a decision on the application.

C. BED and BREAKFAST

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

D. CAMPGROUND

1. A Campground is defined as a plot of ground upon which two or more campsites are located, established or maintained for occupancy by recreational vehicles, tents or other camping units

of the general public as temporary living quarters for recreational, educational or vacation purposes.

2. Campgrounds are subject to the minimum requirements imposed under State licensing procedures and the following specific limitations.
 - a. Shoreland campgrounds:
 - Minimum lot size: 5 acres
 - Minimum site size: 5,000 sq.ft. (net area)
 - Parking: 200 sq.ft. for each site
 - b. Inland campgrounds:
 - Minimum lot size: 5 acres
 - Minimum site size: 2,500 sq.ft. (net area)
 - Parking: 200 sq.ft. for each site
3. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of One Hundred feet (100') from the normal high-water line of a great pond, Seventy Five feet (75') from the normal high-water line of water bodies, tributary streams, or the upland edge of a wetland. Their setback shall be a minimum of 30' from lot lines and this setback area shall be a buffer.
4. The Planning Board may issue an approval of a campground conditional on the State license approval.

E. CAMPSITE

1. A campsite is defined as an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but may not be limited to a gravel pad, parking area, fireplace or tent platform.
2. The following must be met.
 - a. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone.
 - b. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back One Hundred feet (100') feet from the normal high-water line of a great pond and Seventy Five feet (75') feet from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
 - c. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicles shall not be located on any type of permanent foundation except a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
 - d. The clearing of vegetation for the sitting of the recreational vehicle, tent or similar shelter in a Resource Protection Zone shall be limited to 1000 square feet.
 - e. A plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
 - f. When a recreational vehicle, tent or similar shelter is placed on-site for more than One Hundred-Eighty (180) consecutive days per year, all requirements for residential structures shall be met, including either a State approved subsurface sewage disposal system or public sewage facilities. Areas in shore land zones limited to One Hundred-Twenty (120) days.

F. ESSENTIAL SERVICES

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

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

G. HEALTH INSTITUTION

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

H. HOME OCCUPATION

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

I. MARINA DEVELOPMENT

1. The land use shall comply with the land use, structure, and performance standards of this Ordinance.
2. The water use shall satisfy the applicable performance standards in this Section VII (N)
3. In addition to the information required under site plan review, marina permit applications must contain the following information for referral to the Harbor Committee:
 - a. A storm evacuation plan;
 - b. A plan and/or documentation demonstrating the integrity of the proposed docks during storms;
 - c. A harbor traffic impact study;
 - d. A relocation plan for any moorings displaced from the current Southwest Harbor Mooring Plan; and
 - e. An overlay of the Mooring Plan, showing the relationship of this facility to abutters, detailed moorings in the area and those required for the proposal, and the rigging for securement purposes.

J. MARITIME ACTIVITIES NOT LOCATED ON LAND

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

K. MINERAL EXPLORATION and EXTRACTION

1. A permit shall not be required for mineral exploration to determine the nature or extent of mineral resources if it shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than 100 sq. ft. of ground surface. Mineral exploration is prohibited within 75 feet, horizontal distance, of the normal high-water line of a stream.
2. A permit from the Planning Board shall be required for mineral exploration which exceeds the above limitation.
3. All excavations, including test pits and holes shall be immediately capped, refilled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.
4. Mineral extraction may be permitted under the following conditions:
 - a. A reclamation plan shall be filed with, and approved by, the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of d. Below.
 - b. Mineral exploration and extraction shall conform with the Erosion and Sedimentation Control and Storm Water Runoff Standards contained within this Ordinance.
 - c. No part of any extraction operation, including drainage and runoff control features shall be permitted within One Hundred feet (100') of the normal high-water line of a great pond, Seventy Five feet (75') of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within Seventy Five feet (75') of any property line, without written permission of the owner of such adjacent property.
 - d. Within 12 months following the completion of extraction operations at any extraction, site, which are deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12 month period, ground levels and grades shall be established in accordance with the reclamation plan required herein, and the following:
 - 1) All debris, stumps, and similar material shall be removed for disposal in an approved location or buried on site. Only materials generated on-site may be buried or covered.
 - 2) The final graded slope shall be 2:1 or flatter.
 - 3) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
5. In addition to the above, the Planning Board may impose such conditions as necessary to minimize the adverse impacts associated with mineral extraction operation on surrounding uses and resources.

L. MOBILE HOME PARK

1. The regulations for mobile home parks under Title 30-A, MRSA Section 4358 shall apply to all areas of Southwest Harbor except the Shoreland zones. In these zones, the mobile home lot sizes cannot be less than the minimum for the zone.
2. Park lot size:
 - a. The area reserved for road rights-of-way, the area for buffer yards, plus the area of all mobile home park lots.

- b. If the Park is on Town sewer, an additional 10% of the above total Park size must be included for open space.
- 3. Mobile home lot size:
 - a. Sewered – 6500 sq.ft.
 - b. Un-sewered: individual on site-subsurface septic system – 20,000 sq.ft.
 - c. Un-sewered: central on-site waste water system – 12,000 sq.ft.
(the gross density of the park must be 20,000 sq.ft./lot)
- 4. Buffering: See SECTION VI. A. Buffering and Landscaping
- 5. All mobile homes manufactured before June 15, 1976, or not built according to the National Manufactured Housing Construction and Safety Standards Act of 1974, US Code, Title 42, Chapter 70, shall be required to meet the safety standards for older mobile homes as adapted and listed in Appendix A, Maine’s New Mobile Home Park Law. (Source: A Guidebook for Local Officials, Office of Comprehensive Planning.

