



TOWN OF BRUNSWICK
ZONING ORDINANCE REWRITE
COMMITTEE

85 Union Street, Brunswick, ME 04011-1583

WORK SESSION
AGENDA
TOWN HALL ROOM 206
85 UNION STREET
WEDNESDAY, MAY 4, 2016, 1:00 PM

1. Public Comment
2. Draft 2:
 - a. Shoreland Zoning Overlay Section Update
 - b. Chapter 4 Revisions from 4/26/16 meeting
 - c. Chapter 5: Administration
3. Approval of Meeting Summaries
4. Other Business
5. Upcoming Meetings Schedule

Please note that this is a Committee work session. The public is invited to attend with public comment allowed regarding discussion topics. Please call the Brunswick Department of Planning and Development (725-6660) with questions or comments. Individuals needing auxiliary aids for effective communications please call 725-6659 or TDD 725-5521.



TOWN OF BRUNSWICK, MAINE

INCORPORATED 1739

DEPARTMENT OF PLANNING AND DEVELOPMENT
85 UNION STREET, ROOM 216
BRUNSWICK, ME 04011

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May 2, 2016

To: Brunswick Town Council
John Eldridge, CPFO, Town Manager
From: Anna Breinich, FAICP
Subject: Zoning Ordinance Rewrite Committee Update/Timetable

The Zoning Ordinance Rewrite Committee (ZORC) is nearing the completion of its primary task to complete and submit a revised draft zoning ordinance to Planning Board for their review and recommendation to Town Council. A proposed timetable is as follows:

TIMETABLE	TASKS
5.20.16	ZORC wrap-up (excluding signs and shoreland zoning overlay sections)
First week in June	Draft zoning ordinance presented to Planning Board
June-July	Planning Board review ZORC wrap up on shoreland zoning overlay and sign sections Planning Board public forums (Downtown and 2 other areas TBD)
August	ZORC revisions based on Planning Board review Prepare final draft document for Planning Board Public Hearing
Week of September 12 th or 19 th	Planning Board Public Hearing ZORC revisions as needed
9.27.16 or 10.4.16 Planning Board meeting	Planning Board recommendation to Town Council
October	Recommended zoning ordinance presentation to Town Council

B. Change in Use

A nonconforming use may be replaced by another use not allowed in the base zoning district (or any overlay district) if the Director determines that the new use will have no greater adverse impact on the water body, wetland, aquifer, or on adjacent properties and resources, than the existing use. To show that no greater adverse impact will occur, the development application shall include written documentation assessing the probable effects on public health and safety, traffic, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beautyscenic features, as delineated in the 2002 Brunswick Parks, Recreation and Open Space Plan, as amended, flood plain management, archaeological and historic resources, commercial fishing and maritime activities, and other functionally water-dependent uses.

Comment [AB4]: Scenic features as mapped in the Brunswick Parks, Recreation and Open Space Plan (2002) Added 1/8/16

C. Expansion of Use

A nonconforming use may be extended expanded throughout the existing structure housing the use. Outside the APO, SPO, FPO, and WPO Districts, a nonconforming use may also be extended expanded throughout to any expansion of the existing structure allowed by this Ordinance. Any additional expansion of area occupied by the use, whether from expansion of the structure or extension of the use to additional land area, shall be limited to 1,000 square feet over a five-year period—provided that further expansion of a significant nonconforming use may be allowed through approval of a Special Permit in accordance with subSection 5.2.3.C (Review of Expansions of Legally Nonconforming Unclassified or Omitted UsesReview of Expansions of Legally Nonconforming Unclassified or Omitted UsesReview of Expansions of Legally Nonconforming Unclassified or Omitted Uses).

Comment [AB5]: From Jeff 12/2 handout

Comment [AB6]: From Jeff 12/2 handout

D. Reconstruction of Structure with a Nonconforming Use

If a structure housing a nonconforming use is destroyed or damaged by any cause, the nonconforming use may be re-established in the structure if it is restored or reconstructed provided that a Building Permit for the restoration or reconstruction is obtained (a) within five years after the date of destruction or damage, if the property is located outside the APO, SPO, FPO, and WPO Districts, or (b) within one year of the date of destruction, if the property is located within the APO, SPO, FPO, and WPO districts.

Comment [AB7]: Added 12/2.

1.6.4. Nonconforming Structures

A. Continuance

Both in and outside the SPO District, a nonconforming structure may be continued, and may continue to be used for any use allowed by Chapter 3 or by any overlay district in which the property is located, or by subsection 1.6.3 the (Nonconforming Uses) portion of this table, even though the structure or its use does not conform to the requirements of this Ordinance. The propertystructures, collectively known as Fort Andross or Cabot Mill, located North of Highway 1, West of Maine Street, and South of the Androscoggin River that exceed the maximum height or lot coverage of the GM6 zoning district shall be deemed to be conforming structures.

Comment [AB8]: 12/2 discussion topic: expansion of nonconforming structures outside of SPO

Comment [AB9]: Revised 12/2

B. Expansion

(1) Outside SPO District

A nonconforming structure may be expanded if the expansion area complies with the requirements of this Ordinance and the expansion does not increase the structure's nonconformity or create any other new nonconformity, which the exception of the following:

Comment [AB10]: By Special Permit language

a. Where the structure is nonconforming because it extends into a minimum required yardsetback, it may be expanded further within the minimum required yard setback as

Chapter 1 - General Provisions
Section 1.6 Nonconformities
Subsection 1.6.4 Nonconforming Structures

long as it does not extend beyond the setback established by the existing nonconforming structure.

b. Where a structure, located within a Growth Area Zoning District, is nonconforming because it exceeds the allowable maximum building footprint, the structure may be expanded by Special Permit (Subsection _____), such that the expansion does not create any other nonconformity.

(2) In SPO District

a. All new principal and accessory structures, excluding functionally water-dependent uses, must comply with the water body, stream or wetland setback requirements set forth in Section 2.3.3.C (1) a. A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the structure's nonconformity and is in accordance with subsections 1.6.4.B (2) b and c below.:

b. Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, stream, or upland edge of a wetland is prohibited, even if the expansion does not increase nonconformity with the water body, stream or wetland setback requirement. Expansion of an accessory structure located closer to the normal high-water line of the water body, stream or upland edge of a wetland than the principal structure is prohibited, even if the expansion does not increase nonconformity with the water body, stream or wetland setback requirements. (a) the expansion area complies with the requirements of this Ordinance; (b) the expansion does not increase the structure's nonconformity or create a new nonconformity; (c) any portion of the structure existing on January 1, 1989 that fails to comply with the required minimum setback from a water body or wetland in ~~Section 2.3.3.C(1)~~ ~~2.3.3.C(1)~~ (Setbacks of Structures from Water Bodies and Wetlands) is expanded by less than 30%, as measured in floor area or volume (this includes any permitted expansion resulting from a repair, restoration, or reconstruction); and (d) any new, enlarged, or replacement foundation constructed under the structure is placed so that the structure and foundation comply with the minimum setback from a water body or wetland required by ~~Section 2.3.3.C(1)~~ to the greatest extent practicable, as determined by the Codes Enforcement Officer in accordance with ~~Section Error! Reference source not found.~~

c. Notwithstanding subsection 1.6.4.B.(2)a, above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, stream, or upland edge of a wetland, that structure may be expanded as follows, as long as the expansion complies with all other requirements of this Ordinance and the expansion is not prohibited by subsection 1.6.4.B.(2)a.

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

d. All other legally existing nonconforming principal and accessory structures that do not meet the water body, stream, or wetland setback requirements may be expanded or altered as follows, as long as the expansion complies with all other requirements of this Ordinance and the expansion is not prohibited by subsection 1.6.4.B.(2)a. or b. above.

i. For structures located less 75 feet from a stream, and 125 feet from a water body or upland edge of a wetland, the maximum combined total footprint for all

Chapter 4 - Property Development Standards
 Section 4.2 Dimensional and Density Standards
 Subsection 4.2.4 Rural Area Dimensional Standards

Table 4.33: Dimensional and Density Standards for Growth Area Zoning Districts
 [Unless separate standards approved in Common Development Plan]

Standard	New Zone	GR1	GR2	GR3	GR4	GR5	GR6	GR7	GR8	GR9	GM1	GM2	GM3	GM4 ⁽¹⁾	GM5	GM6	GM7	GM8	GC1	GC2	GC3	GC4	GA	GI	GO	GN ⁽²⁾
	Current Zone	R-R	R1 & 8	R2	R3, 4, 5, 6	R7	TR1	TR2	TR3 & 4	TR5	MU2	MU3 & 6	MU4 I1, I-4	MU1, CC	HC1 & 2	TC1, 2, 3	R-CMU	MUOZ	CU1, 2 & 3	CU5 & 6	CU4 & 7	CU/TC	R-AR	I2, I3 & R-B&TI	R-R&OS	BCN

NOTES:

- [1] All new, enlarged, or redeveloped buildings and additions in the GM4 District subject to Development Review shall also be consistent with the Cook's Corner Design Standards, unless such design standards are waived in accordance with Section 5.2.7.M (Waiver Provisions).
- [2] See Section 1.1.1.A(1) for alternative standards applicable in the GN District. Area of new disturbance per parcel shall not exceed 1% of total acreage, measured at time of ordinance adoption.
- [3] 1 du per 20,000 sf of net site area for developments using subsurface wastewater disposal systems.
- [4] Except that lands north of Bath Road shall be limited to 8 du/ac.
- [5] Except that parcels between South Street and Grove Street Longfellow Avenue shall be limited to \$10 du/ac.
- [6] Applicable only to the first floor of buildings along Maine Street. Does not apply to buildings on Park Row.
- [7] Does not apply to buildings on Park Row.
- [8] Front setback averaging applies; See Section 4.1.4.B(4)-subsection 4.2.5.B(4)
- [9] See Cook's Corner Design Standards for maximum front setbacks applicable along Bath Rd., Gurnet Rd., proposed Perimeter Rd, Thomas Point Rd., and all public and private connector roads.
- [10] Applicable only to the first floor of buildings along Maine Street. For all other buildings in the GM6 District, the build-to zone is determined by the range of front setback of principal buildings on the nearest occupied lots on either side on the same block face. Does not apply to buildings on Park Row.
- [11] Limited to 50% impervious coverage and maximum building footprint of 20,000 sq. ft. north of Route 1.
- [12] Except that parcels adjacent to fronting onto Park Row front yard setbacks shall be consistent with the established average front yard setback (see subsection 4.2.5.B (4)), shall have minimum side and rear yards of 15 feet in width; a minimum lot width of 60 feet; a maximum footprint of 7,500 square feet and shall have a maximum lot coverage of 45%.
- [13] Where minimum building height is expressed in stories or feet, both minimums shall apply.
- [14] Minimum height is triggered if floor area is being increased by 50%, and must be met at front lot line.
- [15] Where maximum building height is expressed in stories and feet, both maximums shall apply.
- [16] Unless restricted to a lower height by Flight Path Overlay (FPO) District regulations (see Section 2.3.7).
- [17] Except that lands north of U.S. Highway 1 shall have a maximum building height of 60 ft.
- [18] May be increased to up to 30,000 square feet for a community living facility as defined by 30-A M.R.S.A § 4357-A, with a Conditional Use Permit approved in accordance with Section 5.2.3 (Conditional Use Permit).
- [19] 10,000 square feet for multifamily dwellings, and 20,000 square feet for the Longfellow School-Bowdoin College Edwards Center for Art and Dance building.
- [20] 250,000 square feet if the structure meets one of the conditions listed in Section 04.2.4.B(9).
- [21] See subsection 4.2.4.5.B(4)d for additional setback requirements.
- [22] See subsection 4.2.5.B.(7) for additional height requirements.
- [23] No building footprint restriction for properties located south of Route 1, along Cressey Road and Columbia Drive

Comment [AB110]: Insert adoption date.

Comment [AB111]: Added dimensional standards for Park Row within GM6 per ZORC discussion 3/28

Comment [AB112]: Staff recommendation 2/5/16.

Comment [AB113]: Form existing 204.3 requirements.

Comment [AB114]: Same comment.

Comment [AB115]: Added 4/29/16

4.2.4. Rural Area Dimensional Standards

Table 4.34: Dimensional and Density Standards Table for Rural Zoning Districts

Standard	New Zone	RN ⁽¹⁾	RF	RR	RP1	RP2	RM
	Current Zone	BCN	FF1, CR1	CR2, MU1	CP1, FF3	CP2	MU5
Minimum Lot Area	Residential	n/a	2 ac	1.5 ac	20,000 sf ⁽²¹⁾	20,000 sf ⁽²²⁾	2 ac
	Nonresidential	n/a			4 ac ⁽²¹⁾⁽²²⁾	4 acres ⁽²⁾	
Maximum Density	Developments subject to Development Review	n/a	1 du per 2 ac	1 du per 1.5 ac	1 du per 4 ac	1 du per 4 ac	1 du per 2 ac

B.C. Reservation of Recreation Area

The Recreation Commission may, by formal vote, waive the payment of a required impact fee in lieu of reservation of recreation area, in whole or in part, if it finds that the requirement for additional recreational facilities can be met in whole or in part within the development. The following standards shall apply:

- (1) An estimate of the number of anticipated residents of the development based on occupancy rates acceptable to the Town is submitted by the applicant.
- (2) The Recreation Commission shall determine if the reserved land and/or proposed facilities are suitable for recreational use and if the proposed facilities are appropriate given community-wide recreation needs and the needs of the residents of the development.
- (3) The designation of the land for recreational facilities shall be indicated on the plan for the development.

C.D. Improvement of Recreation Area

If the Recreation Commission determines that the proposed reservation area meets the standards in Subsection 4.7.2.C4.6.3.C(2)4.6.3.B(3), the reserved recreation area shall be improved in accordance with the requirements of the Review Authority. In determining these requirements, the Review Authority shall consider the Comprehensive Plan and the long-range plans of the Recreation Commission.

