

## **South Berwick Town Council June 13, 2011**

Chairman David Burke called the meeting to order at 6:30pm. Councilors present included Gerald W. MacPherson, Sr., David H. Webster, and John C. Kareckas. Town Manager Perry Ellsworth was also in attendance. Jean Demetracopoulos was not present.

### **Approval of Minutes**

1. Council 5-24-11: On a motion by Mr. MacPherson, seconded by Mr. Webster, it was unanimously voted to adopt the minutes as written.

### **Treasurer's Warrant – June 13, 2011**

On a motion by Mr. Kareckas, seconded by Mr. Webster, it was unanimously voted to sign the warrant in the amount of \$710,141.13.

### **Public Comment**

1. Richard Clough, Academy St, commented (in regard to new business #2) that according to the Town Charter the Council could not hold a special town meeting within 30 days of the annual town meeting. [Clerk note: the section of the Charter referred to by Mr. Clough was Article VII section 3, Town meeting – method of abolishing.]
2. Suzanne Roberge, Berwick Rd, on behalf of herself and her family, thanked the Council for dedicating the 2010 Town Report to her mother Gloria Roberge.
3. Eric Pelchat, Front St, referencing the Charter page C9, Article IV section 3 part 4, stated that "the Council shall review the budget and recommend it, with or without change, to the annual town meeting". [Clerk note: the correct section is section 2 subsection IV and the section does not define when the annual town meeting is.]

### **Reports & Correspondence**

The Town Manager stated that the library project is moving forward. It will cost approximately \$1.8-\$1.9 million to complete the construction phase. Currently available funds for the project are \$1.67 million. The Rectory is being taken by an abutting property owner. Mr. Ellsworth also explained that much of the bid process will be conducted online. The plan is to use as many local contractors as possible.

Mr. Ellsworth also commended the Building Committee for their hard work and dedication to the process.

### **Town Manager's Report**

- Rt 236 Project: The work will take place from about the Post Office to the railroad tracks heading toward Berwick. A preliminary meeting with DOT is scheduled for June 29<sup>th</sup>.
- Library Project: See reports & correspondence.
- Great Works Bridge: The project is behind due to winter conditions & steel availability; and the bridge may not open when originally scheduled.
- Recommended scheduling a workshop with the Planning Board to review Outdoor Wood Boilers. Mr. Burke suggested and it was a consensus to schedule it after the first of August.

### **Unfinished Business**

1. The Council discussed the process necessary to transfer funds from the Friends of the Library to the Town for the library project.

The Manager asked for a blanket approval to accept donations from the Friends on an ongoing basis **so projects won't be delayed waiting for Council approvals**. All funds would be processed and deposited through the Town Office.

On a motion by Mr. Kareckas, seconded by Mr. Webster, it was unanimously voted to authorize the Town Manager to set up either a special revenue account or make deposits directly to the library capital account for donations from the Friends of the Library for the library construction project.

2. On a motion by Mr. Kareckas, seconded by Mr. MacPherson, it was unanimously voted to authorize the Manager to sign a contract with JCJ Architecture in the amount of \$4,150 for bidding & negotiation services and \$39,600 for construction administration services, totaling \$43,750.

### **New Business**

1. On a motion by Mr. MacPherson, seconded by Mr. Webster, it was unanimously voted to **approve the renewal of Pepperland Café's liquor license and special amusement permit**.

2. Special Town Meeting:

Mr. Burke explained that since article 22 (LD 1-the tax levy limit override) failed at Town Meeting on June 7<sup>th</sup> the budget as a whole needs to be readdressed.

Numerous residents spoke on the issue: Eric Pelchat, Richard Clough, Norman Fortier, Richard Young, Clifford Cleary, Virginia Jennings, Malcolm Kenney, Marion Cunningham, Burnell Bailey, Norma Tutelian, Diane Bailey, Donald Blanchard, Joyce Cleary, Suzanne Roberge, Tamre Steinhauer, Albert Whitaker, Jr., Samuel Murray, Ralph Stevens, and John Bonasoro.

**The majority of comments expressed the assembly's displeasure that the Council is** considering a revote on article 22 to get the **(Council's) desired** result. Other comments included the recommendation to use some of the undesignated fund, the fact that the **Council needs to "sharpen its pencils and make some cuts"**, and an override of the tax levy limit has been an ongoing practice.

Mr. Ellsworth stated that one or more workshops would be necessary for discussions. Note was also made that a special Council meeting may need to be scheduled to sign the warrant so that posting requirements can be met.

Mr. Webster stated that cuts can be made, but we may not like the impact those cuts have.

On a motion by Mr. Webster, seconded by Mr. MacPherson, it was unanimously voted to hold a special town meeting on July 19, 2011 at 6:30pm.

3. On a motion by Mr. Kareckas, seconded by Mr. MacPherson, it was unanimously voted to table scheduling a public hearing on the proposed amendments to §140-12 District Boundaries of the Zoning Ordinance until the first meeting in August.

4. On a motion by Mr. MacPherson, seconded by Mr. Kareckas, it was unanimously voted to approve the Fire Department grant application for a washer and dryer. (The Town match of \$865 if the grant is awarded and accepted is already included in the 2012 budget.)

5. On a motion by Mr. MacPherson, seconded by Mr. Kareckas, it was unanimously voted to approve the Fire Department grant application for air bottles and air filling station. (The Town match of \$3370 if the grant is awarded and accepted is already included in the 2012 budget and 2013 FD capital budget.)

6. Town Manager Ellsworth explained that grants and gifts to the Town must be accepted by the Council. He recommended this agenda item (similar to unfinished business #1) to cover any gifts for the library project other than those received through the Friends.

Patti Mitchem, President of the Friends, recommended the Council stipulate that they have the right to reject any donation and place a cap on the amount that can be accepted without Council approval. Virginia Jennings recommended a dedicated account be established for just the donations from the Friends.

On a motion by Mr. Kareckas, seconded by Mr. Webster, it was unanimously voted to establish a special revenue account for donations (other than the Friends) for the library project.

### **Council Member Comments**

1. Mr. Kareckas:

-Asked the Manager to check on the sidewalk for the Route 4 Bridge near the Counting House. The sidewalk on the NH side has been completed removed. He expressed his concern that the Maine side would not be rebuilt.

-Stated that the voter turnout at the town meeting was disparaging. He stated that the **Council's effort to get out the vote was inadequate**. He commented that it might be time to consider going to referendum. He added that several things could be done: hold the meeting on a different day, improve voter awareness by mailing each voter a copy of the warrant as soon as it is approved, or podcast the meetings.

2. Mr. Webster:

-Recommended holding a workshop to discuss issues involving the cemeteries.

3. Mr. MacPherson:

-Stated that information regarding Town Meeting does need to be distributed better.

-Commented that he (and the other Councilors) has the same concerns about higher taxes.

**"We are you".**

4. Mr. Burke:

-Thanked everyone for attending, regardless of their stance on the issues.

-**Thanked Mrs. Demetracopoulos and Mr. Ellsworth for their help on Kid's Day fitting children for bicycle helmets.**

### **Adjournment**

On a motion by Mr. MacPherson, seconded by Mr. Webster, it was unanimously voted to adjourn the meeting at 8:55pm.

Attested:

Barbara Bennett, CCM



TOWN OF SO. BERWICK  
CHECK REGISTER

Check Number	Account	Date Paid	Amount
00028522	240900 YORK COUNTY REGISTRY OF DEEDS	06/28/2011	1,222.00
00028523	140532 NCO FINANCIAL SYSTEMS INC	06/28/2011	19.64
00028524	209999 TAX REFUNDS	06/28/2011	589.07
00028525	132500 SECRETARY OF STATE M/V	06/28/2011	14,866.54
00028526	140532 NCO FINANCIAL SYSTEMS INC	06/28/2011	17.85
00028528	133050 TREAS.STATE OF MAINE/IV-D	06/28/2011	68.36
00028529	011100 LOUISE ANDERSON	06/28/2011	10.20
00028530	020220 CATALINA BAKAS	06/28/2011	42.72
00028531	020225 BAKER & TAYLOR	06/28/2011	10.02
00028532	021095 BARBARA BENNETT	06/28/2011	131.19
00028533	021300 BERNSTEIN SHUR	06/28/2011	1,784.00
00028534	030510 CENTRAL MAINE POWER	06/28/2011	7.12
00028535	030725 CITIZENS BANK (CHG)	06/28/2011	100.00
00028536	030920 CLEAN-O-RAMA	06/28/2011	222.27
00028537	031430 COMCAST	06/28/2011	95.00
00028539	032002 ONE COMMUNICATIONS	06/28/2011	1,117.40
00028540	040500 VICTORIA DESILETS	06/28/2011	89.76
00028541	041365 DUSTON'S BAKERY	06/28/2011	47.91
00028542	050798 ELIOT SMALL ENGINE REPAIR INC	06/28/2011	45.00
00028543	141000 FAIR POINT COMM	06/28/2011	136.02
00028544	060300 FAVORITE FOODS INC	06/28/2011	374.46
00028545	060750 FIRE TECH & SAFETY	06/28/2011	432.00
00028546	010525 G&K SERVICES	06/28/2011	972.30
00028547	070200 P GAGNON & SON INC	06/28/2011	4,195.00
00028548	070210 GALL'S INC	06/28/2011	204.96
00028549	070280 GENERAL CODE PUBLISHERS	06/28/2011	850.27
00028550	071102 GPCOG	06/28/2011	1,549.09
00028551	071050 GREAT FALLS CLEANERS	06/28/2011	150.00
00028552	080248 HANSCOM'S TRUCK STOP INC	06/28/2011	7,582.41
00028553	080330 A H HARRIS & SONS	06/28/2011	48.50
00028554	080450 HARVARD PILGRIM HEALTH CARE	06/28/2011	23,294.76
00028555	080575 HETL CHEM/FORENSNIC	06/28/2011	50.00
00028556	081305 HSE GOULD	06/28/2011	46.00
00028557	090120 INLAND FISHERIES & WILDLIFE	06/28/2011	387.25
00028558	090450 INTERSTATE ALL BATTERY CENTER	06/28/2011	23.77
00028559	090500 INVENTORY TRADING COMPANY	06/28/2011	56.00
00028560	100003 J AND P CUSTOM APPAREL	06/28/2011	2,900.00
00028561	100150 JANETOS MARKET	06/28/2011	159.95
00028562	081000 HOPE STORES, INC	06/28/2011	631.00
00028563	100380 JOHN DEERE LANDSCAPES	06/28/2011	102.33
00028564	100870 KENNEBUNK SAVINGS BANK	06/28/2011	17,000.00
00028565	120970 LIBBY SCOTT INC.	06/28/2011	1,421.75
00028566	130626 MAINE OXY/SPEC AIR GASES	06/28/2011	344.52
00028567	132404 MAINE SAD#60	06/28/2011	284.00
00028568	133375 MAINE ENERGY RECOVERY CO.	06/28/2011	3,897.20
00028569	133195 MAINE TURNPIKE AUTHORITY	06/28/2011	9.05
00028570	133358 W.B.MASON	06/28/2011	124.49
00028571	134300 MAINE MUNICIPAL EMPLOYEES	06/28/2011	3,847.92
00028572	140600 NEPTUNE INC	06/28/2011	210.85
00028573	140873 NEW ENGLAND POSITIONING SYSTEM	06/28/2011	494.80
00028574	141080 NEXTEL	06/28/2011	18.96
00028575	141300 NO.BERWICK LUMBER & HARDWARE	06/28/2011	103.80
00028576	150025 OAKWOODS LUMBER INC	06/28/2011	3,000.00
00028577	159990 PATRIOT SIGNAGE	06/28/2011	115.50
00028578	159995 HL PATTEN CONSTRUCTION	06/28/2011	992.00
00028579	200700 PIKE INDUSTRIES INC	06/28/2011	1,850.15