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

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

N. PIERS, DOCKS, WHARVES, BRIDGES, OTHER STRUCTURES & Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland
(For a Marina Development, also see Paragraph I in this SECTION)

- 1. Any permanent or temporary structure(s) shall require a permit subject to the following standards and an opinion from the Harbor Committee. *
- 2. New permanent structures, and expansions thereof, extending over or below the shoreline shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act 38 M R S A section 480 C and the Army Corps of Engineers; a submerged lands lease from the Bureau of Public Lands, Department of Conservation; seasonal “temporary” structures require a permit only from the Army Corps.
- 3. Standards:
 - a. The structure(s) must be capable of withstanding storm winds and waves.
 - b. Structures shall not unreasonably interfere with navigation nor with developed or natural beach areas.
 - c. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
 - d. The facility shall be located so as to minimize adverse effects on fisheries.
 - e. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.
 - f. No dock, pier, bridge and/or float can extend beyond the six foot mean low water line as defined by the current Harbor Mooring Plan, as amended, without an opinion from the Harbor Committee.
 - g. No new structure shall be built on, over or abutting a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland

unless the structure requires direct access to the water body or wetland as an operational necessity. These permitted structures shall not exceed 20' in height above the pier, dock, wharf or other structure.

EXCEPTION: Within the Commercial/Maritime, Maritime and Harbor Zones these structures shall not exceed Twenty five feet (25').

- h. No existing structures built on or over a pier, dock, wharf or other structure extending below the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any zone.
 - i. 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.
4. Pier, dock, etc. applications must contain the following information for submission to the Harbor Committee:
- a. An overlay on the approved Mooring Plan showing the location of the applicant's abutters and their water rights in relation to the proposal;
 - b. Moorings in the area and those needed for the proposal;
 - c. Rigging for securement purposes; and
 - d. Notation of the mean low water line.

O. TIMBER HARVESTING

1. Resource Protection Zone abutting a great pond: There shall be no timber harvesting except to remove safety hazards within the strip of land extending 75' inland from the normal high-water line. Beyond the 75 foot strip, timber harvesting is permitted in accordance with the sections below, except that in no case shall the average residual basal area of trees over 4 inches in diameter at 4 ½ inches above ground level be reduced to less than 30 square feet per acre.
2. All other shoreland zones:
- a. Selective cutting of no more than 40% of the total volume of trees 4" or more in diameter measured at 4 1/2" above ground level on any lot in any 10 year period is permitted with the following conditions:
 - 1) Within One Hundred feet (100') of the normal high-water line of a great pond and within Seventy Five feet (75') of the normal high-water line of other water bodies, streams, or the upland edge of a wetland, there shall be no clear-cut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - 2) At distances greater than One Hundred feet (100') and Seventy Five feet (75') respectively, harvesting operations shall not create single clear-cut openings greater than 10,000 sq. ft. in the forest canopy. Where such openings exceed 5000 sq. ft. they shall be at least 100' apart. Such clear-cut openings shall be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered to be equivalent to basal area.
 - b. Operations exceeding the 40% limitation above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine Licensed Professional Forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The Planning Board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

3. No accumulation of slash shall be left within 50' of the normal high-water line of a water body if part thereof extends more than 4' above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.
4. Timber harvesting equipment shall not use stream channels as travel routes except when surface waters are frozen and the activity will not result in any ground disturbance.
5. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
6. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.
7.
 - a. Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least 75' in width for slopes up to 10% shall be retained between the exposed mineral soil and the normal high-water line of a water body or the upland edge of a wetland.
 - b. For each 10% increase in slope, the unscarified strip shall be increased by 20'. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than 25' from the normal high-water line of a water body or upland edge of a wetland.

P. TRAILER, CAMPER, or OTHER RECREATINAL VEHICLE

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

SECTION VIII: PERMIT REVIEW

A. APPLICABILITY

1. The property owner must secure approval for the following activities from either the Planning Board or the Code Enforcement Officer subject to the appropriate standards of this Ordinance, unless a variance is obtained:
 - a. Any building, structure or part thereof to be erected, constructed, reconstructed, externally enlarged, converted, moved, or demolished;
 - b. Any area for a road or driveway, or area for parking or loading, to be established or expanded;
 - c. Any fill and/or excavation of over 100 cubic yards;
 - d. Any sign to be erected or enlarged;
 - e. Any new use, expansion of an existing use, or change of use; and
2. No local building permit is needed for the following activities, but they must be performed in conformance with the provisions of this Ordinance:
 - a. Repair, maintenance, and alterations to a structure which do NOT affect its footprint, location, height, or use;
 - b. A weekend use such as garage sales and yard sales provided the use occurs only once in any month;

- c. Occasional activities, such as children’s roadside stands, school fund raisers;
- d. Detached structures, such as dog kennels, tool sheds, which are less than eighty (80) square feet, except in shoreland or floodplain zone; no permanent foundation allowed however must be anchored to the location
- e. Clearing for development or timber harvesting which is compliant with the Performance Standards, except in the shoreland zone; and
- f. A track”, an access formed for brush clearing and such purposes with no stone or gravel material introduced and which does not give access to a separate lot.