D.E. Ownership and Maintenance of Reserved Recreation Area

The developer/applicant and Review Authority shall agree on the means of future ownership and control, which shall be one or more of the following:

- (1) The recreation area may be held and maintained in common by the future owners of the development, under the by-laws of an homeowners' association, as approved by the Review Authority.
- (2) The recreation area may be held and maintained in perpetuity by a land trust or other suitable private organization.
- (3) The recreation area may be deeded to the Town for future maintenance and improvement, if acceptable to the Town Council.

4.6.4.8 Circulation and Access

4.6.4.8.1. Street Standards

A. General Standard

The development will not cause unreasonable congestion or unsafe conditions on highways or public roads, either existing or proposed, and the traffic associated with the development shall maintain its level of service on any public road within 200 feet of any existing or proposed curb-cut.

Comment [JE157]: From current ordinance section 41.1.12 with slight revision for clarity. MAW

A.B. Specific Standards: Development of New Streets

- (1) Streets shall be designed to integrate with the site's topography and natural features and provide safe travel for all users of the street. ~~move traffic safely.~~ Any new street or road approved through the Development Review process shall be based upon the written recommendations of the Town Engineer, Fire Chief, Police Chief, and Director of Planning and Development—who shall review the project

Chapter 4 - Property Development Standards
Section 4.8 Circulation and Access
Subsection 4.8.1 Street Standards

for safety. ~~Design of streets shall address pedestrian and bicycle safety and movement.~~

- (2) ~~The size and design needs of new streets shall be based upon the projected number anticipated multimodal users (vehicles, bicycles, pedestrians, transit) to be accommodated, of vehicles they are to carry.~~
- (3) All new streets shall be classified ~~in the Development Review process in accordance with criteria set forth in the Brunswick Street Acceptance and Standards Ordinance, as amended, according to the following criteria:~~
 - a. ~~Collector/Commercial — Serves over 150 units.~~
 - b. ~~Local — Serves 25 to 150 units.~~
 - c. ~~Minor — Serves less than 25 units.~~
 - d. ~~Lane — A secondary access that services housing lots from the rear lot line.~~
- (4) All street designs shall comply with the Maine Department of Transportation (DOT) Complete Streets Policy dated June 2014, as amended. To comply with this policy, all new private and public street projects funded in part or in whole by Maine DOT shall include designs and features to ensure that the street serves the needs all users, including motorists, transit users, bicyclists, and pedestrians of all abilities, as warranted and feasible (as those terms are defined in the Policy).

Comment [AB158]: Revised based on ZORC discussion 4/25/16

B.C. Specific Standards: Street Design and Dedication Standards

Streets intended for public dedication ~~must shall be designed and constructed in accordance with the Brunswick Street Acceptance and Standards Ordinance, as amended, satisfy the Public Works Roadway Dedication Standards found in Appendix B (Street Standards).~~ The Review Authority may approve private roadways for subdivisions; however if they do not conform with these standards they may not be considered for dedication. Applicants proposing private roadways shall apply the Alternative Roadway Standards ~~also found~~ contained in Appendix B (Street Standards) to the greatest extent practicable. ~~All dedications of streets to the Town shall comply with the Brunswick Street Acceptance Ordinance (Chapter 14, Article 188).~~

D. Specific Standards: Interconnectedness

- (1) **General:** The street design shall allow for proper continuation of streets from other adjacent subdivisions and built-up areas. Dead-ends are to be avoided unless based on site constraints and there are no other feasible alternatives. For purposes of this section, pedestrian or bicycle connections to adjacent lands may be sufficient to satisfy this requirement. This requirement may be waived in cases where interconnectedness would result in the disruption of community character.
- (2) **GC1 and GC2 Connectivity Restriction:** ~~Development Review approvals in the GC1 and GC2 zoning districts shall not result in the construction of new streets or access for vehicles connecting to Meadowbrook Road, Whittier Street, Breckan Road, Atwood Lane, Bowdoin Street or Berry Street. No new construction within the GC1 and GC2 zoning districts shall be accessed through any of these streets.~~

Comment [AB159]: From current Sec.204.3.C). Also referenced in Use Table.

E. Specific Standards: Sidewalks

Within all Growth Area zoning districts, developments other than residential developments containing less than 25 units on dead-end streets shall provide sidewalks along the development

Chapter 4 - Property Development Standards
Section 4.9 Parking and Loading
Subsection 4.9.4 Parking Alternatives

- b. Islands shall be at least the minimum width necessary to adequately accommodate the proposed plantings and any proposed walkway through it, and avoid damage to landscaping by parked vehicles.
- c. Each landscaped island shall include at least one canopy shade tree, ~~with islands between parking bays including canopy trees spaced no more than 40 feet apart~~ provided, ~~however~~, that understory trees may be substituted for canopy trees in areas beneath overhead utility lines.

C. Surfacing, Drainage, Lighting

- (1) Parking areas shall be constructed with a suitably durable surface that minimizes dust and is appropriate for the use of the land, with adequate drainage.
- (2) Surfacing, grading and drainage shall facilitate groundwater recharge by minimizing impermeable pavement and run-off. Oil traps may be required for larger paved parking lots.
- (3) Parking areas ~~to be used at night~~ shall be lighted in a manner that does not result in direct lighting to or glare to abutting residential properties or cause a traffic hazard due to glare.

D. Modification/Waiver of Design Requirements

The Review Authority may waive or modify the design and construction standards in this subsection on finding that the total number of parking spaces required for the use cannot be accommodated in accordance with the standards, that the site layout prevents compliance with the standards, or that existing development on the site has been determined by the Code Enforcement Officer to be nonconforming is incompatible with the standards.

E. Maintenance

All parking lot areas shall be maintained pursuant to Section 4.154.14 (Maintenance).

~~4.7.4.4.9.4.~~ Parking Alternatives

The Review Authority may approve alternatives to complying with the requirements in subSection 4.9.14.8.1 (Minimum and Maximum Automobile and Bicycle Parking Requirements)~~Minimum and Maximum Automobile Parking Requirements~~ in accordance with the following standards.

A. Shared Parking

- (1) The Review Authority may allow use of a common parking facility to meet the minimum parking requirements for multiple uses or uses on multiple lots on finding that the uses generate parking demands during different times, or have characteristics making it likely that a significant portion of people will use the same parking space to access the other uses sharing the parking facility.
- (2) Shared parking spaces shall be located within ~~600~~1000 feet walking distance of the primary pedestrian entrance to all uses.
- (3) The Review Authority may require cross easements or other legally enforceable documents that ensure the participating uses or property owners the right to joint use of the parking facility as long as the shared spaces are needed to comply with this Ordinance. If the shared parking becomes unavailable to a participating use, the uses shall provide alternative means of meeting off-street parking requirements.

Comment [AB168]: Increased by ZORC 4/25/16.

B. Off-Site and Satellite Parking

- (1) The Review Authority may allow use of a parking facility located on one lot to meet the minimum parking requirements for a use located on a separate lot.
- (2) Off-site parking spaces shall either be located within 600-1000 feet walking distance of the primary pedestrian entrance to the use served. ~~or be if~~ located in a GC district, GM3, GM4, GM5, GM8 or GI District, or a Rural Area zoning district, ~~and be served by~~ shuttle service shall be provided between the parking facility and the use it serves.
- (3) The Review Authority may require legally enforceable documents that ensure that the served use has the right to use of the off-site or satellite parking facility as long as the spaces are needed to comply with this Ordinance. If the off-site or satellite parking facility becomes unavailable to the served use, the use shall provide alternative means of meeting off-street parking requirements.

Comment [AB169]: Z
ORC changes
4/25/16.

Comment [AB170]: S
ame as comment
above.

C. Provision over the Maximum Allowed

The Review Authority may allow the maximum parking requirement applicable to a development in accordance with subsection 4.9.1.G4.8.1.G to be exceeded on finding that the additional spaces are justified by a parking demand study demonstrating that they are necessary to adequately serve a development.

D. Parking Requirement Reductions

The Review Authority may allow additional reductions of the minimum vehicle parking requirements in subsection 4.9.14.8.1 on finding that the additional reduction is justified by a parking demand study showing reduce transportation and vehicle parking demand due the location, characteristics, or committed operations of the particular use (e.g., type of development, proximity to transit, employee carpool/vanpool program, off-peak work schedules).

4.7.5.4.9.5. Minimum Off-Street Loading Requirements

A. Minimum Number of Off-Street Loading Spaces

(1) General Standard

New development involving the routine vehicular delivery or shipping of goods, supplies, or equipment to or from the development site shall provide a sufficient number of off-street loading spaces to accommodate the delivery and shipping operations of the development's uses in a safe and convenient manner.

(2) Specific Presumptive Standards

- a. Table 4.9.5.A(2)4.8.5.A(2) below sets forth the minimum number of off-street loading spaces that presumptively satisfies the loading space needs of medium-sized and large-sized delivery/shipping trucks based on the principal use and size of the development. It is assumed that the needs of small delivery/shipping trucks can be met through the temporary use of vehicle parking spaces or accessways, without impeding use of adjacent driveways or fire lanes.
- b. The Review Authority may require a higher or lower number of off-street loading spaces based on a finding that the characteristics of the particular development warrant such an increase or decrease, and that the general standard in subsection (1) above is met.

Chapter 4 - Property Development Standards
Section 4.10 Outdoor Lighting
Subsection 4.10.1 ApplicabilityOutdoor Lighting

- (2) Where practicable, off-street loading areas shall be located to the rear of the principal building(s) it serves.
- (3) Loading areas shall be located and designed so vehicles using them can maneuver safely and conveniently to the loading space(s) and complete loading/unloading without interfering with vehicular, bicycle, or pedestrian traffic or use on streets, bikewaysbike lanes, walkwayscrosswalks, and parking areas.
- (4) Off-street loading areas shall be located and designed to screen and otherwise mitigate their potential adverse visual and noise impacts on adjacent streets and properties by any combination of buildings, walls or fences, or dense continuous hedge.

~~4.8~~4.10 **Outdoor Lighting**

4.10.1. ApplicabilityOutdoor Lighting

A. General Standards

Outdoor lighting shall not adversely impact road safety or adjacent properties and uses.

A.B. Specific Standards

- (1) Exemptions. The following types of lighting are exempt from the standards in this subsection 4.9.1.(B):
 - a. Lighting emitting less than 800 lumens;
 - b. White string mini-lights used in window displays or in trees, bushes, and shrubs as part of the landscaping;
 - e. Lighting of places of worship, flags, emergency lighting, as well as approved sports lighting;
 - d.c. Short-term use of lighting for public festivals, celebrations, and the observance of holidays;
 - e.d. Public street and right-of-way lighting; and
 - f.e. Lighting required and regulated by the Federal Aviation Administration (FAA).

(2) **Lighting Height**

The maximum height of freestanding lights shall be the height of the principal building or 25 feet, whichever is less.

Comment [JE171]: I have simplified this section. Didn't think it needed all the subsections. MAW

Comment [AB172]: R removed per ZPRC discussion 4/25/16

Chapter 4 - Property Development Standards
Section 4.11 Architectural Compatibility
Subsection 4.11.1 Architectural Compatibility General Standard

(3) **Light Shielding**

- a. All lighting emitting more than 800 lumens shall:
 - i. Conform to the Illumination Engineering Society (IES) Specification for Full Cutoff;
 - ii. Be shielded to direct all light towards the ground so that the lighting elements are not exposed to normal view;
 - iii. Avoid disability glare (i.e., avoid being a hazard or nuisance to motorists, pedestrians, or neighboring residents);
 - iv. Be directed away from adjacent properties and streets, including properties separated from the development site by a street, road, or right-of-way, so that the lighting elements are not exposed to normal view by motorists or sidewalk pedestrians, or from adjacent properties.
- b. Compliance with this subsection shall be achieved with fixture shielding, directional control designed into the fixture, fixture location, fixture height, fixture aim, or a combination of these measures.

Comment [AB173]: Jeff review

(4) **Lighting Maintenance**

All outdoor lighting shall be maintained pursuant to Section [4.154.14](#) (Maintenance).

4-94.11 Architectural Compatibility

~~4-9-1-4.11.1.~~ **Architectural Compatibility General Standard**

New development shall be compatible with its architectural surroundings in terms of its size, mass, and design and shall comply with any design standards or guidelines for the zoning district in which it is located. ~~Development in the GM4 District shall be consistent with the Cook's Corner Design Standards. Development in the VRO District shall be consistent with the Village Review Overlay District Design Guidelines.~~

~~4-9-2-4.11.2.~~ **Specific Standards**

- ~~A. The height and scale of proposed buildings shall be consistent with existing buildings in the surrounding vicinity.~~
- A. Developments shall comply with the Americans with Disabilities Act in a manner that is compatible with Brunswick's historic architecture.
- B. Municipal resources must shall be available to service the project, and any on-site or off-site impacts associated with the development of the project will be mitigated.
- C. New buildings shall be oriented toward public streets through the location of the main entrance to the building or the provision of windows or façade improvements designed to enhance the view from the street.
- D. Development in the GM4 District shall be consistent with the Cook's Corner Design Standards.
- E. Development in the VRO District shall be consistent with the Village Review Overlay District Design Guidelines.
- F. Except on parcels owned by Bowdoin College or the Town of Brunswick, development within of land previously part of the Brunswick Naval Air Station (BNAS), shall be consistent with design guidelines established and administered by the Midcoast Regional Redevelopment Authority (MRRRA).

Comment [JE174]: From current ordinance 411.11. MAW

Comment [AB175]: Removed per ZORC discussion 4/25/16

Chapter 4 - Property Development Standards
Section 4.15 Site Feature Maintenance
Subsection 4.15.1 General Standard

permitted use may not be perceptible beyond the zoning district boundary unless the use is permitted in an adjacent zoning district.