Check Number	Account	Date Paid	Amount
00028580	160400 PITNEY BOWES	06/28/2011	138.00
00028581	180125 RANSOM ENVIRONMENTAL INC	06/28/2011	42.50
00028582	180185 RCP LLC	06/28/2011	387.50
00028583	181110 ROCHE LOCKSMITH INC	06/28/2011	8.50
00028584	190532 RACHEL ZOLL SCHUMACHER	06/28/2011	250.00
00028585	132500 SECRETARY OF STATE M/V	06/28/2011	13,904.10
00028586	191060 SEXUAL ASSAULT SUPPORT SERVICE	06/28/2011	100.00
00028587	191900 SO BERWICK EMERGENCY RESCUE	06/28/2011	6,140.01
00028588	193410 SO MAINE REGIONAL PLANNING CM	06/28/2011	2,188.60
00028589	193640 STAPLES	06/28/2011	548.98
00028590	200300 TAYLOR RENTAL	06/28/2011	55.00
00028591	201150 ANNMARIE TOWNSEND	06/28/2011	54.92
00028592	133113 TREASURER OF STATE/ATV	06/28/2011	2,771.25
00028593	201238 TRI-CITY TOOL CRIB	06/28/2011	89.15
00028594	201300 TWO-WAY COMMUNICATION SERV INC	06/28/2011	950.54
00028595	210540 UNIVERSAL RECYCLING TECH, LLC	06/28/2011	174.75
00028596	210380 UNITED PARCEL SERVICE	06/28/2011	11.10
00028597	211500 VERIZON WIRELESS	06/28/2011	652.86
00028598	220280 VISITING NURSE SERVICE	06/28/2011	1,000.00
00028599	230300 WALMART COMMUNITY BRC	06/28/2011	82.17
00028600	241109 YORK POLICE DEPARTMENT	06/28/2011	19,536.00
00028601	240900 YORK COUNTY REGISTRY OF DEEDS	06/28/2011	18.72
00028602	241280 ZEP MANUFACTURING CO	06/28/2011	134.62
Total Not Prepaid			130,802.92
Total Prepaid			16,783.46
Grand Total			147,586.38

WARRANT NUMBER ..... \$ 147,586.38 DATE 06/22/2011  
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\* \* \* TREASURER'S WARRANT \* \* \*

THIS IS TO CERTIFY THAT THERE IS DUE AND CHARGEABLE TO THE APPROPRIATIONS LISTED ABOVE THE SUM SET AGAINST EACH NAME AND YOU ARE DIRECTED TO PAY UNTO THE PARTIES NAMED IN THIS SCHEDULE.

TOWN COUNCIL:

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.....  
.....  
.....

RECEIVED  
6.23.11  
Town Manager's Office

July 22, 2011

Dear Town Council  
I AM writing this letter  
of request asking to  
have my side of  
Goodwin Street from  
Portland Street to  
the intersection of  
Norton and Goodwin  
Street be no parking  
anytime as there has  
been ~~any~~ many times  
where the ambulance  
and emergency vehicles  
haven't been able to get  
through because of people  
parking on both sides  
of Goodwin Street Jamming  
the street yard sales  
the veterinarian and  
neighbors having parties  
contribute to the problem  
I ~~am~~ am concerned about  
the day I might have  
to call the ambulance  
for my wife as she  
has diabetes and heart  
trouble I'm hoping this  
can be made permanent  
THANK YOU

Roger Bouchard



**TOWN COUNCIL**  
***Agenda Information Sheet***

<b>Meeting Date: June 28, 2011</b>	<b>Item #    UB 1</b>
<b>Agenda Item: Warrant for Special Town Meeting</b>	
<b>Department Head Recommendation: Fern Houliares</b>	
<p>A Special Town meeting is required for any budget transfers in excess of \$10,000. The Highway budget overrun of \$80,000 is primarily due to winter costs and repairs of equipment. The Transfer Station overrun of \$13,000 is due to the increase in tipping fees at MERC.</p> <p>Any funds approved but not ultimately spent will revert back to the Undesignated Fund.</p>	
<b>Town Manager's Recommendation</b>	
<p>This Special Town Meeting is required under the Town's Charter, Article VII, Section 2.</p>	
<b>Requested Action</b>	
<p>Sign warrant for Special Town Meeting on July 12, 2011 and order it posted.</p>	
<b>Vote</b>	

WARRANT  
TOWN OF SOUTH BERWICK, MAINE  
SPECIAL TOWN MEETING

State of Maine

County of York, ss.

TO: JOSEPH ROUSSELLE, a Resident of South Berwick in the County of York,  
State of Maine.

GREETINGS: In the name of the Town of South Berwick, you are required to notify the inhabitants of said Town, qualified to vote in Town affairs, to assemble in the Town Council Chambers in the Town Hall at 180 Main Street in said Town on Tuesday July 12, 2011 at 6:30 p.m., then and there to act on the following articles:

ARTICLE 1. To elect a moderator to preside at said meeting.

ARTICLE 2. To see what sum the Town will vote to appropriate and expend from the Undesignated General Fund Balance to cover the unexpected overdraft in the Highway budget for 2010/11.

TOWN COUNCIL RECOMMENDS: \$80,000 from Undesignated General Fund.

ARTICLE 3. To see what sum the Town will vote to appropriate and expend from the Undesignated General Fund Balance to cover the unexpected overdraft in the Transfer Station budget for 2010/11.

TOWN COUNCIL RECOMMENDS: \$13,000 from Undesignated General Fund.

ARTICLE 4. To see if the Town will vote to adjourn the Special Town Meeting.

Given under our hands this 28th day of June 2011.

\_\_\_\_\_  
David Burke

\_\_\_\_\_  
Jean Demetracopoulos

\_\_\_\_\_  
Gerald W MacPherson Sr.

\_\_\_\_\_  
David H Webster

\_\_\_\_\_  
John Kareckas

**TOWN COUNCIL**  
***Agenda Information Sheet***

<b>Meeting Date: June 28, 2011</b>	<b>Item # UB 2</b>
<b>Agenda Item: Warrant for Special Town Meeting on July 19, 2011</b>	
<b>Department Head Recommendation: Fern Houliares</b>	
<p>The total LD1 override originally presented at Town meeting was \$420,855.</p> <p>Based upon discussion at Council workshop(s), a Special Town meeting warrant is presented with the LD1 override article separated. Article 2 seeks to override the LD1 limit to accommodate the payment for the Library Construction referendum bond (est \$167,834 in 2011/2012).</p> <p>Article 3 seeks the override for the balance (est \$253,021).</p>	
<b>Town Manager's Recommendation</b>	
Recommend signing the warrant for Special Town Meeting.	
<b>Requested Action</b>	
Sign warrant and order it posted.	
<b>Vote</b>	

WARRANT  
TOWN OF SOUTH BERWICK, MAINE  
SPECIAL TOWN MEETING

State of Maine

County of York, ss.

TO: JOSEPH ROUSSELLE, a Resident of South Berwick in the County of York,  
State of Maine.

GREETINGS: In the name of the Town of South Berwick, you are required to notify the inhabitants of said Town, qualified to vote in Town affairs, to assemble in the Town Council Chambers in the Town Hall at 180 Main Street in said Town on Tuesday July 19, 2011 at 6:30 p.m., then and there to act on the following articles:

ARTICLE 1. To elect a moderator to preside at said meeting.

ARTICLE 2. To see if the Town will vote to increase the property tax levy limit of \$3,000,599 established for the Town of South Berwick by State law for the 2011/2012 Municipal budget approved on June 7, 2011 via Articles 8 through 21, inclusive, to accommodate the payment for the \$1.5 million dollar Library Construction bond approved via referendum vote on November 2, 2010.

TOWN COUNCIL RECOMMENDS: Adoption

ARTICLE 3. To see if the Town will vote to increase the property tax levy limit of \$3,000,599 established for the Town of South Berwick by State law for the 2011/2012 Municipal budget approved on June 7, 2011 via Articles 8 through 21, inclusive adjusted for Article 2 above.

TOWN COUNCIL RECOMMENDS: Adoption

ARTICLE 4. To see if the Town will vote to adjourn the Special Town Meeting.

Given under our hands this 28th day of June 2011.