B. REVIEW AUTHORITY

1. The Code Enforcement Officer (CEO) will have the authority to review the following:
 - a. All single family or two family residential construction
 - b. All commercial additions of 1,000_sq.ft. of total floor area or less subject to definitive performance standards.
 - c. Creation or expansion of driveways up to 200 ft. In length
 - d. Placement of signs
 - e. Demolition of buildings and structures
 - f. Relocation of residential buildings and structures
 - g. The moving or excavation of 100 – 500 cubic yards of inert fill, except within 75 feet, horizontal distance, of the shoreline of a stream or within the Resource Protection Zone where planning board review is required.
 - h. Piers, docks, and wharfs serving a residential use
2. The Planning Board will have the authority to review the following:
 - a. Multi-family residential construction
 - b. All commercial principal buildings and additions greater than 250 square feet
 - c. Relocation of non-residential buildings and structures
 - d. Piers, docks, wharves, etc. For non-residential uses
 - e. Institutional and governmental activities
 - f. Creation or expansion of roads, and driveways over 200 feet in length
 - g. Changes of use
 - h. The moving or excavation of more than 500 cubic yards of inert fill
 - i. Any land use or building activity not specified. (5-4-10)
3. The CEO may request the advice and concurrence of the Planning Board on any application which raises unusual questions, and shall refer any application to the Board for decision, which in the CEO’s judgment requires a public hearing or otherwise requires action by the Planning Board.

C. PERMIT APPLICATION

1. Application forms:
 - a. The form shall be as prescribed by the Town.
 - b. Review by the Code Enforcement Officer: the original application shall be retained by the Town and filed with a copy of the permit.
 - c. Review by the Planning Board:
 - 1) The original application form and eight copies shall be submitted with the plans for the project.
 - 2) The original application shall be retained by the Town and filed with a copy of the permit.

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

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

D. PERMIT APPROVAL PROCEDURE

1. Upon receiving an application, the Town shall note the date of receipt on the application, issue a dated receipt to the applicant if requested, and direct the application to the appropriate review authority.
2. The CEO shall act upon applications according to the following procedure:
 - a. Within 35 days from the date of receipt of the application, the CEO shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete.
 - b. When the CEO has determined that the application is complete, the date shall be so noted on the application form. A dated receipt may be issued if so requested.
 - c. Within 7 days after the application has been accepted as complete, the CEO shall direct the Town to notify the abutters of the project.
 - d. No sooner than 7 days from the date of notification (except as noted below) and within 35 days from receiving a complete application, the CEO shall approve, approve with conditions, or deny in writing on the conformity of those uses established in Section VIII.B.1. to the land use, structure, and performance standards within this Ordinance.

EXCEPTIONS:

- 1) For applications for a deck, shed, garage or similar accessory residential structures and/or the addition to or other improvement of a conforming residential structure, the total size of which is no more than 600 square feet of floor area, the CEO may act without waiting 7 days for the required notification to be effective. This exception would not apply to new dwelling units or driveways.
 - 2) For applications for the demolition of a building or structure, the CEO must wait fourteen (14) days for the required notification to be effective, unless for health and safety reasons the building or structure should be removed immediately.
3. The Planning Board shall act on applications presented to it according to the following procedure:
 - a. Upon receipt of the application, the Town will decide whether the information in the application is sufficient for review. If the application is insufficient or inadequate, the Town will notify the applicant within fifteen (15) business days, in writing, of additional information required. Once all necessary information is provided, as determined by the Town, the application will be issued a date of receipt. Within thirty-five (35) days from the date of receipt of the application, the Town shall have notified the applicant of the date, time and place of the Public Hearing on this application and cause this information to be published in a newspaper of local circulation at least seven (7) days in advance of the Hearing and similarly notify the abutters to the applicant by mail. A copy of the stamped envelopes to the abutters and the printed newspaper notification shall be maintained in the file of the applicant.
 - b. The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the application. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

- c. At the Hearing, the Planning Board shall first determine if the application is a complete application or specify the additional material needed to make it complete. When requested additional material is delivered to the Town Office, the Hearing will be rescheduled.
 - d. After submission of a complete application, the Planning Board shall either approve, approve with conditions, or deny the application in writing within thirty-five (35) days from the Public Hearing at which the application was ruled complete, or within another time limit as may be otherwise mutually agreed to by the Board and the Applicant.
 - e. If the permit is denied, the denial shall include a written statement of Findings of Fact and of reasons in support of the decision
 - f. Completed applications shall be approved only by a decision of the majority of the full Board that the proposed use is in conformance with the land use, structure, and performance standards of this Ordinance. The approval may include a statement of Findings of Fact.
- 4. In issuing approval, the CEO/Planning Board may attach such restrictions and conditions as it deems necessary to ensure compliance with the Ordinance.
 - 5. An appeal to the Board of Appeals from an approval or denial of a permit application shall be made within 30 days of the approval or denial.