F.G. Specific Standard: Vibrations

No use or activity shall cause inherent and recurring generated vibration perceptible without instruments at any point along the property line. Temporary construction is excluded from this restriction.

G.H. Specific Standard: Unlicensed Motor Vehicles

With the exception of properties on which a legally established vehicle sales, rental, or storage use, or a vehicle service or repair use, is located, not more than two currently unregistered and/or uninspected motor vehicle shall be parked, kept, or stored outside. This provision shall not apply to vehicles that do not require registration and/or inspection.

H.I. Specific Standard: Motor Vehicle and Watercraft Parking in Required Setbacks

The parking of motor vehicles and watercraft exceeding 16 feet in length (excluding canoes, kayaks, and rowing skulls), is not permitted in a required setback except for parking on driveways, parking lots and motor vehicle and watercraft display areas legally established in a required setback. For the purpose of watercraft storage, seasonal storage of all watercraft is allowed in a side and rear setback, but not in a front setback.

I.J. Specific Standard: Outdoor Lighting

All installed outdoor lighting shall be operated to comply with the Standards found in Section 4.810 (Outdoor Lighting).

4.134.15 Site Feature Maintenance

4.15.1. General Standard

The Planning Board shall advise the applicant that site features constructed or installed as required by a development approval must be maintained in good repair, and replaced if they are damaged or destroyed, or in the case of living materials, if they die or are effectively destroyed after installation.

~~When the standards and procedures of this Ordinance or conditions attached to a development approval require that any structure or site feature be constructed or installed, the owner of the affected property shall be responsible for maintain these structures and site features in good repair, and for replacing them if they are damaged or destroyed, or in the case of living materials, if they die or are effectively destroyed after installation. In addition, property owners shall be responsible for each of the additional maintenance, replacement, and operating standards set forth in this Section 4.14.~~

Comment [JE191]: Don't like this as a finding. It deals with the future. Help.

Comment [AB192]: Revised per ZORC discussion 4/25/16

4.134.15.2. Specific Standards: Landscape Maintenance

- A.** Landscaped areas, screens, and plant materials required to be installed or protected by this Ordinance or conditions attached to a development approval shall be maintained in a healthy growing condition and in a neat and orderly appearance, free from refuse and debris.
- B.** If required plant material dies or becomes diseased, it shall be replaced by the property owner on or before October of the year the dead or diseased planting is discovered or such further time frame deemed reasonable by the Codes Enforcement Officer.

Chapter 5 - Administration

5.1 General Provisions

5.1.1. Reviewers and Decision-Makers

A. Town Council

(1) ~~{To be inserted}~~ Membership

~~The Town Council consists of nine (9) members elected for terms of three (3) years.~~

(2) Powers and Duties

~~a. The Town Council shall review and approve all zoning ordinance amendments upon recommendation by the Planning Board.~~

~~a. The Town Council shall have the option to exercise jurisdiction regarding any Planning Board approved Special Permit in accordance with subsection~~

B. Planning Board

(1) Membership

The Planning Board consists of seven (7) members appointed by the Town Council for terms of three (3) years.

(2) Powers and Duties

a. The Planning Board shall review all Conditional Use Permits, Special Permits, Major Development Review applications, and any Minor Development Review application for which the applicant requests Planning Board review. The Planning Board may conduct Minor Development Review if recommended by either the Director or the Staff Review Committee.

b. The authority of the Planning Board to review certain Minor Development Review applications is hereby delegated to the Staff Review Committee in accordance with the provisions of ~~S~~subsection 5.1.1.D. Whenever such delegation occurs, the term "Planning Board" shall also refer to the Staff Review Committee.

C. Zoning Board of Appeals

(1) Membership

The Board of Zoning Appeals consists of five (5) full members and four (4) associate members appointed by the Town Council for terms of three (3) years.

(2) Powers and Duties

The Zoning Board of Appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Codes Enforcement Officer, the Planning Board or Village Review Board, and to authorize ~~v~~variances in specific cases.

D. Village Review Board

(1) Membership

a. The Village Review Board ~~shall~~ consists of seven (7) members ~~appointed by the Town Council for terms of three (3) years.~~

Chapter 5 - Administration
Section 5.1 General Provisions
Subsection 5.1.1 Reviewers and Decision-Makers

- b. The members ~~shall~~ include a resident of the Village Review Zone and a Brunswick resident who is a representative of the Pejepscot Historical Society. To the extent possible, the remaining members ~~shall~~ include Brunswick residents with expertise or experience in the fields of architecture, historic preservation and construction engineering.

~~All members shall be appointed by the Town Council for a three-year term.~~

(2) Powers and Duties

The Village Review Board ~~shall have~~ the following powers and duties:

- a. Review new construction, additions, alterations, relocations and demolitions within the Village Review Zone, and issue a Certificate of Appropriateness for applications satisfying the requirements of this Section.
- b. Develop, regularly update, and consult the Village Review Zone Design Guidelines in review of applications for Certificates of Appropriateness.
- c. Act in an advisory capacity to the Town Council, Planning Board and other Town entities regarding the protection of historic sites, structures, and artifacts.
- d. Review and comment upon proposed National Register of Historic Places nominations for properties within the Town.
- e. Maintain and update the existing historic building/structure survey using forms and guidelines established by the Maine Historic Preservation Commission.
- f. Provide educational and informational opportunities for Brunswick residents and businesses regarding historic preservation.
- g. Adopt rules of procedure and shall establish appropriate meeting times.

E. Staff Review Committee

(1) Membership

The Staff Review Committee ~~shall consist~~ of the Director, Public Works Director, Codes Enforcement Officer, Town Planner, Parks and Recreation Director, Fire Chief, Police Chief, Town Assessor, ~~Natural Resources Planner~~, General Manager of the ~~Brunswick-Topsham Brunswick and Topsham~~ Water District, and the General Manager of the Brunswick Sewer District, or their official designees. For the review of projects in the GR1, GA, GO, GI (within former BNAS), GN, GM7 Districts, the Staff Review Committee ~~shall is be~~ expanded to include one nonvoting staff representative from the Midcoast Regional Redevelopment Authority (MRRA) ~~designated in writing by the~~ ~~The~~ Executive Director of MRRA. ~~shall designate the MRRA representative in writing.~~

(2) Powers and Duties

The Staff Review Committee ~~shall have~~ ~~has~~ the following powers and duties:

a. **Development Review.**

When acting in its Development Review capacity:

- i. The Staff Review Committees ~~hall~~ ~~exercise~~ all of the powers exercised by the Planning Board including the power to grant waivers, and the power to approve, approve with conditions, or deny applications for Site Plan approval.

Chapter 5 - Administration
Section 5.1 General Provisions
Subsection 5.1.2 Pre-Application Meetings

~~ii.— Actions by the Staff Review Committee to approve an application, with or without conditions, shall require the approval of three (3) members or a majority of those members present and voting, whichever is greater. A quorum shall consist of three (3) members and, further, shall have a minimum of three deciding votes when acting on an application.~~

Comment [AB195]: Already stated above.

~~iii.ii. The Staff Review Committee may waive provisions of this Chapter, in accordance with Subsection 5.2.8.M5-2.8.M5-2.7.M (Waiver Provisions).~~

~~iv.iii. All appeals from a Staff Review Committee decision shall be heard by the Planning Board.~~

~~v.iv. The Staff Review Committee shall provides recommendations to the Planning Board for any project undergoing Major Development Review. Individual members of the Committee may, in addition, submit letters of recommendations to the Planning Board.~~

~~b. Recommendations. The Staff Review Committee shall provide recommendations to the Planning Board for any project undergoing Major Development Review. Individual members of the Committee may in addition submit letters of recommendations to the Planning Board.~~

Comment [AB196]: Stated above.

F. Director of Planning and Development and Codes Enforcement Officer

(1) Powers and Duties

a. **Minor Change of Use.** The Codes Enforcement Officer may approve Changes of Use that do not exceed the thresholds required for Development Review shown in Table 5.2.7.B.

b. **Minor Modifications.** The Director may approve a minor modification to an approved Site Plan, Subdivision, Conditional Use Permit, or Special Permit, in consultation with the Town Planner, Codes Enforcement Officer, and the Public Works Director, as provided in Section-subsection 5.2.9.B5-2.9.B5-2.8.B (Minor Modifications).

5.1.2. Pre-Application Meetings

Pre-application meetings with Town staff are required prior to submission of applications for Streamlined Major Development Review. Pre-application meetings with the Planning and Development staff, Staff Review Committee, or Planning Board are optional for all other applications, but are strongly recommended prior to the expenditure of funds toward the design of a development proposal.

A. Pre-application Meeting with Town Staff

Prior to submitting an application for development review, the applicant is advised to meet with Planning and Development Staff-staff to discuss applicable zoning standards and submission requirements. At this meeting, staff can detail the process for development review, answer any questions, and provide feedback to the applicant.

B. Pre-application Meeting with Review Authority

Prior to submitting an application for development review, the applicant may meet with the Review Authority to discuss applicable zoning provision, submission requirements, and any requested waivers in order to assist the Review Authority in providing feedback to the applicant.

5.1.3. Applications Required

A. Application Submission

Development applications shall be submitted to the Director. Required application materials are summarized in Appendix D. For each item required to be submitted as part of Development Review applications the applicant shall submit either the requested information or a request for a waiver from the information requirement, pursuant to ~~Section—subsection 5.2.8.M5-2.8.M5-2.7.M~~ (Waiver Provisions). ~~The Town staff~~ shall provide a dated receipt for each application received.

B. Notice Provided

When an application is received, ~~the Town staff~~ shall notify the owners of all property located within a 200 foot radius of the boundaries of the proposed development, giving a general description of the project and specifying its location. ~~The Town staff~~ shall mail notifications via first class mail between 15 and ~~ten~~ (10) days prior to a scheduled review for which it is required. ~~In addition, notification in digital form shall be posted on the Town's website.~~

5.1.4. Determination of Completeness

- A. An application is complete when an application form and all plan requirements or waiver requests have been submitted to the Director. Within five (5) working days of receiving an application, the Director shall determine whether the application is complete. If the application is not complete, the Director shall notify the applicant in writing and request the additional information required. The applicant shall submit the additional information as soon as possible and the procedure in this paragraph shall be repeated until the application is complete.
- B. With the exception of pre-application meetings, no application shall be placed on the Planning Board or Staff Review Committee agenda until the application is complete. As used in this section "complete" shall mean that all submission requirements established by this Ordinance have either been complied with or a wavier has been requested; any additional information requested by the Planning Board or Staff Review Committee at any prior meeting has been provided; and all conditions of any relevant prior approval for the property have been fulfilled (unless the application describes the manner in which unfulfilled conditions will be addressed).

5.1.5. Fees Required **At Submittal**

A. Application Processing Fee

The applicant shall submit with each application the fees for review of that type of application established by the Town Council.

~~B. Development Impact Fees~~

~~Where it can be clearly demonstrated that a proposed development will result in a negative impact or decline in the Level of Service of any existing municipal infrastructure system or service, the Planning Board may require the applicant to participate in municipal infrastructure and/or service system improvements. The Planning Board shall assess and establish the applicant's level of participating in the improvement of the system or service.~~

~~(1) Conducting the Assessment~~

~~In conducting the assessment, the Planning Board shall consider the following:~~

- ~~a. The status of the system and service in the Comprehensive Plan and capital improvement program relative to any planned improvements and scheduling.~~
- ~~b. The net effect of the proposed development on the capacity of the infrastructure or service system, indicating the percentage share caused by the development.~~

Comment [AB197]: ZORC decision 4/25/16.

Chapter 5 - Administration
Section 5.1 General Provisions
Subsection 5.1.6 Fiscal Capacity and Performance Guarantees

- ~~c. A cost estimate for improvement of this infrastructure or service system to meet the increased demand, and an estimate of the applicant's share of that cost.~~
- ~~d. An assessment of municipal water and sewer system improvements provided by the appropriate agencies.~~

~~(2) Improvement Responsibilities~~

~~As soon as the applicant's share of infrastructure and/or service system impact has been established by the Planning Board, the Board shall select the method by which the applicant is to participate in the infrastructure and/or service system improvement. All determinations of appropriate cost share shall comply with all applicable decisions of the federal and state courts regarding essential nexus and rough proportionality in development exactions. The following alternatives are available.~~

- ~~a. **Applicant Makes Improvements.** The applicant shall agree to make the necessary infrastructure and/or service system improvements, establish a construction or service schedule, and post a performance guarantee to cover all associated costs. The applicant may recover the improvement costs within 10 years after improvements are made from subsequent developments that realize a benefit by using the infrastructure and/or service system improvements financed by the applicant. Cost reimbursement for the applicant shall be established as subsequent developments go through the Site Plan or Subdivision review process. In arriving at the appropriate cost share for subsequent developments, the same process must be used.~~
- ~~b. **Town Makes Improvements.** The Town shall agree to complete the improvements. The applicant shall pay the required share of the cost to the Town at the time of approval of the final plan which shall be held in a reserve fund until the improvement is completed in accordance with the scheduled capital improvement program of the Town. If the improvement is not completed within 10 years, the fee, plus interest, must be returned to applicant.~~

5.1.6. Fiscal Capacity and Performance Guarantees

A. Fiscal Capacity

The Planning Board shall require evidence of fiscal capacity, which shall demonstrate that the applicant has the financial resources to complete the project.