\_\_\_\_\_  
David Burke

\_\_\_\_\_  
Jean Demetracopoulos

\_\_\_\_\_  
Gerald W MacPherson Sr.

\_\_\_\_\_  
David H Webster

\_\_\_\_\_  
John Kareckas

**TOWN COUNCIL**  
***Agenda Information Sheet***

<b>Meeting Date: June 28, 2011</b>	<b>Item #    NB 1</b>
<b>Agenda Item: Budget Transfers</b>	
<b>Department Head Recommendation: Fern Houliares</b>	
<p>Eight departments will require a total transfer of \$27,300 from the Undesignated Fund to cover estimated expenditures through June 30. The attached memo lists the dollar breakdown and explanation.</p> <p>These transfers represent approximately .5% of the total 2010/2011 municipal budget.</p> <p>Any funds approved but not ultimately spend will revert back to the Undesignated Fund.</p>	
<b>Town Manager's Recommendation</b>	
<p>Recommend approval of Council Transfers.</p>	
<b>Requested Action</b>	
<p>Approve transfer from Undesignated Fund to departments per attached memo to cover budget overruns.</p>	
<b>Vote</b>	

Date: June 23, 2011  
To: Perry  
From: Fern  
Re: Department Overruns

Based upon the Treasurer warrants through June 28 and payroll through June 18, individual departments will need council transfers for overexpenditures. The actual departments and amounts will not be determined until final adjustments are made by the auditors and myself. The following are the best estimates as of this date:

4160: Code Enforcement	\$ 900	Vehicle Repairs
4180: Town Hall	\$ 2,700	Heating Oil
4185: Community Center	\$ 700	Electricity
4220: Fire	\$ 2,000	Repair/Maintenance Vehicles
4230: Police	\$ 9,000	Traffic Control Wages, Repair/Maintenance Equipment
4335: Solid Waste	\$ 4,000	Repair/Maintenance Vehicles, Tolls/Phone
4470: Library	\$ 2,000	Oil, LP Gas at Young Street
4510: Social Services	\$ 6,000	Assistance Grants (Although General Assistance is one of the "allowable" overages, Council should still acknowledge the expenditures by appropriating the additional money.)
Total	\$27,300	

Combined with the pending \$93,000 overage for the Special Town Meeting for Highway and Transfer Station, the overages total \$120,300 or approximately 2.3% of the total 2010/11 municipal budget. These overages will be offset by "savings" within other departments totaling approximately \$90,000.

Please include these Council transfers as an agenda item for the June 28th meeting.

If you have any other questions, please let me know.

**TOWN COUNCIL**  
***Agenda Information Sheet***

<b>Meeting Date: June 28, 2011</b>	<b>Item # NB 2</b>
<b>Agenda Item: Audit Engagement Letter</b>	
<b>Department Head Recommendation: Fern Houliares</b>	
<p>In the past, the Town Manager (Treasurer) has signed the Engagement Letter for the annual audit. An article in MMA's Townsman Legal section, however, indicates that it should be the responsibility of the Municipal Officers.</p> <p>The audit has been tentatively scheduled for November 9 and 10, 2011.</p>	
<b>Town Manager's Recommendation</b>	
<p>Recommend the Council engage the services of Smith &amp; Associates for the Fiscal Year 2011 Audit.</p>	
<b>Requested Action</b>	
Sign Audit Engagement letter for Smith & Associates, CPAs	
<b>Vote</b>	

# Smith & Associates, CPAs

*A Professional Association*

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50 Forest Falls Drive, Suite 3 • Yarmouth, Maine 04096  
Ph (207) 846-8881 • Fax (207) 846-8882  
www.smithassociatescpa.com

June 17, 2011

TOWN OF SOUTH BERWICK  
180 Main Street  
South Berwick, ME 03908

We are pleased to confirm our understanding of the services we are to provide the Town of South Berwick for the year ended June 30, 2011. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of the Town of South Berwick as of and for the year ended June 30, 2011. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany the Town of South Berwick's basic financial statements. As part of our engagement, we will apply certain limited procedures to the Town of South Berwick's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter.

Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- Statement of Revenues, Expenditures and Changes in Fund Balance – Budget to Actual – General Fund

Additionally, management has chosen not to include the following RSI as required by generally accepted accounting principles:

- Management's Discussion and Analysis

## **Audit Objective**

The objective of our audit is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America and will include tests of the accounting records and other procedures we consider necessary to enable us to express such opinions. If our opinions on the financial statements are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

**Management Responsibilities**

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. You are also responsible for making all management decisions and performing all management functions; for designating an individual with suitable skill, knowledge, or experience to oversee our assistance with the preparation of your financial statements and related notes and any other nonattest services we provide; and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the Town of South Berwick and the respective changes in financial position and where applicable, cash flows, in conformity with U.S. generally accepted accounting principles.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements.

You are also responsible for informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws and regulations.

**Time Limitations**

Because there are inherent difficulties in recalling or preserving information as the period after the engagement increases, you agree that notwithstanding the statute of limitations of the State of Maine, any claim based on this engagement must be commenced within 24 months after performance of our service, unless you have previously provided us with a written notice of a specific defect in our services that form the basis of a claim.

**Loss Limitation and Indemnification**

During the course of our engagement, we will request information and explanations from management regarding the company's operations, internal controls, future plan, specific transactions, and accounting systems and procedures. At the conclusion of our engagement, we will require, as a precondition to the issuance of our report, that management provide certain representations in a written representation letter. The procedures we will perform in our engagement and the conclusions we reach as a basis for our report will be heavily influenced by the written and oral representations that we receive from management. Accordingly, false representations could cause us to expend unnecessary efforts or could cause a material error or a fraud to go undetected by our procedures.

In view of the foregoing, you agree that we shall not be responsible for any misstatements in the company's financial statements that we may fail to detect as a result of false or misleading representations that are made to us by management.

If we incur legal fees as a result of our reliance on any false representation by you, you agree to reimburse us for all our legal fees and related costs of defense.

There is the risk that potential errors and fraud can occur that can result in damages that may be several times the amount of our audit fees. In order to induce us to accept this engagement, you hereby agree that our liability for any negligence, errors, or omissions committed by us will be limited to five (5) times the amount of our audit fees, provided such negligence, errors, or omissions are not a result of our failure to perform the audit in accordance with professional standards, in all material respects.

**Audit Procedures-General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

Because an audit is designed to provide reasonable, but not absolute, assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements

However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditor's is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

**Audit Procedures-General (Continued)**

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about the financial statements and related matters.

**Audit Procedures - Internal Control**

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

**Audit Procedures - Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Town of South Berwick's compliance with applicable laws and regulations and the provisions of contracts and agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion.

**Engagement Administration, Fees, and Other**

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash or other confirmations we request and will locate any documents selected by us for testing.

We expect to begin our audit on mutually agreed upon date, and to issue our reports within a reasonable amount of time thereafter. Wayne C. Smith is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it. Our fee for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc). Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit.

**Engagement Administration, Fees, and Other (Continued)**

We will do everything in our control to minimize the cost of these services. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you before we incur the additional costs.

You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We appreciate the opportunity to be of service to the Town of South Berwick and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,



SMITH & ASSOCIATES, CPAs  
*A Professional Association*

---

**Response:** This letter correctly sets forth the understanding of the Town of South Berwick.

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*J. Harding & Company, PLLC*  
*Certified Public Accountants*

*John C. Harding, CPA*

*John F. Fullerton*

*13 Town West Rd., Suite B-3*  
*Plymouth, NH 03264*  
*(603)536-4441*  
*Fax (603)536-4442*

System Review Report

December 8, 2009

To the Principal of Smith & Associates, CPA's  
and the Peer Review Committee of the New England Peer Review, Inc.

We have reviewed the system of quality control for the accounting and auditing practice of Smith & Associates, CPA's (the firm) in effect for the year ended June 30, 2009. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary).

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards*.

In our opinion, the system of quality control for the accounting and auditing practice of Smith & Associates, CPA's in effect for the year ended June 30, 2009, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Smith & Associates, CPA's has received a peer review rating of *pass*.

*J. Harding & Company, PLLC*

for enforcement varies depending on population and whether a local building code was in effect when MUBEC took effect.

For municipalities over 2,000 in population and with a local building code in effect on December 1, 2010, enforcement must begin immediately.

For municipalities over 2,000 in population but with no local building code in effect on December 1, 2010, enforcement must begin by July 1, 2012.

For municipalities under 2,000 in population, enforcement, including whether and when to begin enforcement, is totally optional with the municipality.

Enforcement consists, at a minimum, of issuing or withholding certificates of occupancy, depending on whether construction complies with MUBEC. Municipalities may employ their own inspectors for this purpose, or they may require the property owner or contractor to engage, at their own expense, a 3rd-party inspector. Both municipal and 3rd-party inspectors must be trained and certified by the Maine State Planning Office (SPO).

Unfortunately, most of MUBEC is not available to either the public or municipalities for free. (MUBEC's component codes and standards were developed by private entities, which sell these copyrighted materials at substantial prices.) The SPO, however, is supposed to provide one free copy of MUBEC to each municipality over 2,000 in population. Most of the building code components of MUBEC are also available for viewing (but not for downloading or printing) at <http://publiccodes.citation.com/icod/>.

Implementing MUBEC will be a challenge for municipalities, contractors and property owners alike. For more detailed information about MUBEC, see our dedicated webpage at <http://www.memun.org/public/MMA/svc/SFR/BuildingCode/default.htm>.

Specific questions about MUBEC, including training and enforcement questions, should be directed to the Maine Department of Public Safety's

Bureau of Building Codes & Standards, the agency charged with implementing MUBEC, at <http://maine.gov/dps/bbcs/>. (By R.P.F.)

## ENGAGING AN AUDITOR

Earlier this year we reminded readers that an annual municipal audit is legally required, not merely advisable (see "Annual Audit Required," *Maine Townsman*, "Legal Notes," March 2010). Recently, though, we were reminded by the State Auditor that it is the municipal officers (selectmen or councilors), not the treasurer or some other official, who must directly engage the auditor.