E. MODIFICATION to an APPROVED PERMIT

- 1. The permit shall have been approved within the last eighteen months.
- 2. The modification shall be minor (as determined by the CEO); if the CEO determines that the modification is not minor, the applicant shall apply to the appropriate review authority with a new application.
- 3. The CEO shall be the permitting authority for the modification. The CEO will request the advice and concurrence of the Planning Board if the modification raises unusual questions or if, in the CEO's judgment, a public hearing should occur.
- 4. The procedure for a modification shall be the same as for the original permit except that the scope of review shall be limited to those portions of the plan which are proposed to be changed.

F. RECONSIDERATION/REVOCATION

- 1. Reconsideration
 - a. This is a procedural rule to get a subject back onto the table for substantive discussion.
 - b. A motion to reconsider a previous decision shall only be made by a Board Member voting on the prevailing side of the original decision. The motion must be offered either at the Meeting at which the original decision was made or at the next regularly scheduled Board Meeting (unless the Board calls a Special Meeting for the reconsideration prior to the regularly scheduled time), but in no case more than 30 days from the date of the original decision.
 - c. The applicant and any one offering verbal or written testimony at the Board's original hearing on the original application shall be given direct notice of the proposed reconsideration.
- 2. Revocation
 - a. This is a jurisdictional rule and deals with the substance of the issues and vested rights.
 - b. Any decision to revoke approval must be made by the Board or Official who granted the approval. The decision must be preceded by written notice and opportunity for a Hearing.
 - c. The revocation process may occur upon discovery that the Board or Official granted approval without authority or that the applicant made false statements material to the decision to approve the application, provided the applicant has not acquired a vested right.

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

G. FEES

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

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

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

I. CERTIFICATE of OCCUPANCY

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

1. Certificates Issued

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

- a. The building permit number
- b. The address of the structure
- c. The name and address of the owner
- d. A description of that portion of the structure for which the certificate is issued.
- e. A statement that the described portion of the structure has been inspected for compliance with the requirements of the land use ordinance, land use ordinance permit.
- f. The name of the building official

- g. Any special stipulations and conditions of the building permit.

2. Temporary Occupancy

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

SECTION IX: APPEALS

A. Board of Appeals Ordinance

The Ordinance of the Southwest Harbor Board of Appeals establishes their regulations, requirements, and procedures. This is available in the Town Office.

B. The Board of Appeals has the following powers and duties relating to this Ordinance:

1. ADMINISTRATIVE APPEAL

To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration of this Ordinance.

2. VARIANCE APPEAL

To authorize variances upon appeal, within the following limitations:

- a. The establishment of a use or structure otherwise prohibited shall not be allowed by variance.
- b. A variance shall not be granted because of the presence of non-conformities in the zone or in an adjoining zone.
- c. Except as provided in subsections d. and e. below, variances may be granted by the Board from the limitations imposed by this Ordinance on height, lot size, lot coverage, and structure setbacks, only where strict application of this Ordinance, or a provision cause "undue hardship" to the applicant and his property. (This term is defined in the Board of Appeals Ordinance.)
- d. Disability variance: Refer to the Board of Appeals Ordinance
- e. Setback variance: To hear and authorize a variance subject to a special statute "undue hardship" definition for single family dwellings.
- f. A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within 14 days of the decision.
- g. Variances granted must be recorded by certificate in the Hancock County Registry of Deeds within 30 days of final approval. (Variances not recorded within this time shall be invalid.) The certificate must be prepared in recordable form and provided to the applicant. It must indicate the name of the current property owner, identify the property by reference to the last recorded deed or deeds of ownership in its chain of title, and indicate the fact that a variance, including any conditions on the variance, has been granted and the date of the granting.

3. EXTENSIONS TO THE LIFE OF THE BUILDING PERMIT

To hear and authorize the extension of building permits for one year, but not to exceed two extensions. The applicant must show that progress has been made toward completion or that progress has been prevented by reasons beyond the control of the applicant.

C. APPEAL PROCEDURE

- 1. An administrative or variance appeal may be taken to the Board of Appeals within 30 days of the date of the decision appealed from.
- 2. The Board of Appeals meets monthly.

3. Forms for the appeal are available in the Town Office.
4. A fee for appeals may be set from time to time by the Board of Appeals.
5. Upon being notified of an appeal, the Code Enforcement Officer/Planning Board shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
6. The person filing the appeal shall have the burden of proof.

D. APPEALS to SUPERIOR COURT

Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within 45 days from the date of any decision of the Board of Appeals.

SECTION X: ENFORCEMENT

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

B. Code Enforcement Officer

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

C. Legal Actions

1. When the above action does not result in the correction or abatement of the violation or nuisance directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town.
2. The Town officers, or their authorized agent, are hereby authorized to propose, negotiate, and enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering any costs, fines or penalty without Court action. Such agreements shall not allow an illegal structure or use to continue or remain unless there condition, the Town Officers or Town Manager, upon notice from the CEO, are hereby authorized and is clear and

convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized Town official and there is no evidence that the owner acted in bad faith. The Town Officers may allow the illegal structure or use to remain if it is determined the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage. Nothing in this Ordinance shall be construed to allow the occupation or use of an illegal structure or the operation of an illegal use.