B. Performance Guarantee

(1) When Required

- a. A performance guarantee may be required prior to the construction of infrastructure that is intended for dedication to the Town, ~~the Brunswick-Topsham Brunswick and Topsham~~ Water District or Brunswick Sewer District or of infrastructure that will be privately owned but will function as the equivalent of public improvements, including, but not limited to, private roads, private sewer systems and private water systems. A performance guarantee will also be required prior to initiation of work within an existing public right of way. ~~The Planning Board may also require security for a period of two years to ensure the replacement of any plantings shown on the landscaping plan which have failed to grow normally, are diseased or have died.~~ No Certificate of Occupancy may be issued unless a written approval is granted by the Town Engineer stating that the occupancy of the project or project phase can accommodate occupants without posing a threat to the public's safety.

Comment [AB198]: Stated separately below.

Chapter 5 - Administration
Section 5.1 General Provisions
Subsection 5.1.7 Property Owners' Associations

- b. The Review Authority may require financial security for a period not to exceed two ~~(2)~~ years to ensure the replacement of any plantings shown on the landscaping plan that have failed to grow normally, are diseased, or have died.

(2) Certified Check, Performance Bond or Letter of Credit

- a. The performance guarantee may be a performance bond, irrevocable letter of credit, or an escrow agreement. Such performance guarantee shall be in a form acceptable to the Town Manager, based upon the recommendations of the Director, the Town Engineer, and ~~/or~~ the Town Attorney.
- b. The performance guarantee shall be for the full amount of the cost of the subject work, as determined by the Town Engineer, plus an additional ~~ten (10)% percent~~ to account for inflation and contingencies.
- c. The time for performance under the performance guarantee shall not exceed two ~~(2)~~ years and the full amount secured by the performance guarantee shall remain available to the Town for the entire term of the performance guarantee unless reduced by written agreement between the Town Manager and the applicant.

(3) Release of Performance Guarantee

- a. The developer may request, at any time, that the performance guarantee be released, in whole or in part. Within 60 days of receiving such a request, the Town Manager, based upon the recommendation of the Director, ~~and the Town Engineer and/or Town Attorney~~, may release all or part of the performance guarantee. In making a determination on the request, the Town Manager shall consider, and the applicant shall provide, evidence of satisfactory completion of the required improvements such as, but not limited to:
 - i. A statement by the Town Engineer that all street and storm drain systems have been constructed and completed in compliance with the Final Plan.
 - ii. A statement from the Brunswick Sewer District ~~and/or the Brunswick and Topsham Water District~~ General Manager that all sewage disposal ~~and water distribution~~ systems have been constructed and completed in conformity with the Final Plan.
 - iii. A statement by a professional land surveyor, that all permanent boundary monuments have been set in accordance with the ~~Final pPlan~~ and current guidelines and standards of the State of Maine Board of Licensure for Professional Land Surveyors Rules at all street corners and angles of all street lines and along ~~with~~ intersections, corners or breaks in a straight lot line. The cost of obtaining this statement shall be borne by the applicant.
- b. In releasing the performance guarantee, ~~the~~ Town ~~staff~~ shall provide the applicant with a ~~Ce~~ertificate of ~~eC~~ompliance signed by the Town Manager.

5.1.7. Property Owners' Associations

All private roads, land and facilities owned in common private ownership shall be managed and controlled by a homeowners' association or property owners' association, in accordance with the following:

- A. The documentation for the association shall be completed prior to approval of the Final ~~Subdivision Pplan~~, and recorded prior to the sale of the first lot ~~or unit~~. The association shall comply with all applicable provisions of State law.
- B. Membership shall be mandatory for each lot ~~or unit~~ owner within the development, who shall be required by recorded covenants and restrictions to pay fees to the ~~home-owners~~ association for

Chapter 5 - Administration
Section 5.1 General Provisions
Subsection 1.1.1 Appeals of Administrative Decisions

taxes, insurance, and maintenance of commonly owned land, private roads, and other common facilities.

- C. Property owners shall be required to pay their pro rata share of the costs and/or the assessment levied by the association shall become a lien on the property.
- D. The homeowners association shall be able to adjust the assessment to meet changed needs.
- E. Ownership shall be structured so that real property taxing authorities may satisfy property tax claims against the conservation-common land and facilities from the association and its members.

5.1.8. Appeals of Administrative Decisions

A. Making an Appeal

- ~~(1) Administrative appeals from decisions of the Codes Enforcement Officer, Planning Board or Village Review Board shall be taken no later than 30 days after the decision is rendered. Dimensional variance appeals do not require a prior decision of the Codes Enforcement Officer or a board and are not subject to this time limit.~~
- ~~(2) The appeal shall be made by filing in the Office of the Codes Enforcement Officer a written notice of appeal specifying the grounds for such appeal. For an appeal seeking a Variance, the applicant shall submit a sketch drawn to scale or photograph showing lot lines, location of existing buildings and other physical features pertinent to the Variance request, and a concise written statement stating what Variance is requested.~~
- ~~(3) Upon being notified of an appeal, the Codes Enforcement Officer, the Planning Board or Village Review Board, as the case may be, shall transmit to the Zoning Board of Appeals all of the documents constituting the record of the decision appealed from. Each appeal shall be accompanied with the fee designated by the Town Council.~~
- ~~(4) A copy of each Variance request located in the Flood Protection Overlay (FPO) district, including the application and all supporting information supplied by the applicant, shall be forwarded by the Codes Enforcement Officer to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Zoning Board of Appeals. Any comments received from the Commissioner prior to the action by the Zoning Board of Appeals shall be made part of the record and shall be taken into consideration by the Zoning Board of Appeals.~~

B. Procedure on Appeal

- ~~(1) The Zoning Board of Appeals shall hold a public hearing on the appeal within 45 days after the filing of the appeal.~~
- ~~(2) At least ten days prior to the date set for hearing, the Board shall give similar written notice to all property owners of record whose properties lie within 200 feet of the perimeter of the affected property, the person making the appeal, and the Codes Enforcement Officer, Planning Board, or Village Review Board (whichever made the decision being appealed), and any other person requesting notice. The notice will be sent via U.S. Mail, postage prepaid, to those persons as listed on the Town's tax records.~~
- ~~(3) At least seven days prior to the date of the hearing on such appeal, the Zoning Board of Appeals shall cause to be published in one issue in a newspaper of general circulation in Brunswick a notice which includes, the name of the person appealing,~~

Chapter 5 - Administration
Section 5.1 General Provisions
Subsection 1.1.1 Appeals of Administrative Decisions

~~a brief description of the property involved, including the street address, a brief description of the decision appealed from, or the nature of a Variance, and the time and place of the Zoning Board of Appeals' hearing.~~

C. Hearings

- ~~(1) In hearing an appeal from a decision of the Codes Enforcement Officer, Planning Board, or Village Review Board, the Zoning Board of Appeals shall:
 - a. Examine all application documents, Ordinance requirements and Finding of Fact and Conclusions prepared by the Codes Enforcement Officer or the Board whose decision is being appealed.
 - b. Determine on the basis of the entire record presented whether the Codes Enforcement Officer or such Board, as applicable, could reasonably have found the facts and reached the conclusions upon which the decision under appeal was based.
 - c. Determine whether the decision being appealed was based on substantial evidence.
 - d. Not substitute the judgment of the Zoning Board of Appeals for the judgment of the Codes Enforcement Officer or the Board whose decision is under appeal.
 - e. If the Zoning Board of Appeals finds that the Codes Enforcement Officer or the Board was not erroneous in its review of the application, the original determination shall be upheld.~~
- ~~(2) The Zoning Board of Appeals may find that all or portions of the decision were faulty, in which case the Board may remand that portion of the application to the Codes Enforcement Officer, Planning Board, or Village Review Board for reconsideration, with recommendations that the Officer or Board make additional Findings of Fact and conclusions to enable the Zoning Board of Appeals to complete its evaluation of the appeal. In the case of a remand, the appeal before the Zoning Board of Appeals shall remain pending until the Codes Enforcement Officer or Board whose decision is on appeal acts on the remand and reports its action to the Zoning Board of Appeals, which shall then make a final decision on the appeal. The decision of the Zoning Board of Appeals to remand is not final action by the Zoning Board of Appeals and is not appealable to Superior Court.~~
- ~~(3) At a hearing on any appeal, the appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chair.~~
- ~~(4) At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause.~~
- ~~(5) If a party does not attend a hearing and is not otherwise represented, its case will be deemed to have been withdrawn without prejudice to refile the appeal. The filing fee will not be refunded to any applicant whose appeal is withdrawn in this manner.~~
- ~~(6) The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.~~

D. Decisions of the Zoning Board of Appeals

- ~~(1) The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to:~~

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.1 Permits

- a. ~~Reverse any order, requirement, decision, or determination of the Codes Enforcement Officer, Planning Board or Village Review Board;~~
- b. ~~Grant a Variance; or~~
- c. ~~Decide in favor of the applicant on any matter which the Board is required to decide under this Ordinance.~~
- (2) ~~The Zoning Board of Appeals shall decide all appeals within at least 30 days after hearing, unless the Board and the applicant agree to a longer time, and shall issue a written decision on all appeals.~~
- (3) ~~All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, on all the material issues of fact, law or discretion presented, and the order, relief or denial. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Codes Enforcement Officer, Planning Board, or Village Review Board (whichever made the decision appealed from) and the Town Council within seven days of the decision date.~~
- (4) ~~For appeal decision located in the Flood Protection Overlay (FPO) district, the Zoning Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven days of the Board's decision. Copies of written decisions of the Zoning Board of Appeals shall be given to the Planning Board, Codes Enforcement Officer, and the Town Council.~~
- (5) ~~A Variance granted by the Zoning Board of Appeals shall expire if the work or change involved is not completed within two years of the date on which the Variance is granted.~~
- (6) ~~All Variances granted by the Zoning Board of Appeals shall be recorded in the Cumberland County Registry of Deeds in accordance with 30-A.M.R.S.A. § 4353(5).~~
- (7) ~~Once an appeal has been denied, a second appeal of a similar nature with regard to the same building or property may not be brought to the Board within six months.~~
- (8) ~~Appeals may be taken as permitted by law from any decision of the Zoning Board of Appeals to Superior Court.~~

5.2 Specific Procedures

5.2.1. Permits

Applications for Building Permits, Certificates of Occupancy, and Changes of Use shall be filed with the Codes Enforcement Officer. All other processes, permits or approvals required by this Ordinance for the type of development involved shall be obtained prior to the issuance of a permit under this ~~Section Subsection~~ 5.2.1. Each application shall state the intended use of the land and buildings. ~~A Building Permit application must also include a plot plan drawn approximately to scale showing the dimensions of the lot, the location and size of the building or buildings proposed to be constructed or relocated, and the location of any public or private way on or adjacent to the lot. All designs must be in accordance with adopted building codes.~~

Building Permit and Certificate of Occupancy

- (1) No building or other structure subject to the Maine Uniform Building and Energy Code adopted by the Town shall be erected, moved, added to or structurally altered

Comment [AB199]: Stated below.

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.1 Permits

without first obtaining a Building Permit. No Building Permit shall be issued except in conformity with the provisions of this Ordinance and all other applicable ordinances of the Town and any conditions imposed pursuant to those ordinances. In the Growth Mixed Use 4 (GM4) district ~~or Village Review Overlay Zone~~, a Building Permit shall not be issued unless the proposed building ~~or renovations to an existing building complies-comply~~ with the Cook's Corner Design Standards ~~or Village Review Zone Design Guidelines, as applicable~~. A Building Permit secured under the provisions of this Ordinance shall expire if the work or change is not begun within one (1) year of the date the permit is granted, and if the work or change is not completed within two (2) years of the date on which the permit is granted. All Building Permits heretofore issued shall be subject to the provisions of this paragraph.

Comment [AB200]: Added

- (2) All applications for Building Permits for the erection or enlargement of any new or existing building shall be accompanied by plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the sizes and locations on the lot of buildings already existing, if any, the location and dimensions of the proposed building or alteration, and the proposed sewage disposal system as required by the Maine State Plumbing Code. The application shall include such other information as may be required by the Codes Enforcement Officer to determine conformance with and to provide for the enforcement of this Ordinance. The Codes Enforcement Officer shall maintain a public record of all Building Permits issued.
- (3) ~~An applicant for a Building Permit shall also make application for a Certificate of Occupancy, which application must be received before a Building Permit may be issued.~~ Upon completion of the work permitted by the Building Permit, the Codes Enforcement Officer shall issue the Certificate of Occupancy upon finding that the building, structure or land and the use or occupancy thereof comply with the provisions of this Ordinance, with all ~~provisions-conditions~~ of any ~~development review approval Site Plans or Subdivision plans approved by the Planning Board or Zoning Board of Appeals~~ ~~Review Authority~~. The Codes Enforcement Officer shall maintain a public record of all Certificates of Occupancy which are issued.
- (4) It shall be unlawful to use or occupy, or permit the use or occupancy of any land, building, structure or part thereof that is created, erected, changed, converted, altered or enlarged, or to change, alter, or enlarge the use of any land, building, or structure without first obtaining a Certificate of Occupancy endorsed to the effect that the proposed use of the land, building or structure conforms with the requirements of this Ordinance.

Comment [AB201]: Do not require as stated.

B. Change/~~Expansion~~ of Use Permit

Comment [AB202]: Don't have an expansion of use permit.

(1) Change of Use Defined

Change of Use is a change from one use to another use of any structure or portion thereof that is permitted in the base zoning district (and overlay zoning district, if applicable) where the property is located. A change within the same category of permitted use (for example a change from one restaurant to another, or a change from one retail store to another) shall not be considered to be a Change of Use. A change in use from a vacant structure to an occupied structure shall be considered a Change of Use, unless the use is a resumption of a prior use. For the purposes of this section, the prior use includes the last occupied use of the vacant structure provided that such use has primarily occurred for a time period of not less than 12 consecutive months ~~at any time~~ during the prior three years.