In a letter quoted in a local newspaper, the State Auditor warned a southern Maine town that it could be in violation of State law because the selectmen had failed to directly engage the auditor on an annual basis. Instead, the town manager (who was also the treasurer) had engaged the auditor for the past 10 years based on the approval of a prior board, without the direct annual approval of the

selectmen. The State Auditor said having the municipal officers rather than the manager engage the auditor "ensures a separation of duties, as well as independence."

We agree. It's important that the one who audits the books be chosen by officials other than those whose financial activities are being examined. We don't believe, however, that this means the municipal officers must re-interview or rebid the auditor annually. If they are satisfied with the auditor they've been using in the past, the municipal officers may continue to employ that auditor, but they must make this decision annually and notify the State Auditor within 30 days thereafter, as required by 30-A M.R.S.A. § 5823.

Incidentally, since a municipality's annual report must include certain excerpts from the annual audit, and since the report must be made available to the voters at least three days before the annual meeting (see 30-A M.R.S.A. § 2801), the municipal officers should engage an auditor well before that date. (By R.P.F.) 

The Maine Municipal Association (MMA) is a voluntary membership organization offering an array of professional services to municipalities and other local governmental entities in Maine.

**MMA's services include advocacy, education and information, professional legal and personnel advisory services, and group insurance self-funded programs.**

For more information visit the MMA website: [www.memun.org](http://www.memun.org) 

60 Community Dr., Augusta, ME 04330 • 207-623-8428



## Professional Directory



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## **Municipal Officials Fiscal Year 2012**

Perry A. Ellsworth	Town Manager, Tax Collector, Treasurer, Road Commissioner
Roberta L. Orsini	Assistant Town Manager
Barbara Bennett, CCM	Town Clerk, Registrar of Voters, Motor Vehicle Agent, IF&W Agent
Beverly J. Hasty	Deputy Tax Collector
Fern R. Houliares	Deputy Treasurer
Craig Skelton	Assessing Agent
Jon St. Pierre	Public Works Director
Joe Rousselle	Code Enforcement Officer, Plumbing Inspector, Health Officer
Jim Webster	Alternate CEO & LPI
Dana P. Lajoie	Police Chief, Constable
George E. Gorman	Fire Chief, Fire Warden
Blain Cote	Emergency Management Director
Mary-Margaret Ney	Library Director
Sharon R. Brassard	Recreation Director
Victoria J. Desilets	Social Services Director
Andrew Clark	Animal Control Officer

Affirmed this 28<sup>th</sup> day of June, 2011:

\_\_\_\_\_  
David Burke

\_\_\_\_\_  
David H. Webster

\_\_\_\_\_  
Gerald W. MacPherson, Sr.

\_\_\_\_\_  
John C. Kareckas

\_\_\_\_\_  
Jean Demetracopoulos



**TOWN COUNCIL**

***Agenda Information Sheet***

<b>Meeting Date: June 28, 2010</b>	<b>Agenda Item NB 4</b>
<b>Subject: Reappointment of Board/Committee Members</b>	
<b>Information:</b>	
<u>Board of Assessment Review</u> Rosann Maurice <i>No</i> Smilie Rogers, Alt	<u>Historic District Commission</u> George Muller
<u>Building Committee</u> Mark Gagnon	<u>Library Advisory Board</u> Elaine Pridham Albert Whitaker, Jr.
<u>Community Development</u> Virginia Jennings Brian Kunkel	<u>Planning Board</u> William Straub
<u>Conservation Commission</u> John Klossner Smilie Rogers	<u>Recreation Committee</u> William Page <i>No - email</i> Michael Anderson <i>No - email</i>
<u>Energy Efficiency Advisory Committee</u> John Rudolph <i>No</i>	<u>Zoning Board of Appeals</u> Peter Grace Ruth Boston <i>No - phone</i> John Klossner, Alt
Reappoint Board/Committee members through June 30, 2014 that wish to be reappointed. Council may wish to consider appointing Smilie Rogers as a regular voting member instead of the alternate to replace Rosann Maurice on BOAR & appointing John Klossner as the regular voting member on the ZBA filling the seat vacated by Ruth Boston.	
<b>Requested Action:</b>	
<b>Vote:</b>	



**TOWN COUNCIL**  
***Agenda Information Sheet***

<b>Meeting Date: June 28, 2011</b>	<b>Item # NB 5</b>
<b>Agenda Item: Shoreland Ordinance Amendments</b>	
<b>Information</b>	
<p>DEP has reviewed the Shoreland Ordinance and returned their comments. The comments have been incorporated by the Planning Coordinator and were presented for your review in your weekly packet dated May 27<sup>th</sup>.</p> <p>The amendments made by DEP are not substantive. The review recommended text be moved within the document to a different place and suggested wording was amended which did not alter the intent of the ordinance. Overall the basic premise remains the same. That being said, the prudent approach is to hold a public hearing on the amendments.</p>	
<b>Requested Action</b>	
<p>Motion to schedule a public hearing on August 9<sup>th</sup> to hear comments on the Shoreland Ordinance revisions.</p>	
<b>Vote</b>	

Code of Ordinances  
Part II, General Legislation  
Amendment to  
Chapter 140. Zoning.

The Mandatory Shoreland Zoning Act, 38 M.R.S.A., sections 435-449 with guidelines and the Board of Environmental Protection (Board) require municipalities to adopt shoreland zoning ordinances consistent with, or no less stringent than, those minimum guidelines set forth in the Act and by the Board. This amendment to the Code incorporates the most current State Shoreland Zoning into the South Berwick Chapter 110, Shoreland Zoning.

The changes through Chapter 140 and Chapter 121 of the Code are in the following Articles and Sections. These amendments are to repeal Section 140-48, Shoreland Standards and Section 140-48.1, Minor Freshwater Wetlands in order to adopt Chapter 110, Shoreland Zoning.

**Chapter 110**

**SHORELAND ZONING**

**ARTICLE I  
General Provisions**

- § 110-1. Purpose.
- § 110-2. Authority.
- § 110-3. Applicability.
- § 110-4. Effective Date.
- § 110-5. Availability.
- § 110-6. Severability.
- § 110-7. Conflicts with Other Ordinances.
- § 110-8. Amendments.
- § 110-9. Official Shoreland Zoning Map.
- § 110-10. Basic Requirements.
- § 110-11. Definitions.

**ARTICLE II  
Nonconformance**

- § 110-12. Requirements.
- § 110-13. Nonconforming Structures Within Areas Regulated by Shoreland Zoning.
- § 110-14. Reconstruction of Nonconforming buildings.
- § 110-15. Nonconforming uses.
- § 110-16. Nonconforming lots of record.

**ARTICLE III  
Establishment of Zoning**

- § 110-17. Overlay Zones.
- § 110-18. District Boundaries.

**ARTICLE IV  
Land Use Standards**

- § 110-19. Performance Standards for Specific Uses.

**ARTICLE V  
Shoreland Standards**

- § 110-20. Agriculture.
- § 110-21. Beach Construction.
- § 110-22. Campgrounds.
- § 110-23. Individual Private Campsites.
- § 110-24. Clearing or Removal of Vegetation for Activities Other than Timber Harvesting.
- § 110-25. Erosion and Sedimentation Control
- § 110-26. Mineral Exploration and Extraction
- § 110-27. Additional Shoreland Structures.
- § 110-28. Roads and Driveways.
- § 110-29. Septic Waste Disposal.
- § 110-30. Signs.
- § 110-31. Principal and Accessory Structures.
- § 110-32. Parking Areas.
- § 110-33. Timber Harvesting.
- § 110-34. Essential Services.
- § 110-35. Storm Water Runoff.
- § 110-36. Archeological Site.
- § 110-37. Minor Freshwater Wetlands.

**ARTICLE VI  
Administration**

- § 110-38. Administration.
- § 110-39. Appeals and Zoning Board of Appeals.
- § 110-40. Allowed Uses.  
Table C, Shoreland Dimensional Requirements.

**ARTICLE I**  
**General Provisions**

**§110-1. Purpose.**

The purpose of this Ordinance is to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

**§110-2. Authority.**

This Ordinance has been prepared in accordance with the provisions of Title 38, Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

All provisions in Chapter 110, Shoreland Ordinance are in addition to Zoning, Chapter 140.

**§110-3. Applicability.**

This Ordinance regulates land uses within 250 feet, horizontal distance, of

- Normal high-water line of any great pond, river, or streams
- Upland edge of a major freshwater wetland
- Upland edge of a coastal wetland, including all areas affected by tidal action
- Recognized features as listed in Section 110-18.A. (4),(5), (6)
- Shoreland and Slope District

This Ordinance is also applicable to areas within:

- 100 year FEMA Floodplain Zones
- Minor Freshwater Wetlands
- Section 110-18 A.(3)-Zone within 100 feet, and

This Ordinance distinguishes between the regulated horizontal limit and the stipulated setback distances or other requirements for uses within the zone area.

- ~~all land areas within 100 feet of upland edge of a minor freshwater wetland, and all land areas within 100 feet, horizontal distance, of the normal high water line of a stream.~~

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

Tributary Streams are regulated by this ordinance and separately may also be protected under the Natural Resources Protection Act, 38 M.R.S.A. §§ 480-A to 480-HH.

Formatted: Bullets and Numbering

Comment [k1]: Deleted "protected under MRSA Title 38 Natural Resources Protection Act" per DEP order.

**§110-4. Effective Date.**

A. Effective Date of Ordinance and Ordinance Amendments. This Ordinance, which was adopted by the municipal legislative body on August 31, 2010, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the

Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

- B. Sections 140-48, Shoreland Standards in Chapter 140 of Zoning are repealed ~~on the statutory date established under 38 M.R.S.A. section 438 A.(5), at which time Chapter 110 for SHORELAND ZONING shall become effective. Until Section 140-48 is repealed, Chapter 110, SHORELAND ZONING, is not in effect and Chapter 110 for Shoreland Zoning is hereby in effect as of the amendment of this ordinance, subject to §110-4(A), above.”~~

Comment [k2]: Revised per DEP order.