3. A decision by the Town Officers or Town Manager to proceed in a legal action against an alleged violator for violations of this Ordinance or any permit issued pursuant to this Ordinance is not appealable to the Board of Appeals. This Ordinance shall be enforced in accordance with Title 30-A MRSa Paragraph 4452.
4. Any person, including but not limited to a landowner, a landowner's agent, the entity in possession, or a contractor, who violates any provisions or requirement of this Ordinance shall be penalized in accordance with Title 30-A MRSa Section 4452 which specifies that monetary penalties shall be assessed on a per day basis, and that each day a violation exists constitutes a separate violation. The law provides for penalties ranging from a minimum of \$100 to a maximum of \$2500 per violation. The law also allows the Court to increase the maximum penalty above \$2500 when it can be shown that the economic benefit to the landowner or costs avoided by violating a land use, structure or performance standard exceeds the applicable penalty. In the Resource Protection Zone the maximum penalty per day is increased to \$5000.
5. The following factors will be taken into consideration in determining an appropriate fine:
 - a. Any prior violations by the same party, person, or entity.
 - b. The degree of environmental damage that cannot be abated or corrected.
 - c. The extent to which the violation continued following a Town order to stop.
 - d. The extent to which the Town contributed to the violation by providing the violator with incorrect information or by failing to take timely action.
 - e. The amount of any economic benefit gained by the landowner or entity in possession as a result of the violation.

SECTION XI: PROCEDURE FOR AMENDING THE ORDINANCE

- A. This Ordinance may be amended by a majority vote of the legislative body present at any regular or special town meeting, or by local referendum ballot. Any changes including typographical, punctuation or other grammar edits must also be approved by the legislative body.
- B. Any proposed amendment(s) must be submitted to the Planning Board not later than ninety (90) days before the regular or special Town Meeting.
- C. The Planning Board shall have held a public hearing on the proposed change after a notice has been posted in the municipal office at least thirteen (13) days before the public hearing and the notice has been published at least two (2) times in a newspaper with local circulation. The date of the first publication must be at least twelve (12) days before the public hearing and the date of the second publication must be at least seven (7) days before the public hearing
- D. If the ordinance is to be enacted by secret ballot, then the Selectmen shall hold a Public Hearing at least 10 days before the date of the referendum vote on the final draft of the ordinance changes. At this public hearing, the Planning Board shall report in writing its opinion on the desirability of the proposed change(s). Any alterations to the proposed ordinance changes would require the Selectmen to hold another public hearing.

- E. Zoning ordinance changes have further requirements as detailed in State law. Unless more stringent requirements are expressly provided for in this section, all other notice, hearing and adoption requirements set forth in the Maine Statutes shall be complied with.
- F. Copies of amendments, attested and signed by the Municipal Clerk, shall be reported to the Commissioner of the Department of Environmental Protection within forty-five (45) days and are not effective unless approved by the Commissioner. If the Commissioner does not act on this within forty-five (45) days of the receipt, the amendment is automatically approved. Any application for a permit submitted to the town within the 45 day period shall be governed by the terms of the amendment, if such amendment is approved by the commissioner.
- G. Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.
- H. Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.
 - A. The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment. [1993, c. 374, §4 (NEW).]
 - B. For each parcel within the municipality that is in or abutting the portion of the municipality affected by the proposed amendment, the notice must be mailed by first class mail at least 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. Notice also must be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing Shoreland Zoning contained in Title 38, chapter 3, subchapter I, article 2-B. [1999, c. 761, §9 (AMD).]

Any action challenging the validity of an amendment to a zoning ordinance or map based on a municipality's failure to comply with paragraph B must be brought in Superior Court within 30 days after the adoption of the amended ordinance or map. The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive a notice under paragraph B, that the municipality failed to send the notice as required, that the appellant had no knowledge of the proposed amendment to the ordinance or map and that the appellant was materially prejudiced by that lack of knowledge. Nothing in this subsection alters the right of a person to challenge the validity of any ordinance based on the failure of the municipality to provide notice as required in paragraph A and subsection C.

SECTION XII: APPENDIX:

Definitions of Zones by Tax Map References and Street Names

Normally the boundary lines of the zones will follow property lines or center lines of roads, streams or other public rights of way; in particular areas the boundaries indicated as approximately following established lot lines shall be construed as following such lines; when a lot is transected by a boundary, the larger part by area determines the zone location but this may extend into the smaller area by not more than 50 feet in depth beyond the boundary.

(Example Map 8: Lot 7 = 8:7)

ZONE A: (Map 3) Beginning at the normal high water line at the easterly end of Lawler Lane; thence westward following the centerline of Lawler Lane to the centerline of Route 102; thence northerly following the centerline of Route 102 to the easterly extension of the southern boundary of 3:1; thence westerly following the southerly line of 3:1 to the easterly line of 3:4; thence northerly by the easterly line of 3:4 to the centerline of Wesley Avenue; thence westerly following the centerline of Wesley Avenue to a point marking the intersection of the centerline of Wesley Avenue and the southerly extension of the western boundary of 6:7; thence northerly to the southwest corner of 6:7; thence northerly to the southwest corner of 6:7; thence northerly by the western boundary of 6:27 and 6:28; thence westerly along the southern boundary of 6:29 and 6:15 to the western boundary of 6:15; thence northerly along the western boundaries of 6:15, 6:16, 6:47 A, 6:49, and 6:57 to the northwestern corner of 6:57; thence following the northerly and easterly boundaries of lot 6:57 to the centerline of Forest Avenue; thence easterly along the centerline of Forest Avenue to the centerline of Route 102; thence southerly on the centerline of Route 102 to the intersection of the centerline of Route 102 and the southwesterly extension of the southern boundary of 6:83; thence northeasterly to the southwestern corner of 6:83; thence northeasterly along the southern boundary of 6:83 and 6:81 to the centerline of Herrick Road; thence southerly on the centerline of Herrick Road to a point marking the intersection of the centerline of Herrick Road and the northeasterly extension of the northeastern boundary of 6:134; thence westerly to the northwestern corner of 6:134, thence southerly following the western boundary of 6:134 through 6:120 to the centerline of Clark Point Road; thence westerly following the centerline of Clark Point Road to a point marking the intersection of Clark Point Road and the northerly extension of the easterly boundary of 3:112; thence southerly following the easterly line of 3:112 to the high water line of the Harbor thence northerly and then southerly following the normal high water line to the point of beginning.