(2) **Permit Required**

Any Change of Use shall require a Change of Use Permit. The Codes Enforcement Officer shall issue the Change of Use Permit upon the submission of a completed application and payment of the required fee unless the Codes Enforcement Officer determines that Development Review is required in accordance with ~~Section-Subsection 5.2.85.2.85-2.7,~~ (Development Review). If Development Review ~~and/or a Village Review Zone Certificate of Appropriateness~~ is required, the Codes Enforcement Officer shall not issue the Change of Use Permit until the required Development Review has been conducted.

Comment [AB203]: Added

(3) **Departmental Review**

Any Change of Use that does not require Development Review ~~or a Village Review Zone Certificate of Appropriateness~~, but results in a change in the configuration of parking, traffic circulation, architecture or landscaping shall require Departmental Review by the Director and the Town Engineer within seven (7) days of the filing of a completed application with the Codes Enforcement Officer.

Comment [AB204]: Added

5.2.2. Conditional Use Permit

Uses listed as Conditional Uses in Table 3.2 (Growth Area Permitted Use Table) or Table 3.3 (Rural Area Permitted Use Table) may be allowed upon the issuance of a Conditional Use Permit by the Planning Board as described in this section.

A. Conditional Use Process

- (1) Applications for Conditional Use Permits shall include those materials required by Appendix D - (Summary of Application Requirements) showing that the application satisfies the standards in ~~Section-subsection 5.2.3.B below5.2.3.B below5.2.3.B below.~~
- (2) When an application is filed, a public hearing will be scheduled ~~using-the provisions in accordance with of Section-subsection 5.1.3.B (Notice Provided) as modified by subsection (3) below.~~
- (3) ~~The-Town staff~~ shall send notice of public hearing to the owners of all property located within 200 feet of any boundary line of the property for which the permit is sought as determined by ~~the-Town staff~~ based upon the Town's tax records, at least ten (10) days prior to the public hearing. If the application is for property located within ~~the-an~~ Aquifer Protection ~~Overlay~~ Zone, notice shall also be sent to the ~~Brunswick-TopshamBrunswick and Topsham~~ Water District.
- (4) Any Brunswick resident or Brunswick property owner shall have the opportunity to provide written comments for consideration by the Planning Board. Written comments must be received prior to the scheduled public hearing. If the application is for property within the Aquifer Protection Zone, the Planning Board shall review any comments made by the ~~Brunswick-TopshamBrunswick and Topsham~~ ~~WaterSewer~~ District.
- ~~(5) A Conditional Use Permit shall be subject to the Development Review Process, subject to any conditions placed on the permit. Any application involving the review of a proposal that involves a Conditional Use Permit shall be subject to Development Review.~~
- (5) The Planning Board may approve, approve with conditions or deny the Conditional Use Permit application. Decisions of the Planning Board shall be made by written Findings of Facts and Conclusions that set forth the reasons for the decision based on all standards of ~~Subsection 5.2.3.B below5.2.3.B below5.2.3.B below~~ and shall

Comment [AB205]: ZORC question. Do we want to establish a deadline?

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.3 Special Permits for Unclassified and Omitted Uses

be made within 14 days ~~of~~ after the public hearing. Such Findings of Fact and Conclusions shall include a plan submitted by the applicant and a permit that outlines all conditions and requirements, copies of which shall be forwarded to the applicant and any person requesting a copy within 14 days ~~of~~ after the public hearing.

- (6) ~~Upon approval of the Conditional Use Permit, the proposed development shall be subject to Development Review (Subsection 5.2.7), subject to any conditions placed on the permit.~~

Comment [AB206]: Moved and revised for clarity

B. Criteria for Approval

The following Criteria shall be applied, where applicable, by the Planning Board when considering an application for Conditional Use Permit. The burden of proof of compliance with these standards rests with the applicant.

- a. The proposed structure and site design comply with all standards of this Ordinance applicable to the zoning district and any overlay district within which the property is located.
- b. The proposed use will not create significantly more vehiclare traffic by patrons, residents, or suppliers than the uses and structure within 300 feet of the proposed use or structure that currently generates the most vehiclare traffic;
- c. The proposed use will not operate or require deliveries earlier in the morning, or later at night, than the uses and structures within 300 feet of the proposed use or structure that currently operate earliest in the morning and latest at night.
- d. The proposed use shall not create any other significant adverse impacts on any property within 300 feet of the lot on which the proposed use or structure would be located.

C. Time Limits and Effect of Denial

A Conditional Use Permit shall expire two (2) years after it is approved by the Planning Board if no Certificate of Occupancy is granted for the use in accordance with ~~Subs~~Section 5.2.8.Q(5) ~~5.2.8.Q(5) 5.2.7.Q(5)~~ (Conditional Use Permit Approval Expiration).

5.2.3. Special Permits for Unclassified and Omitted Uses

Unclassified and Omitted Uses may be allowed upon the issuance of a Special Permit by the Planning Board as ~~described in in this section follows:~~

A. Special Permit Process

- (1) The process for review and decision on an application for a Special Permit shall be the same as that for a Conditional Use Permit in ~~S~~Subsection 5.2.2.A.
- ~~(2) After a Special Permit has been granted, the Director shall prepare and submit to the Town Council an analysis of whether and under what conditions the use allowed by the Special Permit should be added to Table 3.2 (Growth Area Permitted Use Table) and/or Table 3.3 (Rural Area Permitted Use Table). The Council may then act to incorporate such use by an amendment to this Ordinance.~~
- (2) In the event that a Special Permit is approved by the Planning Board, notice shall be forwarded within seven (7) days to the Town Council. The notice shall include a brief description of the Special Permit, including the name of the applicant, the street address and tax map reference of the application, the proposed use or uses,

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.3 Special Permits for Unclassified and Omitted Uses

and a brief synopsis of the permit. The Planning Board shall also forward findings of Fact and Conclusions to the Town Council with the notice.

~~(3) If the Planning Board votes to approve a Special Permit, that approval shall not take effect for 30 days after the Planning Board's vote. During that 30 day period, the Town Council may elect to exercise jurisdiction over the application. Decisions to exercise jurisdiction shall be made by a majority vote of the Town Council during a public meeting. If the Council exercises jurisdiction, it shall, after notice and hearing in the same manner as required for a zoning amendment under Subsection 5.2.10 (Ordinance Text or Map Amendment), ratify, reverse or modify the decision of the Planning Board. If the Town Council does not exercise jurisdiction within 30 days, then the decision of the Planning Board shall be deemed ratified by the Town Council. If the Planning Board denies an application for Special Permit, the Planning Board's decision shall not be subject to any appeal, but the applicant may apply to the Town Council for a zoning amendment as provided in Subsection 5.2.10.~~

~~(4) After a Special Permit has been granted, the Director shall prepare and submit to the Town Council an analysis of whether and under what conditions the use allowed by the Special Permit should be added to Table 3.2 (Growth Area Permitted Use Table) and/or Table 3.3 (Rural Area Permitted Use Table). The Council may then act to incorporate such use by an amendment to this Ordinance.~~

~~(4) If the Planning Board votes to approve a Special Permit, that approval shall not take effect for 30 days after the Planning Board's vote. During that 30 day period, the Town Council may elect to exercise jurisdiction over the application. Decisions to exercise jurisdiction shall be made by a majority vote of the Town Council during a public meeting. If the Council exercises jurisdiction, it shall, after notice and hearing in the same manner as required for a zoning amendment under Section 5.2.9 (Ordinance Text or Map Amendment), ratify, reverse or modify the decision of the Planning Board. If the Town Council does not exercise jurisdiction within 30 days, then the decision of the Planning Board shall be deemed ratified by the Town Council. If the Planning Board denies an application for Special Permit, the Planning Board's decision shall not be subject to any appeal, but the applicant may apply to the Town Council for a zoning amendment as provided in Section 5.2.9.~~

B. Criteria for Approval

The following Criteria shall be applied, where applicable, by the Planning Board when considering an application for Special Permit. The burden of proof of compliance with these standards rests with the applicant.

- (1) The application shall meet the criteria for approval of a Conditional Use Permit in ~~Subs~~Section 5.2.2.B, and in addition, shall meet the following criteria:

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.3 Special Permits for Unclassified and Omitted Uses

- a. The application shall further the planning goals the adopted **Town of Brunswick** Comprehensive Plan, including but not limited to the planning goals for the Planning Area (Appendix A - Planning Areas) in which the property is located.
- b. If the application involves the construction of a new building, or the substantial expansion of an existing building, the size of the resulting building:
 - i. Shall not exceed the gross floor area of the largest building located on a lot within 100 feet of the applicant's parcel by more than **ten (10) percent%**; and
 - ii. Shall not exceed the gross floor area of the largest building located **by** on a lot within 100 feet of the applicant's parcel by more than **12 square** feet.
- c. If the proposed use or structure is located in a **p**Planning **district Area**(Appendix A - Planning Areas) where pedestrian oriented character is encouraged, the use shall generate patron or resident activity (not just employee activity) during normal business hours, and the majority of the front façade of the building shall be consistent with existing setbacks on street.
- d. The proposed use will not generate more noise at any time of the day or night than **the any** use within 300 feet of the proposed use or structure that currently generates the most noise at that time.

C. Review of Expansions of Legally Nonconforming Unclassified or Omitted Uses

~~The following rules shall apply to the e~~Expansion of uses that are legally non-conforming in that they have never been granted a Special Permit shall be reviewed and acted upon by the Planning Board in accordance with Subsections 5.2.3.A and B.

- ~~(1) Expansions that do not reach the threshold for Minor Development Review found in Section 5.2.7.B(2) (Development Activities Subject to Development Review) shall be reviewed by the Director under the minor modification provisions of Section 5.2.8.B and in accordance with the Special Permit review standards in Section 5.2.3.B.~~
- ~~(2) Expansions that meet the Minor Development Review thresholds of Table (Development Activities Subject to Development Review) shall be reviewed by the Staff Review Committee in accordance with the Special Permit process and standards of this section.~~
- ~~(3) Expansions that meet the Major Development Review thresholds of Section 5.2.7.B(2) (Development Activities Subject to Development Review) shall be reviewed by the Planning Board in accordance with the Special Permit process and standards of this section.~~
- ~~(4) Appeals of the Director's or Staff Review Committee's decisions shall be made to the Planning Board.~~

D. Time Limits and Effect of Denial

A Special Permit shall expire two **(2)** years after it is ratified or deemed ratified by the Town Council if no Certificate of Occupancy is granted for the use in accordance with **Subs**Section ~~5.2.8.Q(5)5.2.8.Q(5)5.2.7.Q(5)~~ (Special Permit Approval Expiration). If the Planning Board denies an application for a Special Permit, no application by the applicant or related entity for the same unclassified or omitted use for the same parcel, or any portion of such parcel, shall be accepted for filing within one **(1)** year of the date of the Planning Board's decision.

5.2.4. Special Permits for Nonconforming Building Footprint Expansions

An expansion of a building footprint that is legally nonconforming shall be reviewed as a Special Permit and acted upon by the Planning Board in accordance with Subsections 5.2.3.A and D. The review criteria shall be as follows:

A. The proposed building footprint expansion shall comply with all other applicable zoning district dimensional standards.

B. The proposed expansion shall comply with 4.12 (Neighborhood Protection Standards).

Comment [AB207]: Added per Subsection 1.6.4.

5.2.4.5.2.5. Flood Hazard Development Permit Requirements

Comment [AB208]: Jeff review

A. Flood Hazard Development Permit Required

All construction or other development in special flood hazard areas, including the placement of mobile homes, shall require a Flood Hazard Development Permit from the Codes Enforcement Officer. This permit shall be in addition to any other permits which may be required by this Ordinance. No Flood Hazard Development Permit shall be issued until the Codes Enforcement Officer has determined that all other necessary federal, state, and municipal permits have been obtained.

B. Application for Flood Hazard Development Permit

The application for a Flood Hazard Development Permit shall be submitted to the Codes Enforcement Officer and shall include:

- (1) The name, address, and phone numbers of the applicant, owner, and contractor;
- (2) An address and a map indicating the location of the construction site;
- (3) A site plan showing location of existing and/or proposed development—including but not limited to, structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and the dimensions of the lot;
- (4) A statement of the intended use and cost, including all materials and labor, of the structure and/or development;
- (5) A statement as to the type of sewage system proposed.
- (6) Specification of dimensions of the proposed structure and/or development;
- (7) The elevation in relation to National Geodetic Vertical Datum (NGVD) or to a locally established datum in Zone A only, of the:
 - a. Base flood at the proposed site of all new or substantially improved structures, which is determined:
 - i. In Zones A1-30 and V1-30 from data contained in the "Flood Insurance Study - Town of Brunswick, Maine," as described in SSubsection 2.3.4.B(2); or,
 - ii. In Zone A, to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building;
 - b. Highest and lowest grades at the site adjacent to the walls of the proposed building;
 - c. Lowest floor, including basement; and whether or not such structures contain a basement; and,
 - d. Level, in the case of nonresidential structures only, to which the structure will be floodproofed;

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.5 Flood Hazard Development Permit Requirements

- (8) A description of an elevation reference point established on the site of all new or substantially improved structures;
- (9) Either an Elevation Certificate (FEMA Form 81-31) by a Professional Land Surveyor, registered professional engineer or architect, or for non-residential structures to be floodproofed, a Floodproofing certificate (FEMA Form 81-65) completed by a registered professional engineer or architect. These certificates verify that the elevations shown on the application are accurate;
- (10) Certification by a registered professional engineer or architect that:
 - a. Nonresidential structures will meet the floodproofing criteria in SubSection 2.3.4.D(3) (Nonresidential Structures) and other applicable standards.
 - b. Construction in coastal high hazard areas, Zones V1-30 will meet the criteria of Subsection 2.3.4.D(12) (Coastal Floodplains).
 - c. Engineered hydraulic openings in foundation walls will meet the standards of Subsection 2.3.4.D(8)a.ii.
 - d. Bridges will meet the standards of Subsection 2.3.4.D(9) (Bridges).
 - e. Containment walls will meet the standards of Subsection 2.3.4.D(10) (Containment Walls).
- (11) A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- (12) A statement of construction plans describing in detail how each applicable development standard in Subsection 2.3.4.D (Additional Requirements for the FPO District) will be met.