#### **§110-5. Availability.**

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

#### **§110-6. Severability.**

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

#### **§110-7. Conflicts with Other Ordinances.**

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

#### **§110-8. Amendments.**

A. An amendment to this chapter may be initiated by:

- (1) Written petition of a number of voters equal to at least 10% of the registered voters of the Town and following the provisions of the Town Charter, Article VIII, Section 2.
- (2) The Town Council, provided that a majority of the Council so voted.
- (3) The Planning Board, provided that a majority of the Board has so voted.
- (4) An application by any individual to the Planning Board, as long as a majority of the Board so votes.

B. An amendment to this chapter may be adopted by:

- (1) The Town Council following the provisions of the Town Charter, Article II, Section 3, Subsection VI, if the amendment is initiated by the Town Council, the Planning Board or an application approved by the Planning Board.
- (2) A Special Town Meeting following the provisions of the Town Charter, Article VII, Section 2, if the amendment was initiated by a written petition in accordance with Subsection A.(1), above.
- (3) In either case, the Town Council shall hold a public hearing on the proposed amendment as required by Article VII, Section 2, or by Article II, Section 11, of the Town Charter. The

Planning Board shall report its recommendation regarding the proposed amendment at the public hearing.

- C. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

**§110-9. Official Shoreland Zoning Map.**

- A. Said districts are located as shown on the Official Shoreland Zoning Map, entitled "Shoreland Zoning Map of South Berwick, Maine," based upon the written descriptions contained in Article III, Section 110-18, District Boundaries of this chapter, dated and on file in the office of the Town Clerk. The Official Map shall be signed by the Town Clerk and Chairman of the Town Council at the time of adoption or amendment of this chapter, certifying the date of such adoption or amendment. Additional copies of the Shoreland Zoning Map may be seen in the municipal offices.
- B. In cases of disagreement between the Shoreland Zoning Map and the written descriptions in Article III, Section 110-18, District Boundaries, the written description shall prevail.
- C. The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

**§110-10. Basic Requirements.**

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

**§110-11. Definitions.**

~~(AGRICULTURE, LIVESTOCK: See "Animal Husbandry".~~

~~ANIMAL HUSBANDRY: The keeping of any domesticated animals other than household pets.)~~

~~(AGRICULTURE, NON-LIVESTOCK: The cultivation of soil and the producing or raising of crops, including gardening as a commercial operation. The term shall also include greenhouses, nurseries and versions thereof; but those two (2) terms, when used alone, shall refer specifically to a place where flowers, plants, shrubs and/or trees are grown for sale.)~~

~~ANIMAL HUSBANDRY: The keeping of any domesticated animals other than household pets.~~

~~(BASAL AREA: The area of cross section of a tree stem at diameter breast height (4.5 feet above the ground) and includes bark.)~~

~~AGRICULTURE, LIVESTOCK— See Chapter 140-9. Definitions.~~

~~AGRICULTURE, NONLIVESTOCK— See Chapter 140-9. Definitions.~~

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

**AREA OF SPECIAL FLOOD HAZARD** - The land in the floodplain having a one-percent or greater chance of flood in any given year.

**BASAL AREA: The area of cross section of a tree stem at diameter breast height (4.5 feet above the ground) and includes bark.)**

~~**BASAL AREA** - See Chapter 140-9- Definitions.~~

**BASAL AREA, RESIDUAL:** The total of the basal area of trees remaining on a harvest area.

**BASE FLOOD** - The flood having a one-percent chance of being equaled or exceeded in any given year, alternately referred to as the "one-hundred-year flood."

**BOATHOUSE** - A nonresidential structure designed for the purpose of protecting or storing boats.

**BOAT LANDING** - A facility designed primarily for the launching and landing of watercraft and which may include an access ramp, docking area and parking spaces for vehicles and trailers.

**BOAT LAUNCHING FACILITY** - A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**BODY OF WATER** - Any river, stream, brook, wetland, or pond as defined herein.

**BUREAU** - State of Maine Department of Conservation's Bureau of Forestry. (The Town has incorporated the State's timber harvesting standards.)

**CHANNEL** - A natural or artificial watercourse with definite beds and banks to confine and conduct continuously or periodically flowing water. Channel flow is water flowing within the limits of the defined channel.

**COASTAL WETLANDS** - All tidal and sub tidal lands, including ~~all areas below any identifiable debris left by tidal action~~; all areas with vegetation that is tolerant of salt water and occurs primarily in a saltwater or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables published by the National Ocean Service.

**CROSS-SECTIONAL AREA** - The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight-line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

**DRIVEWAY** - In Shoreland Zoned areas only, the term "Driveway" means: A vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

**FLOOD** - A temporary rise in stream flow or tidal surge that results in water overflowing its banks and inundating adjacent areas.

**FLOOD INSURANCE MAP** - The official map on which the Department of Housing and Urban Development or the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk-premium zones applicable to the town.

**FLOODPLAIN** - The lands adjacent to a body of water, which have been or may be covered by the regional flood.

**FLOOD PROOFING** - A combination of structural provisions, changes or adjustments to properties subject to flooding, primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures and contents of buildings.

**FLOOD, REGIONAL** - The maximum known flood or a body of water; either the one-hundred-year-frequency flood, where calculated, or the flood of record or evidence of vegetative changes.

**FLOODWAY** - The channel of a natural stream or river and portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the floodwater or flood flow of any natural stream or river.

**FLOOR AREA** - In Shoreland Zoned areas only, the term "Floor Area" means: The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks as measured from exterior points.

**FOUNDATION** - In Shoreland Zoned areas only, the term "Foundation" means: The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

**FORESTED WETLAND** - A freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty {20} feet) or taller.

**FRESHWATER WETLANDS, MAJOR** - Freshwater swamps, marshes, bogs, and similar areas (other than forested wetlands) which are:

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

**FRESHWATER WETLANDS, MINOR** - A wetland of two or more contiguous acres, excluding Major Freshwater Wetlands, as identified on the Federal National Wetlands Inventory.

~~**FRONTAGE, SHORE** - The horizontal distance, measured in a straight line, between the intersections of the side lot lines with the shoreline at normal high water elevation.  
(See Shore Frontage)~~

**FUNCTIONALLY WATER-DEPENDENT USES** - Those uses that require for their primary purpose, location on submerged lands or that require direct access to or location in, coastal and inland waters and which cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water - borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to marine or tidal waters.

**GREAT POND** - Any inland body of water which, in a natural state, has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres except for the purposes of this chapter, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**HEIGHT OF A STRUCTURE:** See Chapter 140-9. Definitions.

**LIMITED RESIDENTIAL SHORELAND DISTRICT** ~~—Any areas suitable for residential and recreational development which are used less intensively than those in the Business Districts and currently developed. This district shall include areas when they occur within the limits of the Resource Protection District-Inland Wading Waterfowl Habitat (IWWH) resource protection areas suitable for residential and recreational development which are used less intensively than those in the Business Districts and currently developed. This district shall include areas as shown on the South Berwick Official Shoreland Zoning Map and Table C footnote (4).~~

**LOT AREA** - In Shoreland Zoned areas only, the term “Lot Area” means: The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or the upland edge of a wetland and areas beneath roads serving more than two lots.

**LOT, SHOREFRONT** - Any lot abutting a body of water.

**MARINA** - A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities.

**NORMAL HIGH WATER LINE** - That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high water line is the upland edge of the wetland and not the edge of open water. Areas contiguous with rivers and great ponds that support wetland vegetation and hydric soils, and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond. ~~—In the case of wetlands adjacent to rivers and great ponds, the normal high water line is the upland edge of the wetland, and not the edge of the open water. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils, and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high water are considered part of the river or great pond.~~

**NONCONFORMING LOTS OF RECORD:** See Chapter 140-9. Definitions.

**NONCONFORMING USE:** See Chapter 140-9. Definitions.

**PIERS, DOCKS, WHARFS, BRIDGES AND OTHER STRUCTURES AND USES EXTENDING OVER OR BEYOND THE NORMAL HIGH-WATER LINE OR WITHIN A WETLAND.**

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

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

**PRINCIPAL BUILDING:** See Chapter 140-9. Definitions.

**PRINCIPAL USE:** See Chapter 140-9. Definitions.

**RECENT FLOOD PLAIN SOILS** - The following soil series as described and identified by the National Cooperative Soil Survey:

Alluvial  
Charles  
Cornish  
Fryeburg

Hadley  
Limerick  
Lovewell  
Medomak  
Ondawa  
Podunk  
Rumney  
Saco  
Suncook  
Sunday  
Winooski

**RESIDENTIAL DWELLING UNIT** - In Shoreland Zoned areas only, the term “Residential Dwelling Unit” means: A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

**RIVER** - A free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

**ROAD** - In Shoreland Zoned areas only, the term “Road” means: A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

**SETBACK FROM WATER** - The horizontal distance from the normal high-water elevation to the nearest part of a structure, road parking space, or other regulated object or area.

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

**SHORELAND ZONE** - The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond, river, or saltwater body; within two hundred and fifty (250) feet of the upland edge of a coastal or freshwater wetland; or within two hundred and fifty (250) feet of the normal high-water line of a stream.