ZONE B: All areas not within Zone A, Maritime Activity Zone, Commercial Fishery/Maritime Activity Zone, Harbor Zone, Residential Shoreland Zone, Resource Protection Zone, and Acadia National Park (ANP).

COMMERCIAL FISHERY/MARITIME ACTIVITY ZONE: (Map 4)

Southwest Harbor Area: Beginning at the normal high water line at the southwesterly corner of 4:11; thence northerly following the easterly boundary of 4:11 to the centerline of the Clark Point Road; thence south easterly following the centerline of Clark Point Road to the end of Clark Point Road; thence northeasterly following the southeasterly sideline of Town Wharf Way to the most northerly corner of 4:35-1 (US Coast Guard); thence following the northeasterly boundary of 3:35-1 to the normal high water line of the harbor; thence following the normal high water line of the harbor to the point of beginning. Little Island: Northern half of it.

MARITIME ACTIVITY ZONE: (Map 17)

Manset Harbor Area: Beginning at the normal high water line at the northeast corner of 17:84; thence southwesterly following the easterly boundary of 17:84 a distance of 250'; thence northeasterly 250' from the normal high water line to the centerline of Ocean House Road; thence northerly following the centerline of Ocean House Road crossing Shore Road and 1:65 to the normal high water line; thence easterly following the normal high water line to the point of beginning.
Little Island: Southern half of it.

HARBOR ZONE: (Map 4)

Southwest Harbor Area: Beginning at the normal high water line at the southeastern edge corner of 4:10; thence northerly following the easterly boundary of 4:10 to the centerline of the Clark Point Road; thence westerly following the centerline of Clark Point Road to a point marking the intersection of the centerline of Clark Point Road and the northerly extension of the east boundary of 3:112; thence southerly to the northeasterly corner of 3:112; thence southerly following the easterly boundary of 3:112 to the normal high water line; thence easterly following then following the normal high water line to point of beginning.

Manset Harbor Area: Beginning at the normal high water line at the east end of Lawler Lane; thence westerly following the centerline Lawler Lane to the centerline of Route 102; thence southerly following the centerline of Route 102 to Seawall Road; thence southerly following the center line of Seawall Road to a point marking the intersection of the centerline of Seawall Road and the southerly extension of the easterly boundary line of 2:37; thence northeasterly following the easterly boundary of 2:37 to a point 250' from the normal high water line of the harbor; thence in an easterly direction 250' from and parallel to the high water line of the harbor to the centerline of Ocean House Road thence northerly following the centerline of Ocean House Road, and crossing Shore Road to the normal high water line; thence westerly and then northerly following the normal high water line to the point of beginning.

RESIDENTIAL SHORELAND ZONE:

All areas along the main Shore, Greening Island Shore, and Long Pond within 250' of the normal high water line which are not in Maritime Activity Zone, Commercial Fishery/Maritime Activity Zone, Harbor Zone, Zone A, Zone C, or ANP.

Manset Area: (Map 17) Beginning at the normal high water line at the northwesterly corner of 17:83; thence southwesterly following the westerly boundary of 17:83 a distance of 250 feet; thence in a southerly direction, 250 from and parallel to the high water line of maps 17, 18 and 19 to the centerline of Seawall Road; thence southerly along the centerline of Seawall Road to a point marking the intersection of the centerline of Seawall Road and the extension of the southwesterly boundary of 19:22; thence southeasterly to the southwesterly corner of 19:22; thence southeasterly following the southwest boundary of 19:22 to the high water line, thence northerly along the high waster line to the point of beginning.

Dirigo Area: (Map 4) Beginning at the normal high water line at the most southern corner of 4:36; thence southwesterly following the northwesterly boundary of 4:36, a distance of 250 feet; thence northeasterly 250 feet from and parallel to the high water line to the southeasterly corner of 4:51; thence northeasterly following the southeast boundary line of 4:51 to the high water line; thence southerly following the high water line of the shore to the point of beginning.

Fernald Point Area: (Map 4) Beginning at the normal high water line at the southeasterly corner of 4:71, thence southwesterly following the southerly boundary line 4:71 and 4:70, a distance 250 from the normal high water line; thence northerly following a line 250 feet from and parallel to the high water

line through Map 5, 7 and 9 to a point in the northeasterly line of 11:18; thence southerly along the high water line of the shore to the point of beginning. Also, beginning at the normal high water line at the southeasterly corner of 11:19, thence westerly following the southwesterly boundary line of 11:19 a distance of 250 feet, thence northerly, following a line 250 feet from and parallel to the normal high water line to the north westerly line of 11:21, thence northerly along the line 11:21 to the normal high water line, thence southerly following the normal high water line to the point of beginning.