C. Review Standards for Flood Hazard Development Permit Applications

The Codes Enforcement Officer shall:

- (1) Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Subsection 2.3.4.D (Additional Requirements for the FPO District) will be met;
- (2) Utilize, in the review of all Flood Hazard Development Permit applications, the base flood data contained in the "Flood Insurance Study - Town of Brunswick, Maine," as described in Subsection 2.3.4.B(2). In special flood hazard areas where base flood elevation data are not provided, the Codes Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other sources.
- (3) Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described above;
- (4) In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.1334;
- (5) Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program ~~in the State Planning Office~~ prior to

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.6 Variances and Appeals of Administrative Decisions

- any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- (6) Issue one of the following Flood Hazard Development Permits based on the type of development:
- a. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Codes Enforcement Officer with a second Elevation Certificate completed by a professional land surveyor, engineer, or architect based on the Part 1 permit construction, "as built" for verifying compliance with the elevation requirements of Subsection 2.3.4.D(2) (Residential Structures), Subsection 2.3.4.D(3) (Nonresidential Structures), Subsection 2.3.4.D(4) (Mobile Homes), or Subsection 2.3.4.D(12) (Coastal Floodplains). Following review of the Elevation Certificate the Codes Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or
 - b. A Flood Hazard Development permit for floodproofing of non-residential structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the flood proofing standards of Subsection 2.3.4.D(3)a. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or
 - c. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50 percent% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided in Subsection 2.3.4.D(6) (Accessory Structures), mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.
- (7) Maintain, as a permanent record, copies of all flood Hazard Development Permits issued and data relevant to those permits, including reports of the Board of Appeals on Variances granted under Subsection 5.2.65-2.65-2.5 (Variances), and copies of Elevation Certificates, Floodproofing Certificates and Certificates of Compliance required under the provisions of this Ordinance.

5.2.6. Variances and Appeals of Administrative Decisions

Comment [AB209]:

A. Making an Appeal

- (1) Administrative appeals from decisions of the Codes Enforcement Officer, Planning Board or Village Review Board shall be taken no later than 30 days after the decision is rendered. Dimensional variance appeals do not require a prior decision of the Codes Enforcement Officer or a board and are not subject to this time limit.
- (2) The appeal shall be made by filing in the Office of the Codes Enforcement Officer a written notice of appeal specifying the grounds for such appeal. For an appeal seeking a Variance, the applicant shall submit a sketch drawn to scale or photograph showing lot lines, location of existing buildings and other physical features pertinent to the Variance request, and a concise written statement stating what Variance is requested.

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.6 Variances and Appeals of Administrative Decisions

- (3) Upon being notified of an appeal, the Codes Enforcement Officer, the Planning Board or Village Review Board, as the case may be, shall transmit to the Zoning Board of Appeals all of the documents constituting the record of the decision appealed from. Each appeal shall be accompanied with the fee designated by the Town Council.
- (4) A copy of each Variance request located in the Flood Protection Overlay (FPO) district, including the application and all supporting information supplied by the applicant, shall be forwarded by the Codes Enforcement Officer to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Zoning Board of Appeals. Any comments received from the Commissioner prior to the action by the Zoning Board of Appeals shall be made part of the record and shall be taken into consideration by the Zoning Board of Appeals.

B. Procedure on Appeal

- (1) The Zoning Board of Appeals shall hold a public hearing on the appeal within 45 days after the filing of the appeal.
- (2) At least ten (10) days prior to the date set for hearing, the Board shall give similar written notice to all property owners of record whose properties lie within 200 feet of the perimeter of the affected property, the person making the appeal, and the Codes Enforcement Officer, Planning Board, or Village Review Board (whichever made the decision being appealed), and any other person requesting notice. The notice will be sent via U.S. Mail, postage prepaid, to those persons as listed on the Town's tax records.
- (3) At least seven (7) days prior to the date of the hearing on such appeal, the Zoning Board of Appeals shall cause to be published in one issue in a newspaper of general circulation in Brunswick a notice which includes, the name of the person appealing, a brief description of the property involved, including the street address, a brief description of the decision appealed from, or the nature of a Variance, and the time and place of the Zoning Board of Appeals' hearing.

C. Hearings

- (1) In hearing an appeal from a decision of the Codes Enforcement Officer, Planning Board, or Village Review Board, the Zoning Board of Appeals shall:
 - a. Examine all application documents, Ordinance requirements and Finding of Fact and Conclusions prepared by the Codes Enforcement Officer or the Board whose decision is being appealed.
 - b. Determine on the basis of the entire record presented whether the Codes Enforcement Officer or such Board, as applicable, could reasonably have found the facts and reached the conclusions upon which the decision under appeal was based.
 - c. Determine whether the decision being appealed was based on substantial evidence.
 - d. Not substitute the judgment of the Zoning Board of Appeals for the judgment of the Codes Enforcement Officer or the Board whose decision is under appeal.
 - e. If the Zoning Board of Appeals finds that the Codes Enforcement Officer or the Board was not erroneous in its review of the application, the original determination shall be upheld.
- (2) The Zoning Board of Appeals may find that all or portions of the decision were faulty, in which case the Board may remand that portion of the application to the

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.6 Variances and Appeals of Administrative Decisions

Codes Enforcement Officer, Planning Board, or Village Review Board for reconsideration, with recommendations that the Officer or Board make additional Findings of Fact and conclusions to enable the Zoning Board of Appeals to complete its evaluation of the appeal. In the case of a remand, the appeal before the Zoning Board of Appeals shall remain pending until the Codes Enforcement Officer or Board whose decision is on appeal acts on the remand and reports its action to the Zoning Board of Appeals, which shall then make a final decision on the appeal. The decision of the Zoning Board of Appeals to remand is not final action by the Zoning Board of Appeals and is not appealable to Superior Court.

- (3) At a hearing on any appeal, the appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chair.
- (4) At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause.
- (5) If a party does not attend a hearing and is not otherwise represented, its case will be deemed to have been withdrawn without prejudice to refile the appeal. The filing fee will not be refunded to any applicant whose appeal is withdrawn in this manner.
- (6) The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

D. Decisions of the Zoning Board of Appeals

- (1) The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to:
 - a. Reverse any order, requirement, decision, or determination of the Codes Enforcement Officer, Planning Board or Village Review Board;
 - b. Grant a Variance; or
 - c. Decide in favor of the applicant on any matter which the Board is required to decide under this Ordinance.
- (2) The Zoning Board of Appeals shall decide all appeals within at least 30 days after hearing, unless the Board and the applicant agree to a longer time, and shall issue a written decision on all appeals.
- (3) All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, on all the material issues of fact, law or discretion presented, and the order, relief or denial. Notice of any decision shall be mailed or hand delivered to the petitioner, his representative or agent, the Codes Enforcement Officer, Planning Board, or Village Review Board (whichever made the decision appealed from) and the Town Council within seven days of the decision date.
- (4) For appeal decision located in the Flood Protection Overlay (FPO) district, the Zoning Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven days of the Board's decision. Copies of written decisions of the Zoning Board of Appeals shall be given to the Planning Board, Codes Enforcement Officer, and the Town Council.

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.6 Variances and Appeals of Administrative Decisions

- (5) A Variance granted by the Zoning Board of Appeals shall expire if the work or change involved is not completed within two (2) years of the date on which the Variance is granted.
- (6) All Variances granted by the Zoning Board of Appeals shall be recorded in the Cumberland County Registry of Deeds in accordance with 30-A M.R.S.A. § 4353(5).
- (7) Once an appeal has been denied, a second appeal of a similar nature with regard to the same building or property may not be brought to the Board within six months.
- (8) Appeals may be taken as permitted by law from any decision of the Zoning Board of Appeals to Superior Court.

D.E. General Variance

A Variance may be granted by the Zoning Board of Appeals for the following provisions of this Ordinance.

- (1) Any dimensional requirement in Section 4.1 (Applicability of Property Development Standards)

Generally

Except for single and two family developments, all developments shall comply with the standards in Chapter 4. Property development standards shall apply to all development, with the exception of one and two-family dwellings constructed on a lot separate from an approved subdivision or site plan, unless specifically stated to be applicable.

- (2) Single and Two Family Dwellings Constructed on Lots Separate From an Approved Subdivision or Site Plan

Single and two family residential dwelling constructed on lots separate from an approved Subdivision or Site Plan must comply with the standards in 4.2.2 (Dimensional and Density Standards), 4. (Sewer), 4. (Water), 4. (Solid Waste), 4. (Residential Recreation Areas), 4. (Curb Cuts), and 4. (Operation of Uses and Development) only.

Dimensional and Density StandardsApplicability of Property Development Standards

Generally

Except for single and two family developments, all developments shall comply with the standards in Chapter 4. Property development standards shall apply to all development, with the exception of one and two-family dwellings constructed on a lot separate from an approved subdivision or site plan, unless specifically stated to be applicable.

- Single and Two Family Dwellings Constructed on Lots Separate From an Approved Subdivision or Site Plan

Single and two family residential dwelling constructed on lots separate from an approved Subdivision or Site Plan must comply with the standards in 4.2.2 (Dimensional and Density Standards), 4. (Sewer), 4. (Water), 4. (Solid Waste), 4. (Residential Recreation Areas), 4. (Curb Cuts), and 4. (Operation of Uses and Development) only.

- (1)(3) Dimensional and Density StandardDimensional and Density Standards) including the setback for a single-family dwelling, but not including an increase in allowed density.
- (2)(4). Any dimensional requirements in Subsection 3.4 (Supplementary Use Standards); however, a variance cannot be granted to allow a use that is not a Permitted Use in

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.6 Variances and Appeals of Administrative Decisions

the zoning district where the property is located, or to allow a Conditional Use without a Conditional Use Permit pursuant to Subsection 5.2.2, or to allow an Unclassified or Omitted Use without a Special Permit pursuant to Subsection 5.2.3. Variances shall not be granted for establishment of uses otherwise prohibited by this Ordinance.

- (3)(5) A change to a property containing a dwelling to make that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling (Disability variance).

E.F. General Criteria for Approval

Unless subsection ~~C~~ below applies, the Zoning Board of Appeals shall not grant a Variance pursuant to Subsections ~~5.2.6.E(1)5.2.6.E(1)5.2.5.A(1)~~ and ~~5.2.6.E(4)5.2.6.E(4)5.2.5.A(3)~~ above unless it finds that strict application of this Ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

Comment [AB210]: Jeff review

- a. That the land in question cannot yield a reasonable economic return unless a variance is granted; and
- b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
- c. The granting of a variance will not alter the essential character of the locality; and
- d. The hardship is not the result of action taken by the applicant or a prior owner.

F.G. Setback Variance for Single Family Dwellings

- (1) The Zoning Board of Appeals may grant a set-back variance for a single family dwelling only when strict application of this Ordinance to the applicant and the applicant's property would cause undue hardship. The term "undue hardship" as use in this subsection means:
 - a. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
 - b. The granting of a variance will not alter the essential character of the locality.
 - c. The hardship is not the result of action taken by the applicant or a prior owner.
 - d. The granting of the variance will not substantially reduce or impair the use of abutting property.
 - e. The granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.
- (2) Under this subsection, the Zoning Board of Appeals may only grant a variance from a setback requirement for a single family dwelling that is the primary year-round residence of the applicant. A variance under this subsection may not exceed 20% percent of a setback requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage, provided, however, a variance under this subsection may exceed the 20 percent% of a setback requirement (except for the minimum setbacks from a wetland or a water body required within shoreland zones by rules adopted pursuant to M.R.S.A Title 38, Chapter 3, Subchapter I, Article 2-B, as amended), if the applicant has obtained the written consent of an affected abutting landowner.

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.6 Variances and Appeals of Administrative Decisions

G.H. Criteria for Approval of a Disability Variance

- (1) The Zoning Board of Appeals shall not grant a ~~v~~Variance pursuant to ~~S~~ubsection ~~5.2.6.E(5)5.2.6.E(5)5.2.5.A(4)~~ unless it finds that all of the following criteria have been met:
 - a. The ~~v~~Variance is necessary to make a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling.
 - b. The ~~v~~Variance only permits the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. § 4553, as amended, and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- (2) The Zoning Board of Appeals may impose conditions on the ~~v~~Variance, including limiting the ~~v~~Variance to the duration of the disability or to the time that the person with the disability lives in the dwelling.

H.I. Criteria for Approval of a Disability Variance for Vehicle Storage

- (1) The Zoning Board of Appeals shall not grant a Variance pursuant to ~~Subs~~Section ~~5.2.6.E(5)5.2.6.E(5)5.2.5.A(4)~~ for this purpose unless it finds that all of the following criteria have been met:
 - a. The ~~v~~Variance is necessary for the owner of a dwelling who resided in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose.
 - b. The width and length of the structure may not be larger than two times the width and length of the noncommercial vehicle.
 - c. The owner shall submit proposed plans for the structure with the request for the ~~v~~Variance pursuant to this paragraph to the Zoning Board of Appeals.
 - d. The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.
 - e. For the purposes of this ~~Subs~~Section ~~5.2.6.15.2.6.15.2.5.E~~, "noncommercial vehicle" means a motor vehicle as defined in Maine Statutes Revised, Title 29-A, Section 101, Subsection 42 with a gross vehicle weight of no more than 6,000 pounds bearing a disability registration plate issued pursuant to Title 29-A, Section 521 and owned by the person with the permanent disability. For purposes of this ~~s~~ubsection, "disability" has the same meaning as a physical or mental disability under Maine Statutes Revised Title 5, Section 4553-A.
- (2) The Zoning Board of Appeals may impose conditions on the ~~v~~Variance, including limiting the ~~v~~Variance to the duration of the disability or to the time that the person with the disability lives in the dwelling.