~~**RIVER, STREAM, OR BROOK** - A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial tributary streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area. “River, Stream, or Brook” does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.~~

~~**STRUCTURE** - See Chapter 140-9. Definitions. (In Shoreland Zoned areas only, the term “Structure” means: **STRUCTURE** - Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, and poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located.)~~, such as decks, patios, and satellite dishes. *(DEP guidelines)*

~~**STREAM** - A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the~~

~~body of water becomes a river or flows to another water body or wetland within the shoreland area. (See definition for Stream, above)~~

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

**TRIBUTARY STREAM** - A channel between defined banks not identified in Section 110-18 A. or B. A channel is created by the action of surface water and has two or more of the following characteristics:

- A. It is depicted as a solid line or broken blue line on the most recent edition of the U.S. Geological Survey 7.5 minute series topographic map.
- B. It contains or is known to contain flowing water continuously for a period of at least three months of the year in most years.
- C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
- D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.
- E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

~~A tributary stream does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining stormwater or a grassy swale, created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. *Perennial tributary stream is defined as containing free flowing water for a minimum of 6 months of the year.*~~

**UPLAND EDGE OF A WETLAND** - The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation,

~~or where the soils support the growth of wetland vegetation, but such vegetation is dominated by forested wetlands.~~

**VOLUME OF A STRUCTURE** - In Shoreland Zoned areas only, the term “Volume of a Structure” means: The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

~~**WETLAND** – A freshwater or coastal wetland.~~

**WATER BODY** - Any great pond, river, stream or tidal area or wetland.

**WATER CROSSING** - Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course, Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines and cables as well as maintenance work on these crossings.

**WATER-ORIENTED BUSINESS** - Commercial and industrial facilities which by the nature of their operations require a shorefront location, such as but not limited to boatyards, marinas, bathhouses and commercial fisheries facilities.

~~**WETLAND** - A freshwater or coastal wetland.~~

~~**WETLANDS ASSOCIATED WITH GREAT PONDS AND RIVERS** – Wetlands contiguous with or adjacent to a great pond or river and which, during normal high water, are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm.~~

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causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high-water line of the great pond or river. Wetlands associated with great ponds or rivers are considered part of that great pond or river except as noted herein.

~~WETLANDS ASSOCIATED WITH GREAT PONDS AND RIVERS—Wetlands contiguous with or adjacent to a great pond or river, and which during normal high water are connected by surface water to the great pond or river. Also included are wetlands which are separated from the great pond or river by a berm, causeway, or similar feature less than 100 feet in width, and which have a surface elevation at or below the normal high water line of the great pond or river. Wetlands associated with great ponds or rivers are considered to be part of that great pond or river except as noted herein.~~

## ARTICLE II Nonconformance

### §110-12. Requirements.

Purpose. It is the intent of this Ordinance to promote land use conformities in addition to the provisions in §140-5.

### §110-13. Nonconforming Structures within Areas Regulated by Shoreland Zoning.

A. Expansions. A non-conforming 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 non-conformity of the structure and is in accordance with subparagraphs (1) and (2) below.

- (1) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Section 110-14 and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.
- (2) Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 110-13.B, Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 110-13.A. (1), above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

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

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of

the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required within one (1) year as follows:

- (1) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.
- (2) Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
- (3) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation, which may consist of grasses, shrubs, trees, or a combination thereof.

**§110-14. Reconstruction of nonconforming buildings.**

- A. Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity.
- B. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 110-13.A, above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure.

When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 110-13.B, above.

- C. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.
- D. In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 110-13.B, above, the physical condition and type of foundation present, if any.

- E.** Change of Use of a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

**§110-15. Nonconforming uses.**

- A.** Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 110-13.A.(1) above.
- B.** Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
- C.** Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 110-14.E, above.

**§110-16. Nonconforming lots of record.**

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

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

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

these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

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

- (1) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (2) Any lots that do not meet the frontage and lot size requirements of Section 110-16.C. (1) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

### **ARTICLE III Establishment of Shoreland Zoning**

#### **§110-17. Overlay Zones.**

RP Resource Protection District.  
SP Shoreland and Slope District.  
FEMA 100-yr. Floodplain Zone.  
LRS Limited Residential Shoreland District.  
MFW Minor Freshwater Wetland District.

The purposes of the land use districts are as follows:

- A. Resource Protection District. To control the use of shoreland and other areas to provide maximum protection to the land and water resources. Such areas include but are not limited to wetlands, swamps, marshes, bogs, poorly drained soils, one- hundred-year floodplains and significant wildlife habitats. [Amended 4-11-1988]
- B. Shoreland and Slope District, and 100-yr. Floodplain Zone.
  - (1) To protect from activities or alterations that would unreasonably cause or increase flooding of areas or adjacent properties.
  - (2) To provide maximum protection to the land and water resources with controls of use and development of undeveloped shoreland areas.
  - (3) To minimize expenditures of public monies for flood-control projects.
  - (4) To minimize rescue and relief efforts undertaken at the expense of the general public.
  - (5) To minimize flood damage to public facilities, such as water mains, sewer lines, streets, roads and bridges.
  - (6) To protect the storage capacity of floodplains and assure retention of sufficient floodway area to convey flood flows which reasonably can be expected to occur.
  - (7) To encourage open space uses, such as agriculture and recreation.
- C. Limited Residential Shoreland District. To allow ~~for those areas suitable for residential and recreational development which are used less intensively than those in the Business Districts and are currently developed. This district shall include areas when they occur within the limits of the Resource Protection District within Inland Wading Waterfowl Habitat (IWWH) resource protection areas suitable for residential and recreational development which are used less intensively than those in the Business Districts and currently developed. This district shall include areas as shown on the South Berwick Official Shoreland Zoning Map and Table C footnote (4).~~

- D. Minor Freshwater Wetland District. To further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding; and accelerated erosion; to control building sites, placement of structures and land uses; and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in Shoreland and adjacent areas.

**§110-18. District Boundaries.**

A. Resource Protection District - RP.

- (1) All land within two hundred fifty (250) feet from the normal high-water line (as measured from the edge of the associated wetland) of the following water bodies:
  - (a) Round Pond.
  - (b) Warren Pond.
  - (c) Knights Pond and its outlet.
  - (d) Ogunquit Brook.
  - (e) Chicks Brook, upstream of Emery's Bridge Road.
  - (f) White Marsh Brook.
  - (g) Cox Pond and its outlet to White Marsh Brook.
  - (h) Hooper's Swamp and Hooper's Brook upstream of Belle Marsh Road.~~[Added 3-13-1989]~~
  - (i) Leigh's Mill Pond. ~~[Added 3-13-1989]~~
  - (j) Salmon Falls River/Piscataqua River to its tidal limits.
- (2) The Great Works River in the R3 and R4 Districts (as measured from the edge of the river channel).
- (3) The following resources to their boundary limits:
  - (a) Coastal wetlands. [Added 12-12-1988]
  - (b) All one-hundred-year floodplains. [Added 4-11-1988]
  - (c) Major Freshwater wetlands. [Added 12-12-1988]
  - (d) Minor Freshwater Wetlands.
  - (e) Areas of two or more contiguous acres with sustained slopes of twenty (20%) or greater when located within a Shoreland and Slope District (Section 110-18.B.)
  - (f) Land areas along rivers subject to severe erosion, undercutting, or riverbed movement and lands adjacent to tidal waters, which are subject to severe erosion or mass movement, such as a coastal bluff.
  - (g) For the purpose of this Section, the Resource Protection District shall be a (300) foot radius from the wellhead. However, the Protection District from the Junction Road wellhead shall be an area as described in the Caswell, Eichler, and Hill study "Hydro Geological Evaluation of Bedrock Well at Junction Road Site, South Berwick, Maine, and September, 1994." These zones will be established only after public notice and a public hearing in accordance with Section 140-6 of the Zoning Ordinance. For all new wellhead protection areas, Resource Protection Zones will be based on hydro geological studies/recommendations and will be established according to Zoning, Section 140-6. [Adopted 5-28-96]

Wells representing the location of a public water supply in South Berwick, and portion of Berwick, Maine servicing the South Berwick Water District as recorded by the Maine Drinking Water Program, June 2003.

- (h) Vaughan Woods.
- (i) All areas mapped as very poorly drained soils on the medium-intensity Soil Survey of York County, Maine. In the event that a soil classification boundary designating the limits of the Resource Protection District is challenged by a landowner or abutters, the landowner or abutters shall present evidence that the land in question does not contain soils, which are classified as being very poorly drained by the United States Soil Conservation Service. A high intensity soil survey performed by a registered soil scientist, licensed in the state of Maine may constitute such evidence.

(4) The following resources as identified in the Town's Comprehensive Plan and land within two hundred and fifty feet (250) of those resources as shown on the official Shoreland Zoning Map of South Berwick.

- (a) The Balancing Rock.
- (b) The Spring Hill Overlook.
- (c) The Gorge.

(5) Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value as most recently mapped, or waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of ~~May 1, 2006~~ December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.

(6) Limited Residential Shoreland District – LRS.

All land within two hundred fifty (250) feet from the normal high-water line (as measured from the edge of the associated wetland) of the following IWWH water bodies as mapped within the areas of:

- (a) Fife's Lane and Old South Road.
- (b) York Woods Road.

B. Shoreland and Slope District - SP [Amended 12-12-1988]

(1) Unless previously classified as Resource Protection, all land within two hundred fifty (250) feet horizontally of the normal high-water line, as measured from the edge of the stream channel, of the following water bodies:

- (a) Dennett Brook.
- (b) Boyd Brook.
- (c) Great Works River in the R1 and R2 Districts (the high water line shall be measured from the edge of any associated wetland.)
- (d) Chicks Brook, downstream of Emery's Bridge Road.
- (e) Lover's Brook.
- (f) Shorey's Brook.
- (g) Quamphegan Brook.
- (h) Lord Brook.
- (i) Hooper's Brook.
- (j) Knights Brook.
- (k) Warren Brook, south of Bickel Mountain.

- (l) Hussey Brook, north of Great Hill.
  - (m) Bennett Brook.
  - (n) Hamilton Brook.
  - (o) Driscoll Brook.
  - (p) Salmon Falls River above Route 4 (high water line shall be measured from the edge of any associated wetland.)
  - (q) Unnamed Stream 1 [as shown on Shoreland Map.](#)
  - (r) Unnamed Stream 2 [as shown on Shoreland Map.](#)
  - (s) Hilton Brook.
- (2) Land within two hundred fifty (250) feet of a major freshwater wetland boundary. [Added 12-12-1988]
  - (3) Land within two hundred fifty (250) feet of a coastal wetland boundary. [Added 12-12-1988]
  - (4) Any other free-flowing body of water, not listed above, which flows from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minutes series topographic map, to the point where the body of water becomes a river.
- C. 100-yr. Floodplain Zone - FEMA. Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100-year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- D. Minor Freshwater Wetland - MFW. A wetland of two or more contiguous acres, excluding Major Freshwater Wetlands, or forested wetlands as identified on the Federal National Wetlands Inventory.