Long Pond Area: (Map 22) That portion of 22:12, 22:13, 22:14 & 22:15 that lie within 250' of the normal high water line of Long

Also, beginning at the normal high water line at the southerly edge of 22:26, thence easterly along the property line of 22:26 a distance of 250', thence northerly 250 feet from the high water line to the town line of Mount Desert, thence northwesterly along the town line of Mount Desert to the normal high water line, thence southerly along the normal high water line to the point of beginning.

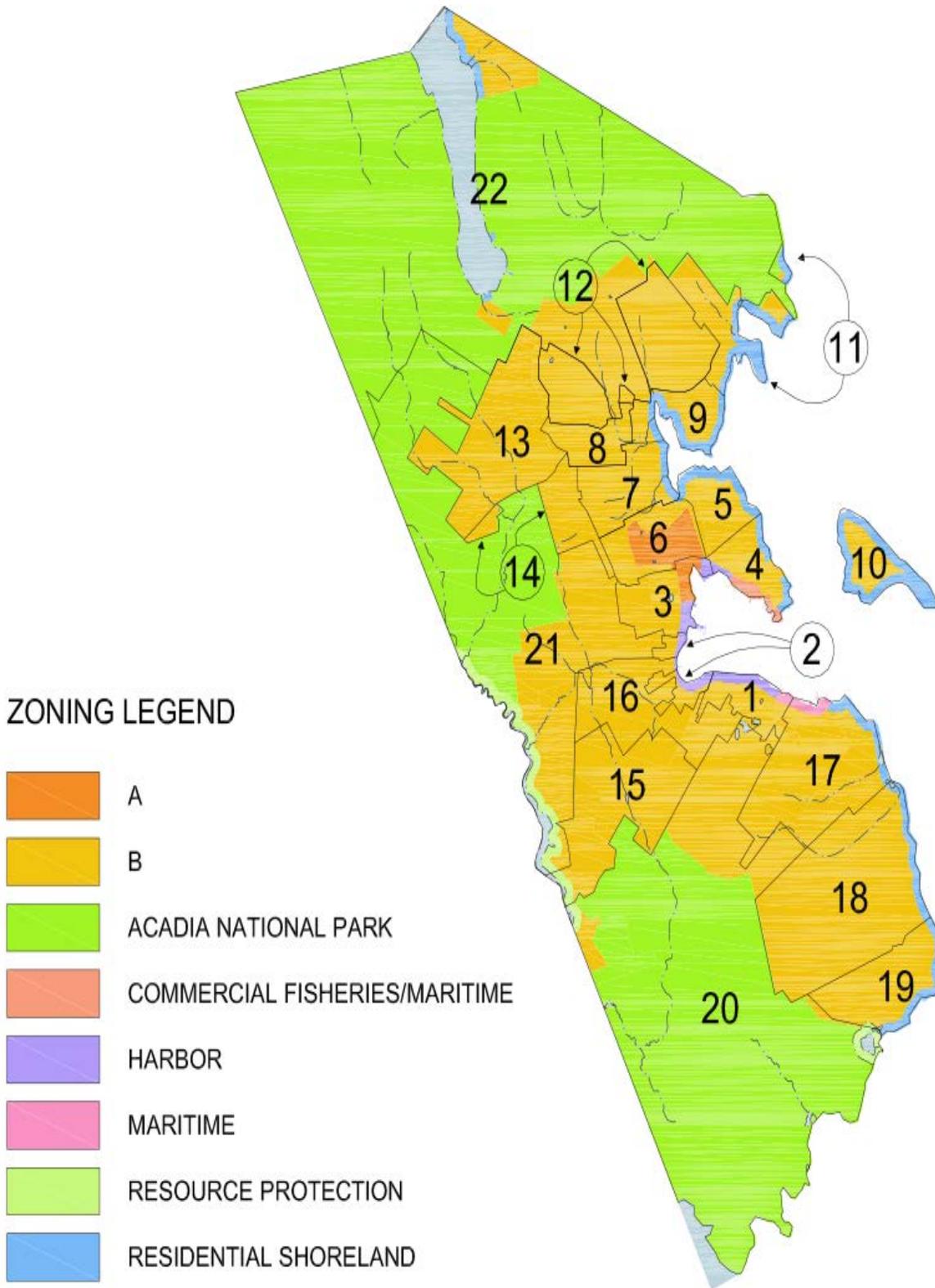
Greening Island: All areas within 250' of the normal high water line.

Acadia National Park: All areas as described by the Acadia National Park.