H.J. Additional Criteria for Variances in the SPO and FPO Districts

- (1) In addition to meeting the criteria in ~~Subs~~Section ~~5.2.65.2.65.2.5.EEA~~ through E above, as applicable, an application for a ~~v~~Variance on property located in the SPO District shall meet the following additional requirements:

Comment [AB211]: Jeff review

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.6 Variances and Appeals of Administrative Decisions

- a. The Board shall make a positive finding for each of the following additional criteria, where applicable:
 - i. Will not result in unsafe or unhealthful conditions;
 - ii. Will not result in erosion or sedimentation;
 - iii. Will not result in water pollution;
 - iv. Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat
 - v. Will conserve shoreland vegetation;
 - vi. Will conserve visual points of access to waters as viewed from public facilities;
 - vii. Will conserve actual points of public access to waters;
 - viii. Will conserve natural beauty; and
 - ix. Will avoid problems associated with the floodplain development and use, such as erosion, increased risk of flood damage to upstream properties or increased flood damage.
- (2) In addition to meeting the criteria in ~~Subs~~Section 5.2.65-2.65-2.5.EEA through E above, as applicable, an application for a ~~v~~variance on property located in the FPO District shall meet the following additional requirements:
 - a. Within any designated regulatory floodway will not result in an increase in flood levels during the base flood discharge;
 - b. Is supported by good and sufficient cause;
 - c. Will not result, should a flood comparable to the base flood occur, in increased flood height, additional threats to public safety, public expense or create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances;
 - d. Will not cause a conflict with other state, federal or local laws or ordinances; and
 - e. ~~v~~Variances shall only be issued upon a determination that the ~~v~~variance is the minimum necessary, considering the flood hazard, to afford relief, and the Zoning Board of Appeals may impose such conditions to a ~~v~~variance as it deems necessary.
 - f. If the ~~v~~variance is for new construction, substantial improvements, or other development for the conduct of a functionally dependent use, the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety, and other criteria of ~~Subs~~Section 5.2.5.C5-2.5.C5-2.4.C (Review Standards for Flood Hazard Development Permit Applications) and ~~Subs~~ection 2.3.4 (Flood Protection Overlay (FPO) District) are met.
 - g. If the ~~v~~variance is for the repair, reconstruction, rehabilitation, or restoration of Historic Structures as defined in Subsection 1.7.2, the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure, the ~~v~~variance is the minimum necessary to preserve the historic character and design of the structure, and the development meets the criteria of ~~S~~Subsection 5.2.6.F5-2.6.F5-2.5.B (General Criteria for Approval).

Comment [AB212]: Jeff revise

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.7 Village Review Overlay Design Review

- (3) Any applicant who meets the criteria of ~~Subs~~Section 5.2.6.F5-2.6.F5-2.5-B (General Criteria for Approval) and ~~Subs~~Section 5.2.6.J5-2.6.J5-2.5-F (Additional Criteria for Variances in the SPO and FPO Districts) shall be notified by the Zoning Board of Appeals in writing that:
 - a. The issuance of a ~~V~~variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 - b. Such construction below the base flood level increases risks to life and property; and
 - c. The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the Town against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the Town from any claims the applicant may have against the Town that are related to the use of land located in a floodplain. A statement to this effect shall be a matter of record in an instrument to be recorded by the applicant in the Cumberland County Registry of Deeds within 30 days of approval by the Zoning Board of Appeals.

5-2-5-2.7. Village Review Overlay Design Review

A. Application for Certificate of Appropriateness

Application forms for a Certificate of Appropriateness shall be made available in hard copy or online by the Department of Planning and Development. Completed applications shall be submitted to the Department of Planning and Development staff with the following information provided:

- (1) Name, address and interest in the property.
- (2) Location and nature of the proposed activity.
- (3) A brief description of the proposed construction, reconstruction, alteration, relocation or demolition and proposed reuse. The description shall include the reason for the request, and must demonstrate how the proposal is in compliance with ~~Subs~~Section 5.2.7.C5-2.7.C5-2.6.C (Review Standards).
- (4) Drawings illustrating the design, texture, and location of any construction, alteration, or demolition/relocation for which a certificate is required. The drawings shall include plans and exterior elevations drawn to scale, with sufficient detail to show their relation to exterior appearances and the architectural design of the building. Proposed materials and textures shall be described, including samples where appropriate. Drawings need not be prepared by an architect or engineer, but shall be clear, complete, and specific.
- (5) Photographs of the building(s) involved and of immediately adjacent properties. Staff shall provide completed historic building/structure survey forms if available for the structure. For demolition or relocation applications, interior and exterior photographs shall be provided clearly indicating the existing condition of the structure and, if available, the structural condition at the time of purchase by the applicant.
- (6) A site plan showing the relationship of proposed changes to walks, driveways, signs, lighting, landscaping, and adjacent properties, if applicable. For relocation or

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.7 Village Review Overlay Design Review

demolition applications, provide post-demolition plans, including a site plan for the property specifying site improvements and a timetable for completion.

- (7) The Review Authority may grant a waiver of submission requirements if it finds the submission of that information is not relevant to a determination.

B. Application Review Process

(1) Consultation

All applicants are encouraged to consult with Department staff prior to submitting an application for a Certificate of Appropriateness at which time a determination can be made as to the level of review required. During consultation, Department staff shall provide appropriate guidance and available resources, including the Village Review Zone Design Guidelines, to the applicant.

(2) Determination of Completeness

Within four (4) days of an application being submitted to the Department, staff shall make a determination regarding completeness. If incomplete, staff will notify the applicant of deficiencies. If complete, staff will process the application as either a Minor Activity or Major Activity application.

(3) Determination of Minor/Major Activity

a. Exempt Activities include:

- i. The independent demolition of incidental noncontributing structures accessory to a contributing resource not visible from a public right-of-way are exempt from review.
- ii. The demolition of a noncontributing resource if the proposed demolition is not visible from the public right-of-way.
- iii. In-kind replacement of windows, siding, doors and building ornamentation, normal maintenance and painting.

Comment [AB213]: Clarification

Comment [AB214]: In existing ordinance.

b. Minor Activities (Staff review) include:

- i. Any alterations or additions not visible from a public right-of-way;
- ii. Replacement of existing exterior siding or other materials, windows or doors which do not alter architectural or historic character;
- iii. Repair, replacement or re-pointing of exterior masonry walls which do not alter architectural or historic character;
- iv. Placement of sheds or other outbuildings, fences or dumpsters located in rear yards not visible from a public right-of-way;
- v. Any demolitions, partial demolitions or relocations of noncontributing resources not visible from a public right-of-way.
- vi. Roof-top appurtenances not visible from a public-right-of-way; and,
- vii. Removal of non-historic elements concealing original architectural character-defining features.

c. Major Activities (Village Review Board-level review) include:

- i. Any alterations or additions to existing structures or new construction visible from a public right-of-way;

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.7 Village Review Overlay Design Review

- ii. Any roof-top appurtenances visible from a public right-of-way;
- iii. Exterior renovations, alterations or modifications to the structure or site not determined to be minor in nature;
- iv. Any demolitions, partial demolitions or relocations of either contributing resources or noncontributing resources visible from a public right-of-way.; and
- v. Any alterations or new placement of walks, driveways or new impervious surfaces associated with any of the above major activities.

(4) Minor Activity Application Review Process

- a. Minor Activity applications for a Certificate of Appropriateness shall be submitted to the Department staff. Staff shall review and either render a decision to the applicant or forward to the Village Review Board for their consideration within ten **(10)** days of determining the application complete.
- b. The Village Review Board may conduct a review of a Minor Activity application at the recommendation of either the Director or Board Chair. A person with standing may appeal the decision by staff to the Village Review Board by submitting an appeal application to the Director within 30 days of the date of the action. The Village Review Board may hold a public hearing and shall render its decision following the review procedure set forth in subsection (5) below.

(5) Major Activity Application Review Process

- a. Major Activity applications for a Certificate of Appropriateness shall be submitted to the Department staff no less than fourteen **(14)** days before the date of the Village Review Board's meeting in which it will be discussed.
- b. The Town shall provide notification to all owners of property within a 200 foot radius of the boundaries of the property under review in the proposed application, giving a general description of the activity and specifying its location. Notifications shall be distributed by first class mail at least ten **(10)** days prior to a scheduled review, stipulating the time and place of the Board's meeting. The Board may also schedule a publicly noticed site visit of the subject property prior to their meeting.
- c. Within 30 days of the Town's receipt of a complete application, the Village Review Board shall hold a public meeting and make a determination as to the completeness of the application. Once the Board determines that the application is complete, it shall review the application. After completing its review, the Board shall vote to deny, approve or approve the application with conditions. The Village Review Board shall set forth the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the applicant and any interested member of the public of the basis for the decision. The date of approval, denial, or approval with conditions shall be the date that the Board votes on an application for a Certificate of ~~Approval~~**Appropriateness**.
- d. A written notice of the determination of the Village Review Board, including findings of fact and Certificate of Appropriateness, shall be sent by regular mail to the applicant and to the Planning Board **or Staff Review Committee** within ten **(10)** days of the Village Review Board's determination.
- e. The Village Review Board, by a majority vote, may request an independent peer review of the application or portion thereof at their discretion. All costs associated with the peer review shall be borne by the applicant. Peer review shall not be undertaken unless it is necessary for an informed review of the submitted materials

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.7 Village Review Overlay Design Review

and at a reasonable cost. Estimated costs for the peer review shall be disclosed to the applicant prior to undertaking such review. The Town shall require an applicant to deposit funds into an escrow account to be held for the purpose of reimbursing peer review costs. The applicant shall be entitled to an accounting of the use of all funds, as well as to a refund of all funds not expended upon final approval, denial or withdrawal of an application.

(6) Additional Processing Requirements for Relocation or Demolition Activities

In addition to the provisions of ~~Subsections 5.2.7.B(1)5.2.7.B(1)5.2.6.B(1)~~ through 5 above, additional processing requirements for Major Activity applications for demolition or relocation of contributing resources, as well as noncontributing resources visible from public right-of-way, are listed ~~below as follows. No Certificate of Appropriateness is required for demolition of a noncontributing resource if the proposed demolition is not visible from the public right-of-way.~~

- a. A permit for demolition or relocation of a contributing resource, a noncontributing resource visible from a public right-of-way or portions thereof, within the Village Review Zone shall not be issued unless a Certificate of Appropriateness has been approved. No exterior demolition work and interior demolition work rendering the structure uninhabitable, or relocation of the resource may commence until the expiration of the 30-day decision appeal period or, if an appeal is taken, upon final disposition of the appeal.
- b. Applications to demolish or relocate contributing resources individually listed on the National Register of Historic Places or deemed eligible by the Maine Historic Preservation Commission, and contributing resources located within a National Register-listed Historic District ~~must shall~~ adhere to a 90-day delay period. The Village Review Board may impose a 90-day delay period for contributing resources of local and regional significance. Such 90-day delay period shall commence when ~~the~~ application is deemed complete by the Village Review Board.
- c. During the 90-day delay period, the applicant shall:
 - i. Consult with ~~the~~ Village Review Board and Maine Preservation or Maine Historic Preservation Commission in seeking alternatives to demolition, including the reuse and/or relocation of the ~~contributing~~ resource.
 - ii. Consult with and notify other related organizations of intent to demolish the contributing resource, as identified during consultations with Village Review Board and Maine Preservation or Maine Historic Preservation Commission.
 - iii. Document "good faith" efforts in seeking an alternative, including relocation and/or reuse, resulting in the preservation of the ~~contributing~~ resource. Such efforts shall include posting a visible sign on the property, listing the property for sale and/or relocation, and publishing a notice of availability in a general circulation local newspaper. The notice of the proposed demolition shall be forwarded to the ~~Village Review Board, Pejepscot Historical Society, Town Council, and Planning Board~~ ~~Review Authority~~.
 - iv. Thoroughly photo or video document the ~~contributing~~ resource and provide photo/video and written documentation to the Town and Pejepscot Historical Society. Any significant architectural features shall be salvaged, reused and/or preserved as appropriate.
 - v. Provide post-demolition plans, including a site plan for the property specifying site improvements and a timetable for completion.

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.7 Village Review Overlay Design Review

- d. If at the end of the 90-day period, no satisfactory alternative has been found, the Village Review Board shall either grant or deny a Certificate of Appropriateness to demolish or relocate the resource, applying the criteria set forth in Subsection 5.2.7.C(4)~~5.2.7.C(4)~~~~5.2.6.C(4)~~ (Demolition and Relocation).

C. Review Standards

(1) General Standard

- a. All Certificates of Appropriateness for new construction, additions, alterations, relocations or demolition shall be in accordance with applicable requirements of this Ordinance.
- b. In meeting the standards of this Ordinance the applicant ~~and~~ Village Review Board in its review shall be informed by guidance from the U.S. Secretary of Interior's Standards for Rehabilitating Historic Buildings and the Village Review Zone Design Guidelines.