**ARTICLE IV**  
**Land Use Standards**

**§110-19. Performance Standards for Specific Uses.**

**Two-Family and Multifamily Dwellings.**

A. New construction. New two-family and multifamily dwellings shall meet the following minimum road and Shoreland frontage as indicated in Table C.

**ARTICLE V**  
**Shoreland Standards**

The following standards shall apply to all land areas within two hundred fifty (250) feet of all water bodies protected by the Resource Protection District in Section 110-18.A. (1) and (2), the Shoreland and Slope District in Section 110-18.B. (1), (2) and (3) and Limited Residential Shoreland District in Section 110-18.A. (6), except that if any of these standards conflict with a stricter provision of this chapter, the more restrictive provision shall apply:

**§110-20. Agriculture.**

A. All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. sections 4201-4209).

- B. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified ~~GPA~~ in Great Ponds Act or a river flowing to a great pond classified ~~GPA~~ in Great Ponds Act, or within one hundred (100) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the Shoreland Zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- C. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the Shoreland Zone shall require a Conservation Plan, as approved by the Natural Resources Conservation Service, to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
- D. There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified ~~GPA~~ in Great Ponds Act; within one hundred (100) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- E. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified ~~GPA~~ in Great Ponds Act; within one hundred (100) feet, horizontal distance, of other water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan, as approved by the appropriate reviewing agency.

**§110-21. Beach Construction.** Beach construction on any great pond or coastal wetland or on any river, stream or brook shall require a permit from the Department of Environmental Protection.

**§110-22. Campgrounds.**

Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

- A. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
- B. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified ~~GPA~~ in Great Ponds Act or a river flowing to a great pond classified ~~GPA~~ in Great Ponds Act, and one hundred (100) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

**§110-23. Individual Private Campsites.**

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

- A. One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the Shoreland Zone, whichever is less, may be permitted.

- B. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified ~~GPA~~ in Great Ponds Act or river flowing to a great pond classified ~~GPA~~ in Great Ponds Act, and one hundred (100) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- C. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- D. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- E. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
- F. When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.

**§110-24. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.**

- A. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 100 feet, horizontal distance, and inland from the normal high-water line, except to remove safety hazards.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

- B. Except in areas as described in Section 110-24.A, above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified ~~GPA~~ in Great Ponds Act or a river flowing to a great pond classified ~~GPA~~ in Great Ponds Act, and one hundred (100) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- (1) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
- (2) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this Section a "well-distributed stand of trees" adjacent to a great pond classified ~~GPA~~ in Great Ponds Act or a river or stream flowing to a great pond classified ~~GPA~~ in Great Ponds Act, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4 1/2 feet above ground level (inches)	Points
2 - <4 "	1
4 - <8 "	2
8 - <12"	4
>12 "	8

Adjacent to areas zoned as Shoreland and Slope a well-distributed stand of trees is defined as maintaining a minimum rating score of 8 per ~~25-foot-square area~~ 25-foot by 50-foot plot area.

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of ~~10~~ 16 per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

- (a) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
  - (b) Each successive plot must be adjacent to, but not overlap a previous plot;
  - (c) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
  - (d) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by ~~is~~ this Ordinance;
  - (e) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.
- (3) For the purposes of this Section "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

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

- (a) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 110-24, A and B.
- (b) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (c) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.
- (d) Section 110-24.B does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

- C. At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified ~~GPA~~ in Great Ponds Act or a river flowing to a great pond classified ~~GPA~~ in Great Ponds Act, and one

hundred (100) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the Shoreland Zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the applicable business districts.

- D. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- E. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 110-24.

#### **§110-25. Erosion and Sedimentation Control.**

- A. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
  - (1) Mulching and revegetation of disturbed soil.
  - (2) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - (3) Permanent stabilization structures such as retaining walls or rip rap.
- B. In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- C. Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- D. Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of rip rap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - (1) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - (2) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - (3) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- E. Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip rap.

**§110-26. Mineral Exploration and Extraction.**

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

- A. A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 110-26.D, below.
- B. No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified ~~GPA~~ in Great Ponds Act or a river flowing to a great pond classified ~~GPA~~ in Great Ponds Act, and within one hundred (100) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- C. When gravel pits must be located within the Shoreland Zone, they shall be set back as far as practicable from the normal high-water line and no less than one hundred (100) feet and screened from the river by existing vegetation.
- D. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
  - (1) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
  - (2) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
  - (3) Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- E. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

**§110-27. Additional Shoreland Structures.**

Piers, docks, wharves, breakwaters, causeways, marinas bridges, structures and uses extending over or beyond the normal high water line of a water body or within a wetland. In addition to federal or state permits which may be required for such structures and uses, they shall conform to the following:

- A. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- B. The location shall not interfere with existing developed or natural beach areas.

- C. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use and character of the area.
- D. The facility shall be located so as to minimize adverse effects on fisheries.
- E. No new structure shall be built on, over, or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- F. No existing structures built on, over or abutting a pier, dock wharf, or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- G. Except in the applicable business districts, structures built on, over, or abutting a pier, wharf, dock, or other structure extending beyond the normal high water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
- H. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

**§110-28. Roads and Driveways.**

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

- A. Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified ~~GPA~~ in Great Ponds Act or a river that flows to a great pond classified ~~GPA~~ in Great Ponds Act, and one-hundred (100) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent. Section 110-28.A does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this Section except for that portion of the road or driveway necessary for direct access to the structure.

- B. New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

- C. Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 110-25.
- D. Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.
- E. In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- F. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

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

Grade (Percent)	Spacing (Feet)
0-2	250
3-5	200-135
6-10	100-80
11-15	80-60
110-20	60-45
21 +	40

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

- G. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

**§110-29. Septic Waste Disposal.**

- A. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following:
  - (1) Clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than one hundred (100) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and;
  - (2) Holding tank is not allowed for a first-time residential use in the Shoreland zone.

**§110-30. Signs.**

The following provisions shall govern the use of signs in the Resource Protection and applicable Residential and Business Districts:

- A. Signs relating to goods and services sold on the premises shall be allowed, provided that such signs shall not exceed six (6) square feet in area and shall not exceed two (2) signs per premises. In the applicable Business Districts, however, such signs shall not exceed sixteen (110) square feet in area. Signs relating to goods or services not sold or rendered on the premises shall be prohibited.
- B. Name signs are allowed, provided such signs shall not exceed two (2) signs per premises, and shall not exceed twelve (12) square feet in the aggregate.
- C. Residential users may display a single sign not over three (3) square feet in area relating to the sale, rental, or lease of the premises.
- D. Signs relating to trespassing and hunting shall be allowed without restriction as to number provided that no such sign shall exceed two (2) square feet in area.
- E. Signs relating to public safety shall be allowed without restriction.
- F. No sign shall extend higher than twenty (20) feet above the ground.
- G. Signs may be illuminated only by shielded, non-flashing lights.

**§110-31. Principal and Accessory Structures.**

~~Except for the Great Works River in the R1 and R2 A, all new principal and accessory structures (See Chapter 140) shall be set back at least two hundred and fifty (250) feet, horizontal distance, from the normal high-water line of great ponds classified GPA in Great Ponds Act and rivers that flow to great ponds classified in GPA-Great Ponds Act. and one hundred (100) feet, horizontal distance, from the normal high water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the applicable Business Districts the setback from the normal high water line shall be at least twenty five (25) feet, horizontal distance, and Limited Residential Shoreland Districts the setback from the normal high water line shall be at least 100'. In the Resource Protection District the setback requirement shall be two hundred and fifty (250) feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.~~

~~See Other setbacks are listed in~~ Table C, Shoreland Dimensional Requirements and Index.

In addition:

- (1) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- (2) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area or eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

- (3) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Shoreland Zone and applicable Residential and Business Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area.
- (4) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.
- (5) The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the Shoreland Zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the Shoreland Zone, including land area previously developed, except in the applicable Residential and Business Districts adjacent to tidal waters and rivers that do not flow to great ponds classified **GPA** in Great Ponds Act.
- (6) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
  - (a) The site has been previously altered and an effective vegetated buffer does not exist;
  - (b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
  - (c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
  - (d) The total height of the wall(s), in the aggregate, are no more than 24 inches;
  - (e) Retaining walls are located outside of the 100 year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
  - (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
  - (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
    - [1] The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
    - [2] Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
    - [3] Only native species may be used to establish the buffer area;
    - [4] A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland; A footpath not to exceed the standards in Section 110-24.B.(1), may traverse the buffer;
- (7) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

**§110-32. Parking Areas.**

- A.** Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the applicable Residential and Business Districts parking areas shall be set back at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in Districts other than the applicable Business District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- B.** Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- C.** In determining the appropriate size of proposed parking facilities, the following shall apply:
  - (1) Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
  - (2) Internal travel aisles: Approximately twenty (20) feet wide.

**§110-33. Timber Harvesting.**

- A.** No accumulation of slash shall be left within fifty (50) feet of the normal high-water mark of any pond, river or salt water body as defined. At distances of greater than fifty (50) feet from the normal high-water mark of such waters and extending to the limits of the area covered by Zoning, Chapter 140, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground.
- B.** Within a strip of land extending 250 feet inland from the normal high water line in a shoreland area zoned for Resource Protection abutting a great pond there shall be no timber harvesting except to remove safety hazards.
- C.** Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an un-scarified strip of vegetation of at least seventy five (75) feet in width for slopes up to ten (10%) percent shall be retained between the exposed mineral soil and the normal high water line of a water body or wetland edge. For each ten (10%) percent increase in slope, the un-scarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet from the normal high water line of a protected water body.
- D.** Timber harvesting operations shall be conducted in such a manner and at such a time that minimal soil disturbance results. Adequate provisions shall be made to prevent soil erosion and sedimentation of surface waters. Timber harvesting equipment shall not use stream channels as travel routes except when:
  - (1) Surface waters are frozen; and
  - (2) The activity will not result in any ground disturbance.
- E.** All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel rock or similar hard surface which would not be eroded or other wise damaged.