RESOURCE PROTECTION ZONE:

All areas along the Bass Harbor Marsh Town Boundary within 250' of the normal high water line which are not in the ANP. Also, beginning at the southwesterly corner of lot #5 of the Seawall Pond Subdivision approved in September, 2006 at a point South $46^{\circ}6'16''$ West, a distance of 100.0 feet; thence turning South $61^{\circ}42'16''$ East a distance 293.0 feet to a point; thence turning North $16^{\circ}28'41''$ East a distance of 124.0 feet to a point; thence turning South $61^{\circ}42'46''$ East a distance of 270 feet to a point; thence turning North $46^{\circ}28'41''$ East a distance 44 feet to a point; thence turning South $61^{\circ}42'46''$ East a distance of 227 feet to a point; thence turning North $46^{\circ}28'41''$ East a distance of 112 feet to a point; thence South $61^{\circ}39'3''$ East a distance of 218 feet to a point; thence South $46^{\circ}28'47''$ West a distance of 122 feet to a point; thence North by West all areas located to a distance of 250 feet from the high water line around Seawall Pond through land(s) of: n/f Susan Rand; n/f Peter Benson; n/f Nathan Carroll; n/f the United States Department of Interior; n/f the State of Maine; and n/f William Milliken; to the point of beginning.

Town of Southwest Harbor
Existing Zoning



SECTION XIII: DEFINITIONS

A. GENERAL

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

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

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

B. WORDS and TERMS DEFINED

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

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

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

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

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

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

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

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

AQUACULTURE: The growing or propagation of harvestable freshwater, estuarine or marine plant or animal species.

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

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

BERTH: A space at a wharf or float for a boat to dock.

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.

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

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

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

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

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

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

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

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

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

COASTAL WETLAND: All tidal and sub-tidal lands; 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 tide

level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service.

NOTE: All areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.

COMMERCIAL FISHERY: Activities directly related to commercial fishing and those commercial activities commonly associated with or supportive of commercial fishing such as the manufacture of sale of ice, bait and nets and the sale, manufacture, installation or repair of boats, engines and other equipment commonly used on boats.

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

CONVERSION: Any alteration of the use of a building.

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

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

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

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

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

DISRUPTION OF SHORELING 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-section, and in the case of flowing waters, a profile and character altered from natural conditions.

DRIVEWAY: A vehicular way within a lot.

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

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

ESSENTIAL SERVICES: Gas, electrical or communication facilities; steam, fuel electric power or water transmission or distribution lines, towers and related equipment; telephone cable or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; but no buildings necessary to furnish these services.

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

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

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

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

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

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

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

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

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

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

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

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

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 can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters; e.g., a public shorefront park.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LOT COVERAGE: The calculation of lot coverage in the Shoreland Zones, within 250' of the normal high – water line of Zone A and within 250' of the State wetlands shall include the total footprint area of all non-vegetated surfaces. In the other zones, lot coverage includes only buildings.

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

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

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

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

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 repair, indoor and outdoor storage of boats and marine equipment, bait and tackle shops, and marine fuel service facilities.

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

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

MINERAL EXTRACTION any operation within any 12 month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

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

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

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

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

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

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

NATIVE: Indigenous to the local forests.

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

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

NON-CONFORMING USE: The use of buildings, structures, premises, land or parts thereof which is not permitted allowed in the zone in which it is situated, but which is allowed to remain solely

because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

NORMAL HIGH-WATER LINE (NHL): 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. Areas contiguous with great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the great pond during the period of normal high-water are considered part of the great pond. The setback from a coastal wetland is measured from the upland edge of the wetland.

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

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

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

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

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

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

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

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

PRINCIPAL USE: The primary use on the lot.

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

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

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

RECONSTRUCT/REPLACE: To renew without increasing the exterior dimensions

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

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

REPLACE: See RECONSTRUCT/REPLACE above.

RESIDENTIAL: One or more dwelling units.

RESIDUAL BASAL AREA: The average of the basal area of trees remaining on a harvested site in Shoreland Zone.

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

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

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

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 salt marsh cord grass (*Spartina Alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

SALT MEADOW: Areas of a coastal wetland that which 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 includesalt meadow cordgrass (*Spartina Patens*) and black rush; common three-square occurs in fresher areas.

SCREEN: Planting providing a continuous view obstruction.

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

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

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

SHORE FRONTAGE: The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

SHORELAND AREA: The land areas located within 250 horizontal feet, horizontal distance, of the normal high-water line of any great pond or river saltwater body; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a or freshwater wetland; or within 75 feet, horizontal distance, of the normal high-water line of a stream.

SHORELINE: The normal high-water line, or upland edge of a freshwater or coastal wetland

SLASH: The residue, e.g., treetops and branches, left on the ground after a timber harvest.

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

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

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

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

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

STRUCTURE: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of decks, patios, fences, poles, wiring and pedestals associated with service drops. The term 'structures' in the shoreland zone includes structures temporarily or permanently located, such as decks, patios, balconies, piers, dumpsters, and satellite dishes; but excludes incidental structures for residential use, such as picnic tables, chairs, birdhouses, flagpoles".

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

SUBSURFACE SEWAGE DISPOSAL SYSTEM: Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system

licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

SUSTAINED SLOPE: A change in elevation, in the shore land zone, where the referenced percent grade is substantially maintained or exceeded, through out the measured area.

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

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

TIMBER HARVESTING: The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shore land 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 Section VI B, Clearing or Removal of Vegetation Standards other than timber harvesting.

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

TRIBUTARY STREAM: A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydro logically with other water bodies. "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.

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.

NOTE: Water setback requirements apply to tributary streams within the shoreland zone.

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 maximum spring tide level, including all areas affected by tidal action. 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) foot) tall or taller.

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

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

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

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

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

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

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

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

WATER CROSSING: Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

WETLAND: A freshwater or coastal wetland.

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

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