(2) New Construction and Additions and Alterations to Existing Structures

- a. In approving applications for a Certificate of Appropriateness for new construction or additions or alterations to contributing resources, the Review Authority shall make findings that the following standards have been satisfied:
 - i. Any additions or alterations shall be designed in a manner to minimize the overall effect on the historic integrity of the contributing resource.
 - ii. Alterations shall remain visually compatible with the existing streetscape.
 - iii. Concealing of distinctive historic or architectural character-defining features is prohibited. If needed, the applicant may replace any significant features with in-kind replacement and/or accurate reproductions.
 - iv. New construction or additions shall be visually compatible with existing mass, scale and materials of the surrounding contributing resources.
 - v. When constructing additions, the applicant shall maintain the structural integrity of existing structures.
- b. In approving applications for a Certificate of Appropriateness for new construction, additions or to commercial, multifamily, and other non-residential structures, the Review Authority shall make findings that the following additional standards have been satisfied:
 - i. Parking lots shall be prohibited in side and front yards, ~~except if~~unless the application involves the renovation of existing structures where such a configuration currently exists and no other placement alternative exists. In cases where such parking configurations exist, the parking area shall be screened from the public right-of-way with landscaping or fencing.
 - ii. Site plans shall identify pedestrian ways and connections from parking areas to public rights-of-way.
 - iii. All dumpsters and mechanical equipment shall be located no less than 25 feet away from a public right-of-way, unless required by a public utility, and shall be screened from public view.
 - iv. Roof-top-mounted heating, ventilation, air conditioning and energy producing equipment shall be screened from the view of any public right-of-way or incorporated into the structural design to the extent that either method does not

Comment [AB215]: Added.

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.7 Village Review Overlay Design Review

- impede functionality. Parapets, projecting cornices, awnings or decorative roof hangs are encouraged. Flat roofs without cornices are prohibited.
- v. The use of cinder-block, concrete and concrete block is prohibited on any portion of a structure that is visible from the building's exterior, with the exception of use in the building's foundation.
 - vi. The use of vinyl, aluminum or other non-wood siding is permitted as illustrated in the Village Review Board Design Guidelines. Asphalt and asbestos siding are prohibited.
 - vii. Buildings with advertising icon images built into their design ("trademark buildings") are prohibited.
 - viii. No building on Maine Street shall have a horizontal expanse of more than 40 feet without a pedestrian entry.
 - ix. No building on Maine Street shall have more than 15 feet horizontally of windowless wall.
 - x. ~~For property not located in the GM6 zoning district,~~ All new buildings and additions on Maine Street must be built to the front property line. This may be waived if at least 60% percent of the building's front facade is on the property line, and the area in front of the setback is developed as a pedestrian space.
 - xi. ~~For property not located in the GM6 zoning district,~~ If more than 50% percent new floor area is added to a structure located on Maine Street, the addition shall be at least two stories high and/or not less than 20 feet tall at the front property line.
 - xii. The first floor facade of any portion of a building that is visible from Maine Street shall include a minimum of 50% percent glass. Upper floors shall have a higher percentage of solid wall, between 15% and 40% percent glass.
- c. Proposed additions or alterations to noncontributing resources shall be designed to enhance or improve the structure's compatibility with nearby contributing resources as compared to the existing noncontributing resources.

(3) Signs

Signs shall comply with Section ~~4.134.134.12~~ (Signs) with consideration given to the Village Review Zone Design Guidelines.

(4) Demolition and Relocation

- a. Demolition or partial demolition or relocation of a contributing or, if visible from a public right-of-way, a noncontributing resource, excluding incidental or noncontributing accessory buildings and structures not visible from the public right-of-way, located on the same property, shall be prohibited unless the application satisfies at least one of the following criteria:
 - i. The structure poses an imminent threat to public health or safety. An application must be accompanied by a report from a qualified structural engineer for review by the Codes Enforcement Officer and photographs depicting the current condition of the building.
 - ii. The condition of the structure is such that it cannot be adapted for any other permitted use, whether by the current owner or by a purchaser, resulting in a reasonable economic return, regardless of whether that return represents the most profitable return possible, provided that the applicant can document he/she has not contributed significantly to the deterioration of the structure. An opinion shall

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.8 Development Review

be provided from an architect, licensed engineer, developer, real estate consultant or appraiser or from a professional experienced in historic rehabilitation, as to the economic feasibility for restoration, renovation, or rehabilitation of the contributing resource versus demolition or relocation of same.

- iii. The proposed replacement structure or reuse of the property is deemed to be as appropriate and compatible with the existing streetscape and surrounding contributing resources.
- b. Demolition, partial demolition or relocation of a noncontributing resource visible from a public right-of-way, shall be approved by the Village Review Board if it is determined that the proposed replacement structure or reuse of the property is deemed more appropriate and compatible with the surrounding contributing resources than the resource proposed for demolition.

D. Expiration of Certificate of Appropriateness

If two (2) years after issuance of a Certificate of Appropriateness, the approved work is not found to be complete by the Codes Enforcement Officer, the approval shall lapse. The applicant may, at any time before the date of approval expiration, make a written request to the Village Review Board for an approval time extension. This request shall explain the reasons why the improvements have not been completed and indicate how the applicant expects to complete the project if the Board grants an extension. The Board may consider any changes to this Ordinance or any other new information relevant to the application when considering an extension request.

5.2.6.5.2.8. Development Review

A. In General

- (1) Development review includes Subdivision and Site Plan review, and certain changes of use and other procedures as outlined in Subsection 5.2.8.B(2)5.2.8.B(2)5.2.7.B(2) (Development Activities Subject to Development Review).
- (2) All time frames for Development Review expressed in this section are minimums. The Town's staff and reviewing entities shall make every effort to conduct reviews as expeditiously as possible.

B. Applicability

(1) Development Activities Not Subject to Development Review

Development Review does not apply to:

- a. 1- or 2-family dwellings, and uses or structures accessory to 1- or 2-family dwellings.
- b. Agricultural land management practices, including farm and woods roads developed in accordance with "Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices," as amended, unless located within the Shoreland Protection Overlay Resource Protection District.
- c. Unpaved trails and paths developed in accordance with "Maine Erosion and Sedimentation Control Handbook for Construction: Best Management Practices," as amended, unless located within the Shoreland Protection Overlay Resource Protection District. (Groups or individuals planning such trails and paths are encouraged to consult with the Planning and Development Department prior to construction).
- d. The initial non-military re-occupancy of a building in the Brunswick Landing area existing as July 20, 2009, provided all of the following are met:

Comment [AB216]: Jared to verify.

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.8 Development Review

- i. The new use is a permitted use in the zoning district in which it is located.
 - ii. In addition to the use restrictions contained in the Permitted Use Tables and related Supplemental Use Standards (Chapter 3 – Property Use Standards), development of former Brunswick Naval Air Station (BNAS) lands shown in Appendix G shall comply with all existing covenants and deed restrictions as contained in conveyance documents issued by the US Navy at the time of transfer and subsequently recorded. Such covenants and deed restrictions may include, but shall not be limited to, groundwater extraction, soil disturbance, and the ongoing maintenance of hazardous material remediation monitoring facilities as needed. Development of transferred former BNAS lands identified by the US Navy as being within Soils and Groundwater Management Zones shall comply with Land Use Controls established for specific sites with mapping and land use controls, as amended, provided as reference material to this Ordinance.
 - iii. The re-occupancy maintains the pre-existing pattern of use of the site including the general location of the building and parking and service areas.
 - iv. The usable floor area of the building is not increased by more than 2,000 square feet, within the existing building footprint.
 - v. The amount of impervious surface on the project site is not increased by more than 2,000 square feet.
 - vi. There is adequate parking available for the new use in accordance with Section 4.94.94.8 (Parking and Loading).
 - vii. The re-occupancy of the building will not change the primary use of the building from residential to non-residential or from non-residential to residential.
 - viii. The initial non-military re-occupancy of a building shall not be considered a Change of Use even if it does not meet the vacancy time limits of Subsection 5.2.1.B(1) (Change of Use Defined). All subsequent re-occupancy of buildings in the Growth Districts applied to former BNAS lands shall be subject to the Change of Use review requirements of Subsection 5.2.1.B (Change of Use PermitChange-of-Use PermitChange/Expansion-of-Use Permit) as applicable.
- e. The Change of Use of a building in the Brunswick Landing area with less than 10,000 square feet of floor area, provided that the new use does not significantly intensify the use of the property compared to its previous use. A new use that increases the required off-street parking required by Section 4.94.94.8 (Parking and Loading) by more than 20 percent, or that increases the number of peak hour vehicle trips based upon the current edition of the ITE Trip Generation Manual, as amended, by more than 20 percent, or that meets any of the review thresholds of Subsection 5.2.8.B(2)5.2.8.B(2)5.2.7-B(2) (Development Activities Subject to Development Review) shall be considered to significantly intensify the use. If the Codes Enforcement Officer determines that there will be a significant intensification of the use, the activity shall be deemed to be a minor development subject to Development Review.

Comment [AB217]: Added.

(2) Development Activities Subject to Development Review

- a. The activities listed in Table 5.2.7.B shall be subject to Development Review based on the applicable thresholds.
- b. Activities that do not meet the thresholds may still require additional review and/or permitting by the Codes Enforcement Officer or as required within applicable zoning overlay zones.

Chapter 5 - Administration
 Section 5.2 Specific Procedures
 Subsection 5.2.8 Development Review

- c. A Certificate of Appropriateness from the Village Review Board is required if the proposed development is within the Village Review Overlay Zone.
- d. Thresholds for development review apply only to new or “add-on” construction, except as indicated in Subsection 5.2.8.C5.2.8.C5.2.7.C (Cumulative Development and Amendments). If development is proposed on two (2) or more lots and the Director finds that the development functions as a single project, thresholds for development review shall be applied to the project as though the lots on which it is located is a single lot.

Impact Criteria	Threshold	Zoning District	Level of Review	Reviewing Authority
Construction of New Floor Area	Less than 1,000 sq. ft.	All GR, GC and Rural Districts; GM1, GM2, GM5, GM6, GM8	Building Permit	Codes Enforcement Officer
	Less than 2,000 sq. ft.	All Other Zoning Districts		
	1,000 - 5,000 sq. ft.	All GR, GC and Rural Districts; GM1, GM2, GM5, GM6, GM8	Minor Development Review	Staff Review Committee
	2,000 - 10,000 sq. ft.	All Other Zoning Districts		
	Over 10,000 sq. ft.	All Zoning Districts	Major Development Review	Planning Board
Change of Use	Less than 10,000 sq. ft.	All Zoning Districts	Change of Use Permit	Codes Enforcement Officer
	Over 10,000 sq. ft.	All Zoning Districts outside of Brunswick Landing Area	Major Development Review	Planning Board
	10,000 – 20,000 sq. ft.	GM7, GA, GI, GO Districts within Brunswick Landing	Minor Development Review	Staff Review Committee
	Over 20,000 sq. ft.	GM7, GA, GI, GO Districts within Brunswick Landing	Major Development Review	Planning Board
	Conversion of single or two-family residence to any other use	All Growth Residential Districts	Major Development Review	Planning Board
Net New Impervious Surface	Less than 1,000 sq. ft.	All GR, GC and Rural Districts; GM1, GM2, GM5, GM6, GM8	Building Permit	Codes Enforcement Officer
	Less than 2,000 sq. ft.	All Other Zoning Districts		
	1,000 - 5,000 sq. ft.	All GR, GC and Rural Districts; GM1, GM2, GM5, GM6, GM8	Minor Development Review	Staff Review Committee
	2,000 - 10,000 sq. ft.	All Other Zoning Districts		
	Over 10,000 sq. ft.	All Zoning Districts	Major Development Review	Planning Board
	Development Subject to Conditional Use Permit or Special Permit creating less than 5,000 sq. ft.	All Zoning Districts	Minor Development Review	Staff Review Committee

Chapter 5 - Administration
Section 5.2 Specific Procedures
Subsection 5.2.8 Development Review

Table 5.2.7.B Development Review Threshold Criteria				
Impact Criteria	Threshold	Zoning District	Level of Review	Reviewing Authority
	Development Subject to Conditional use Permit or Special Permit creating 5,000 or more sq. ft.	All Zoning Districts	Major Development Review	Planning Board
Net Cumulative Total of New Floor Area and New Impervious Surface	Less than 1,500 sq. ft.	All GR, GC and Rural Districts; GM1, GM2, GM5, GM6, GM8	Building Permit	Codes Enforcement Officer
	Less than 3,000 sq. ft.	All Other Zoning Districts		
	1,500 – 7,500 sq.ft.	All GR, GC and Rural Districts; GM1, GM2, GM5, GM6, GM8	Minor Development Review	Staff Review Committee
	3,000 – 15,000 sq. ft.	GM1, GM3, GM4, GM5, GI		
	3,000 - 20,000 sq. ft.	GR1, GM7, GA, GI, GO		
	20,000 sq. ft. or more	All Zoning Districts	Major Development Review	Planning Board
Construction of Multi Family Dwelling Units that does not create a subdivision	Between 3-5 units	All Zoning Districts	Minor Development Review	Staff Review Committee
	Over 5 units	All Zoning Districts	Major Development Review	Planning Board
Mobile Home Park development or expansion	All	All Zoning Districts	Major Development Review	Planning Board
Traffic	An activity generating more than 100 peak hour vehicle trips, based on ITE Trip Generation Manual, as amended, unless previously addressed as part of an approved plan, or upon recommendation by the Town Engineer.	All Zoning Districts	Major Development Review	Planning Board
Development on a Road with a Level of Service of "F"	Construction of new floor area of 2,000 sq. ft. or more, creation of new impervious surface of 2,000 sq. ft. or more or cumulative total of new floor area and impervious surface of 3,000 sq. ft. or more	All Zoning Districts	Major Development Review	Planning Board
New Road Construction	New private or public Road proposed as part of development application	All Zoning Districts	Major Development Review	Planning Board
Subdivision	Subdivision as defined by 30-A M.R.S.A. Section 4401, as amended	All Zoning Districts	Major Development Review	Planning Board
Mineral Extraction	Pursuant to Subsection 3.4.1.T	All Zoning Districts	Major Development Review	Planning Board
Hours of	Non-residential use with	Residential Districts	Major Development	Planning Board