- F. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil re-vegetated.
- G. Except in areas as described in Section 110-33.B, above, timber harvesting shall conform to the following provisions:
  - ⊕1. Selective harvesting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above the ground level on any lot in any ten year period is permitted. In addition:
    - (a) Within one hundred (100) feet, horizontal distance of the normal high water of a water body zoned for Resource Protection and within one hundred (100) feet, horizontal distance of water bodies zoned for Shoreland/Slope and tributary streams, there shall be no clear-cut openings and a well distributed stand of trees shall be maintained.
    - (b) At distances greater than one hundred (100) feet, horizontal distance of any water resource zoned for Resource Protection and the Great Works and Salmon Falls rivers and greater than one hundred (100) feet, horizontal distance of the water resources zoned for Shoreland/Slope, timber harvesting operations shall not create single openings in the forest canopy greater than the height of the average tree in the stand. Such openings shall be included in the calculation of total volume removal. For the purposes of these standards volume may be considered to be equivalent to basal area.
- H. Timber harvesting operations exceeding the (40%) percent limitation in paragraph G(1) above, may be allowed by the Planning Board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this ordinance. The Planning Board shall notify the Commissioner of the Department of Environmental protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

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**§110-34. Essential Services.**

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

**§110-35. Storm Water Runoff.**

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

**§110-36. Archeological Site.**

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

**§110-37. Minor Freshwater Wetlands.**

This Section pertains to work to be carried out adjacent to, but not in, a minor freshwater wetland as defined. Adjacent work includes depositing of fill, excavating, bulldozing and scraping the land when located within one hundred (100) feet of the normal high-water line of a minor freshwater wetland.

- A. In order to prevent surface water which may carry sediment from the disturbance activity from directly entering a minor freshwater wetland:
  - (1) A twenty five (25) foot undisturbed strip of vegetation shall be maintained between the normal high-water line and the activity; and
  - (2) Where sustained slopes exceed 20% a one hundred (100) foot undisturbed strip of vegetation shall be maintained between the normal high-water line and the activity.
- B. These undisturbed buffer strip requirements do not apply to:
  - (1) Providing access to an approved use.
  - (2) Maintenance of existing roadways.
  - (3) Removal of underground storage tanks.
  - (4) Removal, replacement or maintenance of wastewater disposal systems.
  - (5) Placement and replacement of foundations and supports for legally existing or authorized structures.

**ARTICLE VI  
Administration**

**§110-38. Administration.**

- A. **Administering Bodies and Agents.**
  - (1) Code Enforcement Officer. As defined in §140-73, Duties of enforcement officer.
  - (2) Board of Appeals. As defined in §140-76, Board of Appeals; appeal procedures.
  - (3) Planning Board. As defined in Chapter 3, Administrative Code; Article XII, Planning Board, and Chapter A148, Planning Board Bylaws; §A148-1, General.
- B. **Permits Required.** After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.
  - (1) A permit is not required for the replacement of an existing road culvert as long as:
    - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
    - (b) The replacement culvert is not longer than seventy five (75) feet; and
    - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.

- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable Erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

**C. Permit Application.**

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Chapter 140, Zoning: Attachment 1, Table A, Land Use; Attachment 2, Table B, Dimensional Requirements; and Attachment 3, Table C, Shoreland Dimensional Requirements.
- (2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (4) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

**D. Procedure for Administering Permits.** Within thirty five (35) days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 110-38.B, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

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

- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the provisions of Article V, Shoreland Standards.

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

**E. Special Exceptions.** In addition to the criteria specified in Section 110-38.D, above, excepting structure setback requirements, the Planning Board may approve a permit for a single-family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

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

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

- (4) The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
- (5) All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 100 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

**F. Expiration of Permit.** Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

**G. Installation of Public Utility Service.** A public utility, water district, sewer district or any utility company of any kind may not install services to any new structure located in the Shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

**§110-39. Appeals and Zoning Board of Appeals.** See Zoning, Chapter 140, Section 76.

- A. The Board of Appeals may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Planning Board or Code Enforcement Officer in the administration of this chapter. Such hearing shall be held in accordance with Section 140-76.C. Following such hearing, the Board of Appeals may reverse the decision of the Planning Board or Code Enforcement Officer only upon a finding that the decision is clearly contrary to specific provisions of this chapter by the concurring vote of a majority of the votes cast.
- B. Notwithstanding Section 110-39.A. above, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
- C. A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

**§110-40. Allowed Uses.** See Appendix I, Table A, Land Use.

**Table of Land Uses.** All land use activities, as indicated in Table A, Land Use in the Shoreland Zone, shall conform with all of the applicable Shoreland standards in Article V. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map.

**TABLE C  
SHORELAND DIMENSIONAL REQUIREMENTS**

<b>RESIDENTIAL &amp; NON COMMERCIAL</b>							
<b>B1 &amp; B2 &amp; BR residential uses same as Commercial Requirements</b>							
<b>Minimum Lot Size Requirements (sf.)</b>	<b>R1 &amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>I1</u></b>	<b><u>I2</u></b>
Tidal	30,000 (2)	<del>30,000 (2)</del> <b><u>40,000</u></b>	30,000 (2)	NA	NA	NA	NA
Non-Tidal	40,000	40,000	40,000	40,000	40,000	<b><u>40,000</u></b>	<b><u>40,000</u></b>
<b>Shore Frontage (ft.)</b>	<b>R1 &amp; R1A</b>	<b>R2 &amp; R2a</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>I1</u></b>	<b><u>I2</u></b>
Tidal	150	150	200	NA	NA	<b><u>NA</u></b>	<b><u>NA</u></b>
Non-Tidal	200	200	200	200	200	<b><u>200</u></b>	<b><u>200</u></b>
Two-family & Multifamily Dwellings							
2 Units	400	400	400	400	400	<b><u>NA</u></b>	<b><u>400</u></b>
3 Units	600	600	600	600	600	<b><u>NA</u></b>	<b><u>600</u></b>
4 Units	800	800	800	800	800	<b><u>NA</u></b>	<b><u>800</u></b>
5 Units	1,000	1,000	1,000	1,000	1,000	<b><u>NA</u></b>	<b><u>1,000</u></b>
6 Units	1,200	1,200	1,200	1,200	1,200	<b><u>NA</u></b>	<b><u>1,200</u></b>
Two-family & Multifamily Dwellings							
	<b>B1</b>	<b>B2</b>	<b>BR</b>				
2 Units	200	400	200				
3 Units	300	600	300				
4 Units	400	800	400				
5 Units	500	1,000	500				
6 Units	600	1,200	600				

<b>RESIDENTIAL &amp; NON COMMERCIAL (Cont.)</b>							
<b>Setbacks For Structures (ft.)</b>	<b>R1&amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>I1</u></b>	<b><u>I2</u></b>
For Water Bodies and Recognized Features Listed Under Section 110-18.A.(1), (2) (3.a), (4), and (5)	250 (3), <del>(4)</del> , (5)	250 (3), <del>(4)</del> , (5)	250 (3), (4), (5)	250 (3), <del>(4)</del> , (5)	250 (3), <del>(4)</del> , (5)	<del>250 (3), (4)</del> , <u>(5)</u>	<del>250 (3), (4)</del> , <u>(5)</u>
For Water Bodes and Recognized Features Listed Under Section 110-18.B.(1-4), Shoreland and Slope	100	100	100	100	100	<u>100</u>	<u>100</u>
Setbacks vary for Activities; See specific activities in Article V	<b>R1&amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>I1</u></b>	<b><u>I2</u></b>
110-20. Agriculture. 110-22. Campgrounds. 110-23. Individual Private Campsites. 110-24. Clearing of Vegetation for development. <b><u>110-26. Mineral Exploration</u></b> 110-28. Road and Driveways. 110-32. Parking Areas. 110-33. Timber Harvesting. 110-37. Minor Freshwater Wetlands.							
For resources listed under Section 110-18.A.(3), (d) Minor freshwater wetlands and (f) River banks (ft.)	25	25	25	25	25	<u>25</u>	<u>25</u>
For resources listed under Section 110-18.A.	100	100	100	100	100	<u>100</u>	<u>100</u>
<b>Maximum Lot Coverage</b>	<b>R1&amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>I1</u></b>	<b><u>I2</u></b>
As Defined	20%	20%	20%	20%	20%	<u>60%</u>	<u>60%</u>

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<b>COMMERCIAL</b>								
<b>Minimum Lot Area (sf.) (7)</b>	<b>B1 &amp; B2</b>		<b>R1&amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>II&amp;I2</u></b>
Tidal	NA		40,000	NA	40,000	NA	NA	<u>NA</u>
Non-Tidal	NA		60,000	60,000	60,000	60,000	60,000	<u>80,000</u>
<b>Shore Frontage (ft.)</b>	<b>B1 &amp; B2</b>		<b>R1&amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>II&amp;I2</u></b>
Tidal	NA		200	NA	200	NA	NA	<u>NA</u>
Non-Tidal	Same as Table B- <u>NA</u>		300	300	300	300	300	<u>300</u>
<b>Setbacks for Structures (ft.)</b>	<b>B1 &amp; B2</b>		<b>R1&amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>II&amp;I2</u></b>
For Water Bodies Listed Under Section 110-18.A. (1), (2), (4), and (5)	25		<del>200</del> <u>250</u>					
For Water Bodies Listed Under Section 110-18.B.(1-4) Shoreland and Slope	25		<del>300</del> <u>100</u>	<u>100</u>				
<b>Maximum Lot Coverage</b>	<b>B1</b>	<b>B2</b>	<b>R1&amp; R1A</b>	<b>R2 &amp; R2A</b>	<b>R3</b>	<b>R4</b>	<b>R5</b>	<b><u>II&amp;I2</u></b>
As Defined	<u>NA</u>	50%	20%	20%	20%	20%	20%	<u>70%</u>